

Nos. 20-543, 20-544

In the
Supreme Court of the United States

JANET L. YELLEN, SECRETARY OF TREASURY,
Petitioner,

v.

CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION, *et al.*,
Respondents.

ALASKA NATIVE VILLAGE CORPORATION
ASSOCIATION, INC., *et al.*,
Petitioners,

v.

CONFEDERATED TRIBES OF THE CHEHALIS
RESERVATION, *et al.*,
Respondents.

On Writs Of Certiorari To The United States Court of
Appeals for the District of Columbia Circuit

**BRIEF OF *AMICI CURIAE* U.S. SENATORS
LISA MURKOWSKI AND DAN SULLIVAN, AND
U.S. CONGRESSMAN DON YOUNG IN SUPPORT
OF PETITIONERS**

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**BRIEF OF *AMICI CURIAE* U.S. SENATORS
LISA MURKOWSKI AND DAN SULLIVAN, AND
U.S. CONGRESSMAN DON YOUNG¹ IN
SUPPORT OF PETITIONERS**

U.S. Senators Lisa Murkowski and Dan Sullivan, and U.S. Congressman Don Young respectfully submit this brief in support of Petitioners and to reverse the September 25, 2020, judgment of the Court of Appeals for the D.C. Circuit.

INTEREST OF AMICI CURIAE

Amici Members of Congress are the two United States Senators and the one Member of the United States House of Representatives elected from the state of Alaska. We are Members of Congress who serve the *only* state in the nation that is home to both List Act tribes and Alaska Native Corporations (“ANCs”).

To be clear, when we use the term List Act tribe in this brief, unless specifically stated, that term refers to the definition of Federally Recognized Tribe contained in the List Act of 1994 (“List Act”).

¹ No counsel for any party authored this brief in whole or in part, and no such monetary contribution intended to fund the preparation or submission of this brief was made; this brief was prepared and submitted *pro bono*.

Counsel has obtained written consent to the filing of this brief from Petitioners Alaska Native Village Corporation Association, Inc., *et al.* and Secretary Yellen, and from Respondents Confederated Tribes of the Chehalis Reservation, *et al.*, Cheyenne River Sioux Tribe, *et al.*, and Ute Tribe of the Uintah and Ouray Reservation.

Amici Members of Congress have a unique expertise and interest in legislating fairly on behalf of both List Act tribes and ANCs in order to maximize the good we do on behalf of our constituency and all indigenous people of the nation.

We also have the *only* Indian constituency receiving disparate treatment under Title V of the CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (codified at 42 U.S.C. § 801). This disparate treatment fails to uphold the trust relationship between the federal government and the Alaska Native and American Indian people of our state. (The terms Alaska Native people, Indians, and indigenous people are used interchangeably in this brief because Alaska Native people are Indians, as was explicitly reaffirmed by Congress in classifying ANCSA as Indian legislation.)

Amici Members of Congress continue that trust relationship by using the definition of “Indian tribe” pursuant to the Indian Self-Determination and Education Assistance Act (“ISDEAA”), 25 U.S.C. § 5304(e), as it was enacted and reaffirmed over the years—to include ANCs as eligible to receive and deliver services to all indigenous people of our state. The ISDEAA definition of “Indian tribe” is considered the “gold standard” for inclusivity, and was intentionally used by Congress in the CARES Act, Title V, to provide the maximum benefit for all indigenous people, including those in Alaska. Like the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”), ISDEAA recognizes and reinforces that a tribe need not be sovereign for its members to participate in decisions affecting their lives—self-determination—with the

resulting decisions providing benefits to all indigenous people of Alaska.

Amici Members of Congress's expertise legislating to uphold and further the federal trust relationship includes Congressman Young's service on the U.S. House of Representatives' ("House") Indian Affairs Subcommittee, which introduced the terms Alaska Native "regional or village corporation" into ISDEAA, f/k/a "ISDA," during its original consideration in 1974, prior to its enactment.

Indeed, all three *Amici* Members of Congress oversee and/or serve on committees that use the ISDEAA definition as written—to include ANCs to receive and provide benefits to the indigenous people of Alaska.

Senator Murkowski is currently the Vice Chair of the U.S. Senate Committee on Indian Affairs, which passes and oversees laws specific to all Indian Affairs and has been a member of the committee since 2003. She is also currently a member of the Committee on Energy and Natural Resources, which has jurisdiction over the Alaska Native Claims Settlement Act ("ANCSA"). She has been a member of the committee since 2002 and served as Chair from 2015-2020 and the Ranking Member from 2009-2014. Senator Murkowski is also a member of the Committee on Appropriations and serves as the Ranking Member for the Subcommittee on the Interior, Environment, and Related Agencies, which funds a large share of federal Indian programs that uphold the federal trust responsibility, including the Bureau of Indian Affairs ("BIA"), the Indian Health Service ("IHS"), and the many tribes and tribal organizations that contract or

compact such programs via ISDEAA (Public Law 93-638)-*the very law and definition at issue here.*

Senator Murkowski is also a member of the Health, Education, Labor, and Pensions Committee, which has been combating COVID-19 and dealing with health care challenges across the country for all groups, including America's indigenous people.

Senator Sullivan serves on the U.S. Senate Committee on Commerce, Science, and Transportation, which oversees many issues ranging from telecommunication to fisheries, marine transportation highways to interstate commerce, space to consumer safety, transportation to technology, and the Coast Guard to aviation. The Commerce Committee is one of the two Senate committees that oversees the surface transportation bill that is reauthorized about every five years, and includes the Tribal Transportation Program. The Tribal Transportation Program includes ANCs as eligible "Indian tribes."

Senator Sullivan also sits on the U.S. Senate Committee on Environment and Public Works ("EPW"), the other Committee that has oversight of the surface transportation bill as well as a water resources development bill that is passed approximately every two years and provides eligibility and assistance to indigenous people. EPW also oversees the Environmental Protection Agency's Indian Environmental General Assistance Program, which includes ANCs as Indian tribal governments. Senator Sullivan also helped author 42 U.S.C. § 1962d-5b(b), in which the Army Corps of Engineers treats ANCs as "Indian tribes" pursuant to ISDEAA.

Prior to his tenure as U.S. Senator, he served as the Attorney General of the State of Alaska and was regularly involved with litigation involving Indian law and Alaska Native law.

Finally, Congressman Young is the Dean of the House and its longest serving member, having devoted 48 years/24 terms to serving the interests of the residents of Alaska and the United States. Congressman Young actively participated in the passage of ISDEAA in 1974/1975 and its amendments; amendments that include defining ANCs as “Indian tribes” prior to the final bill becoming law. Congressman Young was also present in 1988 when ISDEAA was revisited and the definition to include Alaska Native “regional or village corporation” was affirmed. Congressman Young was involved in the passage of the 1988/1991 ANCSA amendments as well as the passage of NAHASDA in 1996.

Congressman Young is currently the Chairman Emeritus of the House Natural Resources Committee and is also the Ranking Member on the Subcommittee for Indigenous People of the United States f/k/a Indian, Insular, and Alaska Native Affairs.

Congressman Young’s experience is particularly unique and useful to this Court as the CARES Act, Title V, was enacted to provide for emergency-relief funds to “Indian tribes” defined by ISDEAA, which includes both Alaska Native “regional or village corporations” and List Act tribes. 42 U.S.C. §§ 801(g)(1), (5). In addition to taking part in the original passage of ISDEAA; since taking office, Congressman Young has been in office for all re-enactments, affirmations, and amendments discussed herein.

