No. 21-35220

In the United States Court of Appeals for the Ninth Circuit

HEREDITARY CHIEF WILBUR SLOCKISH, ET AL.,
PLAINTIFFS-APPELLANTS

v.

UNITED STATES FEDERAL HIGHWAY ADMINISTRATION, ET AL.,
DEFENDANTS-APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON (CIV. NO. 08-1169) (THE HONORABLE MARCO A. HERNANDEZ, J.)

BRIEF OF AMICI CURIAE AMERICAN INDIAN LAW SCHOLARS SUPPORTING APPELLANTS AND REVERSAL

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INTEREST OF AMICI CURIAE

Amici are law professors with expertise in federal Indian law.[*] Professor Melissa L. Tatum is a Research Professor of Law at the University of Arizona James E. Rogers College of Law. Professor Heather Whiteman Runs Him is an Associate Clinical Professor at the University of Arizona James E. Rogers College of Law. Professor Marcia A. Zug is a Professor of Law at the University of South Carolina School of Law. Amici's professional affiliations are provided for identification purposes only and do not imply endorsement by their institution.

Amici have an interest in ensuring the coherent development of the field of federal Indian law. In particular, they have an interest in ensuring that American Indians enjoy the full scope of religious freedom afforded to them by the Constitution and laws of the United States. In their current and previous positions, amici have taught, researched, written about, and litigated cases involving federal Indian law and the rights of American Indians. Amici also teach students who will practice in this Court.

[*] Amici curiae state that no counsel for any party authored this brief in whole or in part; no counsel or party contributed money intended to fund the preparation or submission of this brief; and no person other than amici curiae or their counsel contributed money intended to fund its preparation or submission. All parties have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This twelve-year-old case arises out of the government's decision to bulldoze an American Indian sacred altar, burial ground, and historic campground to add a turn lane on U.S. Route 26 in Oregon. This case illustrates the importance of the federal statutes, regulations, and executive orders that require agencies to consult with American Indians before taking actions that will affect them and to protect their sacred sites. Consultation is critical to ensuring that American Indians can access their sacred sites and practice their traditional religions. When those rights are not protected, the Federal Land Policy and Management Act (FLPMA) provides an important safeguard by making them enforceable in court. The district court erred in this case when it denied relief by applying an unduly strict issue-exhaustion requirement. Plaintiffs should be allowed to seek judicial redress for the agencies' violations, and the judgment below should be reversed.

I. Executive Orders 13,007 and 13,175 ensure that the federal government respects the rights of American Indians to access their sacred sites and to practice their religions. Executive Order 13,175 requires executive-branch agencies to consult with tribal leaders before implementing policies that affect the tribes, and Executive Order 13,007 requires that, if an agency learns of a sacred site, it must take action to protect the physical integrity of the site.

Consultation improves the quality of agency decisionmaking by promoting information-gathering, increased stakeholder participation, and mutually agreeable solutions. It can even help avoid protracted litigation. As the processes at two sacred sites—Devils Tower and Medicine Wheel—demonstrate, consultation is not just a way to protect the constitutional rights of American Indians to worship; it is also good governance.

When agencies fail to fully protect the religious freedom of American Indians, judicial review is an essential safeguard. FLPMA makes Executive Order 13,007 enforceable against the Bureau of Land Management, and judicial enforcement of that order's requirements comports with foundational concepts of administrative law.

II. Courts reviewing the failure of an agency properly to consult should be mindful of the characteristics of consultation—both its benefits and its limits—when applying the doctrine of issue exhaustion. As the Supreme Court recently reiterated, issue exhaustion is a practical inquiry, and courts must be sensitive to the particular administrative procedure at issue.

Given the unique nature of tribal consultation, courts should not impose a strict issue-exhaustion requirement on consultation procedures. Consultation is an informal process designed to encourage multiple stakeholders to engage with an agency (and with each other) and to find common ground. If courts were to impose a strict issue-exhaustion requirement, it would alter

the informal nature of the procedure and likely decrease participation. Consultation with tribal members also raises unique issues. The relationship between tribal members and agency officials may be fraught until mutual trust develops; tribal members may be skeptical of the official's need for the information; and members may fear—as happened here—that the sacred site could be vandalized if its location is disclosed. Courts should be sensitive to these imperfections in the consultation process and flexibly apply the issue-exhaustion doctrine. Here, the district court erred by applying a strict version of that doctrine, and that error warrants reversal.

