

Nos. 20-543, 20-544

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*In The*  
**Supreme Court of the United States**

JANET L. YELLEN, SECRETARY OF THE 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 D.C. Circuit*

**BRIEF OF THE ASSOCIATION OF ALASKA  
HOUSING AUTHORITIES AS *AMICUS CURIAE*  
SUPPORTING PETITIONERS**

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Association of Alaska Housing Authorities' (AAHA) members include fourteen Regional Native Housing Authorities, many of whom are the tribally designated housing entities for regional Alaska Native Corporations. AAHA's members play a key role in increasing the supply of quality, affordable housing in Alaska. They build, renovate, and weatherize homes; provide home-buying assistance; offer renter and homebuyer education; develop infrastructure for housing development; build community facilities; and employ thousands of Alaskans each year. AAHA members are the primary, and in many regions the only, providers of affordable housing in Alaska.

*Amicus* agrees with Petitioners that the Indian Self-Determination and Education Assistance Act (ISDEAA) definition of "Indian tribe" unambiguously includes Alaska Native Corporations (ANCs). 25 U.S.C. § 5304(e). They write separately to emphasize how the contrary, textually unmoored interpretation puts at risk critically important federal programs through which ANC designees like AAHA's members provide extensive services to Alaska Natives and American Indians within Alaska, including housing programs funded under the later-enacted Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). ANCs or their housing

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<sup>1</sup> Counsel of record for all parties consented to the filing of this brief. S. Ct. R. 37.3(a). No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund the brief's preparation or submission.



authority designees (like AAHA's members) have participated in housing programs for Alaska Natives since the housing authorities were created, both before and after NAHASDA. In enacting NAHASDA in 1996, and in appropriating funds for its programs, Congress has expressly—and repeatedly—recognized as much, cementing ANC's crucial role in providing much needed affordable housing for vulnerable Alaska Native and American Indian populations. Such congressional reaffirmation and explicit statutory recognition confirm that Congress meant what it said when it expressly included ANCs as program participants in both ISDEAA and NAHASDA.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

As housing entities designated by regional ANCs, AAHA's members work on the front lines of developing and providing affordable housing opportunities in Alaska, by carrying out programs funded by NAHASDA. In the unique environment and structure of tribal self-governance within Alaska, regional ANCs are a critical part of providing for the "health, education, [and] welfare" of Alaska Natives. 43 U.S.C. § 1606(r). Congress recognized as much when it took pains to include ANCs in federal programs providing essential services to Alaska Natives and American Indians in Alaska. In NAHASDA, in particular, Congress expressly referred to ANCs or their designees in multiple parts of the statute, implicitly endorsed the long-standing administrative interpretation of NAHASDA to include ANCs as funding recipients, and repeatedly confirmed the

inclusion of ANC-designated housing authorities in annual appropriations acts.

The legislative acknowledgement within NAHASDA that ANCs may be “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. § 4103(13)(B), enacted more than two decades after ISDEAA, confirms that the same phrase in ISDEAA cannot reasonably be read to exclude ANCs from eligibility under ISDEAA. To read ISDEAA otherwise is not only inconsistent with ISDEAA’s own text, structure, and history, as Petitioners argue, it simply cannot be squared with the long-accepted and critical role played by ANCs within NAHASDA.

Alaska is vast. Many native villages lie off the road system. By congressional design, there are virtually no tribal lands or reservations. In this unique context, Congress’s inclusion of ANCs as Indian tribes within NAHASDA allows ANC-designated Regional Native Housing Authorities to provide critically-needed affordable housing programs to Alaska Natives and American Indians. Because so many Alaska Natives cannot be served within village boundaries, federal programs meant to serve Alaska Native populations cannot effectively function for tens of thousands of Alaska Natives without the involvement of regional ANCs. State and local resources cannot fill the gap. And even if they could, there is no reason to adopt a counter-textual statutory reading that would abrogate Congress’s trust responsibilities to Alaska Natives and decimate

federal support for safe, affordable housing for some of the Nation’s most vulnerable populations.

## ARGUMENT

### I. Congress’s Express Recognition Of Housing Assistance Eligibility For ANCs Confirms Their Inclusion Within ISDEAA.

#### A. Like ISDEAA, NAHASDA Was Designed to Permit Indian Tribes, Defined to Include ANCs, to Structure Services to Best Fit Their Communities.