The D.C. Circuit’s decision singles out the indigenous people of Alaska, the constituency we represent, and forces them to try to seek redress from the State of Alaska (“State”) rather than the federal government, which owes them a special duty under its trust relationship with Indians. Not only is that incorrect for legal and historic reasons, but it is also not the reality of how services are received or delivered to indigenous people in Alaska.

In response to the D.C. Circuit’s decision removing the trust relationship from Congress, the State has emphatically asserted that it is not the State’s responsibility to deliver such services and they do not have the capacity to do so. *See Am. Br. of State of Alaska*.

Thus, the State has affirmed *and instituted in practice during COVID-19* that ISDEAA reinforced the federal government’s trust responsibility to the indigenous people of Alaska. It is not the State’s responsibility to deliver benefits. Accordingly, we respectfully request this Court overturn the decision of the D.C. Circuit.

SUMMARY OF ARGUMENT

Since the passage of ISDEAA, Congress has used the ISDEAA definition of “Indian tribe” to provide benefits to all the indigenous people of Alaska, regardless of whether an indigenous person belongs to a List Act tribe, an ANC, neither, or both. The CARES Act, Title V, was not intended to leave our indigenous constituents out in the cold just because they do not belong to a List Act tribe or live outside the boundaries of a tribal village. Superimposing another definition not only limits self-determination solely to Alaska

Native people who belong to a List Act tribe, it would upend the laws we write, agency practice, and established jurisprudence. The D.C. Circuit’s decision stands alone in its position.

In the 40-plus years prior to our drafting of the relevant portion of the CARES Act, not one branch of government, read, understood, or applied the ISDEAA definition only to sovereign tribes—simply because it does not.

ISDEAA’s concept of self-determination has not been limited to sovereign tribes nor does it hinge on whether or not a tribe is recognized pursuant to the List Act. “There has never been a single, all-purpose definition of . . . ‘Indian tribe’ . . . for federal purposes.” COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 3.02[1] (Nell Jessup Newton ed., 2017).

Indeed, “federal courts historically played a significant role in determining federally recognized tribal existence, relying heavily on the history of dealings by the political branches through treaties, statutes, executive orders, or agreements recognizing the tribe in question.” *Id.* Even the List Act “includes a finding that tribes recognized by the Congress, by the executive order, or by court decision ‘*may not be terminated except by an Act of Congress.*’” *Id.* fn.2 (citing to Pub. L No. 103-454 § 103(4), 108 Stat. 4971) (emphasis added).

It is not our burden to defend our laws, but the burden is on those challenging them to prove those laws do not work as every branch of government has read, understood, applied, and relied upon for nearly half a century. Congress has not terminated the

recognition of ISDEAA tribes, which includes ANCs, even though we had every opportunity to do so.

Alaska ranks number one among states in the delivery of the COVID-19 vaccine. The State has attributed this success, in which the whole population has benefitted directly, to the delivery system in which ANCs play a large part. Whether by snow machines, dog sleds (sometimes pulled by snow machines), or bush planes, the Alaska system has worked successfully to deliver vaccines during one of the worst pandemics to face this nation. Without ANCs, the tribal organization health care system as well as other systems in place, could easily fail.

Moreover, the success of Alaska's unique system for receiving and delivering trust benefits, a system that includes ANCs or their non-profit designees, along with List Act tribes, is a testament to the success of self-determination during the pandemic. While funds are being withheld from ANCs and only ANCs because of the D.C. Circuit's decision, ANCs, through their established non-profits and/or as part of tribal organizations, have gone into overdrive, often at their expense and risk, to provide benefits for *all the indigenous people of the state* through these networks. These networks exist and thrive through Alaska's unique system of ANCs and List Act tribes working in complement to further self-determination—the process by which our indigenous constituency makes choices affecting their lives.

Accordingly, we respectfully request the D.C. Circuit's decision be reversed and ANCs continue to be considered "Indian tribes" under ISDEAA as they have been for nearly half a century by all branches of the federal government.

ARGUMENT**I. THE D.C. CIRCUIT’S DECISION INCORRECTLY ASSIGNED SOVEREIGNTY AS A REQUIREMENT FOR SELF-DETERMINATION—IT IS NOT****A. ISDEAA and ANCSA Do Not Confer Sovereignty But the Basic Right of Self-Determination for Indian People**

To understand ISDEAA in Alaska, the Court must understand ANCSA and how self-determination of the Alaska Native people occurs in practice. In the very title of ISDEAA is Indian Self-Determination. Importantly, both ANCSA and ISDEAA were enacted for maximum participation of Native people in decisions affecting their lives: the very purpose of self-determination. “[W]ith maximum participation by Natives in decisions affecting their rights” 43 U.S.C. § 1601(b).

The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the *Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.*

25 U.S.C. § 5302(a) (emphasis added).

In 1971, ANCSA was signed into law and, *inter alia*, Congress established ANCs in order to settle aboriginal land claims in Alaska. In 1988, Congress

amended ANCSA and reaffirmed the special trust relationship between the federal government and American Indians, which includes Alaska Native people. “[T]he Alaska Native Claims Settlement Act and this Act are Indian legislation enacted by Congress pursuant to its plenary authority under the Constitution of the United States to regulate Indian affairs.” 43 U.S.C. § 1601 note; *see also* U.S. Const. Art. I, § 8, cl. 3.

ANCSA makes clear that the Alaska Native people are the heart and soul of ANCs, and for whom ANCs were formed to benefit. Alaska Native people are not to be considered “less than” other Indian people just because they fall into one designation rather than another. With its passage in 1975, ISDEAA also explicitly recognized and imported ANCs into concepts of self-determination by including them in the definition of “Indian tribe.”

Neither ANCSA nor ISDEAA confer sovereignty or sovereign recognition. Rather, both confer on the Alaska Native people the right to self-determination as guaranteed to them by the trust responsibility of the federal government. In this way, self-determination is not a feature unique or reserved solely to sovereign tribes.

List Act tribes are recognized by the Secretary of the Interior and placed on a list, published every year. 25 U.S.C. § 5131. The federal recognition process is rigorous and List Act tribes, *inter alia*, are sovereign whereas ANCs are not. List Act tribes are included in the ISDEAA definition alongside ANCs to maximize self-determination—not to make ANCs sovereign.

To be sure, the List Act was not passed, nor has it been applied, to terminate the rights of Alaska Native people who do not belong to a sovereign List Act tribe. It is not asserted to be a statute that disenfranchised the indigenous people from trust benefits. Rather, the List Act confers special and notable sovereign recognition without ending the benefits intended for all indigenous people.

In 1987, the Ninth Circuit analyzed the statutory construct of ISDEAA in *Cook Inlet Native Ass'n v. Bowen*, 810 F.2d 1471 (9th Cir. 1987), and affirmed that the inclusive text was correct. That is, *Bowen* found that Congress expressly inserted Alaska Native “regional or village corporation” into the ISDEAA definition and that those words have meaning.

The following year, both ISDEAA and ANCSA were revisited by Congress, which reaffirmed that the court’s holding in *Bowen* was correct.