ARGUMENT

I. EXECUTIVE ORDERS 13,007 AND 13,175 ARE CRITICAL TO PROTECTING THE RELIGIOUS LIBERTY OF AMERICAN INDIANS

A. Executive Orders Ensure That The Federal Government Respects The Rights Of American Indians To Access Their Sacred Sites

1. Presidents have long used executive orders and other presidential directives to "take Care that the Laws be faithfully executed" and conform the actions of executive-branch agencies to the policies of the United States. U.S. Const. Art. II, § 3, cl. 1; *see generally* Frank B. Cross, *Executive Orders 12,291 and 12,493: A Test Case in Presidential Control of Executive Agencies*, 4 J.L. & Pol. 483, 484-498 (1988). Executive Orders 13,007 and 13,175—both issued by President Clinton—ensure that the federal govern-

ment respects the rights of American Indians to access their sacred sites and to exercise their sovereign powers.

a. *Executive Order 13,175*. Executive Order 13,175 requires executive-branch agencies to consult with tribal officials in the policymaking process. The order mandates that federal agencies seek "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." 65 Fed. Reg. 67,249, 67,250 (Nov. 9, 2000). The basic policy of Executive Order 13,175 has been reaffirmed by presidents of both parties. Most recently, President Biden issued a memorandum restating the commitment "to honoring Tribal sovereignty and including Tribal voices in policy deliberation," and instructing executive-branch agencies to develop detailed plans to implement Executive Order 13,175. Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7491, 7491 (Jan. 26, 2021); *see also* Tribal Consultation, 74 Fed. Reg. 57,881 (Nov. 5, 2009) (President Obama); Memorandum on Government-to-Government Relationship With Tribal Governments, 2 Pub. Papers 2,177 (Sept. 23, 2004) (President George W. Bush).

Mandatory consultation with tribal officials is a critical means by which agencies determine whether federal actions will affect the sacred sites or other culturally significant locations of American Indians. Because Executive Order 13,175 applies broadly throughout the federal government, it

complements the patchwork of statutes, regulations, and agency policies that require consultation in discrete circumstances. *See* White House Indian Affairs Executive Working Group, *List of Federal Tribal Consultation Statutes, Orders, Regulations, Rules, Policies, Manuals, Protocols, and Guidance* (2009) (collecting consultation requirements).

b. *Executive Order 13,007.* Executive Order 13,007 imposes substantive requirements that complement the procedural requirement of consultation in Executive Order 13,175. Under Executive Order 13,007, federal agencies must "(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites." 61 Fed. Reg. 26,771, 26,771 (May 29, 1996). The order also instructs agencies to "maintain the confidentiality of sacred sites" when they receive information about them. *Id.*

Those substantive requirements ensure that federal agencies protect the religious freedom of American Indians. That freedom is enshrined in the First Amendment and protected by statutes such as the Religious Freedom Restoration Act (RFRA) and the American Indian Religious Freedom Act (AIRFA). Indeed, in AIRFA, Congress declared it the "policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian." Pub. L. No. 95-341, 92 Stat. 469 (1978) (codified at 42

U.S.C. § 1996); see also *Lyng* v. *Northwest Indian Cemetery Protective Association*, 485 U.S. 439, 454-455 (1988) (discussing AIRFA). Executive Order 13,007 implements that policy within the Executive Branch.

Executive Order 13,007 also reaffirms that it is the policy of the United States to protect the rights of American Indians to *practice* their religion—not just to hold certain beliefs. As the Supreme Court has explained, traditional religious practices are often "intimately and inextricably bound up" with particular geographic areas, rituals, and sacred sites. *See Lyng*, 485 U.S. at 451. Executive Order 13,007 is an acknowledgment by the Executive Branch that "site specific worship is vital to Indian religious practices." *Bear Lodge Multiple Use Association* v. *Babbitt*, 175 F.3d 814, 818 (10th Cir. 1999).

