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To: Tara Sweeney, Assistant Secretary – Indian Affairs

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Re: Consultation Comments on Organization and Federal Recognition under the Alaska Amendment to the IRA “Common Bond” Standard

INTRODUCTION

We are submitting comments in response to the Department of the Interior’s (Department) July 2, 2018 Dear Tribal Leader Letter (July 2 Letter) asking for feedback on how the Department could better implement the organization and federal recognition provision of the Alaska amendment to the Indian Reorganization Act (IRA). We represent the petitioners associated with the Department’s two long-pending requests to organize under the Alaska amendment to the IRA common bond standard: the Qutekcak Native Tribe (QNT) and the Knugank Tribe (Knugank).¹

Although our clients prepared their requests to organize pursuant to specific instructions the Department provided them more than 20 years ago and submitted those requests in accordance with the guidance applicable at that time, we understand you nonetheless plan to apply your new guidance to these long-delayed and still pending requests.

Any guidance the Department develops must be consistent with the statutory terms governing the delegation of authority Congress provided to the Department in the Alaska amendment to the IRA. It must also be consistent with the Department’s prior interpretation and implementation of the statute. Our comments provide you with input on the common bond standard in order to help the Department develop interpretive guidance that complies with these parameters.

¹ We also represented the King Salmon Tribe of Alaska in its request to organize pursuant to the IRA and related efforts to secure its status as a federally recognized tribe.

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I. BRIEF SUMMARY OF PARAMETERS OF COMMON BOND STANDARD

As discussed below, the eligibility standard for organization and federal recognition under the Alaska amendment to the IRA—often called the “common bond standard”—is clear. Congress through statutory language spelled out the requirements for meeting the common bond standard, and the Department through guidance, precedent, and technical assistance has further clarified the parameters. Congress’s act of creating the common bond organization standard was properly aimed at carrying out the unique obligations owed to Alaska Natives.

The parameters of the common bond standard as articulated by Congress’s statutory language and the Department’s guidance, precedent, and technical assistance are as follows:

- **Common Bond.** A common bond is demonstrated through shared residence, or shared occupation, or shared association.² The common bond is fully apparent when it arises from circumstances through which the United States took on unique obligations to the individual Alaska Natives sharing the common bond.
- **Boundaries.** Shared residence must take place within a well-defined neighborhood, community, or rural district. Social interactions between Alaska Natives may be used to determine the existence and outer geographic boundaries of a well-defined neighborhood, community, or rural district.
- **Timeframes.** The Department has concluded that a group of Alaska Natives is eligible to organize under the common bond standard when the group meets the common bond standard at the time of organization and in 1936 and presently maintains within it a continuing element of the group as it existed in 1936.

Below, we have discussed the relevant authorities supporting the above-described parameters.

II. RESPONSES TO QUESTIONS POSED IN JULY 2 LETTER

Below we have answered the questions you posed in the July 2 Letter. However, we have regrouped your questions to facilitate more concise responses to the issues you raised.

A. Response to Question 1: **The common bond standard is still good law and relevant in today’s Alaska.**

² These comments focus only on demonstrating a common bond through shared residence and do not discuss demonstrating a common bond through shared occupation or association.

In 1936, Congress amended the IRA to create the “common bond” organization standard designed specifically for groups of Alaska Natives, stating:

[G]roups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans. . . .³

The Department has utilized the provision to organize groups of Alaska Natives since its enactment in 1936,⁴ and it has thereafter federally recognized them as tribes.⁵

We are aware of two groups of Alaska Natives—who are our clients—with pending requests asking the Department to facilitate their organization and deem them federally recognized: QNT and Knugank. Therefore, the need for the Alaska amendment to the IRA still exists today.

Congress has not repealed the organization provision of the Alaska amendment to the IRA. Congress explicitly repealed the provision of the Alaska amendment to the IRA dedicated to creating specific reservations in Alaska,⁶ but it has left the organization provision alone. And other more recent statutes dealing generally with federal recognition, such as the Federally Recognized Tribes List Act (List Act),⁷ do not repeal or mention the organization provision of the Alaska amendment to the IRA. Nor did the

³ Pub. L. No. 74-538, 49 Stat. 1250 (1936) (codified at 25 U.S.C. § 5119) (citing language as originally enacted).

⁴ Letter from Kevin Washburn, Assistant Sec’y – Indian Affairs, to Mark Begich, U.S. Senator, Alaska (May 6, 2013) (“We understand that at least 38 Alaska Native groups have organized and received charters under [the Alaska amendment to the IRA].”); Memorandum from Solicitor to Sec’y, re Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers, M-36975, at 1–2 (Jan. 11, 1993) [hereinafter M-36975] (referring to at least 72 Alaska tribes that organized under Alaska amendment to IRA, most before Department created formal recognition regulations, and Department’s continued efforts to facilitate such organizations); DAVID S. CASE & DAVID A. VOLUCK, ALASKA NATIVES AND AMERICAN LAWS 330 (3d. ed. 2012) [hereinafter ALASKA NATIVES AND AMERICAN LAWS] (stating more than 70 groups organized under common bond standard).

⁵ 58 Fed. Reg. 54,364, 54,364 (Oct. 21, 1993) (referring to “Indian Reorganization Act councils organized under the Indian Reorganization Act (IRA) . . . and dealt with on a government-to-government basis by the BIA”); Memorandum from Acting Assoc. Solicitor, Indian Affairs, to Solicitor, re Federal “Recognition” of Indian Tribes, at 15 n.5 (July 17, 1975) (noting “organization of previously unrecognized tribes is specifically permitted” under Alaska amendment to IRA).

⁶ Pub. L. No. 94-579, 90 Stat. 2744 (1976) (codified at 43 U.S.C. §§ 1701–1787) (wherein Congress rescinded Secretary’s authority to establish reservations in Alaska under Section 2 of Alaska amendment to IRA).

⁷ Pub. L. No. 103-454, 108 Stat. 4791 (1994). Rather, legislative history associated with the List Act states the “Secretary [must] continue the current policy of including Alaska Native entities on the list of Federally recognized Indian tribes which are eligible to receive services.” H.R. Rep. No. 103-781, at 5 (1994).