**1. In 1988, Congress Reaffirmed
The Trust Relationship
Between the Federal
Government and Alaska
Native People**

In 1988, following *Bowen*, ANCSA was amended to explicitly reaffirm that the Alaska Native people were to remain eligible for federal programs. “*Notwithstanding any other provision of law, Alaska Natives shall remain eligible* for all Federal Indian programs on the same basis as other Native Americans.” 43 U.S.C. § 1626(d) (emphasis added). ANCSA does not require that the Alaska Native people belong to a List Act tribe rather than an ANC

to remain eligible for Indian programs, such as CARES Act relief funding. Accordingly, this amendment made after *Bowen* and in agreement with self-determination, clarified any confusion that may have existed prior or subsequent to *Bowen*.

Indeed, Congress's history of amending ANCSA must hold significant weight in judicial interpretation of our actions. *See, e.g., U.S. v. Brown*, 333 U.S. 18, 25 (1948) (concluding amendment of disputed provision "was intended . . . to broaden the Act's coverage or to assure its broad coverage"); *see also Pierce Cty. v. Guillen*, 537 U.S. 129, 145 (2003) (holding that when Congress acts to amend a statute, the court presumes Congress intended the amendment to have real and substantial effect and that giving that amendment less weight would render our actions an exercise in futility) (citing to *Stone v. INS*, 514 U.S. 386, 397 (1995)).

The Constitutional analysis in the House report accompanying the 1988 amendment is striking in that it explicitly embraces that Congress exercised its power, in passing and amending ANCSA, pursuant to the Indian Commerce Clause, as enunciated in *Morton v. Mancari*, and did so by treating the Alaska Native people, through ANCs, as Indians. The federal trust and fiduciary relationship continues and did *not* run its course or end with the land claims settled. *See Report From the House of Representatives, Additional Views, Mr. Udall, Chair, to accompany H.R. 278, H.R. Rep. No. 100-31 (1987).*

In agreement is a D.C. District Court decision, which was affirmed by the D.C. Circuit, holding that ANCs are "Indian tribes" under ISDEAA and

recognizing that ANCs are modern mechanisms for self-determination.

Although “treaties . . . were originally the primary instrument for the expression of this relationship,” in the modern era “federal laws like Section 8014 *are the means by which the United States carries out its trust responsibilities and the federal policy of self-determination and economic self-sufficiency.*” Amendment No. 3319, 146 Cong. Rec. S5019 (daily ed. June 13, 2000). The ANCSA is one such modern mechanism that designates Native Alaskan Corporations as the vehicle used to provide continuing economic benefits in exchange for extinguished aboriginal land rights.

Am. Fed’n of Gov’t Emps. (AFL-CIO) v. United States, 195 F.Supp.2d 4, 21-22 (D.D.C. 2002) (footnote omitted) (emphasis added), *aff’d*, 330 F.3d 513 (D.C. Cir. 2003); *cert denied*, 540 U.S. 1088 (2003). Notably, ANCSA extinguished only the land claims settled. It did not terminate the federal trust responsibility or Alaska Native people’s eligibility to receive and deliver those trust benefits.

ANCSA was a unique drafting of Indian law specific to the Alaska Native people. ANCSA did not curtail fundamental rights of self-determination, as long confirmed by agencies, courts, and Congress. Congressman Young joined in amending ISDEAA prior to passage to reflect that, and later Congresses have recognized and reaffirmed ANCs as “Indian tribes” under ISDEAA.

2. The 1988 ISDEAA Amendments Confirmed ANCs Are “Indian Tribes”

The 1988 amendments to ISDEAA did not revisit the definition of “Indian tribe,” which included ANCs. Indeed, the 1988 amendments changed other definitions in ISDEAA but did not change the definition of “Indian tribe,” leaving ANCs as part of the definition. *See* Indian Self-Determination and Education Act Amendments of 1988, Pub. L. No. 100-472, § 103, 102 Stat. 2285 (1988).

That is, in 1988, after the Ninth Circuit’s *Bowen* decision in 1987, and after over a decade of agency practice administering the statute as Congress intended, Congress revisited ISDEAA. The inclusive definition of “Indian tribe” did not change, nor did agency practice after Congress reenacted the definition.

“When the statute giving rise to the longstanding interpretation has been reenacted without pertinent change, the ‘congressional failure to revise or repeal the agency’s interpretation is persuasive evidence that the interpretation is the one intended by Congress.’” *FDIC v. Philadelphia Gear Corp.*, 476 U.S. 426, 437 (1986) (citing to *NLRB v. Bell Aerospace*, 416 U.S. 267, 275 (1974); *Zenith Radio Corp. v. United States*, 437 U.S. 443, 457 (1978)).

This Court has long held that Congress “is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.” *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). The 1988 amendments to ISDEAA followed thirteen

years of uniform Congressional and administrative practice and reliance as well as affirmed recent jurisprudence.

The inclusion of express language recognizing ANCs as “Indian tribes” in ISDEAA meant and means something, as it did in 1974 and as was reinforced in 1988 by Congress in respective amendments to both ISDEAA and ANCSA. Just as the goal of ANCSA was and is to maximize Indian participation in decisions affecting their lives, so too was the goal of ISDEAA, as reflected in the text and title.

As this court has held, later enacted statutes, such as the List Act, do not repeal the self-determination rights established in ANCSA and ISDEAA. *See Branch v. Smith*, 538 U.S. 254, 273 (2003) (“[i]mplied repeal will only be found where provisions in two statutes are in ‘irreconcilable conflict,’ or where the latter act covers the whole subject of the earlier one and ‘is clearly intended as a substitute.’”) (quoting *Posadas v. Nat’l City Bank*, 296 U.S. 497, 503 (1936)); *United States v. United Cont’l Tuna Corp.*, 425 U.S. 164, 168 (1976) (“[i]t is, of course, a cardinal principle of statutory construction that repeals by implication are not favored.”).

To that end, “[t]he legislative history [of the Federally Recognized Indian Tribe List Act] indicates no Congressional intent to take away the federal benefits offered to other Indian Tribes that are not federally recognized [by the List Act] or to modify the contractual provisions associated with the federal benefits they receive.” *Schmasow v. Native Am. Ctr.*, 978 P.2d 304, 308 (Mont. 1999). Simply put, the List Act does not repeal the ISDEAA “Indian tribe” definition—it complements it.

Accordingly, and knowing how we legislate to include ANCs, *Amici* Members of Congress used the ISDEAA definition in the CARES Act, Title V. As we intended, this usage assigns to this statute its ordinary meaning as read, understood, and applied to the Alaska Native people.

3. NAHASDA Further Confirms ANCs Are “Indian Tribes” Under ISDEAA

NAHASDA, enacted in 1996, reinforced self-determination and fulfillment of the federal trust responsibility to the Indian people in providing affordable housing. *See* 25 U.S.C. § 4101(1)-(7). NAHASDA has also been amended several times from 1996 to 2010. *See, e.g.*, Pub. L. No. 104-330, 110 Stat. 4016 (1996); Pub. L. No. 105-276, 112 Stat. 2461 (1998); Pub. L. No. 106-568, 114 Stat. 2868 (2000); Pub. L. No. 107-292, 116 Stat. 2053 (2002); Pub. L. No. 108-393, 118 Stat. 2246 (2004); Pub. L. No. 109-136, 119 Stat. 2643 (2005); Pub. L. No. 110-411, 122 Stat. 4319 (2008); and Pub. L. No. 111-269, 124 Stat. 2850 (2010).