1. As Petitioners recount (Br. 4-8),<sup>2</sup> the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601–1624, departed sharply from the approach taken for American Indians in the Lower 48. In the process of resolving all Alaska Native claims to aboriginal lands within Alaska, Congress “end[ed] the sort of federal supervision over Indian affairs that had previously marked federal Indian policy.” *Alaska v. Native Vill. of Venetie Tribal Gov’t*, 522 U.S. 520, 523–24 (1998). Instead of creating or preserving reservations, Congress revoked all previously created reservations in Alaska (save one). In exchange for extinguishing all aboriginal land claims, Congress provided for funds and millions of acres of land to be transferred in fee simple to newly-created Alaska-Native-controlled ANCs. *See id.* at 524. Two types of

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<sup>2</sup> All citations are to Petitioners’ brief or the Petition Appendix in No. 20-544.

ANCs were established: regional ANCs (dividing the entire State into 12 regions) and village ANCs (numbering 200 plus and centered in Alaska Native communities). 43 U.S.C. §§ 1606(a), (d), 1607(a). Village ANCs are responsible for acting “for and on behalf of a Native village,” *id.* § 1602(j); regional ANCs must “promote the health, education, [and] welfare” of Alaska Natives within their region, *id.* § 1606(r).

2. Since their inception, Alaska’s regional housing authorities—as authorized by regional non-profits and later designated by regional ANCs as tribally designated housing entities under NAHASDA—have been active participants in federal housing programs for Alaska Natives and American Indians. Before enactment of NAHASDA, the Department of Housing and Urban Development (HUD) provided funds to Indian housing authorities through a variety of programs under the United States Housing Act of 1937, 42 U.S.C. § 1437 et seq. Many housing designees of regional ANCs participated in those programs. *See HUD, FY 2019 [Indian Housing Block Grant] Final Allocation Current Assisted Stock*, <https://tinyurl.com/y3fu7mup> (listing pre-NAHASDA housing units associated with ANCs that were still being maintained in 2019).

In 1996, Congress terminated Indian housing assistance under the 1937 Housing Act, 25 U.S.C. §§ 4181(a), 4182, and replaced it with annual block grants to “Indian tribes” to carry out affordable housing activities, *id.* § 4111(a). Much like ISDEAA, enacted in 1975 to “help Indian tribes assume responsibility for aid programs that benefit their members,” *Menominee Indian Tribe of Wis. v. United*

*States*, 136 S. Ct. 750, 753 (2016), NAHASDA replaced federally-operated programs with support that “recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities.” 25 U.S.C. § 4101(7). “More than in past programs, the NAHASDA regulations encourage tribes to act as primary agents in shaping their own housing programs.” HUD Off. of Native Am. Programs, *The NAHASDA Development Model Series*, 2 (July 26, 1999), <https://tinyurl.com/y3yp5aox>.

In Congress’s view, providing housing assistance to Alaska Natives and American Indians was part of “a unique Federal responsibility to Indian people,” which included “providing affordable homes in safe and healthy environments ... [to] help[] tribes and their members to improve their housing conditions and socioeconomic status.” 25 U.S.C. § 4101(2), (5).

3. NAHASDA’s definition of “Indian tribe” both echoes and cross-references the ISDEAA definition, and expressly includes village and regional ANCs as Indian tribes.

NAHASDA block grants may be provided to “Indian tribes,” which include “federally recognized tribe[s].” *Id.* § 4103(13)(A). The term “federally recognized tribe,” in turn

means any Indian tribe, band, nation, or other organized group or community of Indians, *including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act* [43 U.S.C. 1601 et seq.], that is recognized as

eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

*Id.* § 4103(13)(B) (emphasis added). Tribes may delegate their authority to receive and administer block grants to a “tribally designated housing entity.” *Id.* § 4103(22).

**B. Congress’s Repeated References to ANCs within NAHASDA Confirm that ANCs Are “Indian Tribes.”**

As Petitioners explain (Br. 25-30), Congress meant what it said when it expressly included ANCs within ISDEAA’s “Indian tribe” definition. It is nonsensical to read the eligibility clause of that definition (which the D.C. Circuit termed the “recognition clause,” Pet. App. 12)—describing a tribe “that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians”—to refer to formal recognition of sovereignty by the Secretary of the Interior under the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791. To do so would render the express inclusion of ANCs a nullity. *See* Pet’rs’ Br. 31-36.