Alaska Native Claims Settlement Act (ANCSA) repeal the provision.⁸ In 2009, the Supreme Court in *Carcieri v. Salazar* cited the Alaska amendment to the IRA organization standard as still valid law.⁹

The Department has consistently recognized the continuing vitality of the organization provision of the Alaska amendment to the IRA. It has acknowledged that subsequent legislation did not repeal the provision¹⁰ and that Alaska Natives, even after amendments to 25 C.F.R. Part 83 (Part 83), may still seek federal recognition pursuant to organization under the Alaska amendment to the IRA.¹¹ Officials within the Department have continued to affirm to congressional members concerned about resolution of the two petitioners' pending requests that the Alaska amendment to the IRA is still viable and the petitions are still under active review.¹² And, in recent years, Department officials have engaged in detailed discussions about the parameters of the common bond standard with those petitioners' representatives.¹³

B. Response to Questions 7 and 8: There are challenges to federal recognition specific to Alaska Natives, which Congress properly accounted for in enacting the common bond standard. The Department's congressionally-delegated authority under the Alaska amendment to the IRA is more appropriate for recognition of groups of Alaska Natives than the Department's Part 83 process.

All tribes may seek federal recognition through Part 83, including tribes in Alaska.¹⁴ However, for the reasons discussed below, Part 83 is not designed or

⁸ Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified at 43 U.S.C. §§ 1601–1629h). Relatedly, courts examining tribal sovereignty after ANCSA have found that it continues to exist. *John v. Baker*, 982 P.2d 738, 753 (Alaska 1999) (“[N]owhere does the law express any intent to force Alaska Natives to abandon their sovereignty.”).

⁹ *Carcieri v. Salazar*, 555 U.S. 379, 392 n.6 (2009).

¹⁰ M-36975, at 39.

¹¹ 80 Fed. Reg. 37,538, 37,539 n.1 (June 26, 2015).

¹² See, e.g., Letter from Kevin Washburn, Assistant Sec’y – Indian Affairs, to Mark Begich, U.S. Senator, Alaska (May 6, 2013); Letter from Larry Echo Hawk, Assistant Sec’y – Indian Affairs, to Lisa Murkowski, U.S. Senator, Alaska (Jan. 31, 2012). It should be noted that there are many instances where officials from the Department have made oral and written references to ongoing efforts to examine the petitioners' submissions under the Alaska amendment to the IRA common bond standard.

¹³ See, e.g., Memorandum from Hobbs, Straus, Dean and Walker, LLP, Counsel for QNT, to Jody Cummings, Deputy Solicitor – Indian Affairs (Oct. 14, 2016) (addressing issues raised in Sept. 30, 2016 meeting); Memorandum from Hobbs, Straus, Dean and Walker, LLP, Counsel for QNT, to Jody Cummings, Deputy Solicitor – Indian Affairs (Aug. 23, 2016) (addressing issues raised in Aug. 10, 2016 meeting); Memorandum from Hobbs, Straus, Dean and Walker, LLP, Counsel for Knugank, to Venus McGhee Prince, Deputy Solicitor – Indian Affairs (Apr. 14, 2015) (addressing issues raised in Mar. 27, 2015 meeting). There have been many substantive phone calls and meetings between Department officials and the petitioners' attorneys to discuss the common bond standard.

¹⁴ 59 Fed. Reg. 9280, 9284 (Feb. 25, 1994).

appropriate for many groups of Alaska Natives seeking recognition. The Department for this reason has acknowledged that Part 83 is not required for federal recognition of Alaska tribes.¹⁵ Instead, the common bond standard was designed by Congress to address historical differences tribes in Alaska faced.

First, the common bond standard aims to provide a mechanism for recognizing Alaska tribes as they traditionally existed dating back to historical times, or first contact with non-Native people.¹⁶ Alaska Natives have traditional affiliations such as Iñupiat, Tlingit, Haida, and Athabaskan.¹⁷ But smaller villages were the essential units of self-government for most Alaska Native societies, including during historical times.¹⁸ These smaller villages migrated seasonally and were not necessarily tied to a particular land base.

Tribes in Alaska were able to operate in their traditional ways for many years longer than tribes in the lower 48 states, as tribes in Alaska remained isolated from non-Natives until relatively recently. Euro-Asian contact, although infrequent and limited in nature, began in Alaska with the arrival of the Russians in the mid-1700s.¹⁹ As the Department's Solicitor in a 1923 opinion recounted, even after Alaska was ceded to the United States by Russia in 1867, "Congress took no particular notice of these natives; has never undertaken to hamper their individual movements; confine them to a locality or reservation, or to place them under the immediate control of its officers, as has been the case with the American Indians."²⁰ Indeed, contact between Alaska Natives and the

¹⁵ See, e.g., 80 Fed. Reg. 37,538, 37,539 n.1 (July 1, 2015) (noting Congress's common bond standard is applicable to Alaska Natives); 53 Fed. Reg. 52,829, 52,832 (Dec. 29, 1988) (stating Alaska Native entities that satisfy certain criteria are eligible for funding and services and "should not have to undertake to obtain Federal Acknowledgment pursuant to Part 83"); Letter from Larry Echo Hawk, Assistant Sec'y – Indian Affairs, to Lisa Murkowski, U.S. Senator, Alaska, at 2 (Jan. 31, 2012) (stating Alaska Native entities need only seek recognition through Part 83's administrative process when they do not meet common bond standard for organization under Alaska amendment to IRA).

¹⁶ However, tribes in Alaska that do not organize under the common bond standard may still receive federal recognition. See ALASKA NATIVES AND AMERICAN LAWS at 327–30.

¹⁷ See *id.* at 325–71.

¹⁸ *Id.* at 383, 385, 387.

¹⁹ DAVID H. GETCHES ET AL., CASES AND MATERIALS ON FEDERAL INDIAN LAW 958 (7th ed. 2017) [hereinafter CASES AND MATERIALS ON FEDERAL INDIAN LAW].

²⁰ Memorandum from Solicitor to Sec'y, Status of Alaska Natives, M-26915 (Feb. 24, 1932) [hereinafter M-26915] (citing Leasing of Lands within Reservations Created for the Benefit of the Natives of Alaska, 49 Pub. Lands Dec. 592, 594 (1923)). See also *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 557–58 (9th Cir. 1991) ("Following the United States' purchase of Alaska in 1867, Congress paid little heed to the region's natives and was content to leave their legal status unresolved."). These comments cite to the Ninth Circuit's decision in *Native Vill. of Venetie I.R.A. Council v. Alaska* for the sole purpose of discussing relevant background information relating to the legal status of Alaska Natives within the United States. The citations to the Ninth Circuit's decision have not been impacted by any subsequent court decision.