Like ISDEAA, NAHASDA is a statute of inclusion and self-determination as both titles state. It defines “federally recognized tribes” to include ANCs, in a manner that is substantively similar to the ISDEAA definition of “Indian tribe,” both in wording and by incorporating reference—irrespective of sovereignty. 25 U.S.C. § 4103(13)(B). Comparatively, the List Act of 1994 specifies only *sovereign* Indian tribes in its definition of “federally recognized tribes.” NAHASDA—enacted decades after ISDEAA, and two years after the List Act—ensured maximum participation of indigenous people in decisions

affecting their lives and well-being in a fundamental way—housing.

NAHASDA’s implementing regulations confirm that ANCs rightly participate in—and are critical to—NAHASDA programs. *See, e.g.*, 24 C.F.R. § 1000.302(1)(ix), (4) (ANCs are included in the allocation formula for Alaska); *see also* 24 C.F.R. § 1000.302(4)(ii) (in context of the Indian Housing Block Grant, “[t]he *geographic formula area of the regional corporation* shall be the area established by . . . ANCSA”) (emphasis added).

4. Indian Tribal Energy Development and Self-Determination Act

Amici Members of Congress similarly included ANCs in 2018 amendments to the Indian Tribal Energy Development and Self-Determination Act (“ITEDSDA”). Pub. L. No. 115-325, § 202(a), 132 Stat. 4445 (2018). Using the ISDEAA definition, the biomass project created by this legislation will benefit Indian tribes, with increased energy reliability, greater economic development, and improved power transmission. In order to include ANCs in the biomass project, we again defined “Indian tribe” by incorporating the inclusive ISDEAA definition. 132 Stat. 4461. (“The term ‘Indian tribe’ has the meaning given the term in section 4 of [ISDEAA].”); *see also* 25 U.S.C. § 3501(4)(A) (generally defining “Indian tribe” for ITEDSDA by incorporating the ISDEAA definition).

Our inclusion of ANCs in ITEDSDA’s general definition of “Indian tribe” is underscored by our *exclusion* of ANCs for other purposes within the same

statute. *See* 25 U.S.C. § 3501(4)(B); 25 U.S.C. § 3503(b)(1)(C) (emphasis added) (ANCs are excluded from using grant funds for developing and enforcing tribal (sovereign) laws in this program). This speaks to Congress’s specificity and purpose in employing the ISDEAA definition, as Congress is presumed aware of prior interpretation and usage.

We, *Amici* Members of Congress, not only have consistently sat on the committees with jurisdiction over Indian affairs, (one member since the inception of the ISDEAA), but have continuously passed and affirmed acts, like ITEDSDA, which define “Indian tribe” to include ANCs, as was done in the CARES Act, Title V. Neither we nor our colleagues have repealed or terminated that status.

B. The ISDEAA Definition and the List Act Definition Differ Substantially and the Difference Matters

In Alaska, some Alaska Native people are shareholders of ANCs, some are members of List Act tribes, some are both, and some are neither. Regardless of membership, ANCs and List Act tribes work together to ensure maximum participation by the Alaska Native people in decisions affecting their lives—self-determination. To further that goal, Congress uses different definitions. And it is demonstrably working.

For instance, in addition to ISDEAA, which includes ANCs, there are also statutes that solely refer to sovereign List Act tribes, without any language inserting ANCs. Further, there are statutes that refer to both types of tribes using the different definitions in the very same statute. A chart

demonstrating just some of the statutes that use the different definitions, such as the ISDEAA definition, including statutes enacted or amended since 1988, as well as statutes using the List Act tribe definition, and statutes using both definitions is attached.² The differences in the definitions, in their simplest forms, are represented below.

Indian Tribes pursuant to ISDEAA	Indian Tribes Pursuant to List Act
<p>“Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 25 U.S.C. § 5304(e).</p>	<p>“Indian tribe.” The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994. <i>See</i> 25 U.S.C. § 479a(2)-(3). Transferred to 25 U.S.C. § 5130(2)-(3).</p>

² Appendix B, List of Statutes Using Differing Definitions of “Indian Tribe.”

Amici Members of Congress are intimately familiar with the List Act tribe definition. Along with our colleagues, we could easily have chosen that definition to include only List Act tribes in the CARES Act, if that were the law we wanted to draft. We did not. We used the broader term and we know the difference between the two.

For example, we excluded ANCs from certain disaster relief intended for state and local governments by incorporating the List Act definition. See 42 U.S.C. § 5122(6) (defining “Indian tribal government” to mean “the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the [List Act].”)

In the Indian Gaming Regulatory Act, we also excluded ANCs where tribal sovereignty was directly relevant to reservation land and accompanying rights. There, Congress similarly defined “Indian tribe” as “any Indian tribe, band, nation, or other organized group or community of Indians . . . recognized as eligible [for federal programs and services] by the Secretary.” 25 U.S.C. § 2703(5)(A), (B) (emphasis added).

In enacting the CARES Act, Title V, we did not incorporate the List Act definition. We incorporated the ISDEAA definition, which has long been used by Congress to include ANCs. *Cf. Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2071-72 (2018) (noting Court’s presumption that “differences in language . . . convey differences in meaning”).

“Congress alone has the institutional competence, democratic legitimacy, and (most importantly) constitutional authority to revise statutes in light of new social problems and preferences. Until it exercises that power, the people may rely on the original meaning of the written law.” *Id.* at 2074. In this case, the people, the lawmakers, and the agencies have relied upon the written law for 46 years—consistently and correctly.

Consistent with congressional practice and the 1988 reaffirmations of ANCSA and ISDEAA, the BIA confirmed that the non-inclusion of ANCs on the Secretary of Interior’s yearly published list emphatically did not reflect a determination of, or impact in any way, ANCs’ statutory eligibility for programs and services available only to Indians:

Because the list published by this notice is limited to entities found to be Indian tribes, as that term is defined and used in 25 CFR part 83, it does not include a number of non-tribal Native entities in Alaska that currently contract with or receive services from the Bureau of Indian Affairs pursuant to specific statutory authority, including ANCSA village and regional corporations and various tribal organizations. These entities are made eligible for Federal contracting and services by statute and their non-inclusion on the list below does not affect the continued eligibility of the entities for contracts and services.

58 Fed. Reg. 54,364, 54,365 (Oct. 21, 1993).

By the time the BIA reaffirmed that ANCs were ISDEAA “Indian tribes” in 1993, *Bowen* had been decided by the Ninth Circuit, ANCSA had made crystal clear its affirmation of the status of Alaska Native people, and ISDEAA had been revisited and reenacted, reaffirming the definition.

Further, with participation by Congressman Young, NAHASDA and ITEDSDA in 1996 and 2018, respectively, reinforced the consistent pattern of Congressional statutes throughout the years when defining “Indian tribes.” There is no legitimate reason we or our colleagues would doubt the ISDEAA definition includes ANCs, given the text we drafted, or the historical practice and reliance of all three branches of government.

