[ORAL ARGUMENT NOT YET SCHEDULED]

No. 23-5076

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,
Plaintiff-Appellant,

v.

DEBRA A. HAALAND,
Secretary, United States Department of the Interior;
UNITED STATES DEPARTMENT OF THE INTERIOR,
Defendants-Appellees,

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN; MGM GRAND DETROIT, LLC; DETROIT ENTERTAINMENT, L.L.C.; GREEKTOWN CASINO, LLC; NOTTAWASEPPI HURON BAND OF POTAWATOMI INDIANS,
Intervenors for Defendants-Appellees.

On Appeal from the United States District Court for the District of Columbia, No. 1:18-cv-2035-TNM (Hon. Trevor N. McFadden)

BRIEF FOR PLAINTIFF-APPELLANT

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September 22, 2023

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), plaintiff-appellant the Sault Ste. Marie Tribe of Chippewa Indians certifies as follows:

A. Parties And Amici

Plaintiff-appellant the Sault Ste. Marie Tribe of Chippewa Indians appeared in the district court and is a party in this Court.

Defendants-appellees Debra A. Haaland, in her official capacity as Secretary of the Interior, and the United States Department of the Interior appeared in the district court and are parties in this Court.

Intervenors the Saginaw Chippewa Indian Tribe of Michigan; MGM Grand Detroit, LLC; Detroit Entertainment, LLC; Greektown Casino, LLC; and the Nottawaseppi Huron Band of Potawatomi Indians appeared in the district court and are intervenors in this court.

No amici appeared or participated in the proceedings below.

B. Rulings Under Review

This appeal is from the memorandum opinion and order entered by Judge Trevor N. McFadden on March 6, 2023, Dkts. 106 and 107, which denied plaintiff's renewed motion for summary judgment, and granted defendants' and intervenors' renewed motions for summary judgment. The district court's opinion

has not yet been published in the Federal Supplement but is available at 2023 WL 2384443. The district court's order is unpublished.

C. Related Cases

This case was previously before this Court as *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland*, No. 20-5123 (consolidated with Nos. 20-5125, 20-5127, 20-5128). Counsel is unaware of any related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

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GLOSSARY

Settlement Act	Michigan Indian Land Claims Settlement Act
Fund	Self-Sufficiency Fund
Gaming Act	Indian Gaming Regulatory Act
Interior	U.S. Department of the Interior
Intervenors	MGM Grand Detroit, LLC; Detroit Entertainment, LLC; Greektown Casino, LLC; Nottawaseppi Huron Band of Potawatomi Indians; and Saginaw Chippewa Indian Tribe of Michigan
Tribal Intervenors	Nottawaseppi Huron Band of Potawatomi Indians and Saginaw Chippewa Indian Tribe of Michigan
Tribe	Sault Ste. Marie Tribe of Chippewa Indians

INTRODUCTION

Congress enacted the Michigan Indian Land Claims Settlement Act in 1997 to satisfy decades-old judgments against the United States for its unlawful taking of ancestral lands from the Sault Ste. Marie Tribe of Chippewa Indians and other Michigan tribes. To promote tribal self-sufficiency and to enable the Tribe to take steps to advance the general welfare of the Tribe and its members, the Settlement Act created a "Self-Sufficiency Fund," which received the funds paid by the federal government for the settlement of the Tribe's historic land claims. §108(b).[1]

Under the plain terms of the Settlement Act, interest from the Self-Sufficiency Fund may be used by the Tribe for various purposes, including "for" "educational, social welfare, health, cultural, or charitable purposes" that benefit tribal members, §108(c)(4), or the "enhancement of tribal lands," §108(c)(5). Congress required that "[a]ny lands acquired using amounts from interest" from the "Fund shall be held in trust by the Secretary [of the Interior] for the benefit of the tribe." §108(f). In these concrete ways, the Settlement Act embodies a commitment by the federal government to help remedy grievous historic wrongs against the Tribe and its ancestors, paving the way for land acquisition and other efforts by the Tribe to meet the many pressing needs of tribal members.

[1] Unless otherwise noted, statutory citations refer to the Michigan Indian Land Claims Settlement Act, Pub. L. No. 105-143, 111 Stat. 2652 (1997).

In 2012, acting under the Settlement Act, the Tribe's Board purchased land outside Detroit, referred to as the "Sibley Parcel," with Fund interest after determining that the land purchase would enhance the Tribe's lands and help to address the unmet needs of the Tribe and the Tribe's many members who live in the area. In authorizing the purchase, the Board made clear that it intended to use the Sibley Parcel to engage in lawful Indian gaming for the purpose of generating a predictable, durable, and meaningful revenue source to fund numerous tribal projects and services, including health, educational, and social services.

The Department of the Interior, however, refused to take the Sibley Parcel into trust. It acknowledged that §108(f) imposed a mandatory trust obligation. But it wrongly concluded that the Tribe's purchase of the Sibley Parcel did not satisfy §108(c) of the Settlement Act. As relevant here, according to Interior, the Tribe may spend Fund interest for one of §108(c)(4)'s enumerated "purposes" only if the expenditure would immediately accomplish the "educational, social welfare, health, cultural, or charitable" objective, apparently without intervening steps and independent of any other measures. It was thus insufficient, Interior claimed, that the Tribe intended the Sibley project to accomplish vital educational, social welfare, and other objectives by generating revenue through Indian gaming—revenue that the Tribe determined it would use for tribal welfare purposes and revenue that the Tribe was required by federal law to use for those purposes.

Interior offered no considered defense of its statutory interpretation, and there is none. Straightforward principles of statutory construction compel the conclusion that the Tribe's use of Fund interest to purchase the Sibley Parcel was "for" a "social welfare," "charitable," or other "purpose" because the Tribe intended and designed the Sibley project to accomplish those very objectives. Nothing in the Settlement Act requires that an expenditure immediately or directly achieve a specific social welfare or other objective to fit within §108(c)(4), and such a reading clashes with the statute's plain meaning and judicial precedent interpreting analogous phrases. What is more, the Indian canon would dictate that any ambiguity in the Settlement Act be resolved in favor of the Tribe, not Interior.

In addition, even under Interior's atextual interpretation of §108(c)(4), Interior acted arbitrarily and capriciously in concluding that the Tribe's land purchase was not "for educational, social welfare, health, cultural, or charitable purposes." The Tribe submitted ample information and evidence showing that the acquisition would enable the Tribe (1) to provide direct social services to nearby members; (2) to generate revenues for investment in social services; and (3) to provide jobs to nearby tribal members. In denying the Tribe's submission, Interior addressed only the second point—arbitrarily and capriciously disregarding evidence supporting the other two compelling rationales.

This Court should reject Interior's breach of statutory commitments the United States made to the Tribe in the Settlement Act; it should vacate Interior's denial of the Tribe's mandatory trust submission; and it should reverse the district court's judgment affirming that denial.

RELEVANT STATUTES

Applicable statutes can be found in the addendum bound with this brief.

JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. §1331 because the Tribe's claims arise under the Administrative Procedure Act, 5 U.S.C. §§701-706. The district court entered final judgment on March 6, 2023, and the Sault Tribe timely appealed on April 3, 2023. *See* Fed. R. App. P. 4(a)(1). This Court has jurisdiction under 28 U.S.C. §1291 because this appeal is from a final judgment disposing of all claims.

STATEMENT OF ISSUES

1. Whether Interior denied the Tribe's mandatory fee-to-trust submission based on an incorrect interpretation of "for educational, social welfare, health, cultural, or charitable purposes" in §108(c)(4) of the Settlement Act?

2. Whether Interior's denial was arbitrary and capricious because Interior failed to address evidence that the Tribe's land purchase satisfied even Interior's interpretation of §108(c)(4) of the Settlement Act?

STATEMENT OF THE CASE

A. The Sault Ste. Marie Tribe Of Chippewa Indians

The Sault Tribe is "the largest Indian Tribe east of the Mississippi River, with more than 43,000 enrolled members." AR72, 3103. The Tribe is economically distressed and acutely land-starved—problems that go hand in hand. The Tribe's trust lands, which are concentrated in Michigan's rural Upper Peninsula, are unable to generate significant revenue and thus are inadequate to meet many of the basic needs of the Tribe's members, including with respect to employment, housing, health care, and social services. AR2164-2165. As reflected in the administrative record, the Sault Tribe persistently "struggl[es] to provide basic services for its members" including "vital services for cultural activities, elder meal programs, education programs, day care, and food assistance for low-income families." AR2164. For example, the Tribe currently has a "housing shortage" of more than 2,200 households, *FY 2024 Formula Response Form*, U.S. Department of Housing and Urban Development, 12, and approximately 20% of Tribal families live below the poverty level, Van Norman & Allen, *Sault Ste. Marie Tribe of Chippewa Indians of Michigan Tribal Court Assessment*, at i (Oct. 29, 2015). The Tribe accordingly faces a pressing need for "new revenue to fund crucial government services" to meet the "social welfare and health" needs of tribal members. AR2166-2167.

Compounding the challenges the Tribe faces in meeting the needs of tribal members, more than one-third of its members live downstate in Michigan's Lower Peninsula—a total (14,500 members) that alone exceeds the aggregate population of any other Michigan tribe. AR2161. Yet the Tribe has no trust land downstate in Michigan to help provide much-needed social and tribal services to such members, who also "have no tribal employment opportunities" nearby. AR2163.[2]

The Tribe's history with the United States government helps to explain the persistent challenges that the Tribe faces today. The Tribe descends from a group of Chippewa bands who historically inhabited the Upper Great Lakes region. *See* AR3103; *see also Sault Ste. Marie Tribe of Chippewa Indians v. United States*, 576 F. Supp. 2d 838, 840-841 (W.D. Mich. 2008). In the nineteenth century, however, the United States coerced the Tribe's ancestors into relinquishing most of their lands. Under the Treaty of March 28, 1836 (7 Stat. 491), for example, the Ottawa and Chippewa surrendered vast territories, including large parts of Michigan's Upper Peninsula and the northern half of the Lower Peninsula, to the United States for negligible compensation. *See* AR1852 (map).