United States only occurred some 70 years prior to the enactment of the Alaska amendment to the IRA.²¹

In designing the common bond standard, Congress knew that tribes in Alaska operated differently than tribes in the lower 48 states, in part due to traditional differences. In a congressional report, Congress explained:

[The common bond standard is necessary] because of the peculiar nontribal organizations under which the Alaska natives operate. They have no tribal organizations as that term is understood generally. Many groups which would otherwise be termed “tribes” live in villages which are the bases of their organizations.²²

Thus, Congress via the common bond standard created a standard for federal recognition that was designed to accommodate the organization of Alaska Native tribes operating in their traditional ways.

Additionally, practically speaking, tribes in Alaska existing since historical times are not likely to have the evidentiary documentation necessary to demonstrate that status and succeed under Part 83. The Department has acknowledged that applying Part 83 to Alaska tribes would be “unduly burdensome” due to the geographical nature of Alaska.²³ Many “small pockets of Natives liv[e] in isolated locations scattered throughout the state.”²⁴ Because of the “extreme isolation,” a group of Alaska Natives “may not have extensive documentation on its history” during the 19th and early 20th centuries.²⁵ Thus, the Department has acknowledged that, because tribes from the lower 48 states had more contact with outsiders and therefore more documentation, “insistence on the same formality for those Alaska groups might penalize them simply for being located in an area that was, until recently, extremely isolated.”²⁶

Second, the common bond standard was intended to provide a mechanism for recognizing groups of Alaska Natives from different origins²⁷ who came together to form new Alaska Native communities due to circumstances through which the United States took on unique obligations to the individual Alaska Natives. These circumstances were a

²¹ CASES AND MATERIALS ON FEDERAL INDIAN LAW, at 958.

²² H.R. Rep. No. 74-2244, at 1–2 (1936); *see also* ALASKA NATIVES AND AMERICAN LAWS, at 386.

²³ 53 Fed. Reg. 52,829, 52,833 (Dec. 29, 1988).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See, e.g., id.* at 52,832–33; Memorandum from Michael J. Anderson, Assoc. Solicitor, Indian Affairs, to Ada E. Deer, Assistant Sec’y – Indian Affairs, re Constitutions for Alaska Native Village of Dot Lake, at 4 (Sept. 19, 1994) [hereinafter Dot Lake Decision]; Memorandum from Assoc. Solicitor, Indian Affairs, to Director, Office of Indian Services, re Eligibility of Eskimo Village to Organize under the Indian Reorganization Act, at 3 (July 10, 1978) [hereinafter Eskimo Village Decision].

result of non-Natives' general disregard for Alaska tribes, which had uniquely destructive consequences. For example, for a time, the United States discounted Alaska tribes' status as sovereign and limited their ability to exercise their sovereignty,²⁸ which hampered tribal governments' ability to provide for their people and contributed to Alaska Natives' need to relocate to meet their basic needs. There were also instances where contact between non-Natives and remote Alaska tribes resulted in devastation, such as when Alaska tribes were exposed to illness that wiped out their populations, which led remaining Alaska Natives to relocate to new communities.²⁹

Although allowing for organization of Alaska Natives from different origins, the common bond standard ensures that the Alaska Natives organizing exist as a community at the time of organization—thereby excluding organization of Alaska Natives not affiliated with a contemporary Alaska Native community. For example, Congress has determined that a common bond consisting of shared residence within a well-defined community or neighborhood would limit organization to those groups of Alaska Natives who, in light of their proximity in residence, can be presumed to operate as a cohesive community.

It is well within Congress's power to create an organization and recognition standard. In carrying out the unique obligations it owes to Indians, the United States has authority to, and regularly engages in the practice of, extending federal recognition to tribes, both through Congress and the Executive Branch.³⁰ Courts defer to these political decisions.³¹ Present-day tribes that descend from a tribe or tribes that existed during historical times may receive federal recognition,³² and the Executive Branch has designed

²⁸ See *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 558 (9th Cir. 1991) (“Alaska natives were treated as divorced from the rules of Indian law which applied to lower-forty-eight tribes.”).

²⁹ See, e.g., Maria Gilson deValpine, *Influenza in Bristol Bay, 1919: “The Saddest Repudiation of a Benevolent Intention”*, SAGE OPEN, Jan.-Mar. 2015, at 1–7 (discussing devastating effects of 1919 wave of influenza in Bristol Bay, Alaska, which killed many Alaska Natives and left many children orphaned, as well as devastating impacts in other regions of Alaska, including Unalaska and Aleutian Islands).

³⁰ See *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004) (“Federal recognition may arise from treaty, statute, executive or administrative order, or from a course of dealing with the tribe as a political entity.”) (quoting WILLIAM C. CANBY, JR., *AMERICAN INDIAN LAW IN A NUTSHELL* 4 (4th ed. 2004)); 140 CONG. REC. S6145 (May 19, 1994) (“Over the years, the Federal Government has extended recognition to Indian tribes through treaties, executive orders, a course of dealing, decisions of the Federal courts, acts of Congress and administrative action.”) (statement by Sen. McCain); COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 3.02[3], at 134 (Nell Jessup Newton et al. eds., 2012 ed.) (“Tribes recognized by treaty, statute, administrative process, or other intercourse with the United States are known as federally recognized tribes.”).

³¹ See, e.g., *Samish Indian Nation v. United States*, 419 F.3d 1355, 1370–73 (Fed. Cir. 2005); *Miami Nation of Indians of Indiana, Inc. v. U.S. Dep’t of Interior*, 255 F.3d 342, 346–48 (7th Cir. 2001); *Golden Hill Paugussett Tribe of Indians v. Weicker*, 39 F.3d 51, 59–60 (2nd Cir. 1994); *W. Shoshone Bus. Council v. Babbitt*, 1 F.3d 1052, 1057 (10th Cir. 1993); *Robinson v. Salazar*, 885 F. Supp. 2d 1002, 1030 (E.D. Cal. 2012).