C. The Amendment to ISDEAA Prior to Passage and Later Affirmation by Congress of the Definition Including ANCs Should Be Afforded Great Weight

Using the ISDEAA definition in Title V of the CARES Act is not an unusual approach nor a new understanding of how ANCs and ISDEAA work in Alaska. In 1974, Congressman Young was on the Subcommittee that added the provision including ANCs within the ISDEAA definition and did so deliberately. This definition has become the “gold standard” when Congress legislates to include ANCs.

Prior to ISDEAA’s enactment in 1975, an amendment was offered and accepted to the bill that became law. That amendment’s sole purpose was to include ANCs as “Indian tribes” eligible for programs

and services, as well as administer those services, offered to Indians because of their status as Indians.

The bill was amended after hearings³ “to include regional and village corporations established by the Alaska Native Claims Settlement Act”⁴ without requiring any formal tribal recognition by the Secretary of the Interior, which would come approximately two decades later, or be formed as part of the Indian Reorganization Act. ISDEAA was enacted two weeks later and has been used as intended by Congress for nearly a half a century. Additionally, federal agencies have continually implemented the law to include ANCs, and courts, prior to the D.C. Circuit’s decision, affirmed this interpretation.

II. Alaska Is Often The Exception, Not The Rule

Alaska is different and federal legislation passed for the benefit of the people reflects that difference. Congress for nearly half a century has legislated based on ANCs’ inclusion in the ISDEAA definition of “Indian tribe.” Further, the administration of ISDEAA by agencies confirms the law has been interpreted as Congress intended—to include ANCs as “Indian tribes.”

In contrast, the D.C. Circuit’s decision effectively found that the system of receiving and

³ Indian Self-Determination and Education Assistance Act: Hearings on S. 1017 and Related Bills, before the Subcomm. on Indian Affairs, Comm. on Interior and Insular Affairs, House, 93rd Cong. (1974).

⁴ H.R. Rep. No. 93-1600 (1974).

delivering Indian services in Alaska should be set aside because it did not conform to the Lower 48 model of a traditional sovereign tribe with reservation land; this is a fundamental misunderstanding of Alaska that has grave consequences, which cannot be overstated.

In failing to consider the realities of Alaska, including the actual usage of ISDEAA for over 40 years to include ANCs, the D.C. Circuit's decision set aside the plain meaning as the statute reads. "A text should not be construed strictly, and it should not be construed leniently; it should be construed reasonably, to contain *all* that it fairly means." Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* at 17 (Amy Gutmann ed. 1997) (emphasis added).

The D.C. Circuit's decision divorced the text from the reality of Alaska by identifying one characteristic of Lower 48 List Act tribes (sovereignty) and superimposing that system on Alaska. One size simply does not fit all as this Court recently reiterated.

"Alaska is often the exception, not the rule." *Sturgeon v. Frost*, 136 S. Ct. 1061, 1071 (2016) (*Sturgeon I*) (finding that failure to recognize Alaska's unique conditions was a fatal flaw when examining the application of federal law specific to Alaska). In reaching its conclusion, this Court also examined ANCSA to understand the intent of Alaska National Interest Land Conservation Act ("ANILCA"). *Id.* at 1065. Failing to undertake those steps in recognizing the uniqueness of the federal law application in Alaska would produce a "‘topsy-turvy’ result." *Sturgeon v. Frost*, 139 S. Ct. 1066, 1078 (2019)

(*Sturgeon II*) (quoting *Sturgeon I*). This “topsy-turvy” result is exactly what the D.C. Circuit’s decision delivers.

This Court was correct when it said a little more than one year ago that the landscape made Alaska different in application of ANILCA. “The State’s extreme climate and rugged terrain make them dependent on rivers to reach a market, a hospital, or a home.” *Sturgeon II* at 1087.

Given the unique geography, ANCs as well as List Act tribes, commonly in tandem and as discussed below, administer Indian programs that deliver health care, housing assistance, and social services in the vast remoteness of Alaska; services normally delivered by the government. The administration of these programs and services do not just impact rural Alaska but also impact the state’s single greatest population of Alaska Native people and American Indians: those that reside in Anchorage and its surrounding area. That area has no List Act Tribe that provides comprehensive health care, housing, or social services. It is not an overstatement that nearly all of Alaska’s indigenous people, urban and rural, rely on ANCs to work with List Act tribes to deliver and administer programs and systems for the benefit of the indigenous people. The text and usage of ISDEAA in the day-to-day life of our constituents is the foundation of the unique system employed only in Alaska, and is only possible in Alaska given ANCSA solely applied to Alaska’s indigenous people.

The following published photographs, demonstrate how the Alaska system of receiving and delivering services succeeds because of cooperation of

the Alaska Native people and entities in exercising self-determination.



Photo 1 - A team of vaccinators sit in a sled next to their chartered plane before being pulled behind a snow machine into the village of Shungnak in Dec. 2020.



Photo 2 - Dr. Ellen Hodges (right) and nurse Melissa Tefft prepare doses of Covid-19 vaccine delivered via bush plane.



Photo 3 - By snow machine, bush plane, and ATV, vaccines are getting in remote regions of Alaska.

Maps of Alaska attached demonstrate the lack of a road system across a vast landscape and numerous remote villages which necessitate Native entities working together to receive and deliver critical services. *See* Appendix A, Maps of Alaska.

A. The COVID-19 Pandemic Has Disproportionately Impacted Alaska Native People But the Alaska System is Succeeding

Historically, pandemics have hit Alaska’s Native communities particularly hard. During the 1918 influenza pandemic, over *90 percent* of the deaths in Alaska occurred in Native villages and more than *80 percent* of all deaths in Alaska were Alaska Native people.⁵ Elders recall how the 1918 flu pandemic “decimated entire villages.”⁶ Like the 1918 influenza pandemic, the current COVID-19 pandemic has disproportionately impacted Alaska Native people.⁷

At the height of the current pandemic (thus far), infection rates in remote Native villages reached 20 percent.⁸ The spread of infection is heightened by

⁵ Alaska Dept. of Health & Human Svcs., *1918 Pandemic Influenza Mortality in Alaska* (Sept. 20, 2018), <https://bit.ly/3pmDy5f>.

⁶ Washington Post, *How is Alaska leading the nation in vaccinating residents? With boats, ferries, planes and snowmobiles* (Feb. 4, 2021), <https://wapo.st/3jS6xez>.

⁷ *See generally* CDC, *COVID-19 Mortality Among American Indian and Alaska Native Persons* (Dec. 11, 2020), <http://bit.ly/3bdICUL>.

⁸ Washington Post, *Covid has spared Alaska’s remote villages. Not anymore* (Oct. 30, 2020), <https://wapo.st/36xqdhR>.

the absence of basic sanitation—in many communities, homes lack running water and sewer connections.⁹ Despite making up approximately 16 percent of Alaska’s population, Alaska Native people and American Indians have accounted for 37 percent of total reported deaths from COVID-19.¹⁰

Alaska’s unique geography and limited infrastructure has compounded that disproportionate impact. As this Court has observed, “[o]ver three-quarters of Alaska’s 300 communities live in regions unconnected to the State’s road system,” and “[r]esidents of those areas include many of Alaska’s poorest citizens.” *Sturgeon II*, 139 S. Ct. at 1087. “The State’s extreme climate and rugged terrain make [some residents] dependent on rivers to reach a market, a hospital, or a home.” *Id.* A vast majority of these described residents, live in Alaska Native communities, many of which are only accessible by small airplane or boat and do not have hospitals.