The errors in the D.C. Circuit’s contrary reading are plain from ISDEAA’s text and history alone. But expanding the statutory lens to consider Congress’s repeated, textual recognition that ANCs are included within NAHASDA—which uses a materially identical definition and cross-references ISDEAA—reinforces

what is already apparent from ISDEAA's four corners: the eligibility clause does not exclude ANCs.

*First*, beyond the express inclusion of regional ANCs within the "Indian tribe" definition, NAHASDA expressly recognizes the status of Alaskan Regional Native Housing Authorities, many of which are the tribally designated housing entities for regional ANCs. Alaska law permits the Alaska Native associations for each regional ANC to establish a Regional Native Housing Authority. Alaska Stat. § 18.55.996. NAHASDA expressly designates these regional housing authorities (all of whom are AAHA members) as tribally designated housing entities permitted to receive and administer NAHASDA block grants. 25 U.S.C. § 4103(22)(B)(ii) (defining "tribally designated housing entity" to include entities created "by operation of State law providing specifically for housing authorities or housing entities for Indians, including regional housing authorities in the State of Alaska").

Whatever debate existed in the 1970s as to whether ANCs would be recognized as sovereign entities, *see* Pet. App. 19—and there was never any such debate for regional ANCs, *see* Pet'rs' Br. 32-34—it was plainly put to rest by 1996. Accordingly, Congress's express inclusion of ANCs and regional housing authorities within NAHASDA demonstrates that Congress could not have intended the eligibility clause to limit eligible entities to tribes that are formally recognized as sovereigns under the List Act.

*Second*, Congress required that the formula for allocating block grants under NAHASDA account for continued support to properties developed "pursuant

to a contract between an Indian housing authority for the tribe and the Secretary” under pre-NAHASDA programs. 25 U.S.C. § 4152(b)(1). Such pre-NAHASDA properties include many developed by regional housing authorities that are now designated by regional ANCs as tribally designated housing entities and that were recognized as Indian housing authorities under the Housing Act of 1937. *See supra* p. 5. If Congress had intended to terminate support for properties developed by ANC-designated Regional Native Housing Authorities as “Indian housing authorit[ies],” it surely would have said so more clearly, rather than implicitly revoking its express inclusion of ANCs by requiring a type of formal recognition that it knew in 1996 that ANCs could not achieve.<sup>3</sup>

*Third*, NAHASDA’s eligibility clause refers not just to “recogni[tion] as eligible for the special programs and services provided by the United States to Indians” but to such recognition “pursuant to” ISDEAA. 25 U.S.C. § 4103(13)(B). The “pursuant to” clause suggests that the recognition referred to within

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<sup>3</sup> In NAHASDA, Congress accounted for all of the pre-NAHASDA properties developed by Indian housing authorities, including for entities that Congress knew would not otherwise meet the NAHASDA definition of tribe, 25 U.S.C. § 4103(13)(B). To continue support to pre-NAHASDA properties developed by several state-recognized tribes that had not secured federal recognition, Congress defined “Indian tribe” to include both federally recognized tribes (as defined by statute to include ANCs) and “State recognized tribe[s],” *id.* § 4103(13)(A), which were limited to State recognized tribes whose Indian housing authorities had a pre-NAHASDA contract and had received funding within the prior five years, *id.* § 4103(13)(C).



the definition is simple recognition as a tribal entity eligible to contract under ISDEAA for the special programs the United States provides to Indians, not the term-of-art recognition as sovereign under the List Act. If Congress meant the eligibility clause to refer to formal recognition of sovereignty, presumably it would have referred to recognition pursuant to the List Act, not pursuant to ISDEAA—as it did in other statutes when that sort of formal recognition is what it meant, *see, e.g.*, 42 U.S.C. § 5122(6) (“The term ‘Indian tribal government’ means 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 Federally Recognized Indian Tribe List Act of 1994.”).