³² This standard grew out of case law. The cases drawn from dealt with the origin of tribes' inherent sovereignty, see *United States v. Wheeler*, 435 U.S. 313, 322–23 (1978); *Worcester v. Georgia*, 31 U.S.

its federal recognition Part 83 process to only recognize such tribes.³³ In establishing statutory organization standards, Congress has directed the Executive Branch to also carry out organization and federal recognition of Indians meeting those standards, which need not require the community organizing to have descended from a tribe that existed during historical times.³⁴ In this manner, Congress has authorized the Executive Branch to facilitate the organization of communities of Indians meeting these statutory standards.³⁵

Congress's "Indians residing on one reservation" organization standard in the original enactment of the IRA is one such example of this. Congress in its initial enactment of the IRA defined "tribe" to include "the Indians residing on one reservation."³⁶ These tribal entities were then eligible to organize by adopting governing documents,³⁷ and thereafter they gained federal recognition.³⁸ Congress in creating this organization standard recognized that, in reality, circumstances throughout time—often caused by United States Indian policy—often resulted in Indians living together in new communities.³⁹ This was most common in California, where Indian people had been forced from productive tribal lands, became "homeless" in the eyes of the federal government, and were then encouraged to relocate to small plots of land called "rancherias" with California Indians from different tribes.⁴⁰ Courts have noted this organization standard as an avenue for federal recognition.⁴¹

515 (1832), and how they maintain that sovereignty over time, *see United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976). As the Ninth Circuit explained: "In accordance with this doctrine of inherent tribal sovereignty, it follows that the Indian groups to be recognized as sovereigns should be those entities which historically acted as bodies politic, particularly in the periods prior to their subjugation by non-natives. There is, however, an additional prerequisite that an Indian group must meet in order to achieve present-day recognition as a sovereign: the modern-day group must demonstrate some relationship with or connection to the historical entity." *Native Vill. of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 557 (9th Cir. 1991).

³³ *See* 25 C.F.R. Part 83 (allowing for federal recognition of petitioners that can demonstrate political and genealogical connection to tribe or tribes that existed during historical times).

³⁴ Tribes that organized under IRA standards have gained federal recognition as such. *See* FELIX S. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 270–71 (1942).

³⁵ Congress cannot "bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe," but instead it may recognize "distinctly Indian communities." *United States v. Sandoval*, 231 U.S. 28, 46 (1913).

³⁶ 25 U.S.C. § 5129.

³⁷ 25 U.S.C. § 5123(a).

³⁸ *See* FELIX S. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 270–71 (1942); *Allen v. United States*, 871 F. Supp. 2d 982, 990 (N.D. Cal. 2012) ("[A]ll of the tribes that organized under the IRA became federally recognized tribes. . .").

³⁹ *See* 140 CONG. REC. S6147 (daily ed. May 19, 1994); *see also* FELIX S. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 270–71 (1942).

⁴⁰ *See Duncan v. Andrus*, 517 F.Supp. 1, 2 (N.D. Cal. 1977).

⁴¹ *See, e.g., Allen v. United States*, 871 F. Supp. 2d 982, 991–92 (N.D. Cal. 2012) (interpreting IRA as authorizing organization and federal recognition of previously unrecognized Indians residing on one

The Alaska amendment to the IRA is meant to provide Alaska Natives with an organization option similar to the “Indians residing on one reservation” organization standard.⁴² In supporting congressional efforts to enact the common bond standard, the Department said application of the original IRA definition of “tribe” in Alaska “would deprive certain groups whose members are scattered, or which are composed of individuals from several localities.”⁴³ Courts, including the United States Supreme Court, have noted Congress’s common bond standard as a useful way to address the unique circumstances of Alaska Natives.⁴⁴

Moreover, in directing the Executive Branch to apply organization standards, it is proper and within Congress’s power to account for unique circumstances such as those underlying the common bond standard in Alaska. Such organization standards do not raise constitutional concerns.

The United States Constitution authorizes the federal government to exercise broad Indian affairs powers, including through the Indian commerce clause,⁴⁵ the treaty clause,⁴⁶ the “Indians not taxed” portion of the apportionment clause,⁴⁷ the property clause,⁴⁸ and the offenses clause.⁴⁹ The United States before and after the Constitution’s

reservation); *see also Stand Up for California! v. U.S. Dep’t of Interior*, 879 F.3d 1177, 1182–83 (D.C. Cir. 2018).

⁴² Soon after enacting the IRA, Congress realized that Alaska Native communities were not able to benefit from the IRA’s “Indians residing on one reservation” organization standard because Alaska tribes did not have reservation land bases in the same way tribes in the lower 48 states did. H.R. Rep. No. 74-2244, at 2, 4 (1936); M-36975, at 30; *see also* Letter from Larry Echo Hawk, Assistant Sec’y – Indian Affairs, to Lisa Murkowski, U.S. Senator, Alaska, at 1 (Jan. 31, 2012). Congress amended the IRA to allow Alaska Native communities sharing a common bond of residence, association, or occupation within a well-defined community, neighborhood, or rural district, rather than a reservation, to organize. H.R. Rep. No. 74-2244, at 3 (1936); M-36975, at 30. Thus, the Department has acknowledged that the Alaska amendment to the IRA “authorized groups to organize as tribes which are not historical tribes and are not residing on reservations.” 53 Fed. Reg. 52,829, 52,832–33 (Dec. 29, 1988).

⁴³ H.R. Rep. No. 74-2244, at 4–5 (1936) (Letter from Harold Ickes, Sec’y, Dep’t of Interior).

⁴⁴ *Carciari v. Salazar*, 555 U.S. 379, 392 n.6 (2009) (citing common bond standard and stating “Congress chose to expand the Secretary’s authority to particular Indian tribes not necessarily encompassed within the definitions of ‘Indian’ set forth in § 479”); *Alaska Chapter, Associated Gen. Contractors of Am., Inc. v. Pierce*, 694 F.2d 1162, 1169 n.10 (9th Cir. 1982) (stating common bond standard accounted for unique non-reservation and non-tribal situation of Alaska Natives); *see also United States v. Booth*, 161 F. Supp. 269, 272 (D. Alaska 1958) (citing common bond standard and stating “[i]n Southeastern Alaska there are many groups of non-tribal Indians and therefore special language was necessary to bring the Indians of Southeastern Alaska within the terms of the Wheeler-Howard Act”).

⁴⁵ U.S. CONST., art. I, § 8, cl. 3.

⁴⁶ *Id.* art. II, § 2, cl. 2.

⁴⁷ *Id.* art. I, § 2, cl. 3.

⁴⁸ *Id.* art. IV, § 3, cl. 2.

⁴⁹ *Id.* art. I, § 8, cl. 10. The United States also draws its broad Indian affairs powers from “the Constitution’s adoption of preconstitutional powers necessarily inherent in any Federal Government.” *United States v. Lara*, 541 U.S. 193, 200–01 (2004). *See also Morton v. Mancari*, 417 U.S. 535, 551–52

drafting dealt with tribes as political entities and with Indians as having a political status.⁵⁰ Through these dealings, the United States took on unique obligations to tribes and Indians.⁵¹ In this way, the Constitution carries forward the underlying relationship between the United States and tribes and ensures the United States has the tools necessary to carry out the unique obligations to Indians that have grown from that relationship.