By 1946, when Congress created the Indian Claims Commission to help remedy Indian tribes' historic land claims against the United States, the Tribe was

[2] Apart from the Sibley parcel at issue, the Tribe's only land in the Lower Peninsula is a nearby 7-acre parcel of fee land in Wayne County. AR2152.

entirely landless. AR2150. The lack of tribal lands resulted in an exodus of tribal members to the Lower Peninsula of Michigan in pursuit of economic opportunity. AR2162-2163. This diaspora was encouraged by federal policy, specifically Interior's "Voluntary Relocation Program," which urged tribal members to leave their rural homes to find work in urban areas. AR2163. Deemed a failure, that federal program ended in 1975. But by then, many tribal members could not afford to return home, and so remained in the cities, often in cultural isolation and poverty, *id.*—a significant reason one-third of the Tribe's members today live in Michigan's Lower Peninsula, AR2154.

In 1971, the Indian Claims Commission held that the terms of the relevant treaties taking the Tribe's historic lands were "unconscionable." *Bay Mills Indian Community v. United States*, 26 Ind. Cl. Comm. 550, 553 (1971). The Commission found that the signatory tribes ceded land worth approximately $12.1 million, for which the United States paid them only $1.8 million. *Id.* at 560-561. To remedy that manifest injustice, the Commission awarded more than $10 million in damages. *See id.* at 561; *Bay Mills Indian Community v. United States*, 32 Ind. Cl. Comm. 303, 309 (1973); *Ottawa-Chippewa Tribe of Michigan v. United States*, 35 Ind. Cl. Comm. 385 (1975). Despite overwhelming and unmet tribal financial and social needs, however, the federal government failed to pay those damages to affected tribes for decades. *See* H.R. Rep. No. 105-352, at 8 (1997).

B. The Michigan Indian Land Claims Settlement Act

In 1997, Congress enacted the Settlement Act to "compensate"—and finally settle—certain tribes' claims for the wrongful "19th-century takings of … ancestral lands." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 786 (2014). The Settlement Act established a formula "for the fair and equitable division of the judgment funds" awarded by the Indian Claims Commission among various tribes, and it sought to "provide the opportunity for the tribes to develop plans for the use or distribution of their share of the funds" to promote economic self-sufficiency, including through land acquisitions. §102(b).

The Settlement Act was a "negotiated compromise between the tribes" and the federal government. *Judgment Funds of the Ottawa and Chippewa Indians of Michigan: Hearing on H.R. 1604 Before the S. Comm. on Indian Affairs*, 105th Cong. 27 (1997) (statement of Rep. Kildee), 1997 WL 702876. And different Indian tribes, including the Sault Tribe, struck different bargains. *See, e.g.*, §107 (plan for Bay Mills Indian Community), §109 (plan for Grand Traverse Band of Ottawa and Chippewa Indians).

Section 108 of the Act sets forth the Sault Tribe's plan, as approved by Congress, for the use of its share of the settlement funds. §105(a)(3). Section 108(a) directs the Tribe's Board of Directors to establish a "trust fund … [to] be known as the 'Self-Sufficiency Fund'" to receive settlement funds distributed by

the Act. §108(a)(1). The Board is the Tribe's "governing body," Const. of the Sault Ste. Marie Tribe of Chippewa, art. IV §1 (1975), with the power, among other things, to "expend funds for public purposes of the tribe," *id.* art. VII §1(d), and to "manage, lease, sell, acquire or otherwise deal with the tribal lands," *id.* art. VII §1(k). The Settlement Act designates the Board as the sole "trustee" of the Self-Sufficiency Fund, responsible for "administer[ing] the Fund in accordance with the provisions of" the Tribe's self-sufficiency plan. §108(a)(2).

Section 108(e) directs the Secretary of the Interior to transfer the Tribe's portion of the settlement funds and thereafter to "have no trust responsibility for the investment, administration, or expenditure of the principal or income of the Self-Sufficiency Fund." §108(e)(2). Congress specified that "[n]otwithstanding any other provision of law, … approval of the Secretary for any payment or distribution from … the Self-Sufficiency Fund shall not be required." *Id.*

The Settlement Act authorizes the Tribe's Board to use principal and interest of the Fund for several "broad purposes" related to improving the economic, social, and general well-being of the Tribe and its members, including for land acquisitions. H.R. Rep. No. 105-352, at 10. In fact, in the course of negotiations over the Settlement Act, the Sault Tribe expressed "land acquisition goals" and, during negotiations, the Tribe was able to secure "significant changes" to original drafts of the Act "for land acquisition purposes." AR464.

Section 108(b) governs the Tribe's use of Self-Sufficiency Fund principal. It authorizes, among other things, "investments or expenditures which the board of directors determines … are reasonably related to … economic development beneficial to the tribe; or … are otherwise financially beneficial to the tribe and its members; or … will consolidate or enhance tribal landholdings."

Section 108(c) governs the Tribe's use of "interest and other investment income" earned from Fund principal. This subsection authorizes the Board to expend interest for five articulated purposes, including as a "dividend to tribal members," §108(c)(2); for the "consolidation or enhancement of tribal lands," §108(c)(5); or, as most relevant here, "for educational, social welfare, health, cultural, or charitable purposes which benefit" the Tribe's members, §108(c)(4).

Finally, §108(f) mandates that "[a]ny lands acquired using … interest … of the Self-Sufficiency Fund shall be held in trust by the Secretary for the benefit of the tribe." Section 108(f)'s mandatory nature is no accident. Interior has long had discretionary authority to take land into trust on behalf of Indian tribes. *See* 25 U.S.C. §5108; 25 C.F.R. pt. 151. In response to earlier drafts of the Settlement Act, Interior objected to the mandatory trust language, asking Congress to revise the text so that Interior "retain[ed] discretion" over whether to take land into trust "under existing regulations." AR466-467. Congress chose not to revise the Act

and instead to retain the mandatory trust acquisition requirement, consistent with the Settlement Act's purpose of remedying the historic taking of the Tribe's lands.

C. The Tribe's Purchase Of The Sibley Parcel And Trust Submission

1. In 2012, to promote tribal welfare and to remedy the shortcomings of its existing land base, the Tribe's Board voted to use Self-Sufficiency Fund interest to purchase approximately 71 acres in Michigan's Lower Peninsula, known as the Sibley Parcel. In the resolution approving the purchase, the Board explained that the land would be used to "operate a casino gaming enterprise," thus enabling the Tribe "to engage in economic development opportunities that will be of substantial benefit to the Tribe and to the tribal community." AR3148-3149.

True to that tribal welfare purpose, the Board's authorizing resolution made early commitments of potential gaming revenue to specific health, educational, and social services. The resolution thus committed 10% of the income from the project to the principal in the Fund, 2% to "establish a college scholarship program for tribal members," and 3% to "the Elder Health Self-Sufficiency Fund, the Elder Employment Self-Sufficiency Fund, the Funeral Assistance Self-Sufficiency Fund, and the Education Assistance Self-Sufficiency Fund." AR3150. Given the Board's inability to predict when tribal gaming would commence, if ever, and what specific social welfare needs the Tribe would face at that time, the resolution did not make other earmarked commitments of gaming revenue.

2. The Board's decision to purchase land with Self-Sufficiency Fund Interest to pursue Indian gaming as a means to meet the significant social welfare needs of the Tribe was consistent with federal law and policy, as expressed in the Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467 (1988), or "Gaming Act". Unlike commercial casinos, tribal gaming operations are designed—and statutorily required—to serve the general needs of a tribe and its members, not to generate private profit. The Gaming Act thus dictates that all net revenues from gaming operations must be used for statutorily defined "purposes," including funding a tribe's government, supporting charitable efforts, and providing for the welfare of a tribe and its members. *See* 25 U.S.C. §2710(b)(2)(B) (limiting "purposes" for which Class II gaming revenue may be used, including "to provide for the general welfare of the Indian tribe and its members"; to support "charitable organizations"; and to "fund tribal government operations or programs"); *id.* §2710(d)(1)(A)(ii) (incorporating same requirements for Class III gaming).

The statutory mandate that gaming revenue be used to support general tribal needs, including vital social services, was central to the Gaming Act's enactment. Congress "view[ed] tribal gaming as governmental gaming, the purpose of which is to raise tribal revenues for member services." S. Rep. No. 100-446, at 12 (1988). Congress thus created an opportunity for tribes to help advance public welfare and charitable objectives, much in the same manner in which proceeds from state-run

lotteries are typically dedicated to public uses. *See* 25 U.S.C. §2702 (recognizing Indian gaming is a "means" to achieve tribal "self-sufficiency"); U.S. Resp. Br. 5-6, *Greater New Orleans Broadcasting Association v. United States*, No. 98-387 (U.S. Mar. 24, 1999) (acknowledging that, "[l]ike state governments [through lotteries], Indian tribes have come to rely on gambling as a source of public revenue").

When Congress later studied implementation of the Gaming Act, it found the statute was working as designed, as "[v]irtually all of the proceeds from Indian gaming activities are used to fund the social welfare, education, and health needs of Indian tribes." 141 Cong. Rec. 6562 (1995) (statement of Sen. McCain). Last year, the National Indian Gaming Commission reaffirmed that tribes use "gaming revenues to fund essential government services, including education, health care, police and fire protection, water and sewer services, and elderly and child care." National Indian Gaming Commission, Bulletin No. 2022-4, at 1, *Use of New Gaming Revenues Bulletin (Updated)* (June 23, 2022).

Against that backdrop, the Tribe's decision to pursue gaming on the Sibley Parcel for the purpose of securing a predictable, durable, and significant revenue stream to fund tribal services and to achieve other social welfare, educational, and health objectives was reasonable and consistent with federal law and policy.