*Fourth*, as with ISDEAA, *see* Pet’rs’ Br. 12, the implementing agency has agreed that ANCs are “Indian tribes” for purposes of NAHASDA from the start, and Congress has oft acquiesced in that interpretation. In regulations developed through negotiated rulemaking involving all stakeholders, *see* 25 U.S.C. § 4116(b)(2), HUD recognized that ANCs, including regional ANCs, were “Indian tribes” within the meaning of NAHASDA. *See, e.g.*, Implementation of the Native American Housing Assistance and Self-Determination Act of 1996; Final Rule, 63 Fed. Reg. 12,334, 12,335 (Mar. 12, 1998) (rejecting commenter’s suggestion “that only Federally recognized Indian tribes be recognized in Alaska”); *id.* at 12,366 (adopting 24 C.F.R. § 1000.327, which explains how to allocate data for “Indian tribes in Alaska not located on reservations” between Alaska Native Villages, “the regional Indian tribe, and if there is no regional Indian

tribe, ... the regional corporation”). Congress has amended NAHASDA at least seven times since then, without altering the “Indian tribe” definition. *See* HUD, *Native American Housing Assistance and Self-Determination Act of 1996*, <https://tinyurl.com/y6hgotpf> (tracking all amendments to NAHASDA). “Congress is presumed to be aware of an administrative ... interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change.” *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1762 (2018) (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978)).

*Finally*, congressional appropriations have repeatedly reaffirmed that ANCs are Indian tribes under NAHASDA by confirming the eligibility of their designees for NAHASDA funds. Since 2005, Congress has enacted an appropriations rider specifying that funds made available for Alaska Natives under NAHASDA block grants must “be allocated to the same Native Alaskan housing block grant recipients that received funds in fiscal year 2005,” which includes the Regional Native Housing Authorities as tribally designated housing entities for regional ANCs. *See, e.g.*, Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, Pub. L. No. 109-115, § 319, 119 Stat. 2396, 2465 (2005).

Lest there be any doubt, in the 2021 Consolidated Appropriations Act, Congress was pellucid. In that Act, Congress provided pandemic-related emergency rental assistance to any “Indian tribe or its tribally designated housing entity ... that was eligible to

receive” a NAHASDA grant for fiscal year 2020. Pub. L. No. 116-260, § 501(k)(2)(C), 134 Stat. 1182, 2077 (2020). Congress further specified that “[f]or the avoidance of doubt, the term Indian tribe shall include Alaska native corporations established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)” *Id.*

Congress’s repeated, express recognition of ANCs as “Indian tribes” under NAHASDA, within a definition that is substantially similar to—and cross-references while reinforcing through use of the “pursuant to” clause—the ISDEAA definition confirms that the definitions’ eligibility clauses embrace ANCs in both statutes. *See Barnhart v. Walton*, 535 U.S. 212, 221 (2002) (noting that courts generally should not “interpret the same statutory words differently in closely related contexts”). Far from imposing a formal-recognition requirement that it knew by 1996 (if not before) that no ANC could meet, Congress in NAHASDA and ISDEAA plainly intended for ANCs, as the entities authorized by Congress to promote the health, education, and welfare of Alaska Natives, to be eligible to participate in federal programs that enable Alaska Natives to set their own course and meet the

needs of their communities in the ways that they determine are best.<sup>4</sup>

## **II. Alaska Native Corporations Are Integral To The Success Of Federal Housing Assistance To Alaska Natives.**

### **A. Housing Programs Administered by Regional ANC Designees Have Provided Critical Services to Alaska Natives.**

1. Alaska Natives face special challenges and acute needs for affordable housing, given the geography, climate, and economy of Alaska. Statewide, the percentage of homes that are overcrowded (too small for the number of residents) is twice the national average. Alaska Hous. Fin. Corp., *2018 Alaska Housing Assessment: Statewide Housing Summary*, 4 (Jan. 17, 2018), <https://tinyurl.com/y4mtb5xt>. The highest rates of overcrowding are in rural areas where the population is majority Alaska Native. *Id.* Many of those overcrowded homes are also old and energy-inefficient, increasing the burden of