1. Alaska’s Vaccination Efforts Have Been Highly Successful

Despite the challenges of Alaska’s terrain, Alaska currently has the highest vaccination rate per

⁹ Alaska Dept. of Env’tl. Conservation, *Alaska Water and Sewer Challenge* (last visited Feb. 24, 2021), <https://bit.ly/35FEqKh>.

¹⁰ Alaska Dept. of Health & Human Svcs., *Summary of COVID-19 Deaths—Alaska, January 1 through December 31, 2020*, Epidemiology Bulletin No. 2 (Jan. 29, 2021), <https://bit.ly/3rOnKZkCite>; see also Alaska’s News Source, *In new report, DHHS details Alaska’s COVID-19 death rates* (Feb. 4, 2021), <http://bit.ly/3bfbuKz>.

capita in the United States.¹¹ Twenty-one percent of Alaska residents have already received at least one vaccine dose.¹²

As the State's Chief Medical Officer recently observed, "Alaska's success in vaccination is because of the tribal success in vaccination."¹³ She explained that the tribal health system has been indispensable in distributing doses across the state, with tribal health organizations harnessing a fleet of chartered bush planes, snow machines, sleds, and boats.¹⁴ The State recognized early on that ANCs are an integral part to the delivery of those services through the tribal health system. *See Am. Brief of State of Alaska.*

Alaska's rural vaccination successes have required tremendous effort. "Alaskans are being vaccinated on fishing boats, inside 10-seater planes[,] and on frozen landing strips."¹⁵ One medical crew "used a sled pulled by a [snow machine] to deliver vaccine to the village of Shungnak."¹⁶ Another doctor described having "to tuck the vaccine between her shirt and coat to keep it warm right before injecting

¹¹ The New York Times, *See How the Vaccine Rollout Is Going in Your State* (last visited Feb. 24, 2021), <http://nyti.ms/3pxI2ER>.

¹² *Id.*

¹³ Indian Country Today, *Tribes are racing ahead of vaccination curve* (Feb. 16, 2021), <http://bit.ly/3ptrxK4>.

¹⁴ Dr. Anne Zink, Alaska Chief Medical Officer, on distribution of the COVID vaccine, Alaska Public Media (Jan. 14, 2021), <http://bit.ly/2ZugGF7>.

¹⁵ Washington Post, *supra* note 6.

¹⁶ *Id.*

it,” so that the vaccine would not freeze.¹⁷ Despite the challenges, Alaska’s, and notably the tribal health system’s, efforts have resulted in the highest vaccination rate in the nation. This result would not be possible without Alaska’s unique system of receiving and delivering benefits—the system that could face impending collapse without ANCs being recognized as Indian tribes under ISDEAA.

III. THE D.C. CIRCUIT’S DECISION THREATENS TO SEVERELY DISRUPT OR DECIMATE RECEIPT AND DELIVERY OF CRITICAL SERVICES DURING A PANDEMIC AND HIGHLY SUCCESSFUL VACCINATION EFFORT

The potential ramifications of the D.C. Circuit’s stand-alone decision are staggering. ANCs’ status as “Indian tribes” under ISDEAA is fundamental to Alaska’s system of Indian self-determination. Withdrawing that status would not only wrongfully withhold hundreds of millions of CARES Act dollars that Congress appropriated to indigenous people in Alaska—in response to a pandemic—but also upend the highly successful systems for receiving and distributing federal services to indigenous people in Alaska that has been in place for decades.

Some indigenous people in Alaska receive services from their own List Act tribe when they reside within the List Act tribe’s geographic boundaries. Many indigenous Alaskans are not enrolled in *any* tribe and depend on ANCs for services

¹⁷ CBS News, *Sleds, snowmobiles and planes: How COVID-19 vaccines are distributed in rural Alaska* (Jan. 30, 2021), <https://cbsn.ws/2Lh4Ri6>.

through ANC designations to non-profits and/or health care tribal organizations. Even some List Act tribe members may have only limited access to health care through their own tribes because they may not live within the List Act tribe's geographic boundaries, near other tribal areas, or the List Act tribe may not provide the services required.

To fill these gaps, ANCs have used their status as "Indian tribes" under ISDEAA and other federal statutes to authorize and designate nonprofit tribal organizations and/or regional tribal health organizations and/or tribal housing authorities to deliver trust/government services to the indigenous people of Alaska. Contrary to the typical single community encapsulated by a tribe in Alaska, the state is divided into 12 regions, with regional corporations covering all of the state—oftentimes feeding into the system or systems with the List Act tribes to provide services. This designation of tribal authority from ANCs and List Act tribes is critical to cover the vastness of Alaska as it includes health care, housing, and other social services that are governmental in nature.

One significant example is Southcentral Foundation ("SCF"), which, for the past 38 years, has been the regional tribal health organization ("THO") designated and authorized by Cook Inlet Region, Inc. (an ANC), to administer and provide IHS programs and activities pursuant to ISDEAA. SCF delivers health care services to nearly 65,000 indigenous

people residing in areas of the Municipality of Anchorage and the Matanuska-Susitna Borough.¹⁸

Other ANCs have similarly used their authority as “Indian tribes” under ISDEAA and other federal statutes to authorize and designate tribal organizations to provide programs and services to indigenous people throughout our state. In terms of health care services, these ANC designees, with the exception of SCF, are THOs, which pool resources under the tribal authority of *both* ANCs and List Act tribes in order to cover a larger geographic area and serve a larger population. Together, all THOs operate “58 tribal health centers, 160 tribal community health aide clinics and five residential substance abuse treatment centers.”¹⁹

Although a THO may deliver services under the tribal authority of a List Act tribe, the authority conferred by the List Act tribe on the THO does not extend beyond its geographic tribal boundaries, and may be relatively small. For example, there are seven tribes, five of which are List Act tribes within the region of Chugach Alaska Corporation (“Chugach”), an ANC. These List Act tribes, together with Chugach, have authorized and designated Chugachmiut, a nonprofit tribal organization, to provide health care and social services, education and training, and technical assistance to 2,200 Alaska

¹⁸ SCF History, <http://bit.ly/3aMQHzb> (last visited Feb. 24, 2021).

¹⁹ IHS, Alaska Area, <https://www.ihs.gov/alaska/> (last visited Feb. 24, 2021).

Native people within the region.²⁰ Chugachmiut provides much needed services to Alaska Native people in the towns of Valdez and Seward (both communities without List Act tribes and both on the road system). Without that ISDEAA tribal authority conferred by Chugach and five List Act tribes, Alaska Native people living in these large towns would have no access to the critical services provided by Chugachmiut.

ANCs and their designees implement many other federal Indian programs as the recipients of federal funds supporting critical services to Alaska Native communities. To list just two examples, tribal organizations affiliated with regional ANCs act as tribal grant recipients providing child welfare services under the Social Security Act Titles IVB and IVE, 42 U.S.C. §§ 428, 479B; and administering housing-assistance block grant funds for low-income Alaska Native people under NAHASDA.