3. In June 2014, the Tribe presented a mandatory fee-to-trust submission under the Settlement Act to Interior for the Sibley Parcel. The Tribe made clear that it intended to "conduct gaming activities on the Parcel under the terms of the Indian Gaming Regulatory Act" and that the Tribe's plan was to "engage in" gaming and "other lawful activities … to provide educational, health and welfare services to the thousands of" nearby members. AR3112-3113 n.1.

The Tribe advanced three reasons the acquisition satisfied §108(c) and thus triggered Interior's mandatory trust duty under §108(f). First, the acquisition "enhance[d] … tribal lands" under §108(c)(5) because it increased the size and value of the Tribe's total landholdings. AR3117. Second, if "enhancement of tribal lands" under §108(c)(5) required an acquisition to increase the value of the Tribe's existing lands, the Sibley acquisition met that standard because it would "generate revenues that will be used to improve, restore, or otherwise increase the usefulness or value of the Tribe's existing lands." AR3118. The Tribe also explained that "the proximity of the [Sibley] Parcel to the Tribe's" existing 7-acre parcel downstate "will make the latter more valuable … because the Tribe will have a combined larger land base" for "facilitating the delivery of services to" nearby members. AR3118.

Third, as relevant here, the Tribe explained the land acquisition was "for educational, social welfare, health, cultural, or charitable purposes" under

§108(c)(4). The Tribe stressed that the acquisition "will provide both economic means and a geographic base to enable the Tribe to address the health, educational, welfare, and cultural needs of" tribal members who live downstate, by (i) "provid[ing] a land base" to "facilitate the delivery of services" to those members, (ii) "generat[ing] revenues" through Indian gaming "necessary for the provision of social services," and (iii) "creat[ing] hundreds of jobs for those members." AR3118-3119. The Tribe added that the Board "was well aware" of these "social welfare purposes" given that, starting with the Board's 2012 resolution, the Board "mandat[ed] that portions of [gaming] revenues" "be set aside to support specific social programs." AR3119.

4. In April 2015, the Tribe filed a supplemental trust submission. That submission included additional explanations and evidence confirming that the Tribe's purpose in acquiring the Sibley Parcel was to promote social welfare and other objectives under §108(c)(4), and to enhance tribal lands under §108(c)(5). *See* AR2148-2228.

The Tribe's submission explained, for example, that "[t]he revenue generation benefits projected from the Sibley … Parcel[] cannot be achieved through … additional Upper Peninsula lands." AR2156. The Tribe's existing casinos in the Upper Peninsula were in continual decline: "from 2003 to 2014 the Tribe suffered a staggering 24.5% decrease in gaming revenue" due to

"[c]ompetition from the State Lottery, coupled with new casinos in … the Lower Peninsula." AR2156. The situation was pressing, the Tribe explained, given that "in 2013 the Sault Tribe generated by far the lowest gaming revenues per tribal member of any tribe in Michigan." AR2158-2159.

The submission also drew a direct link between gaming operations and revenues needed to support tribal services, explaining that "declining revenues have led to a projected decrease in tribal governmental program support by as much as two million dollars per year." AR2156; *see also* AR2214. "As a result," not only does the Tribe lack the financial resources and landbase to serve its thousands of downstate members, but the "the Tribe is struggling to provide basic services for its [Upper Peninsula] members," "includ[ing] vital … cultural activities, elder meal programs, education programs, day care, … food assistance," and unmet "housing … needs." AR2164.

For those reasons, the Tribe emphasized that generating gaming revenue downstate was its only practical way to secure the promise of the "Self Sufficiency" Fund and to advance the Tribe's social welfare aims. AR2160-2167. Specifically, the Tribe explained that gaming operations on the Sibley Parcel would (1) "generate the revenue [the Tribe] needs to address the significant unmet social welfare, health and cultural needs of Sault members" in the Upper Peninsula, AR2160, and (2) "secur[e] [a] nearby trust land" base "to provide meaningful

employment" and direct social "services to th[e] substantial [downstate] component of its population," AR2164.

As to Upper Peninsula tribal members, the Tribe stated that "without a source of new revenue to fund crucial governmental services, the social welfare and health of Sault members … will continue to be woefully underserved." AR2167. An affidavit from the Director of the Tribal Housing Authority confirmed that "increased gaming revenue is the most viable means of increasing housing services availability." AR2227-2228. And as to downstate tribal members, the Tribe explained that it "will never be able to provide meaningful employment opportunities or services to this substantial component of its population base without securing nearby trust land." AR2164. Those tribal members "live hundreds of miles from … the Upper Peninsula, and as a result they have no tribal employment opportunities" or "access to tribal services." AR2163. Lower Peninsula gaming operations, the Tribe added, would address that concern by providing "employment for thousands of members," AR2164, a land base for providing direct social services, and "the financial resources to develop the seven [other] acres" it owns downstate into land that could also provide social services, AR2159-2160.

During this time, Interior never questioned that the Tribe's purpose in purchasing the Sibley Parcel was ultimately to advance the educational, health,

social welfare, charitable, and cultural needs of the Tribe and its members, including through tribal gaming—just as Congress envisioned in enacting the Gaming Act and in accord with the Settlement Act's self-sufficiency objectives.

D. Interior's Denial Of The Tribe's Trust Submission

In January 2017, Interior first declined to approve the Tribe's trust submission. AR969-974. Interior agreed that §108(f) imposes a mandatory duty to take land into trust, explaining that "shall" is "'ordinarily the language of command.'" AR971. But Interior asserted that the Tribe had failed to establish that the purchase of land was consistent with any purpose set forth in §108(c) of the Settlement Act. As to §108(c)(4), Interior rejected in a footnote the Tribe's position that the Sibley purchase was "for educational, social welfare, health, cultural, or charitable purposes." AR971-972 n.25. Interior asserted that the Tribe's position was "too attenuated," claiming without elaboration that the Tribe "may not satisfy" §108(c)(4) "by using … fund income to start an economic enterprise, which may generate its own profits, which profits might then be spent on social welfare purposes." *Id*. Interior did not acknowledge or address the employment or direct-services opportunities the Sibley Parcel would provide for the Tribe's significant downstate population.

After additional discussions with Interior during which the Tribe attempted to clarify what types of information Interior might view as sufficient to satisfy

§108(c), Interior issued a final decision denying the Tribe's trust submission in July 2017 ("Trust Denial Order"). AR1930-1933. The Trust Denial Order said nothing more about the Tribe's position that the land acquisition was for social welfare and other purposes under §108(c)(4), simply noting Interior's prior rejection of the Tribe's position. AR1931 n.9. Interior did assert, however—in rejecting the Tribe's separate argument that the purchase would enhance the Tribe's landholdings under §108(c)(5)—that "the Tribe has not offered any evidence of its plans to use the gaming revenue to benefit its existing lands or its members." AR1933; *see also* AR1932 (similar).

E. Procedural History

In August 2018, the Tribe sued Interior and the Secretary, seeking vacatur of the Trust Denial Order. Three Detroit-area commercial casinos and two tribes with gaming operations in the Lower Peninsula intervened to defend the agency's decision. In March 2020, the district court awarded summary judgment for the Tribe, concluding that Interior lacked the statutory authority to contravene the Tribe's judgment that its purchase satisfied §108(c) and that, in any event, Interior's decision was contrary to §108(c)(5). The Court did not address at that time the Tribe's claims under §108(c)(4).

A divided panel of this Court reversed. The majority held that Interior had authority, before taking land into trust, to verify that the land was purchased

consistent with §108(c), and it accepted Interior's view that "enhancement of tribal lands" "does not include an acquisition of lands with no connection to increasing the quality or value of existing tribal lands." *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland*, 25 F.4th 12, 22, 24 (D.C. Cir. 2022).

On remand, the Tribe moved for summary judgment on three grounds, including that Interior's interpretation of §108(c)(4) was contrary to law. The district court granted summary judgment to defendants. *See* Op.1-31. The district court first held that the Tribe's purchase was not "for … social welfare … purposes" under §108(c)(4). Op.9-16. Specifically, the court reasoned that §108(c)(4) unambiguously confirmed Interior's view that "starting an economic enterprise, which may generate its own profits, which might then be spent on social welfare purposes" is insufficient. Op.9-13 (cleaned up). And the court rejected the Tribe's interpretation that §108(c)(4) turns on the Tribe's "purpose" in acquiring the land, meaning its "objective, goal, or end." Op.13. Rather, the court held that §108(c)(4) requires Fund income to be spent directly on social welfare services, which cannot overlap with "economic development." Op.13-17. The court also interpreted the Tribe's commitments of 3% and 2% of gaming revenues to elders and scholarships, respectively, as establishing that the Tribe "plan[ned] to use" only "a sliver of its income" for "social welfare." Op.10; *see also* Op.19 (stating only "five percent of [revenue] will finance social welfare").

In addition, the court held Interior did not arbitrarily disregard the Tribe's record evidence supporting its trust submission even under Interior's narrow interpretation of §108(c)(4), Op.20-28, and otherwise adequately explained its decision, Op.28-31. The court stated that "it makes sense that Interior [did] not spend time refuting various documents that it did not consider evidence *at all*." Op.25-26.

SUMMARY OF ARGUMENT

Interior's Trust Denial Order both misapprehended the plain language of the Settlement Act and was arbitrary and capricious.

First, Interior's interpretation of §108(c)(4) is contrary to law. Without engaging at all with statutory text, Interior reasoned that the Tribe may spend Fund interest for one of §108(c)(4)'s enumerated "purposes" only if the expenditure would immediately accomplish the "educational, social welfare, health, cultural, or charitable" objective, without intervening steps. But straightforward principles of statutory construction and judicial precedent interpreting analogous language dictate that the Tribe's "purpose," its objective, goal, or end, in expending interest is dispositive—not whether intervening steps are necessary to achieve §108(c)(4) benefits. Thus, the Tribe's use of Fund interest to purchase the Sibley Parcel was "for" a "social welfare," "charitable" or other "purpose" because the Tribe planned

and designed the Sibley project to accomplish those objectives, in part by generating revenue through Indian gaming.