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<sup>4</sup> Although *amicus* believes that Congress plainly intended for both the NAHASDA and ISDEAA definitions to include ANCs, should the Court conclude otherwise as to ISDEAA, *amicus* urges the Court to limit its holding to ISDEAA and explicitly leave open the question of the NAHASDA definition which is not presented by this case. At the very least, the divergent regulatory and implementation history of NAHASDA, as well as Congress's repeated endorsement, in the appropriation context, of the inclusion of ANCs and their designated regional housing authorities, would require full briefing and independent assessment before reaching a conclusion as to NAHASDA.

already high heating costs during Alaska winters. *Id.* at 5. A national report on Alaska Native and American Indian housing found that out of all tribal areas, Alaska suffered from the worst physical housing problems, with more than a third of housing units having a physical defect. *Id.* at 23. In some areas of Alaska, more than a third of homes have no indoor plumbing and more than a quarter lack full kitchens. *Id.* at 24. And in the more urban parts of Alaska, there are substantial affordability issues, with more than a third of households cost-burdened or very cost-burdened—meaning the household must spend more than 35% of its income on housing. *Id.* at 19.

Housing programs supported by ANC-designated housing authorities using NAHASDA funding have made great strides in meeting these challenges. Block grants under NAHASDA (known as Indian Housing Block Grants) are the largest source of funding for Alaska’s tribally designated Regional Native Housing Authorities. And federal funding does double duty, as housing authorities are often able to leverage that funding to obtain additional funds from other state and federal programs, as well as private investment. A study commissioned by AAHA found that in 2019, Indian Housing Block Grants represented 63% of the funding for Regional Native Housing Authority programs (\$82 million), with private investment making up 31%, and the rest coming from the State or other federal programs. AAHA, *Economic Impact of the Regional Housing Authorities*, <https://tinyurl.com/yafcpbya> (AAHA Study). Much of that private investment is spurred by Indian Housing Block Grants as the critical first investment

needed to get a housing development or community development project off the ground. See *Loan Leveraging in Indian Country: Hearing Before the S. Comm. on Indian Affs.*, 114th Cong. 14 (2015) (*Loan Leveraging Hearing*) (prepared statement of Carol Gore, President/CEO, Cook Inlet Housing Authority) (“In tribal communities, [Indian Housing Block Grant] funds are most often the first funds that provide the opportunity for critical leveraging and meaningful investment.”).

Collectively, these funds enable Alaska’s Regional Native Housing Authorities to serve thousands of tribally-affiliated Alaskans, including but not limited to Alaska Native families. Approximately 11,600 Alaskans live in 4,800 housing units built, improved, or managed by Regional Native Housing Authorities. AAHA Study, *supra*. In 2019 alone, Regional Native Housing Authorities rehabilitated, modernized, or weatherized over 1,100 deficient or unsafe homes and constructed about 100 modern, energy efficient new homes. AAHA, *What We Produce*, <https://tinyurl.com/ya9u99op>

Regional Native Housing Authorities’ programs meet the housing needs of many people beyond those residing in authority-operated properties, through programs such as housing affordability vouchers, financial literacy and homeownership education, homeless shelters, and transitional housing support. *Id.* In 2019, Cook Inlet Housing Authority (CIHA), the tribally designated housing entity for Cook Inlet Region, Inc. (CIRI), alone recorded over 9,400 client interactions while providing housing and related services that directly address the barriers faced by

Alaska Native and American Indian families in achieving housing stability in the region. CIHA, *Our Families*, <https://tinyurl.com/y8jqsrnz>. Interior Regional Housing Authority (IRHA), designated by the regional ANC Doyon, Ltd., serves an area larger than Texas, encompassing Alaska's second-largest city (Fairbanks) and many remote villages. See IRHA, *About Us*, <https://tinyurl.com/yc6z2e3t>. IRHA provides a variety of programs to meet the housing needs of low-income Alaska Native and American Indian families, including a rental assistance program for low-income elders; a lease-to-own program for single-family homes that permits participants to purchase homes after 20 years of payments; and housing rehabilitation grants. See generally, IRHA, *Indian Housing Plan*, <https://tinyurl.com/y7hvsaf8>.

2. The housing programs administered by regional ANC-designated housing entities serve the critical needs of not only their own regional shareholders, but Alaska Native and American Indian populations from throughout Alaska.