By not understanding how the systems work in Alaska, the D.C. Circuit's decision unnecessarily puts these programs in jeopardy. If left intact, the D.C. Circuit's decision would dramatically impede, if not decimate, these and future successes we legislated to achieve. ANCs designate THOs and nonprofit tribal organizations pursuant to ISDEAA. If ANCs are read out of ISDEAA's definition of "Indian tribe," it would put their authority to designate in jeopardy; including to those THOs that receive and distribute services (including under NAHASDA, ITEDSDA, and many other statutes) to Alaska Native people as they have

²⁰ See Chugachmiut, Service Area, <https://bit.ly/3kpgAq9> (last visited Feb. 24, 2021).

done for nearly half a century. This would turn Alaska's longstanding, successful framework for Indian self-determination on its head and replace success with potential collapse.

V. CONCLUSION

We used the ISDEAA definition of "Indian tribe" in the CARES Act, Title V, to include ANCs as eligible recipients of tribal relief. For decades, the legislative, the judicial, and the executive branches have uniformly relied upon the same reading of the statute—as all were entitled to do. If Congress had meant to limit the tribal relief only to Alaska Native people enrolled in List Act tribes, we would have used the List Act definition. We did not; we used the ISDEAA definition which includes ANCs, and we know the difference. For the foregoing reasons, we respectfully request this Court reverse the judgment of the D.C. Circuit.

Respectfully submitted,

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APPENDIX

Table of Appendices

Appendix A

Maps of Alaska

Appendix B

List of Statutes Using Differing Definitions of
“Indian Tribe”

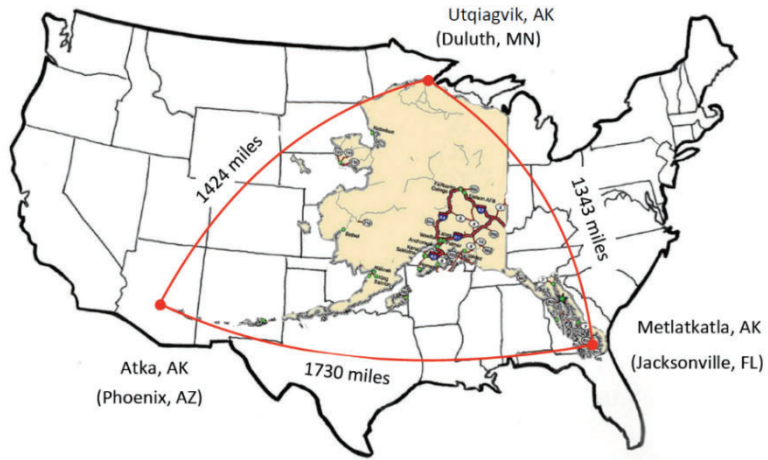
Append. A-1

Maps of Alaska



Map 1 - Native Entities in Alaska and Major Road System. The smaller inlaid box represents the only Alaska Native community, Metlakatla, that opted for a reservation system. Metlakatla is under the jurisdiction of the Northwest BIA division, not the Alaska division, because it operates more like a Lower 48 List Act tribe.

Append. A-2



Map 2 - Distance Comparison of Alaska and 48 Contiguous States.

Append. B-1

**List of Statutes Using Differing Definitions of
'Indian Tribe'**

Indian tribes pursuant to ISDEAA	List Act Tribes Defined
<p>“Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. § 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 25 U.S.C. § 5304(e).</p>	<p>Indian tribe. The term “Indian tribe” means any Indian or Alaska Native tribe, band, nation, pueblo, village, or other community the name of which is included on a list published by the Secretary of the Interior pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. § 479a-1)</p>

Append. B-2

**A. Statutes that Contain the ISDEAA
Definition of 'Indian Tribe' Either Identically
or are Substantially the Same.**

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
1	Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4103(13)	Oct. 26, 1996	Housing
2	Public and Assisted Housing Drug Elimination Act of 1988, 42 U.S.C. § 11905(6)	Nov. 18, 1988; amended Oct. 21, 1998 to include definition of Indian tribe	Housing
3	Housing and Community Development Act of 1992, 12 U.S.C. § 1715z-13a(1)(8)	Oct. 28, 1992; amended Oct. 26, 1996 to include definition of Indian tribe	Housing and Community Development

Append. B-3

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
4	Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. § 4368b(c)(1)	Oct. 24, 1992	Tribal Environmental Regulatory Programs
5	Revenue Reconciliation Act of 1993, 26 U.S.C. § 45A(c)(6)	Aug. 10, 1993	Indian Employment Credits
6	Aquatic Nuisance Prevention and Control Act, 16 U.S.C. § 4702(9)	Nov. 29, 1990	Coastal Inland Waters Infestations
7	National Forest Act, 16 U.S.C. § 539p(b)(3)	Dec. 19, 2014	Land Exchange
8	American Indian Trust Management Reform Act, 25	Oct. 25, 1994	Indian Trust Funds

Append. B-4

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
	U.S.C. § 4001(2)		
9	American Indian Agricultural Resource Management Act of 1993, 25 U.S.C. § 3703(10)	Dec. 3, 1993	Indian Agricultural Lands and Resources
10	Public Works and Economic Development Act of 1965, 42 U.S.C. § 3122(7)	Aug. 26, 1965; amended Nov. 13, 1998 to include definition of Indian tribe	Unemployment and underemployment
11	Elementary and Secondary Education Act, 20 U.S.C. § 7011(6)	Apr. 11, 1965; amended Jan. 8, 2002 to include definition of Indian tribe	Education
12	Museum and Library Services Act,	Sept. 30, 1996; amended	Museum services

Append. B-5

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
	20 U.S.C. § 9101(5)	Sept. 25, 2003 to include definition of Indian tribe	
13	Higher Education Tribal Grant Authorization Act, 25 U.S.C. § 3307(f)(2)	Jul. 23, 1992	Financial Assistance at Institutions of Higher Education
14	Tribally Controlled Colleges and Universities Assistance Act of 1978, 25 U.S.C. § 1801(a)(2)	Oct. 17, 1978	Colleges and Universities

Append. B-6

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
15	National Housing Act of 1949, 42 U.S.C. § 1490p-2(r)(4)	Jul. 15, 1949; amended December 27, 2000, to include definition of Indian tribe	National Housing Policy
16	Plant Protection Act, 7 U.S.C. § 7781(1)	Jun. 20, 2000; amended Oct. 30, 2004 to include definition of Indian tribe	Plant Protection and Quarantine
17	Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. § 8011(k)(9)	Nov. 28, 1990	Congregate Housing Programs
18	National Historic Preservation Act, 54 U.S.C. § 300309	Dec. 19, 2014	Historic Property Preservation

Append. B-7

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
19	Federal Unemployment Tax Act, 26 U.S.C. § 3306(u)	Aug. 16, 1954; amended Dec. 15, 2000 to include definition of Indian tribe	Employer Excise Tax
20	Major Crimes Act, 18 U.S.C. § 1159(c)(3)	Jun. 25, 1948; amended Nov. 29, 1990 to include definition of Indian tribe	Indian Country Jurisdiction
21	Indian Alcohol and Substance Abuse Prevention and Treatment Act, 25 U.S.C. § 2403(3)	Oct. 27, 1986	Narcotics Trafficking in Indian Country
22	Indian Dams Safety Act, 25 U.S.C. § 3802(4)	Aug. 23, 1994	Dams Safety
23	National Defense	Oct. 23, 1992 (renumbered)	Defense Bill