As a fallback argument, Interior, Intervenors, and the district court have claimed that even if intervening steps are permitted under §108(c)(4), tribal gaming is not one of them—either because a casino categorically cannot be a means of advancing §108(c)(4) purposes or because (they allege) the Tribe has committed only a small percentage of future gaming revenues to social welfare purposes. Both contentions are unfounded. Any perceived dissonance between a casino and social welfare or charitable purposes is misplaced in the context of Indian gaming, where Congress itself have drawn a direct and logical link between tribal gaming revenue and tribal social services. In fact, the Tribe is required by federal law to use gaming revenues for just such purposes. And while the Tribe did make early commitments to spend certain percentages of gaming revenues on particular social services programs, those commitments are just the beginning, given that all net gaming revenues will necessarily be dedicated to advancing tribal welfare.

Interior, Intervenors, and the district court have also advanced a statutory argument not relied upon by Interior in denying the trust submission: that Fund interest can never be used for anything related to "economic development" because §108(b) of the Settlement Act permits Fund principal to be used for "economic development," while §108(c)(4) does not use the phrase "economic development"

in prescribing the uses for Fund interest. This too is wrong. In permitting the Tribe to use Fund interest "for" "social welfare" and "charitable" "purposes," the statute necessarily permits the Tribe to pursue those objectives, including by pursuing economic development projects necessary to achieve them on a more sustainable basis. Using economic development as a tool to help achieve social welfare or charitable objectives is hardly uncommon, and nothing in the Settlement Act at all demonstrates that Congress precluded the Tribe from using that tool here. In addition, the premise of this argument—that any objective permitted under §108(b) with respect to Fund principal cannot be pursued under §108(c) with respect to Fund interest—clashes with the structure and design of the statute.

Finally, even were §108(c)(4) ambiguous on any of these points, the Indian canon of construction would require resolving any ambiguity in favor of the Tribe, especially given the statute's obvious purpose of settling the Tribe's historic land claims against the United States. This established canon of construction also trumps any deference to Interior's view that would otherwise be due.

Second, Interior arbitrarily failed to address record evidence that the Sibley purchase satisfied even its narrow reading of §108(c)(4). Under Interior's own—and atextual—interpretation of §108(c)(4), Interior acted arbitrarily and capriciously in concluding that the Tribe's land purchase was not "for educational, social welfare, health, cultural, or charitable purposes." The Tribe submitted ample

evidence demonstrating that the land acquisition would enable the Tribe to (1) provide direct social services to nearby members; (2) generate revenues for investment in social services; and (3) create jobs for nearby tribal members.

In denying the Tribe's submission, Interior addressed only the second point and disregarded evidence supporting the other two rationales. The district court rationalized Interior's silence by claiming that Interior did not need to address every argument. But Interior needed to explain its core reasoning and it failed to do so here. Interior's alternative suggestion that the Tribe provided no "documentation" or "evidence" to support its position simply defies the administrative record.

STANDARD OF REVIEW

Where, as here, a "district court reviewed an agency action under the Administrative Procedure Act," this Court "reviews the administrative action directly, according no particular deference to the judgment of the district court." *Quantum Entertainment Ltd. v. U.S. Department of Interior*, 714 F.3d 1338, 1342 (D.C. Cir. 2013) (alterations omitted); *see also Durant v. District of Columbia Government*, 875 F.3d 685, 693 (D.C. Cir. 2017) (similar).

Under the Administrative Procedure Act, a court must "set aside agency action" that is "not in accordance with law" or is "arbitrary" or "capricious." 5 U.S.C. §706(2)(A), (B). This Court "decide[s] all relevant questions of law," *id.*

§706, and when, "after 'employing traditional tools of statutory construction,'" a court can "discern Congress's meaning," it "owe[s] an agency's interpretation of the law no deference." *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018). Moreover, when a statute implicates the relationship between the United States and an Indian tribe, as does the Settlement Act here, the Indian canon of interpretation "trump[s]" any "normally-applicable deference" due to an agency's interpretation of ambiguous text, requiring that any ambiguity be resolved in the tribe's favor. *Cobell v. Kempthorne*, 455 F.3d 301, 304 (D.C. Cir. 2006).[3]

Agency action is arbitrary and capricious when, among other things, an agency has "offered an explanation … that runs counter to the evidence before the agency." *Motor Vehicle Manufacturers Association of U.S., Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983). In reviewing Interior's decision, moreover, "it is axiomatic that agency decisions may not be affirmed on grounds not actually relied upon by the agency." *Calpine Corp. v. FERC*, 702 F.3d 41, 46 (D.C. Cir. 2012).

[3] The Tribe preserves the position that *Chevron* deference may not ever be lawfully applied, including as to Interior's interpretation of the Settlement Act. *See Loper Bright Enterprises v. Raimondo*, No. 22-451 (U.S.).

ARGUMENT[4]

I. INTERIOR'S INTERPRETATION OF §108(C)(4) IS CONTRARY TO LAW

The Tribe's use of interest from its Self-Sufficiency Fund to purchase the Sibley Parcel was "for educational, social welfare, health, cultural, or charitable purposes which benefit the members of the Sault Ste. Marie Tribe." §108(c)(4). As the Tribe made clear to Interior, the land acquisition was designed to "enable the Tribe to address the health, educational, welfare, and cultural needs of" tribal members in the Upper and Lower Peninsula, by "generat[ing] revenues necessary for the provision of social services" through Indian gaming—in addition to "provid[ing] a land base" to "facilitate the delivery of services" to tribal members and "creat[ing] hundreds of jobs for [tribal] members." AR3118-3119; *see also supra* pp.14-18 (describing the Tribe's submissions to Interior).

Crucially, no one has genuinely disputed that the Tribe's Board, in fact, purchased the Sibley Parcel with the plan and objective of using the land to help meet the unmet social welfare, cultural, health, charitable, and educational needs of the Tribe, including by raising desperately needed tribal revenue through Indian gaming. Because §108(c)(4) unambiguously turns on the Tribe's "purpose" in

[4] The Tribe acknowledges that this panel is bound by the holdings of the D.C. Circuit's prior decision in this case, but it expressly preserves for further review its statutory arguments that Interior lacks the authority to determine whether the Tribe's use of Fund interest satisfies §108(c) and that Interior's interpretation of §108(c)(5) is contrary to law.

using Fund interest—that is, its objective, goal, or end—the Tribe's uncontested purpose should be the end of the matter.

Interior nonetheless rejected the Tribe's §108(c)(4) position, addressing it in a footnote. AR971-972 n.25. Although Interior acknowledged that §108(c)(4) may permit a "land" acquisition for "a school, a job training center, a health clinic, or a museum," it asserted the Tribe's acquisition of the Sibley Parcel was "*too attenuated* to satisfy [the Settlement Act]." AR972 n.25 (emphasis added). Without engaging with §108(c)(4)'s text, Interior took the position that §108(c)(4) contains an implied "directness" or "immediacy" requirement. According to Interior, §108(c)(4) does not permit the Tribe to use Fund interest "to start an economic enterprise, which may generate its own profits, which profits might then be spent on social welfare purposes." *Id.*

Interior's "no attenuation" reading of §108(c)(4) countermands the text of the statute and defies principles of statutory construction. The other arguments advanced by Interior, Intervenors, and the district court—that Indian gaming is an impermissible means of achieving §108(c)(4) objectives and that economic development is off limits under §108(c)(4)—are also unavailing. Finally, the Indian canon would require resolving any ambiguity in the Tribe's favor.

A. The Tribe's "Purpose" In Expending Self-Sufficiency Fund Interest Is Dispositive, Not Whether Intervening Steps Are Necessary To Accomplish §108(c)(4) Benefits

1. Contrary to Interior's, Intervenors' and the district court's position, the Settlement Act contains no requirement that an interest expenditure directly or immediately result in a specific social welfare (or other) benefit. *See, e.g.*, Interior Cross MSJ 14 (claiming that §108(c)(4) does not permit "intervening step[s]" and that the statute "requires a more direct social-welfare effect"). Section 108(c)(4) instead requires only that the Tribe, in spending Fund interest, have as its objective or intended effect to accomplish social welfare, health, educational, or other benefits for its members. Straightforward principles of statutory interpretation compel that result.

Beginning with the text, §108(c)(4) permits the Tribe's Board to use Fund interest "for educational, social welfare, health, cultural, or charitable purposes which benefit the members of the Sault Ste. Marie Tribe." The plain meaning and grammatical structure of that provision—Fund interest must be spent "for" an enumerated "purpose"—unambiguously establish that the Tribe's objective when making the expenditure is dispositive. The statutory touchstone, in other words, is the Tribe's intended effect, not whether that effect is achieved immediately.

The most common definition of "for" is "with the object or purpose of." *Jennings v. Rodriguez*, 138 S. Ct. 830, 845 (2018) (collecting definitions). And the

"purpose" of an action is the actor's objective or end goal in taking that action. *See Black's Law Dictionary* 1250 (7th ed. 1999) ("purpose" means "[a]n objective, goal, or end"); *American Heritage Dictionary* 1471 (3d ed. 1996) ("The object toward which one strives; … an aim or a goal; … [a] result or an effect that is intended or desired; an intention[.]"). As one dictionary explains, for example, a purpose is "something that one sets before himself as an object to be attained: an end or aim to be kept in view in any plan, measure, exertion, or operation: design." *Webster's Third New International Dictionary* 1847 (3d ed. 1993). "[P]urpose" is thus a close synonym to "object," "denoting 'something one sets before oneself as a thing to be done; the end one has in view.'" Garner, *A Dictionary of Modern Legal Usage* 720 (2d. ed. 1995).