Because actions taken pursuant to these constitutional Indian affairs powers necessarily single out Indians to whom the United States owes unique obligations, the Constitution implicitly mandates they are in keeping with constitutional principles. Thus, the Constitution creates a constitutionally-identified non-suspect class of Indians. The Supreme Court reasoned the Constitution “singles Indians out as a proper subject for separate legislation”⁵² due to “the unique legal status of Tribal Nations under federal law and upon the plenary power of Congress [drawn from the Constitution], based on a history of treaties and the assumption of a guardian-ward status.”⁵³ As a corollary, the Court has said that actions taken in furtherance of the United States’ unique legal and moral obligations owed to tribes and Indians are constitutionally permissible.⁵⁴ This seminal holding is one of the cornerstones of Indian law and has been applied time and again.⁵⁵

(1974); *McClanahan v. State Tax Comm’n of Ariz.*, 411 U.S. 164, 172 n.7 (1973); *United States v. Holliday*, 70 U.S. 407, 418 (1865).

⁵⁰ Matthew L.M. Fletcher, *The Original Understanding of the Political Status of Indian Tribes*, 82 ST. JOHN’S L. REV. 153, 180 (2008); see also *Worcester v. Georgia*, 31 U.S. 515 (1832); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Johnson v. McIntosh*, 21 U.S. 543 (1823); *United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188, 196 (1876).

⁵¹ *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 176 (2011); *Morton v. Mancari*, 417 U.S. 535, 552 (1974); *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942); *United States v. Kagama*, 118 U.S. 375, 384 (1886); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

⁵² *Morton v. Mancari*, 417 U.S. 535, 551–52 (1974). See also *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n.*, 443 U.S. 658, 673 n.20 (1979) (stating “peculiar semisovereign and constitutionally recognized status of Indians justifies special treatment on their behalf”); *United States v. Antelope*, 430 U.S. 641, 645 (1977) (“The decisions of this Court leave no doubt that federal legislation with respect to Indian tribes, although relating to Indians as such, is not based upon impermissible racial classifications. Quite the contrary, classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government’s relations with Indians.”); see also *United States v. Cohen*, 733 F.2d 128, 139 (D.C. Cir. 1984) (“[I]n a sense, the Constitution itself establishes the rationality of the present classification, by providing a separate federal power which reaches only the present group.”).

⁵³ *Morton v. Mancari*, 417 U.S. 535, 551 (1974). See also *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n.*, 443 U.S. 658, 673 n.20, 675 (1979); *United States v. Antelope*, 430 U.S. 641, 645–46 (1977); *Morton v. Mancari*, 417 U.S. 535, 552 (1974).

⁵⁴ See *Morton v. Mancari*, 417 U.S. 535, 555 (1974); *Alaska Chapter, Associated Gen. Contractors of Am., Inc. v. Pierce*, 694 F.2d 1162, 1168 (9th Cir. 1982) (“If the preference in fact furthers Congress’ special obligation, then a *fortiori* it is a political rather than racial classification, even though racial criteria might be used in defining who is an eligible Indian.”).

⁵⁵ See, e.g., *Washington v. Wash. State Commercial Passenger Fishing Vessel Ass’n.*, 443 U.S. 658, 673 n.20 (1979); *Washington v. Confederated Bands and Tribes of Yakima Indian Nation*, 439 U.S. 463, 500–01 (1979); *Delaware Tribal Bus. Comm. v. Weeks*, 430 U.S. 73, 84–85 (1977); *United States v. Antelope*,

The Indians falling into this constitutionally-identified non-suspect class encompass Alaska Natives organizing under the common bond standard. The Constitution's Indian affairs powers and the unique obligations owed to Indians are rooted in part in the political status of tribes that existed at first contact with non-Natives, and so tribes and tribally affiliated Indians fall into the constitutionally-identified class. In some circumstances, however, the United States has also taken on unique legal and moral obligations to individual Indians not affiliated with a tribe, who thus fall into the constitutionally-identified class. For example, a transfer of unique obligations owed to a tribe to individual Indians may take place in situations where the United States, its predecessors, or its citizens took actions that led to the destruction of the cohesive functioning of the tribe or to individuals' (and their descendants') involuntarily severed connections to a tribe. Recognizing this, Congress has created organization standards to facilitate organizing these Indians into tribal political entities so that the United States may engage in a government-to-government relationship and carry out its unique obligations owed to them. Some Alaska Native groups organizing under the common bond standard may descend from tribes that existed during historical times, and some may consist of individual Alaska Natives otherwise owed unique obligations; but all Alaska Native groups meeting the common bond standard fall into the constitutionally-identified non-suspect class of Indians.⁵⁶

C. Response to Questions 4 and 5: A group of Alaska Natives that has gained federal recognition, including through organization pursuant to the common bond standard, has the right to exercise sovereign governmental powers upon federal recognition that the Department may not limit.

Congress made clear in a 1994 amendment to the IRA that, once federally recognized, the Executive Branch must treat all tribes the same, regardless of the way in which they received federal recognition—through organization, Part 83, or otherwise.⁵⁷ This amendment was necessary because officials within the Department had placed limitations on the exercise of sovereignty of federally recognized tribes that had been organized under the IRA.⁵⁸

Federally recognized tribes in Alaska share the same status as federally recognized tribes in the lower 48 states. The Department, after serious consideration, determined that federally recognized tribes in Alaska are sovereign entities that maintain

430 U.S. 641, 645–46 (1977); *Moe v. Confederated Salish & Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463, 479–80 (1976); *Fisher v. Dist. Court of Sixteenth Judicial Dist. of Mont., in & for Rosebud Cty.*, 424 U.S. 382, 390–91 (1976); *Morton v. Mancari*, 417 U.S. 535 (1974).

⁵⁶ *Alaska Chapter, Associated Gen. Contractors of Am., Inc. v. Pierce*, 694 F.2d 1162, 1168, n.10 (9th Cir. 1982) (applying equal protection principles articulated in *Morton v. Mancari* to Alaska Natives).

⁵⁷ 25 U.S.C. § 5123(f)–(g).