Append. B-8

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
	Authorization Act For Fiscal Year 1993, 10 U.S.C. § 2323a(e)(3)		
24	Legislation Establishing the National Museum of the American Indian, 20 U.S.C. § 80q-14(8)	Nov. 28, 1989	National Museum of the American Indian
25	Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. § 4702(12)	Sept. 23, 1994	Community Development Financial Institutions Fund
26	Biomass Energy and Alcohol Fuels Act of 1980, 42	Jun. 30, 1980	Biomass Energy

Append. B-9

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
	U.S.C. § 8802(12)		
27	Early Learning Opportunities Act, 20 U.S.C. § 9402(5)	Dec. 21, 2000	Early Childhood Development
28	Native American Education Improvement Act of 2001, 25 U.S.C. § 2511(4)	Jan. 8, 2002	Education
29	Unfunded Mandates Reform Act of 1995, 2 U.S.C. § 658(13)	Mar. 22, 1995	Amendments to Congressional Budget Act of 1974
30	Indian Arts and Crafts Amendments Act, 25 U.S.C. § 305e(a)(3)(A)	Nov. 29, 1990	Indian Art

Append. B-10

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
31	Native American Education Improvement Act of 2001, 25 U.S.C. § 2021(20)	Jan. 8, 2002	Education
32	Native American Business Development, Trade Promotion and Tourism Act, 25 U.S.C. § 4302(6)	Nov. 7, 2000	Business Development
33	Agricultural Act of 2014, 25 U.S.C. § 1685(b)(4)	Feb. 7, 2014	Agricultural Programs
34	Water Resources Development Act of 2000, 33 U.S.C. § 2269(a)	Dec. 11, 2000	Improvements to Rivers and Harbors

Append. B-11

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
35	Water Resources Development Act of 2000, 33 U.S.C. § 2338(a)	Dec. 11, 2000	Improvements to Rivers and Harbors
36	No Child Left Behind Act of 2001, 20 U.S.C. § 7546(2)(A)	Jan. 8, 2002	Education
37	Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. § 3202(10)	Nov. 28, 1990	Violence Prevention
38	Indian Health Care Benefits, 26 U.S.C. § 139D(c)(1)	Mar. 23, 2010	Indian Health Care
39	Public Health Service Act, 42 U.S.C. § 247b-14(e)	Jul. 1, 1944; amended Oct. 17, 2000 to include	Community Water Fluoridation

Append. B-12

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
		definition of Indian tribe and Tribal Organization	
40	Indian Health Care Improvement Act, 25 U.S.C. § 1603(14)	Sept. 30, 1976	Health Care and Education
41	Native American Languages Act, 25 U.S.C. § 2902(5)	Oct. 30, 1990	Native American Languages
42	Workforce Innovation and Opportunity Act, 29 U.S.C. § 3221(b)(2)	Jul. 22, 2014	Employment and Training
43	Family Violence Prevention and Services Act, 42 U.S.C. § 10402(5)	Dec. 20, 2010	Violence Prevention

Append. B-13

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
44	Older Americans Act of 1965, 42 U.S.C. § 3002(27)	Jul. 14, 1965	Social Services
45	Violence Against Women Act, 34 U.S.C. § 12291(a)(16)	Jan. 5, 2006	Violence Prevention

Append. B-14

B. Statutes that Contain the Federally Recognized Indian Tribe List Act Definition of 'Indian Tribe' Either Identically or are Substantively the Same, Including Statutes that Do Not Include Alaska Native Corporations as 'Indian Tribes.'

No.	Name of Statute	Date of Enactment and/or Date Amended to Include Definition	Subject
1	Native American Graves Protection and Repatriation Act, 1990, 25 U.S.C. § 3001(7)	Nov. 16, 1990	Protection of Native American Graves
2	Civil Rights Act of 1968, 25 U.S.C. § 1301(1)	Apr. 11, 1968	Prescribe Penalties for Certain Acts of Violence or Intimidation
3	Comprehensive Environmental Response, Compensation, and Liability	Dec. 11, 1980; amended Oct. 17, 1986 to include	Environmental Liability

Append. B-15

No.	Name of Statute	Date of Enactment and/or Date Amended to Include Definition	Subject
	Act of 1980, 42 U.S.C. § 9601(36)	definition of Indian tribe	
4	Indian Mineral Development Act of 1982, 25 U.S.C. § 2101(2)	Dec. 22, 1982	Disposition of Tribal Mineral Resources
5	Indian Land Consolidation Act, 25 U.S.C. § 2201(1)	Jan. 12, 1983	Exchange of Lands by Indian Tribes
6	Indian Gaming Regulatory Act, 25 U.S.C. § 2703(5)	Oct. 17, 1988	Regulate Gaming on Indian Lands
7	Indian Law Enforcement Reform Act, 25 U.S.C. § 2801(6)	Aug. 18, 1990	Law Enforcement
8	Violent Crime Control and Law	Sept. 13, 1994	Crime Prevention

Append. B-16

No.	Name of Statute	Date of Enactment and/or Date Amended to Include Definition	Subject
	Enforcement Act of 1994, 34 U.S.C. § 12133, 34 U.S.C. § 12161(b), 34 U.S.C. § 12227, 34 U.S.C. § 12271(d), 34 U.S.C. § 10389(3)		
9	American Indian Religious Freedom Act Amendments of 1994, 42 U.S.C. § 1996a(c)(2)	Oct. 6, 1994	Religious Freedom
10	ADAMHA Reorganization Act, 42 U.S.C. § 290bb-25(n)(3)	Jul. 10, 1992	Alcohol, Drug Abuse, and Mental Health Administration
11	Disaster Relief Act of 1974, 42	May 22, 1974; amended Jan.	Supplemental

Append. B-17

No.	Name of Statute	Date of Enactment and/or Date Amended to Include Definition	Subject
	U.S.C. § 5122(6)	29, 2013 to include definition of Indian tribe	Appropriations
12	Solid Waste Disposal Act, 42 U.S.C. § 6991(1)	Oct. 20, 1965; amended Aug. 8, 2005 to include definition of Indian tribe	Ensure Jobs and Reliable Energy
13	Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. § 5130(2)	Nov. 2, 1994	Recognition of Sovereign Indian Tribes
14	Higher Education Amendments of 1986, 20 U.S.C. § 4402(5)	Oct. 17, 1986	Education
15	Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(8)	Nov. 8, 1978	Welfare of Indian Children

Append. B-18

No.	Name of Statute	Date of Enactment and/or Date Amended to Include Definition	Subject
			and Families
16	National Housing Act of 1949, 42 U.S.C. § 1471(b)(6)	Jul. 15, 1949; amended Oct. 8, 1980 to include definition of Indian tribe	Housing

Append. B-19

C. Statutes that Contain the ISDEAA Definition of Indian Tribe and Federally Recognized Indian Tribe List Act Definition of Indian Tribe Either Identically or Are Substantially the Same.

No.	Name of Statute	Date of Enactment; and/or Date Amended to Include Definition	Subject
1	Prevent All Cigarette Trafficking Act of 2009, 15 U.S.C. § 375(8)	Mar. 31, 2010	Tobacco Regulation
2	Agricultural Credit Act of 1961, 7 U.S.C. § 1926 (a)(19)(A), (20)(B), 21(A)	Aug. 8, 1961; amended Dec. 20, 2018, to include ISDEAA definition of Indian tribe	Loans to Farmers and Ranchers