The Supreme Court has held that an analogous statutory phrase—"for the purpose of"—means that an action must "have for its object or be the means of … facilitating" an end result. *Mortensen v. United States*, 322 U.S. 369, 374 (1944) (interpreting the Mann Act). Other decisions are in accord. *E.g., U.S. Department of Treasury v. Fabe*, 508 U.S. 491, 501, 505 (1993) (under the McCarran-Ferguson Act, "[t]he broad category of laws enacted 'for the purpose of regulating the business of insurance' consists of laws that possess the 'end, intention, or aim' of adjusting, managing, or controlling the business of insurance" whether that aim is to be accomplished 'directly or indirectly'"); *United States v. Bailey*, 444 U.S. 394,

404-405 (1980) (criminal "purpose" "corresponds loosely with the common-law concept of specific intent," and turns on whether the defendant "consciously desires th[e] result, whatever the likelihood of that result happening").

It bears emphasis that the "purposes" for which the Tribe may expend Fund interest under §108(c)(4)—"educational, social welfare, health, cultural, or charitable"—are also by themselves expansive, flexible, and overlapping. "Social welfare," for example, refers to the "well-being of a community … esp[ecially] with regard to health and economic matters." *Oxford English Dictionary* (July 2023); *see also Collins English Dictionary* (2023) (defining social welfare as "the welfare of society"). And "charitable purposes" commonly "include … relief of poverty; … advancement of education; … promotion of health; [and] governmental or municipal purposes." *Restatement (Second) of Trusts* §368 (1959). As the Supreme Court has said, a "charitable use … may be applied to almost anything *that tends to promote the well-doing and well-being of social man*." *Bob Jones University v. United States*, 461 U.S. 574, 588 (1983).

Consistent with §108(c)(4)'s plain meaning, then, an interest expenditure must have the object of attaining, or be a means of facilitating, one or more of §108(c)(4)'s purposes—that is, the Tribe's objective must be to help achieve educational, social welfare, health, cultural, or charitable benefits for the Tribe's members. The Tribe's goals and intended effects are controlling. Nothing in the

text of §108(c)(4) remotely suggests that an interest expenditure must realize those benefits at the very moment the money is spent, without any intervening step.

Indeed, interpreting "for the purpose of" in this manner accords with "everyday parlance." *Mohamad v. Palestinian Authority*, 566 U.S. 449, 454 (2012). People often describe undertaking an action "for" a "purpose" that is not immediately accomplished by, but is only a step toward, an end result. That is because "purpose" ordinarily turns on the reason why an action is taken, not what outcome is immediately accomplished by the action. For example, a student's payment for an LSAT prep course is an expenditure "for the purpose of securing law school admission," even though the expenditure does not directly or immediately accomplish the desired goal. Similarly, an aspiring actor's deposit of money to retain an acting coach is an expenditure "for the purpose of pursuing an acting career," just as a city's use of funds to hire an engineer to draw blueprints for a rail system is an expenditure "for the purpose of facilitating rail commerce."

2. Interior's interpretation—that social welfare or other benefits must be directly or immediately achieved—has no foothold in the statute. Had Congress intended to limit §108(c)(4) in that manner, it could have said that Fund interest may be expended "on educational, social welfare, health, cultural, or charitable services or projects" or "for projects or services that directly promote educational, social welfare, health, cultural, or charitable benefits." Alternatively, Congress

could have said that Fund interest may be distributed "as a social service benefit" or "as a health benefit," as it did with respect to other §108(c) subsections. *See* §108(c)(2) (interest may be distributed "as a dividend to tribal members"), §108(c)(3) (interest may be distributed "as a per capita payment").

But "Congress did not write the statute that way." *Corley v. United States*, 556 U.S. 303, 315 (2009). By "introducing a [directness or immediacy] limitation not found in the statute," Interior seeks to "alter, rather than to interpret, [the Settlement Act]." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2381 (2020); *see also Jama v. ICE*, 543 U.S. 335, 341 (2005) (courts should not "lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply").

Interior's interpretation of §108(c)(4) as permitting no "attenuat[ion]" is also implausible. Expenditures typically do not themselves directly provide the types of benefits listed in §108(c)(4). For example, Interior concedes that purchasing land for a health clinic may satisfy §108(c)(4). AR972 n.25. But the use of money to purchase land to build a health clinic does not immediately or directly provide health benefits to tribal members. Nor does even the subsequent step of using money to build a clinic or pay health care professionals. It is only through the subsequent operation of the clinic and the provision of medical care that tribal members ultimately receive benefits enumerated in §108(c)(4). To be sure,

purchasing land for a health clinic and purchasing land for a casino that will be used to fund the Tribe's health care programs are different means of achieving health benefits for tribal members, but that does not change the Tribe's purpose. Nor does it change that in each case some intervening steps are required beyond the purchase of the land to provide the intended benefits to the Tribe's members.

Indeed, it is telling that Interior has not even attempted to articulate the extent or types of "attenuation" §108(c)(4) purportedly prohibits. How many intervening steps are too many? Are these intervening steps measured in number, complexity, time, or some other set of factors to be imposed by Interior? Interior does not say. Interior's amorphous, atextual reading of §108(c)(4) thus seeks to replace a straightforward inquiry into the Tribe's purpose in spending Fund interest with an indeterminate "attenuation" standard. That, too, weighs heavily against Interior's interpretation.

Finally, Interior's narrow interpretation of §108(c)(4) clashes with the Settlement Act's design and purposes to advance tribal self-sufficiency and remedy the historic taking of tribal lands. *See Stafford v. Briggs*, 444 U.S. 527, 535-536 (1980) (statutory interpretation must take account of "objects and policy of the law"). This inquiry does not require resort to atextual speculation about Congress's purposes; rather, those purposes are evident from enacted statutory text (including the creation of a "Self-Sufficiency" Fund) as well as the obvious overall objective

of the Michigan Indian Land Claims Settlement Act. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011) (finding congressional purpose "evident" and "readily apparent" in statutory text). By artificially limiting the Tribe's ability to spend its own settlement funds on projects that the Tribe believes are vital to the welfare of the Tribe and its members, Interior's position frustrates the Settlement Act's design and operation. Because "[a] statute should ordinarily be read to effectuate its purposes rather than to frustrate them," *Motor Vehicle Manufacturers Association of U.S., Inc. v. Ruckelshaus*, 719 F.2d 1159, 1165 (D.C. Cir. 1983), Interior's constricted reading of §108(c)(4) cannot stand.

Interior's rewriting of the Settlement Act's terms is not supportable for other reasons. Ordinarily, "the people may rely on the original meaning of the written law." *Wisconsin Central Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018). That principle has special purchase in the context of a negotiated settlement statute between sovereigns. Because the plain meaning of §108(c)(4) authorizes the Tribe to spend Fund interest "for" "social welfare" and "charitable" "purposes," including by pursuing gaming authorized under the Gaming Act as a critical step toward addressing the many needs of tribal members, the Tribe was entitled to rely on the plain meaning of the text—which does not contain the "directness" or "immediacy" requirement Interior posits. "Promises were made" by Congress through the Settlement Act to recompense the Tribe for historic injustices, and

those commitments should not be hollowed out based on Interior's apparent assessment that "the price of keeping them [is] too great." *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2482 (2020); *cf. Washington State Department of Licensing v. Cougar Den, Inc.*, 139 S. Ct. 1000, 1021 (2019) (Gorsuch, J., concurring in the judgment).

3. In embracing Interior's position, the district court advanced additional statutory points, but none are persuasive. The court opined that §108(c)(4) applies only to "direct, nonprofit charitable activities," Op.11, a conclusion based on dictionaries defining "social welfare" by reference to "social services." Op.10-11. But this is beside the point: Even if "social welfare" means only direct "social services," the Tribe's purchase of the Sibley Parcel is designed to generate revenue for the "purpose" of funding such social services. *See supra* pp.26-27. The Tribe's planned project thus remains "for … social welfare … purposes" even under the district court's interpretation because, as explained above, the presence of intermediate steps before a social welfare or other benefit is achieved does not change the Tribe's "purpose" in undertaking the project. *See supra* pp.28-34.

For similar reasons, the district court's view that reading "social welfare" to include "anything that benefits a community" would render the neighboring terms ("educational," "health," "cultural," and "charitable") superfluous is misplaced. Op.12. Because "[s]ometimes drafters *do* repeat themselves and *do* include words

that add nothing of substance," taking a "belt-and-suspenders" approach to drafting, Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 176-177 (2012), redundancy is not a basis to artificially constrict the plain breadth of §108(c)(4)'s purposes. To the contrary, the use of multiple broad terms that overlap reinforces Congress's intent to sweep broadly. *See Agnew v. Government of the District of Columbia*, 920 F.3d 49, 57 (D.C. Cir. 2019) ("That the terms also substantially overlap does not contravene the surplusage canon"). Grants to an educational or health charity, for example, would obviously involve "charitable" as well as "educational" and "health" purposes. Indeed, the district court's opinion inadvertently proves the point in defining "social welfare" as "direct, nonprofit *charitable* activities." Op.11 (emphasis added). Statutory provisions such as §108(c)(4) "written in broad, sweeping language should be given broad, sweeping application," *Consumer Electronics Association v. FCC*, 347 F.3d 291, 298 (D.C. Cir. 2003) (Roberts, J.), not arbitrarily narrowed.[5]

[5] The court faulted the Tribe for engaging in a "tortured" "textual sleight of hand" by "stitch[ing]" together the words "for" and "purpose," allowing the Tribe to argue that any use of Fund interest is permitted "so long as money eventually trickles down to one of §108(c)(4)'s enumerated ends." Op.13. But there is nothing "tortured," or "'hyperliteral'" (Op.13), in reading the statute's reference to "for … social welfare … or charitable purposes" to mean for social welfare or charitable purposes. And the court's reference to "trickle[] down" misses the key point that funding needed tribal services is not an incidental byproduct of the Tribe's plan, but the very purpose of Sibley purchase.

B. Tribal Gaming Is A Permissible Means Of Achieving §108(c)(4)'s Enumerated Purposes

As a fallback to Interior's no "attenuation" rationale for rejecting the Tribe's trust submission, Interior, Intervenors, and the district court have advanced assorted objections that bottom on the claim that, even if intervening steps are permitted under §108(c)(4), tribal gaming is not one of them. These arguments take two forms: first, a casino categorically cannot be a means of advancing §108(c)(4) social welfare, charitable, or other purposes; second, the Tribe has committed only a negligible sum of future gaming revenues to social welfare or other purposes. Neither contention withstands scrutiny.