2. Together, Executive Orders 13,007 and 13,175 require agencies to seek out information about the effect of federal projects on local tribes, and, if an agency learns of a sacred site, to protect it. The consultation process can alert agencies to important tribal values and sacred sites; ensure that the agency invites all stakeholders to the table; and help the agency reach a resolution that is mutually agreeable to the stakeholders. Two examples demonstrate the importance and effectiveness of the consultation process when done fully and properly.

a. *Devils Tower.* The National Park Service undertook a successful consultation process regarding Devils Tower in the Black Hills of northeastern Wyoming. Melissa L. Tatum & Jill Kappus Shaw, *Law, Culture & Environment* 60-64 (2014) (Tatum & Shaw); *see also* Raymond Cross & Elizabeth Brenneman, *Devils Tower at the Crossroads: The National Park Service and the Preservation of Native American Cultural Resources in the 21st Century*, 18 Pub. Land & Resources L. Rev. 5, 24-25 (1997). Devils Tower figures prominently in the creation narratives of local tribes, many of which consider the tower sacred and perform rituals at the tower's base. *See* Tatum & Shaw 59-60. The tower is also a popular site for tourists and for recreational climbers, and in the early 1990s the Park Service became concerned that climbing could conflict with the sacred purposes for which many American Indians visited the tower. *See id.* at 61. The most significant issue was what to do during the month of June—the busiest climbing month on Devils Tower, but also the month during which the Lakota Tribe holds its Sun Dance at the base. *See id.* at 63.

The Park Service began to prepare a management plan to accommodate those competing interests. Instead of drafting a plan internally and then releasing it for public comment, the Park Service sought input from key stakeholders at the earliest stages by establishing a working group that included recreational climbers, tribes, environmental organizations, and local

governments. *See* Tatum & Shaw 62-64. As a result of that working group, most of the recreational users voluntarily agreed to a moratorium on climbing Devils Tower during the month of June. *See id.* at 63; *see also* Lloyd Burton & David Ruppert, *Bear's Lodge or Devils Tower: Intercultural Relations, Legal Pluralism, and the Management of Sacred Sites on Public Lands*, 8 Cornell J.L. & Pub. Pol'y 201, 214-217 (1999). The voluntary moratorium remains in effect today. *See* Tatum & Shaw 66.

By engaging in consultation with local tribes and other stakeholders at the earliest stages, the Park Service helped the parties negotiate a broadly satisfactory resolution. And because the agency facilitated conversations between the climbers and the tribes, the climbers were willing to comply with a voluntary moratorium out of respect for the religious traditions of the tribes. From the agency's perspective, too, the process reduced the likelihood of protracted litigation. By satisfying many stakeholders in advance, the agency narrowed the set of issues that later arose in a lawsuit. *See* pp. 10-11, *infra*.

b. *Medicine Wheel.* Another successful model for consultation involved Medicine Wheel in the Big Horn National Forest in Wyoming. *See* Tatum & Shaw 51-58. Constructed sometime between 300 and 800 years ago, the Medicine Wheel consists of a central cairn and 28 radial rows of stone, which represent the 28 days in the lunar cycle and which mark the rising and

setting sun at the summer solstice. *See id.* at 52. The Medicine Wheel is considered a sacred site by many tribes, and the Secretary of the Interior designated it as a National Historic Landmark in 1970. *See id.*

In the 1980s, as visitation began to increase, the United States Forest Service sought to revise its management plan to protect the site in light of its status as a national landmark. *See* Tatum & Shaw 51-58. The Forest Service's draft proposal drew intense criticism from area tribes because, among other things, it included "no provisions for religious use" of the site. *Id.* at 52-53. Several tribes and environmental organizations formed the Medicine Wheel Coalition for the Sacred Sites of North America to oppose the Forest Service's proposed plan. *See id.* at 53. In the wake of that opposition, the Forest Service withdrew its plan and invited the Coalition, historical preservationists, local governments, and others to consult on a revised plan. *See id.* The parties reached an agreement that would, among other things, limit vehicle access to the site; set aside 12 days a year for the tribes' exclusive use for religious and cultural purposes; and take other actions to protect the site. *See id.* at 54. The Forest Service and the working group also entered into negotiations about expanding the boundaries of the landmark, and in 2011, the Secretary of the Interior designated almost 4,000 additional acres as part of the monument, including culturally significant land near the Medicine Wheel. *See id.* at 58.