The nature of Alaska's geography and economy are such that many Alaska Natives move to the State's more populous regions to pursue economic opportunities. Most villages are not on the road system, so travel back and forth to population centers is difficult and expensive. See Hansi Lo Wang, *Why the U.S. Census Starts in Alaska's Most Remote, Rural Villages*, Nat'l Pub. Radio (Jan. 21, 2019), <https://tinyurl.com/y8kvqx93> (more than 80% of Alaskan communities are not connected to roads). Since 1980, the Alaska Native population within the city limits of Anchorage has more than quadrupled as

Alaska Native families move to the area for jobs, education, and other opportunities. See Municipality of Anchorage, *Population Indicators*, 22, <https://tinyurl.com/yapecul4> (just under 9,000 in 1980); U.S. Census Bureau, *American Community Survey: American Indian and Alaska Native Alone or in Combination with One or More Other Races*, tbl. B02010 (2019), <https://tinyurl.com/y7q5aww4> (over 37,000 in 2019).

Such geographic factors help explain why ANC-designated Regional Native Housing Authorities in more populated areas, such as Anchorage, are often the first stop for migrating Alaska Native families who would often find themselves homeless but for the services provided by Regional Native Housing Authorities. Nearly 50% of the homeless population in Anchorage, and more than 75% of the unsheltered homeless population, is Alaska Native. Anchorage Coal. to End Homelessness, *Gap Analysis & 2021 Community Priorities for the Homeless Prevention & Response System*, 13 (July 2020), <https://tinyurl.com/yc3bsrpa>.

Because of this movement of families within Alaska (and from outside the State), some Regional Native Housing Authorities serve far more Alaska Native and American Indian populations from other tribes than they do shareholders of their regional ANC. For example, CIHA—like other Regional Native Housing Authorities—provides services to any Alaska Native/American Indian individuals within its region, not only shareholders of the regional ANC (CIRI) that designated it as a housing entity. See Letter from CIHA to Deputy Assistant Sec’y for Native Am.



Programs, HUD Off. of Native Am. Programs, 2 (Sept. 23, 2020). In 2019–2020, more than 90% of the Alaska Natives and American Indians served by CIHA were not CIRI shareholders. *Id.*

Beyond direct services, the development and revitalization of affordable housing for Alaska Natives redounds to the benefit of the community as a whole. Redevelopment of the housing stock in an area can contribute to more vibrant and stable neighborhoods by serving as a catalyst for other investments. For example, CIHA received a HUD award for “its dramatic turnaround of the historic Mountain View Village community” through CIHA’s efforts to rehabilitate deficient or condemned housing in the Anchorage neighborhood with the highest concentration of Alaska Native families. News Release, HUD, *Cook Inlet Housing Authority Wins Prestigious HUD Secretary Award* (Jan. 24, 2014), <https://tinyurl.com/y5nw3h9b>. Leveraging NAHASDA funding, CIHA built 349 new, affordable homes to replace 143 blighted properties, spurring more businesses to relocate or redevelop in the neighborhood, and spawning a virtuous cycle of community development. *Loan Leveraging Hearing, supra*, at 16.

**B. It Would Be Impossible to Meet the Needs of Alaska Native and American Indian Populations in Alaska without the Regional ANCs.**

In the unique context of Alaska, the successes achieved by housing assistance programs administered by ANC-designated Regional Native

Housing Authorities would not have been possible without Congress’s inclusion of ANCs within the definition of “Indian tribe.” In NAHASDA, Congress directed HUD to allocate funding in part based on need, meaning the “extent of poverty and economic distress and the number of Indian families within Indian areas of the tribe.” 25 U.S.C. § 4152(b)(2). Under regulations adopted through negotiated rulemaking, *id.* § 4116(b)(2), HUD recognized that the special nature of tribal government within Alaska—where, with one exception, no reservation or trust lands are set aside for Alaska Natives—required an Alaskan-specific way of assessing the need within Alaska Native areas.