1. Interior, Intervenors, and the district court have variously claimed that, as a matter of plain meaning, a casino cannot have a "social welfare" or "charitable" purpose. *See, e.g.*, Op.12 ("[o]nly in an alternate America would … spinning the roulette wheel" be an "educational, healthful, cultural, or charitable activit[y]"). But this is pure misdirection, because these arguments confuse the Tribe's *ends* (accomplishing social welfare, charitable, and other benefits) with the *means* used to accomplish those ends (Indian gaming). The question is not whether a casino is a charity, or casino gaming is a charitable activity; the question is whether the Tribe's planned investment in gaming operations to secure a predictable, durable, significant revenue stream to provide for social services and

other welfare programs is an expenditure "for" a "social welfare" or "charitable" "purpose" under §108(c)(4). It is, for the reasons explained above.

The Tribe acknowledges that when one thinks of a "social welfare" or "charitable" "purpose," a casino may not be the first thing that springs to mind. But context matters, and that intuition is misplaced here. The Tribe seeks to engage in Indian gaming as a means of advancing tribal welfare, not as a way to generate private profit or shareholder wealth. In truth, it makes no sense to treat gaming as the reason "for" (or "purpose" of) the Tribe's purchase of the Sibley Parcel. The Tribe has no intent, or "purpose" in the parlance of §108(c)(4), to engage in gaming for the sake of engaging in gaming; gaming is a calculated means by which the Tribe can help meet the pressing social welfare, charitable, educational, and health needs of its members. Significantly, there is no evidence in the record establishing that the Tribe had any "purpose" in purchasing the Sibley Parcel *other* than to help meet these needs.

Put differently, any perceived dissonance between a casino and social welfare and charitable purposes is misplaced in the context of Indian gaming. "Indian tribes are not-for-profit corporations that are interested only in maximizing dividends for investors." Fletcher, *The Comparative Rights of Indispensable Sovereigns*, 40 Gonz. L. Rev. 1, 75 (2005). Again, by mandate of federal law, all net gaming revenues must be used for the good of the Tribe and its members.

Supra pp.12-13; *see* 25 U.S.C. §2710(b)(2)(B); *id.* §2710(d)(1)(A)(ii). The Gaming Act carefully limits the use of "net revenues from any tribal gaming" to "purposes" conspicuously similar to those set forth in §108(c)(4) of the Settlement Act, including "to fund tribal government operations or programs," "to provide for the general welfare of the Indian tribe and its members," and "to donate to charitable organizations." 25 U.S.C. §2710(b)(2)(B); *see* National Indian Gaming Comm'n, Bulletin No. 2022-4, at 2 ("[The Gaming Act] requires that net gaming revenues from Indian gaming be used for public purposes that are consistent with those typically provided by governments."). In that way, federal law itself draws a straightforward, not attenuated, link between tribal gaming and tribal welfare and charitable benefits.

As explained, the requirement that tribal gaming revenue be used for tribal purposes, not private profit, was central to the Gaming Act's enactment. *Supra* pp. 12-13; *see* S. Rep. No. 100-446, at 12 (1988) (contrasting "tribal gaming" as having a "public purpose" with "individually owned bingo or card game[s]" on Indian lands, which would have the "purpose" of providing "profit to the individual owner(s)"); *see also* 25 U.S.C. §2701(1). Thus, when it comes to Indian gaming, there is an essential nexus between tribal gaming and "the provision of tribal services," *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 218-219 (1987), such that "tribal gaming operations cannot be understood as mere profit-

making ventures that are wholly separate from the Tribes' core governmental functions," *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring). There is accordingly no persuasive basis for inferring that Congress silently placed Indian gaming operations off limits under §108(c)(4) as a means to achieve tribal welfare and charitable objectives.

2. For similar reasons, the district court wrongly framed the question presented as whether the Tribe's "plan to use income to purchase land to build a casino and devote a sliver of income to social welfare qualify" under §108(c)(4). Op.10; *see also* Op.19 (claiming only "five percent of [revenue] will finance social welfare"); Op.23 (repeating the "five percent" figure). It is true, as the Tribe has explained, that in approving the purchase of the Sibley Parcel in 2012, the Tribe's Board adopted a resolution mandating that 3% of income from the project be distributed for specific social services programs (including a health fund, which plainly qualifies as a "health" purpose) and that 2% of income be used to establish a college scholarship program for tribal members (an undoubted "educational" purpose). AR3150; *supra* p.11.

Those earmarked spending commitments were made in 2012, years before the Board could reasonably expect that gaming revenue might ever be generated and thus reasonably could be committed to future social welfare projects. The key point is that those initial commitments are just the tip of the iceberg. Under the

Gaming Act, all of the Tribe's net gaming revenues must be dedicated to enumerated purposes designed to enhance the welfare of the Tribe and its members. In claiming that the Tribe's plan involved dedicating only "pennies on the revenue dollar" to social welfare purposes, Op.17, the district court misunderstood the Tribe's plan as well as the purposes of and legal constraints on Indian gaming.[6]

C. Fund Interest Under §108(c)(4) May Be Used For Economic Development Projects, So Long As The Purpose Of The Project Is To Achieve A Statutorily Enumerated End

Lastly, Interior, Intervenors, and the district court have advanced a statutory argument—not relied upon by Interior in the Trust Denial Order—that Fund interest can never be used for anything related to "economic development." Op.16. The argument runs as follows. Because §108(b) of the Settlement Act permits Fund principal to be used for "economic development," while §108(c)(4) does not use the phrase "economic development," Fund interest cannot also be used for

[6] The district court acknowledged that "[p]erhaps" there was an "'essential nexus'" between tribal gaming and social services, but the court found that irrelevant because, it claimed, only "five percent" of gaming revenue "will finance social welfare projects." Op.19. That is wrong, for all the reasons explained in the text. In addition, relying on "[p]art of the administrative record that no party mention[ed]," the court suggested that the 2012 Board resolution approving the Sibley purchase acknowledged the purchase could reduce "money spent for the social welfare of its members." Op.19. That misunderstands the facts. In approving the purchase of the Sibley Parcel using Fund interest, the Board sought to ensure that preexisting payments to tribal elders (also paid out of Fund interest, *see* §108(c)(3)) would not be disturbed. The resolution simply reflects the Board's desire to ensure that did not happen—and the court's speculation that elder payments were negatively affected is counterfactual.

"economic development"—no matter a project's purpose. *See* Op.17 ("The Sault cannot shoehorn its economic development project into §108(c)(4)'s text when it is covered by a neighboring subsection."). This argument is doubly flawed.

First, this argument confuses the Tribe's means and ends. Naturally read, §108(c)(4) encompasses projects that might be labeled economic development, so long as the Tribe's "purpose" is to achieve an enumerated §108(c)(4) benefit. As the Tribe explained above, "social welfare" refers to the "well-being of a community … esp[ecially] with regard to health and economic matters." *Oxford English Dictionary*. And "charitable purpose" naturally includes any number of objectives closely linked to economic advancement, including "the relief of poverty," "governmental or municipal purposes," and "purposes the accomplishment of which is beneficial to the community." *Restatement (Second) of Trusts* §368. In permitting the Tribe to use Fund interest "for" "social welfare" and "charitable" "purposes," the statute necessarily permits the Tribe to pursue those objectives, including by pursuing economic development projects necessary to achieve them on a more sustainable basis.

Using economic development as a tool to help achieve social welfare or charitable objectives is hardly uncommon. *See, e.g.*, Cohen, *Charitable Commerce: Examining Property Tax Exemptions for Community Economic Development Organizations*, 116 Colum. L. Rev. 1503, 1505 (2016) ("community

economic development organizations … work[] directly with the commercial sector to accomplish their social-welfare missions"). In fact, "[t]he IRS recognizes economic development as a charitable purpose under the federal income tax exemption statute." *Id*. at 1506 & n.13 (citing and discussing IRS guidance documents). There is simply no bright line divide between economic development and social welfare or charitable objectives, at least where economic development is carefully designed to advance those specific objectives.

Confirming the point, Interior's own examples of what kind of expenditures would satisfy §108(c)(4) refute the view that anything relating to economic development is off limits under §108(c). For example, Interior claimed that Fund interest may be used for a "job training" center (AR972 n.25), but many, if not all, job training programs would presumably qualify as economic development—such as a program that gives loans to private businesses that provide job training for unemployed tribal members or a tribal coding bootcamp where students agree to pay the tribe a set amount of future earnings from any coding job. Moreover, Interior cited the possibility of buying land to build a "school" or "museum" with Fund interest—but either of those projects would certainly be a type of economic development, both in constructing the facilities and then in operating the school or museum.

Second, the core premise of this argument—that any objective permitted under §108(b) with respect to Fund principal cannot be pursued under §108(c) with respect to Fund interest—clashes with the structure and design of the Settlement Act. Section 108(b)(1)(B), for example, states that Fund principal can be used for any expenditure "financially beneficial to the tribe or its members." If the district court were correct that §108(c)(4) cannot be used to accomplish anything specified in §108(b), it is difficult to see what types of "charitable" or "social welfare" projects could ever be pursued under §108(c)(4) because those projects would by definition "financially benefit" tribal members.

In this statutory context, reliance on a supposed negative implication from the express reference to economic development in §108(b) is thus misplaced. "Virtually all the authorities who discuss the negative-implication canon emphasize that it must be applied with great caution, since its application depends so much on context." Scalia & Garner, *Reading Law* 107. Where, as here, "all other textual and contextual evidence of congressional intent" indicates that Fund interest may be used to support economic development projects that otherwise satisfy §108(c)(4), any "contrary" "inference drawn from congressional silence" is unreasonable and "certainly cannot be credited." *Burns v. United States*, 501 U.S. 129, 136 (1991).