⁵⁸ 140 CONG. REC. S6145 (May 19, 1994) (statement by Sen. McCain).

government-to-government relationships with the United States like any other federally recognized tribe.⁵⁹ And the courts have determined that tribes in Alaska possess the same inherent sovereignty as tribes in the lower 48 states even apart from federal recognition.⁶⁰

Thus, the principles of tribal sovereignty as well as the 1994 amendment to the IRA apply to federally recognized tribes in Alaska, and the Department may not limit their sovereignty.

D. Response to Questions 2 and 3: The Department should define and interpret all aspects of the common bond standard in accordance with the statute's plain language and with past Department guidance and precedent.

When it enacted the Alaska amendment to the IRA, Congress made clear what constitutes a “common bond.” The statute explicitly referred to “a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district.”⁶¹ The Department’s 1937 guidance,⁶² issued one year after the Alaska amendment to the IRA, to interpret the statutory common bond standard as well as its precedent, including both common bond eligibility decisions⁶³ and the constitutions⁶⁴ used to organize eligible groups, have affirmed this straightforward standard. The broad strokes of the common bond standard remain unchanged, and the 1937 guidance remains the Department’s guidepost when determining whether an Alaska Native group is eligible to organize.⁶⁵

⁵⁹ 59 Fed. Reg. 9280, 9284 (Feb. 25, 1994); 58 Fed. Reg. 54,364, 54,366 (Oct. 21, 1993); M-36975, at 8, 47; *see also* Memorandum from Solicitor to Sec’y, re Status of Alaska Natives, M-26915 (Feb. 24, 1932).

⁶⁰ *Native Vill. of Venetie I.R.A. Council v. State of Alaska*, 944 F.2d 548, 558–59 (9th Cir. 1991) (“[T]o the extent that Alaska’s natives formed bodies politic to govern domestic relations, to punish wrongdoers, and otherwise to provide for the general welfare, we perceive no reason why they, too, should not be recognized as having been sovereign entities. If the native villages of Venetie and Fort Yukon are the modern-day successors to sovereign historical bands of natives, the villages are to be afforded the same rights and responsibilities as are sovereign bands of native Americans in the continental United States.”); *John v. Baker*, 982 P.2d 738, 748–49 (Alaska 1999) (“Today we must decide for the first time a question of significant complexity and import: Do Alaska Native villages have inherent, non-territorial sovereignty allowing them to resolve domestic disputes between their own members? After examining relevant federal pronouncements regarding sovereign power, we hold that Alaska Native tribes, by virtue of their inherent powers as sovereign nations, do possess that authority.”).

⁶¹ 25 U.S.C. § 5119.

⁶² Memorandum from Harold L. Ickes, Sec’y, Dep’t of Interior, re Instructions for Organization in Alaska under the Reorganization Act of June 18, 1934 (48 Stat. 987), and the Alaska Act of May 1, 1936 (49 Stat. 1250), and the Amendments Thereto (Dec. 22, 1937) [hereinafter Ickes Guidance].

⁶³ *See, e.g.*, Dot Lake Decision, at 4; Eskimo Village Decision, at 1–3.

⁶⁴ *See, e.g.*, Constitution and By-Laws of the Douglas Indian Association, Territory of Alaska (Nov. 24, 1941); Constitution and By-Laws of the Native Village of Kotzebue, Alaska (May 23, 1939); Constitution and By-Laws of the Sitka Community Association, Territory of Alaska (Oct. 11, 1938).

⁶⁵ *See* M-36975, at 31–32; *see also* Letter from Larry Echo Hawk, Assistant Sec’y – Indian Affairs, to Lisa Murkowski, U.S. Senator, Alaska (Jan. 31, 2012); Letter from Kevin Washburn, Assistant Sec’y – Indian Affairs, to Mark Begich, U.S. Senator, Alaska (May 6, 2013).

It is well-established and agreed upon that the common bond standard allows for the organization of Alaska Natives who do not all descend from a single tribe that existed during historical times. Congress made this intention clear while discussing the common bond standard's enactment.⁶⁶ And the Department has always taken the position that the common bond standard allows for the organization of Alaska Natives who are from different localities and do not descend from the same tribes that existed in historical times but who share the requisite common bond today.⁶⁷

Under the Department's 1937 guidance, three types of entities meet the common bond standard—with the first two based on shared residence.⁶⁸ The first type is an Alaska Native village that is organizing as a unit and that already carries out certain municipal and public activities. The second type is a group of Alaska Natives living among non-Natives within a town or city where the town or city government carries out municipal and public activities.⁶⁹

In its guidance, the Department said organizing groups should include all resident Alaska Natives during organization regardless of their genealogy.⁷⁰ The Department's 1937 Guidance states that, when a group of Alaska Natives organize as a community, that group should include all Alaska Natives residing within the geographic boundaries of the community during organization unless an Alaska Native withdraws from organization or it is administratively determined such organization is not feasible or practical.⁷¹ In fact, when creating a list of eligible voters who will participate in the secretarial election, the 1937 Guidance states the group should create a census of all Alaska Native residents of voting age.⁷² Thereafter, those residents become the original members of the recognized tribe.⁷³

An examination of the constitutions drafted with the technical assistance of and approved by the Department that were used in organizing groups of Alaska Natives helps

⁶⁶ H.R. Rep. No. 74-2244, at 2, 4–5 (1936). The “common bond” terminology for the Alaska amendment to the IRA was borrowed from the Federal Credit Union Act (FCUA), 12 U.S.C. §§ 1751–1795k, which used similar terms for establishing membership in credit unions. Section 109 of the FCUA provided that “membership shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district.” 48 Stat. 1219 (1934) (now codified at 12 U.S.C. § 1759, amended in 1998 to remove quoted language). Implementation of the FCUA involved examining shared residence.

⁶⁷ See, e.g., 53 Fed. Reg. 52,829, 52,832–33 (Dec. 29, 1988); Dot Lake Decision, at 4; Eskimo Village Decision, at 3.

⁶⁸ Ickes Guidance, at 1.

⁶⁹ The third type is based on shared occupation or association, *id.* at 1, which we do not discuss here.

⁷⁰ *Id.* at 1–3, 6.

⁷¹ *Id.* at 1–2.

⁷² *Id.* at 3, 6.