3. Executive Orders 13,007 and 13,175 are good policy not just because they ensure that federal agencies protect the religious rights of American Indians and other tribal interests, but because they help agencies better to understand the competing positions of different parties affected by a given agency action, which may aid the agency in finding a mutually agreeable solution for all or most parties.

Although both the Devils Tower and Medicine Wheel consultation processes resulted in the protection of sacred sites, a comparison of these processes illustrates the importance of early consultation. The Park Service invited tribal input before releasing a draft management plan for Devils Tower, whereas the Forest Service waited until after releasing a proposal to consult with tribal interests and other stakeholders at Medicine Wheel. The result was a greater degree of opposition in the case of Medicine Wheel. *See* pp. 8-9, *supra*.

Broad-based consultation can also narrow the scope of any eventual litigation, which reduces the burden on agencies and courts. For instance, the process at Medicine Wheel excluded commercial interests. After the Forest Service issued its final management plan, a logging company challenged the plan in federal court. *See Wyoming Sawmills Inc.* v. *United States Forest Service*, 383 F.3d 1241, 1243 (10th Cir. 2004). Although the case was ultimately dismissed, the litigation lasted eight years after the agency issued the

final plan. *See id.* at 1244. By contrast, the challenge to the plan for Devils Tower lasted just over four years, *see Bear Lodge*, 175 F.3d at 819, in part because the more extensive consultation process narrowed the scope of the issues for litigation. This case, which has taken over a decade to litigate, illustrates that an inadequate consultation process only leads to more time-consuming and complicated litigation.

B. Judicial Review Of Compliance With Executive Order 13,007 Protects The Religious Freedom Of American Indians

Although the consultation and accommodation process is important, it sometimes breaks down. In such circumstances, judicial review is essential to ensure that the agency respects the religious freedom of American Indians.

Executive Orders 13,007 and 13,175 impose a duty on federal agencies to engage in consultation with tribes and protect their religious sites, but agencies might fail to follow those instructions for any number of reasons. For example, agency officials might prioritize other issues over tribal interests, or they might face political pressure to respond to the concerns of other stakeholders. Whatever the motivation, some agencies have long delayed the implementation of a consultation policy. *See* Michael Eitner, *Meaningful Consultation With Tribal Governments: A Uniform Standard To Guarantee That Federal Agencies Properly Consider Their Concerns*, 85 U. Colo. L.

Rev. 867, 876-877 (2014). And in this case, the agency's defective consultation process resulted in a failure properly to accommodate the sacred site.

Congress has only infrequently incorporated a cause of action in the various legal provisions protecting the religious liberty of American Indians. AIRFA does not "create a cause of action or any judicially enforceable individual rights." *Lyng*, 485 U.S. at 455. Likewise, Executive Orders 13,007 and 13,175 do not purport to create any "right" or "benefit" that is "enforceable at law or in equity." 65 Fed. Reg. 67,252; 61 Fed. Reg. 26,772.

Thus, it is imperative that courts hold agencies to their commitments when a statute *does* make those commitments enforceable. As this Court has recognized, FLPMA makes Executive Order 13,007 enforceable against the Bureau of Land Management. *See South Fork Band Council of Western Shoshone of Nevada* v. *Department of the Interior*, 588 F.3d 718, 724 (9th Cir. 2009); *Te-Moak Tribe of Western Shoshone Indians of Nevada* v. *Department of the Interior*, 565 Fed. App'x 665, 667 (9th Cir. 2014). FLPMA requires the Bureau to take "any action necessary to prevent unnecessary or undue degradation" of "public lands," 43 U.S.C. § 1732(b), and the Bureau has defined that requirement to include any "conditions, activities, or practices" that "fail[] to comply" with "laws related to environmental protection and protection of cultural resources." 43 C.F.R. § 3809.5.