Circuit precedent does not compel a different result. *See* Op.16. In the prior appeal in this case, this Court had no occasion to interpret §108(c)(4). The questions before the Court were whether Interior had the authority to verify compliance with §108(c) in taking land into trust under §108(f) and, if so, whether the Sibley Parcel enhanced tribal lands under §108(c)(5). In passing on the former question, the Court observed that §108(c) "lists permissible uses for Fund interest"—a point with which the Tribe agrees—and that §108(b) suggests "more expansive uses for Fund principal" than for Fund interest, *Sault Ste. Marie Tribe Chippewa Indians v. Haaland*, 25 F.4th 12, 18 (D.C. Cir. 2022)—a point that is irrelevant here. Whether §108(b) is more expansive than §108(c) in certain respects has no logical bearing on the statutory question now before the Court: may the Tribe spend Fund interest to pursue tribal gaming operations for the purpose of securing a predictable, durable, significant funding stream to support social welfare and other tribal services? This Court's prior opinion had no occasion to decide and did not speak to that question.

D. The Indian Canon Compels The Tribe's Reading Of §108(c)(4)

Finally, even were §108(c)(4) ambiguous on any of these points, the Indian canon of construction would require resolving any ambiguity in favor of the Tribe.

The Supreme Court has "consistently admonished that federal statutes … relating to tribes and tribal activities must be 'construed generously in order to

comport with … traditional notions of [Indian] sovereignty and with the federal policy of encouraging tribal independence.'" *Ramah Navajo School Board, Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 846 (1982). Consistent with this precedent, even were there "two possible constructions" of §108(c)(4), the Indian canon would dictate the "choice between them" and compel the Tribe's reading. *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 269 (1992); *see also City of Roseville v. Norton*, 348 F.3d 1020, 1032 (D.C. Cir. 2003) (application of canon to statutes, as well as treaties, is "settled").

This canon also "trump[s]" any "normally-applicable deference" to the agency under *Chevron*. *Cobell v. Kempthorne*, 455 F.3d 301, 304 (D.C. Cir. 2006); *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1266 n.7 (D.C. Cir. 2008) ("[W]e typically do not apply full *Chevron* deference to an agency interpretation of an ambiguous statutory provision involving Indian affairs."); *Cobell v. Norton*, 240 F.3d 1081, 1101 (D.C. Cir. 2001) (similar)); *Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991) (similar); *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1444-1445 & n.8 (D.C. Cir. 1988) (similar).

That is so because the Indian canon is a substantive rule of statutory interpretation, "rooted in the unique trust relationship between the United States and the Indians." *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985).

It "arises not from ordinary exegesis, but 'from principles of equitable obligations and normative rules of behavior'" inherent in that trust relationship. *Norton*, 240 F.3d at 1101. Although it originally developed in the treaty context—where it has sometimes been compared to the doctrine of *contra proferentem*—the canon is best understood as a "quasi-constitutional" clear-statement rule that any diminishment of tribal rights must be unequivocally directed by Congress. Frickey, *Marshalling Past and Present*, 107 Harv. L. Rev. 381, 406-417 (1993). The Indian canon thus works "to promote the ongoing sovereign-to-sovereign relationship of the tribe and the federal government" by ensuring that Congress, not agencies construing purported ambiguities in federal law, makes significant decisions regarding Indian affairs. *Id*. at 428.

To be sure, this Court once applied *Chevron* deference in the Indian-law context, but "with muted effect" and in a "unique" scenario where the agency was responsible "for careful stewardship of limited government resources." *Cobell v. Salazar*, 573 F.3d 808, 812-813 (D.C. Cir. 2009). Still, that was appropriate only "[g]ranted [that] the Indians' benefit remains paramount." *Id.* And *Salazar* did not upend the long line of precedent holding the Indian canon generally trumps *Chevron*. Regardless, *Salazar* has no purchase here, where Interior's mandatory trust duty under the Settlement Act is "straightforward" and "does not require

management of similarly limited government resources." *Sault Ste. Marie Tribe*, 25 F.4th at 28 (Henderson, J., dissenting).

In short, ordinary tools of statutory construction establish that the Tribe's use of Fund interest to purchase the Sibley Parcel was "for" "social welfare," "charitable" and other "purposes" under §108(c)(4). But even were there statutory ambiguity, because the Settlement Act "can reasonably be construed as the Tribe would have it construed," the Indian canon requires that it "be construed that way." *Muscogee (Creek) Nation*, 851 F.2d at 1445 & n.8.[7]

II. INTERIOR ARBITRARILY FAILED TO ADDRESS EVIDENCE THAT THE SIBLEY PURCHASE SATISFIED ITS READING OF §108(C)(4)

A. If Interior were correct that Fund interest may be used under §108(c)(4) only if it brings about social welfare benefits without reliance on revenue generated from gaming, the Tribe would still prevail. That is because, beyond generating gaming revenue, the Tribe's purchase of the Sibley Parcel was intended to (1) secure a land base to provide social services to the Tribe's large, yet

[7] Intervenors have previously argued the Indian canon does not apply because gaming operations on the Sibley Parcel could adversely affect the interests of tribal Intervenors. That is irrelevant. The Settlement Act was not enacted for the benefit of tribal Intervenors; it was enacted to settle land claims with specific tribes, including the Sault Tribe, and to support those specific tribes' sovereignty and self-sufficiency efforts. Ambiguity in a statute like this—enacted for the benefit of a particular tribe—must be "resolve[d] … in favor of the tribe." *City of Roseville v. Norton*, 348 F.3d 1020, 1032 (D.C. Cir. 2003) (construing Auburn Indian Restoration Act).

unserved, downstate population and (2) create jobs for thousands of nearby tribal members. *See supra* pp.14-15 (discussing the Tribe's submissions on these points).

Record evidence supported both theories. To start, the Tribe submitted an affidavit from its Tribal Registrar showing the distribution of its members across Michigan. AR2183-2192. The affidavit demonstrated that "approximately 4,500 members"—more than one-third of the Tribe's membership and a population "greater than the population of most other Michigan tribes"—"live within a 50-mile radius of the Sibley Parcel." AR2161; *see* AR2162 (map). The Tribe explained, moreover, that it "will never be able to provide meaningful employment opportunities or services to this substantial component of its population base without securing nearby trust land." AR2164.

The record was also clear that the Tribe intended to use the Sibley Parcel "for" the "purpose" of meeting the social and economic needs of tribal members, through the provision of direct services and employment opportunities. Like most tribes, the Tribe uses trust land to provide activities for and services to its members, including health clinics, vaccine drives, classes, and social events. *See, e.g.*, U.S. Department of Interior, *Benefits of Trust Land Acquisition (Fee to Trust)*, (recognizing several benefits of trust land status and ways trust status empowers tribes and contributes to general welfare of tribal members). And the Tribe explained to Interior that it planned to use the land at issue here in this manner. For

instance, the Tribe explained that the Sibley Parcel would "provide … a geographic base to enable the Tribe to address the health, educational, welfare, and cultural needs of [its] members" in the Lower Peninsula. AR3118. Approximately seventy acres of trust land in the Lower Peninsula, in other words, could support a casino operation, as well as house physical facilities to provide health, educational, cultural, and social services to nearby tribal members.

Both common sense and undisputed record evidence similarly demonstrated that the Sibley purchase would create needed employment opportunities for tribal members living in the Lower Peninsula—also a social welfare benefit. It is well known that casinos "provide critical employment opportunities for tribal members"; indeed, "[m]any tribes" operate casinos "for the sole purpose of providing employment for tribal members." Fletcher, 40 Gonz. L. Rev. at 112-113. The Supreme Court has recognized this reality. *See Cabazon Band of Mission Indians*, 480 U.S. at 218-219. And, in this case, the Tribe's submissions to Interior explained that "[m]any tribal members … moved to the southern portion of the State to seek employment opportunities" and "[m]any of those members are in serious need of … employment opportunities." AR3118. As the Chief Financial Officer for the Tribe's casino operations attested, gaming operations downstate would provide employment for nearby members, AR2214, and the Tribe's

submissions made clear that Lower Peninsula trust land would "create hundreds of jobs for those members," AR3119.

B. Interior's treatment of this evidence in the Trust Denial Order was arbitrary and capricious.

1. In rejecting the Tribe's §108(c)(4) argument, Interior did not even acknowledge all of the Tribe's rationales. The sole reason Interior articulated for rejecting the Tribe's trust submission under §108(c)(4) was that generating "profits, which profits might then be spent on social welfare purposes," was "too attenuated." AR971-972 n.25. That claim (which is wrong on its own terms) responds to only one of the Tribe's rationales under §108(c)(4), ignoring two others: that the Sibley purchase would permit the provision of direct tribal services and provide needed tribal employment opportunities.

When an agency "'does not respond to arguments'" that do not appear "'frivolous on their face and could affect the agency's ultimate disposition,'" *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028, 1054-1055 (D.C. Cir. 2022) (cleaned up), it acts unlawfully. Consistent with bedrock principles of administrative law, Interior was required to "articulate a satisfactory explanation" for rejecting the Tribe's direct-services and employment rationales, offering a "rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43; *see also DHS v. Regents of the University of California*, 140 S. Ct.

1891, 1913 (2020). Here, Interior "failed to provide even a minimal level of analysis." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

The district court tried to rationalize Interior's silence, by claiming that Interior did not need to "note and address every argument," and that "[i]t is clear from the administrative record" as a whole "why Interior rejected the Sault's §108(c)(4) arguments." Op.30 n.20. These responses miss the mark. While Interior "need not set forth fulsome explanations on all material points," it "still must … provid[e] a statement of reasoning" when it comes to "an important aspect of an[] issue before" it. *Cboe Futures Exchange, LLC v. SEC,* 77 F.4th 971, 980 (D.C. Cir. 2023) (cleaned up); *Spirit Airlines, Inc. v. U.S. Department of Transportation*, 997 F.3d 1247, 1255 (D.C. Cir. 2021) (agency "[i]gnor[ed] an important aspect" where it "gave no indication it even considered" the issue "beyond a single sentence"). The Tribe here explained—and submitted significant evidence substantiating—its intent to use the Sibley Parcel to provide direct services to tribal members and to create tribal employment opportunities. This was obviously an "important aspect" of the issue before the agency.