⁷³ *Id.* at 4–5.

to solidify the understanding that shared residence, shared occupation, or shared association serve as the necessary common bond. These constitutions call for the inclusion of all Alaska Native residents, even those newly joining the community after 1936.⁷⁴

The constitution of the Native Village of Kotzebue, Alaska, approved in 1939, states the Alaska Natives share “the common bond of living together in the Village of Kotzebue.”⁷⁵ First members are those on the “list of native residents” that was “made according to the Instructions of the Secretary of the Interior for organization in Alaska.”⁷⁶

The constitution of the Sitka Community Association, approved in 1938, states the Alaska Natives share “a common bond of residence in the neighborhood of Sitka.”⁷⁷ Original members are all Indian residents of the neighborhood of Sitka whose names appear on the census role “prepared in accordance with the Instructions of the Secretary of the Interior for Organization in Alaska.”⁷⁸

In fact, the Department in 1978 determined that the Eskimo Village, located in Fairbanks, Alaska, did not meet the common bond standard and was thus not eligible to organize under the IRA due to a lack of Alaska Native residents within the community.⁷⁹ The Department explained that the Alaska amendment to the IRA permits organization of groups of Alaska Natives “composed of native individuals from various localities.”⁸⁰ As Alaska Natives had not migrated to and settled in Fairbanks until they were recruited for work on the railroads during World War II, which took place after 1936, the Department found they were not in existence prior to 1936—which it has deemed a relevant time period.⁸¹ Put differently, the Department found the group did not meet the common bond standard in 1936 because it did not share a common bond of residence at that time, but, if Alaska Native residents had lived together there at that time, it would have met the standard.

⁷⁴ See, e.g., Constitution and By-Laws of the Native Village of Kotzebue, Alaska, art. 2, §§ 1, 4 (May 23, 1939) (stating first members include those on “the list of native residents” and any Native person may become new member if he “sets up a home in the Village”); Constitution and By-Laws of the Sitka Community Association, Territory of Alaska, art. II, §§ 1, 3(b) (Oct. 11, 1938) (stating “original members” are “all the Indians residing in the neighborhood of Sitka” and “new members” include “[a]ny Indian who becomes a resident of the neighborhood of Sitka . . . after maintaining a permanent residence”).

⁷⁵ Constitution and By-Laws of the Native Village of Kotzebue, Alaska, pmbl. (May 23, 1939).

⁷⁶ *Id.* art. 2, § 1.

⁷⁷ Constitution and By-Laws of the Sitka Community Association, Territory of Alaska, pmbl. (Oct. 11, 1938).

⁷⁸ *Id.* art. II, § 1.

⁷⁹ Eskimo Village Decision, at 1.

⁸⁰ *Id.* at 2.

⁸¹ *Id.* at 1, 3.

Thus, based on this large body of statutory and administrative authority, it is clear that the common bond standard can be satisfied by Alaska Natives sharing residence.

It is well-established that Congress creates organization standards for communities of Indians to whom the United States owes unique obligations but who may no longer be affiliated with their tribes, as described in Part B above. And often, this lack of affiliation is a result of contact with non-Natives. Therefore, the common bond standard is even more clearly apparent when it arises from circumstances caused by contact with non-Natives. We see this, for example, in situations where Alaska Native villages' contact with non-Natives results in illness that devastates the tribes.

In recent years, representatives of the Solicitor's Office and other officials in the Department have provided insight on the Department's interpretation of the common bond standard during technical assistance meetings with us as representatives of the pending petitioners. Department officials have sought to interpret the common bond standard faithfully while also exercising policy discretion to ensure no floodgates are thrown open to recognition of groups of Alaska Natives newly residing together.

First, in addition to requiring a group of Alaska Natives to meet the common bond standard upon organization, which the statutory language clearly requires, Department officials have said that the group must also have met the common bond standard in 1936 when the Alaska amendment to the IRA was enacted. The statutory language of the Alaska amendment to the IRA does not require this. The Department's guidance and precedent have been inconsistent regarding this requirement.⁸² But the Department now seems settled on this position.⁸³ The petitioners now rely upon the understanding that this is a parameter of the common bond standard the Department will apply when examining a petition.

Second, officials within the Department have said that they will look to social interactions to define the outer geographic boundaries of a well-defined neighborhood, community, or rural district.⁸⁴ This approach reflects that clearly delineated geographic

⁸² Dot Lake Decision, at 4 (indicating group need not have "formed" prior to 1936); Eskimo Village Decision, at 3 (stating group must have "existed" in 1936); Ickes Guidance (not addressing or requiring existence in 1936).

⁸³ Letter from Larry Echo Hawk, Assistant Sec'y – Indian Affairs, to Lisa Murkowski, U.S. Senator, Alaska, at 2 (Jan. 31, 2012).

⁸⁴ The Department has yet to articulate the level of social interaction necessary to demonstrate that a well-defined Alaska Native neighborhood, community, or rural district exists and to delineate its boundaries, but it has consistently acknowledged that this statutory standard is different from the community criterion required under Part 83, 25 C.F.R. § 83.11(b). Thus, the Department must ensure Alaska Native groups are evaluated under the special common bond standard Congress dictated rather than under a Part 83 community criterion analysis. Whatever the level of social interaction required, the Department's past decisions regarding the common bond standard indicate that, when considering whether a common bond exists, the Department should examine whether a group of Alaska Natives shares "common interests or

boundaries that would apply in the context of a reservation are not available in Alaska. The petitioners now operate under the presumption that this is a parameter of the common bond standard the Department will apply when examining a petition.

That the geographic boundaries of an organizing Alaska Native group can be based on something more than municipal boundaries is demonstrated by past organizations of Alaska Natives facilitated by the Department. For example, past organizations show that community boundaries can be defined by tribal village boundaries. The constitution of the Native Village of Kotzebue Alaska states the Alaska Natives share residence in the “Village of Kotzebue.”⁸⁵ Past organizations also show the community boundaries can be defined by where the community’s social interactions take place. The constitution of the Sitka Community Association states the Alaska Natives share residence in “the neighborhood of Sitka” but then define it to include the incorporated limits of the town of Sitka, areas known as “Indian Possessions” and “Cottage Settlement,” and any area in the vicinity of Sitka that may be reserved or acquired for the use of the community association.⁸⁶

Although officials within the Department have determined that an Alaska Native group seeking to organize must meet the common bond standard in 1936, they have acknowledged that the geographic boundaries of that group’s residence may change between 1936 and the time of organization, as circumstances outside the control of the Alaska Native group often shift the community’s residence and interactions.