The cultural heritage of American Indians doubtless includes their unique religious practices, so an order designed to preserve "access to," "ceremonial use" of, and the "physical integrity" of "Indian sacred sites" is undoubtedly preserving a "cultural resource." *See Bear Lodge Multiple Use Association* v. *Babbitt*, 2 F. Supp. 2d 1448, 1450 n.2 (D. Wyo. 1998) (rejecting a distinction between religious and cultural practices). Having agreed to follow the Executive Order regarding Indian sacred sites when managing public lands, the Bureau should be required by the courts to "turn square corners when it deals with" tribes. *See Niz-Chavez* v. *Garland*, No. 19-863, 2021 WL 1676619, at *9 (U.S. Apr. 29, 2021).

The holdings in *South Fork* and *Te-Moak* comport with fundamental principles of administrative law. When a federal agency issues regulations, it is obviously required to adhere to those regulations. As the Supreme Court has explained, where "the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures," even where "the internal procedures are possibly more rigorous than otherwise would be required." *Morton* v. *Ruiz*, 415 U.S. 199, 235 (1974); *see also United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260, 267 (1954); *National Association of Home Builders* v. *Norton*, 340 F.3d 835, 852 (9th Cir. 2003). The holdings in *South Fork* and *Te-Moak* also comport with fundamental principles of judicial review: the "irreplaceable value" of judicial review is in its protection of "the

constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action." *Raines* v. *Byrd*, 521 U.S. 811, 829 (1997).

As appellants explain, the Bureau violated Executive Order 13,007 in this case by destroying the sacred altar, burial ground, and historic campground known as *Ana Kwna Nchi Nchi Patat*. *See* Br. of Appellants 56-57. Although Executive Order 13,007 does not by its own terms impose a judicially enforceable duty on agencies, the Bureau has committed to do nothing that would violate a law related to the "protection of cultural resources." 43 C.F.R. § 3809.5. Having made that commitment, "the [Bureau] must follow the policy." *National Association of Home Builders*, 340 F.3d at 852.

II. THE COURT SHOULD FLEXIBLY APPLY ISSUE-EXHAUSTION REQUIREMENTS WHEN FEDERAL LAW MANDATES CONSULTATION WITH AMERICAN INDIANS

The district court concluded that plaintiffs had failed to exhaust many of their claims during consultation, but it applied an improperly rigid issue-exhaustion requirement. *See* Br. of Appellants 62-63. Although consultation is a critical means by which agencies gather information from tribes, it has its limits. Courts should be mindful of those limits when applying judicially created issue-exhaustion requirements to consultation processes involving American Indian sacred sites.

A. As the Supreme Court recently reiterated, courts must be sensitive to the "characteristics of the particular administrative procedure provided" when applying judicially created issue-exhaustion requirements. *Carr* v. *Saul*, 141 S. Ct. 1352, 1358 (2021) (citation omitted); *see also Sims* v. *Apfel*, 530 U.S. 103, 109-110 (2000); *McCarthy* v. *Madigan*, 503 U.S. 140, 146 (1992). Whether and how to apply the doctrine is an "intensely practical" question. *McCarthy*, 503 U.S. at 146 (citation omitted).

One important consideration is "the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding." *Carr*, 141 S. Ct. at 1358 (citation omitted). By design, the consultation process is anything but adversarial. For example, Executive Order 13,175 urges agencies to "explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." 65 Fed. Reg. 67,251. The Bureau of Land Management's guidance states that consultation is a "dialogue between a BLM manager and an American Indian or Alaska Native tribal government regarding proposed BLM actions." BLM Manual Handbook H-8120-1, Guidelines for Conducting Tribal Consultation, at V-1 (Dec. 3, 2004). A "dialogue" between a tribe and an agency bears no resemblance to the traditional model of adversarial litigation.

Indeed, forcing consultation to be more like adversarial litigation would undermine much of its value. A key benefit of consultation is that it is less

formal and regimented than many other agency procedures, and it invites participation by a wide range of actors with different degrees of experience in dealing with the government. Consultation is effective precisely because it involves multiple stakeholders engaging with the agency (and with each other) to accommodate the competing interests of tribes, environmentalists, businesses, historical preservationists, local governments, and others. *See* pp. 6-11, *supra*. If courts were to impose a strict issue-exhaustion requirement on the tribes, it would defeat the less formal nature of the procedure and deter American Indians (and others) from participating. The courts should take care not to transform the intended collaborative nature of consultation into a mere prelude to litigation—an opportunity to catalog grievances rather than to find common ground.