The district court said that "it is clear from the administrative record why Interior rejected the Sault's §108(c)(4) arguments." Op.30 n.20 (citing AR971-972 n.25, AR1931). But its citations simply refer back to Interior's January 2017 letter and its Trust Denial Order—neither of which discusses the Tribe's position that the

Sibley acquisition satisfies §108(c)(4) because it will enable the Tribe to provide direct social services and create employment opportunities.

The district court is correct that agencies, of course, play a role in "collect[ing], weigh[ing], and even discard[ing]" evidence. Op.26. But Interior's "fail[ure] to provide even a minimal level of analysis," *Navarro*, 579 U.S. at 221, as to *how* it weighed or assessed the Tribe's evidence makes judicial review impossible and defies the principle that an agency may not disregard record evidence without "adequate explanation," *Genuine Parts Co. v. EPA*, 890 F.3d 304, 312 (D.C. Cir. 2018).

2. In addressing the Tribe's separate argument for trust status under §108(c)(5), Interior claimed the Tribe failed to "provid[e] supporting documentation" corroborating the point that acquiring land in the Lower Peninsula would allow the Tribe to provide services to its members and it claimed that the "Tribe fail[ed] to cite any evidence" that the land purchase would lead to "employment" opportunities for nearby members. AR1932. Assuming Interior intended these explanations to carry over to §108(c)(4), the record refutes them.

The Tribe's submissions to Interior explaining its intention to use the Sibley Parcel to "provide a land base" to "facilitate the delivery of services" to tribal members and to "provide meaningful employment" for members, AR3118-3119, 2164—and its affidavits supporting those points, *e.g.*, AR2161, 2182, 2213-2215,

2227-28—were certainly "documentation," "evidence," or both. If Interior deemed these materials insufficient for some reason, it had a duty to say why. Simply "say[ing] that [the Tribe] had 'no evidence'" when the Tribe had submitted evidence obviously "runs counter to the evidence before the agency." *County of Los Angeles v. Shalala*, 192 F.3d 1005, 1021 (D.C. Cir. 1999). And where "an agency speaks in absolute terms that there is no evidence, it acts arbitrarily and capriciously when there is in fact pertinent record evidence." *Cigar Association of America v. FDA*, 2022 WL 2438512, at *7 (D.D.C. July 5, 2022).

The district court concluded that Interior could disregard this record because the Tribe's materials were not "evidence at *all*." Op.25. But setting aside that Interior never offered this explanation, the Tribe's submissions and affidavits spoke to what the Tribe itself intended to do with the Sibley Parcel, and thus were "representations by parties who were uniquely in a position to know." *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095, 1125 (D.C. Cir. 1984). Interior certainly should have credited those representations, especially because no one meaningfully disputed that the Tribe would use the Sibley Parcel to provide direct services or create tribal employment opportunities. Indeed, nowhere in the record did Interior question the Tribe's representations. "[T]he substantial-evidence standard … does not allow an agency to close its eyes to on-point and uncontradicted record evidence," "includ[ing] … *a sworn*

affidavit," "without any explanation at all." *Fogo De Chao (Holdings) Inc. v. DHS*, 769 F.3d 1127, 1147 (D.C. Cir. 2014); *cf. Department of Labor v. Greenwich Collieries*, 512 U.S. 267, 280 (1994) (in agency adjudication, agency may not "'stand mute and arbitrarily disbelieve credible evidence'").

If Interior needed specific forms of additional documentation or evidence to resolve the Tribe's claim for mandatory trust status, it was obligated to explain that to the Tribe before denying the trust submission. *See, e.g.*, *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000) (vacating "denial[s] of a … license" where there was no "fair notice of" what was needed for approval).

CONCLUSION

This Court should vacate the Trust Denial Order and reverse the district court's judgment affirming that Order.

Respectfully submitted.

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September 22, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i), as modified by the Court's scheduling order.

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 12,606 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Kelly P. Dunbar
KELLY P. DUNBAR

September 22, 2023

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Michigan Indian Land Claims Settlement Act,
Pub. L. No. 105-143, 111 Stat. 2652 (1997)

An Act

To provide for the division, use, and distribution of judgment funds of the Ottawa and Chippewa Indians of Michigan pursuant to dockets numbered 18-E, 58, 364, and 18-R before the Indian Claims Commission.

* * *

§ 102. Findings; purpose.

(a) FINDINGS.—Congress finds the following:

(1) Judgments were rendered in the Indian Claims Commission in dockets numbered 18–E, 58, and 364 in favor of the Ottawa and Chippewa Indians of Michigan and in docket numbered 18–R in favor of the Sault Ste. Marie Band of Chippewa Indians.

(2) The funds Congress appropriated to pay these judgments have been held by the Department of the Interior for the beneficiaries pending a division of the funds among the beneficiaries in a manner acceptable to the tribes and descendency group and pending development of plans for the use and distribution of the respective tribes' share.

(3) The 1836 treaty negotiations show that the United States concluded negotiations with the Chippewa concerning the cession of the upper peninsula and with the Ottawa with respect to the lower peninsula.

(4) A number of sites in both areas were used by both the Ottawa and Chippewa Indians. The Ottawa and Chippewa Indians were intermarried and there were villages composed of members of both tribes.

(b) PURPOSE.—It is the purpose of this title to provide for the fair and equitable division of the judgment funds among the beneficiaries and to provide the opportunity for the tribes to develop plans for the use or distribution of their share of the funds.

* * *

§ 107. Plan for use and distribution of Bay Mills Indian Community funds.

(a) TRIBAL LAND TRUST.

* * *

(3) The earnings generated by the Land Trust shall be used exclusively for improvements on tribal land or the consolidation and enhancement of tribal landholdings through purchase or exchange. Any land acquired with funds from the Land Trust shall be held as Indian lands are held.

* * *

§ 108. Plan for use of Sault Ste. Marie Tribe of Chippewa Indians of Michigan funds.

(a) SELF-SUFFICIENCY FUND.—

(1) The Sault Ste. Marie Tribe of Chippewa Indians of Michigan (referred to in this section as the "Sault Ste. Marie Tribe"), through its board of directors, shall establish a trust fund for the benefit of the Sault Ste. Marie Tribe which shall be known as the "Self-Sufficiency Fund". The principal of the Self-Sufficiency Fund shall consist of—

(A) the Sault Ste. Marie Tribe's share of the judgment funds transferred by the Secretary to the board of directors pursuant to subsection (e);

(B) such amounts of the interest and other income of the Self-Sufficiency Fund as the board of directors may choose to add to the principal; and

(C) any other funds that the board of directors of the Sault Ste. Marie Tribe chooses to add to the principal.

(2) The board of directors shall be the trustee of the Self-Sufficiency Fund and shall administer the Fund in accordance with the provisions of this section.

(b) USE OF PRINCIPAL.—

(1) The principal of the Self-Sufficiency Fund shall be used exclusively for investments or expenditures which the board of directors determines—

(A) are reasonably related to—

(i) economic development beneficial to the tribe; or

(ii) development of tribal resources;

(B) are otherwise financially beneficial to the tribe and its members; or

(C) will consolidate or enhance tribal landholdings.

(2) At least one-half of the principal of the Self-Sufficiency Fund at any given time shall be invested in investment instruments or funds calculated to produce a reasonable rate of return without undue speculation or risk.

(3) No portion of the principal of the Self-Sufficiency Fund shall be distributed in the form of per capita payments.

(4) Any lands acquired using amounts from the Self-Sufficiency Fund shall be held as Indian lands are held.

(c) USE OF SELF-SUFFICIENCY FUND INCOME.—The interest and other investment income of the Self-Sufficiency Fund shall be distributed—

(1) as an addition to the principal of the Fund;

(2) as a dividend to tribal members;

(3) as a per capita payment to some group or category of tribal members designated by the board of directors;

(4) for educational, social welfare, health, cultural, or charitable purposes which benefit the members of the Sault Ste. Marie Tribe; or

(5) for consolidation or enhancement of tribal lands.

(d) GENERAL RULES AND PROCEDURES.—

(1) The Self-Sufficiency Fund shall be maintained as a separate account.

(2) The books and records of the Self-Sufficiency Fund shall be audited at least once during each fiscal year by an independent certified public accountant who shall prepare a report on the results of such audit. Such report shall be treated as a public document of the Sault Ste. Marie Tribe and a copy of the report shall be available for inspection by any enrolled member of the Sault Ste. Marie Tribe.

(e) TRANSFER OF JUDGMENT FUNDS TO SELF-SUFFICIENCY FUND.—

(1) The Secretary shall transfer to the Self-Sufficiency Fund the share of the funds which have been allocated to the Sault Ste. Marie Tribe pursuant to section 104.

(2) Notwithstanding any other provision of law, after the transfer required by paragraph (1) the approval of the Secretary for any payment or distribution from the principal or income of the Self-Sufficiency Fund shall not be required and the Secretary shall have no trust responsibility for the investment, administration, or expenditure of the principal or income of the Self-Sufficiency Fund.

(f) LANDS ACQUIRED USING INTEREST OR OTHER INCOME OF THE SELF-SUFFICIENCY FUND.—Any lands acquired using amounts from interest or other income of the Self-Sufficiency Fund shall be held in trust by the Secretary for the benefit of the tribe.

Indian Gaming Regulatory Act,
Pub. L. No. 100-497, 102 Stat. 2467 (1988)

An Act

to regulate gaming on Indian lands.

* * *

§ 11. "25 USC 2710"

(b)

* * *

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that —

* * *

(B) net revenues from any tribal gaming are not to be used for purposes other than —

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies

* * *

(d)

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are —

(A) authorized by an ordinance or resolution that —

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal–State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Kelly P. Dunbar
KELLY P. DUNBAR