Third, Department officials have further stated that some element of the 1936 Alaska Native group must remain intact and continue into the group as it exists at the time of organization. This continuity requirement is not found in the language of the Alaska amendment to the IRA or in the Department’s past guidance or precedent, but the Department now seems settled on it. In interpreting what it means for the group to maintain a continuing element, Department officials have agreed that genealogical descent can be used as a tool to demonstrate this continuation but that genealogical descent cannot be required, as this would contradict the Department’s own guidance and precedent.⁸⁷ Again, the petitioners now operate under the presumption that continuation is a parameter of the common bond standard the Department will apply when examining a petition.

economic ties” and verify the group did not form for the sole purpose of obtaining economic benefits under the IRA. Dot Lake Decision, at 4; Eskimo Village Decision, at 2.

⁸⁵ See, e.g., Constitution and By-Laws of the Native Village of Kotzebue, Alaska, pmbl. (May 23, 1939).

⁸⁶ Constitution and By-Laws of the Sitka Community Association, Territory of Alaska, art. II, § 4 (Oct. 11, 1938).

⁸⁷ The Department has acknowledged that this statutory standard is different from the descent criterion required under Part 83, 25 C.F.R. § 83.11(e), which is mandatory for Part 83. Genealogical descent is but one tool available for showing continuity of the group for the common bond standard.

E. Response to Questions 6 and 9: The Department need not promulgate additional guidance, regulatory or otherwise, to dictate the process for organizing a group of Alaska Natives that meet the common bond standard, as a process has already existed for decades.

The Department need not promulgate regulations or issue additional formal agency guidance detailing the process for organizing under the Alaska amendment to the IRA. The statutory language itself and the Department's existing guidance issued shortly after the statute's enactment provide the Department all that is necessary to organize a group of Alaska Natives meeting the common bond standard.

We already discussed the parameters of the common bond standard applicable for determining whether a group of Alaska Natives is eligible to organize. Significantly, however, the Department has also dictated the proper procedural steps for organizing an eligible group.

The process for organization under the 1937 guidance is as follows: (1) the Alaska Native group calls a general meeting; (2) the group elects a constitutional committee, with a temporary leader, that drafts the governing documents for consideration of the group as a whole; (3) the group works with the local representative from the Bureau of Indian Affairs (BIA); (4) once the group as a whole has agreed on drafts, the local representative submits the documents to the local BIA office for review and consultation; (5) after review, the local BIA office submits the documents to the Washington DC office for review; (6) after the group and the Washington DC office reach an agreement about the suitability of the documents, the documents are submitted to the Secretary for approval; (7) upon approval by the Secretary, notice of a secretarial election to vote on the documents is provided to eligible voters from within the group; and (8) eligible voters from within the group then vote on whether to adopt the documents.⁸⁸ Upon completion of organization, the Alaska Natives permitted to vote to adopt the governing documents become the original members of the tribe.⁸⁹

III. REQUEST FOR PENDING PETITIONERS

We appreciate the opportunity to comment on this significant topic.

However, we do not agree that additional delay or a new process is appropriate for the pending petitioners. QNT first submitted its formal request to organize in 1993. Knugank submitted its formal organization request in 2001, and it has been seeking to resolve its tribal status since its improper enrollment under ANCSA and wrongful omission from the 1993 list of federally recognized tribes. For decades, the petitioners

⁸⁸ Ickes Guidance, at 2–5.

⁸⁹ *Id.* at 4–5.

have been following the Department's guidance in order to demonstrate their eligibility to organize under the common bond standard. They have relied upon the specific instructions provided by Department officials based on the guidance applicable at the time they submitted their petitions. They have put their trust in Department officials when those officials made promises to issue decisions by certain deadlines—promises they made not only to the petitioners but also to the Alaska congressional delegation. When one petitioner contemplated bringing an undue delay lawsuit, Department officials made further promises to issue a decision promptly in exchange for the petitioner foregoing the lawsuit. None of these promises were kept, and there is no escaping a sense of deep injustice.

We understand, however, that the Department has determined it cannot move forward issuing decisions for the petitioners until it completes tribal consultation and issues additional guidance on the common bond standard. Based on our understanding that the Department has determined it requires additional guidance, we strongly urge that this guidance takes the form of a procedure that can be applied promptly to the pending petitioners upon its completion. We highlight that it should serve to clarify (and not contradict) statutory terms and previous Department interpretation. The pending petitioners should not be required to re-submit their petitions, but rather they should be permitted to supplement their existing petitions if they so choose.

If the Department chooses to promulgate time-consuming regulations requiring notice-and-comment rulemaking at the conclusion of its tribal consultation period, the Department should process the pending petitions under the existing rules and processes. It is these existing guidance documents that the petitioners have relied upon in preparing their submissions. The delay that would be involved in notice-and-comment rulemaking would be unacceptable if the pending petitioners are made to wait for completion of that process.

The pending petitioners have waited long enough to organize under the Alaska amendment to the IRA and we urge you to move their petitions forward without further delay.

IV. INDEX OF PAST SUBMISSIONS

During our representation of QNT and Knugank, we have prepared many legal memoranda addressing legal topics at the request of the Solicitor's Office. We have included an index of those memoranda below. We would be happy to provide any of this material to you at your request.

- November 30, 2010
 - Legal memorandum requested by Solicitor's Office addressing legal questions.

- Addresses: (1) whether Alaska amendment to IRA is still means for recognition; (2) standards for organization under Alaska amendment to IRA; and (3) procedures for organization.
- April 14, 2015
 - Legal memorandum addressing issues raised by Solicitor's Office.
 - Addresses: (1) standards and procedures for organization under Alaska amendment to IRA; (2) organization under Alaska amendment to IRA and Department's federal recognition framework; (3) how tribes organizing under Alaska amendment to IRA are political entities; and (4) how IRA's definition of "Indian" cannot limit organization under Alaska amendment to IRA.
- June 17, 2015
 - Application of legal standard as articulated by Solicitor's Office to QNT's evidence.
- June 29, 2015
 - Application of legal standard as articulated by Solicitor's Office to Knugank's evidence.
- September 10, 2015
 - Briefing paper summarizing applicable law and QNT's evidence.
- March 23, 2016
 - Briefing paper summarizing applicable law and QNT's evidence.
- August 23, 2016
 - Legal memorandum addressing Solicitor's Office statements regarding its interpretation of legal standard as applied to QNT's evidence.
- October 14, 2016
 - Legal memorandum addressing Solicitor's Office statements regarding QNT's evidence as it relates to meeting legal standard.
- October 14, 2016
 - Application of legal standard as re-articulated by Solicitor's Office to QNT's evidence.
- November 27, 2017
 - Briefing paper summarizing applicable law and QNT's evidence.
- March 26, 2018
 - Briefing paper summarizing applicable law and Knugank's evidence.