Specific considerations about consultation with Indian tribes are also relevant. American Indians may be unwilling initially to divulge precise information about the location of sacred sites to strangers. Further, there may be religiously required steps or protocols, such as ritual purification or spiritual offerings, that an agency official must take before visiting a sacred site. *See* National Park Service, National Register Bulletin No. 38, at 8. And more generally, the tribe's communication of information to the agency may be fraught with cultural barriers, making it necessary for the agency to de-

velop a relationship of mutual trust before a tribal representative is willing to proceed with the consultation process.

A related consideration is the possibility that information disclosed to the agency will be more widely disseminated. An agency's "use and protection of the information" is often not "certain." BLM Manual Handbook H-8120-1, *supra*, at V-1. Early in a consultation, tribal leaders may be unsure about the reasons for the agency's interest in the information. *See id.* Even when an agency is committed to keeping information secret, as it is required to do under Executive Order 13,007, competing stakeholders may seek to compel disclosure under the Freedom of Information Act. *See*, *e.g.*, *Department of Interior* v. *Klamath Water Users Protective Association*, 532 U.S. 1, 7-8 (2001). Disclosure of the location of sacred sites can have serious practical consequences; both the site at issue here and other culturally important sites have been targeted by vandals. *See, e.g.*, Christine Hauser, *Ancient Native American Site Is Defaced In Georgia Forest*, N.Y. Times (Apr. 7, 2021) <tinyurl.com/2021-vandalism>. Given the limitations on tribal consultation, courts should not impose a strict issue-exhaustion requirement on consultation procedures.

B. In this case, the district court adopted the magistrate judge's recommendation that plaintiffs had failed to exhaust many of their arguments, but the magistrate judge imposed an inappropriately rigid standard.

See 1 E.R. 4, 74-81. The magistrate judge stated generically that "a party waives arguments that are not raised during the administrative process" and that the Ninth Circuit defines the exhaustion requirement "broadly." *Id.* at 74 (quoting *North Plains Resource Council, Inc.* v. *Surface Transportation Board*, 668 F.3d 1067, 1081 (9th Cir. 2011), and *Great Basin Mine Watch* v. *Hankins*, 456 F.3d 955, 965 (9th Cir. 2006)). On the contrary, Ninth Circuit case law requires flexible application of the administrative issue-exhaustion doctrine, as appellants have explained. *See* Br. of Appellants 62-63. A plaintiff must show only that the agency was aware of the plaintiff's concern "in general terms." *Lands Council* v. *McNair*, 629 F.3d 1070, 1076 (9th Cir. 2010). That standard recognizes that compliance with an agency's procedural responsibilities remains the agency's "duty" and should not entirely depend "on the vigilance and limited resources" of plaintiffs. *Friends of the Clearwater* v. *Dombeck*, 222 F.3d 552, 559 (9th Cir. 2000).

Even if more specific notice of an objection is sometimes necessary to exhaust an issue, the Court should not require such specificity here because the record shows that plaintiffs were concerned that revealing the location of the sacred site could cause it to be destroyed. *See* Br. of Appellants 68-69. And that concern was justified: the altar had been vandalized only a few days after a government official stated that the altar was disrupting an earlier highway-widening project. *See id.*

* * * * *

Consultation is an important means of ensuring that agencies hear the views of American Indians and respect their rights of access to, and protection of, sacred sites. When agencies fail to protect those rights, courts have a vital role to play. Yet instead of holding the Bureau to account, the district court declined to reach the merits and enforced a strict issue-exhaustion rule. Appellants should not be denied their day in court under a rigid application of a rule ill-suited to the nature of consultation proceedings.

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted,

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MAY 10, 2021

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CERTIFICATE OF SERVICE

I, Kannon K. Shanmugam, counsel for amici curiae and a member of the Bar of this Court, certify that, on May 10, 2021, a copy of the attached Brief of Amici Curiae American Indian Law Scholars was filed with the Clerk through the Court's electronic filing system. I further certify that all parties required to be served have been served.

/s/ Kannon K. Shanmugam
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