Reflecting the unique structure created by ANCSA, the NAHASDA allocation formula assigns need (measured by Alaska Native/American Indian population and other factors) to Alaska Native Village tribes for populations living within those (often small) village boundaries, if the tribe intends to operate its own housing program. 24 C.F.R. § 1000.327. If the tribe does not, or for populations that live in the vast areas between villages, the Alaska Native/American Indian populations are assigned to the regional Indian tribe (if there is one) or to the regional ANC, to enable accurate assessment of housing needs in that area, and to properly calibrate the amount of funding to be allocated. *Id.*

Given the scale and complexity of building and operating affordable housing, many Alaska Native Village tribes may choose not to operate their own affordable housing programs. Nor could smaller programs leverage NAHASDA funding to maximize

private investment in the way that larger programs can, simply due to the type of scale required to obtain private investment in affordable housing. *See generally* David A. Goldstein et al., *Changing the Paradigm: Creating Scale and Keeping Local Expertise in Nonprofit Affordable Housing Development*, 27 J. Affordable Housing & Comty. Dev. L. 511 (2019) (describing how scale is necessary to successfully obtain and leverage affordable housing development funding). And, as described above, the unique geography of Alaska also means that a large segment of the Alaska Native population lives outside of (and often far from) the boundaries of Alaska Native villages, because of intrastate migration, the difficulty of travel, and the vast swaths of territory in between villages. The Association of Village Council Presidents (AVCP) Regional Housing Authority, for example, serves an area approximately the size of New York with a population of about 26,000 people. *See* AVCP, *Our Region*, <https://tinyurl.com/yawsooyt>; AVCP, *Yukon-Kuskokwim Region Comprehensive Economic Development Strategy 2018–2023*, 17 (July 2018), <https://tinyurl.com/y9b77z5r>.

For these reasons, the participation of regional ANCs through tribally designated housing entities is essential to the provision of federal support for Alaska Native and American Indian affordable housing within Alaska. As an example, the total Fiscal Year 2020 NAHASDA block grant award for tribes in the Cook Inlet region was \$17,136,257, of which \$14,040,730 was awarded to CIHA on behalf of Cook Inlet Region, Inc., because most of the need falls outside the boundaries of the villages in the Cook Inlet

region. HUD, *FY 2020 Final [Indian Housing Block Grant] Funding by [Tribeally Designated Housing Entities] & Regions*, 3, <https://tinyurl.com/y2g2dtw6>. A similar pattern pertains in some regions even outside of major metropolitan areas, with the majority of need, and thus funding, being attributed to the region (as opposed to specific villages) due to many Alaska Natives residing outside of village boundaries. See, e.g., HUD, *FY 2020 [Indian Housing Block Grant] Final Allocation*, <https://tinyurl.com/ya848grb> (*FY 2020 NAHASDA Funding*) (over 50% of population-based funding for Chugach region attributed to the regional ANC).

If regional ANCs were excluded from NAHASDA, much of the housing needs currently served by the ANC-designated housing entities would go unmet, as the housing needs of Alaska Natives extend well beyond precise village boundaries. Nor is it possible for the State or local governments to simply jump in and meet that need. For one thing, the resources are not there. The Alaska Housing Finance Corporation, the public housing authority that administers most non-NAHASDA HUD programs within Alaska, received \$58.4 million in federal funding in 2017, see Alaska Hous. Fin. Corp., *State of Alaska FY2019 Governor's Operating Budget*, 7 (Dec. 15, 2017), <https://tinyurl.com/y3oehl6f>—hardly enough to support its existing programs. Much less could it handle the additional burden that would result from the counter-textual excision of regional ANCs from NAHASDA, given that over \$40 million was allocated to regional ANCs under NAHASDA in 2020 (out of a total Alaska allocation of nearly \$95 million), see *FY 2020*

*NAHASDA Funding, supra.* And Alaska is experiencing even greater revenue shortfalls than most States due to the current pandemic. *See* Andrew Kitchenman, *Alaska Has Lost a Greater Share of Revenue than Most States Due to COVID-19*, Nat'l Pub. Radio (Aug. 3, 2020), <https://tinyurl.com/y2pmauay>.

In sum, regional ANCs are included as “Indian tribes” within NAHASDA (as within ISDEAA) in part because Congress recognized that given the unique structure of tribal relationships in Alaska—where, unlike the lower 48, there are no large reservations encompassing thousands of acres—most of the need would fall within regional areas but outside the narrow boundaries of native villages. An atextual reading of the statute to exclude ANCs from participation would exclude a large segment of Alaska Natives entirely from the federal support that Congress provided as part of its special obligation to Alaska Natives. Such an abrogation of its trust responsibilities is not what Congress intended.

## CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted.

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