

NOT YET SCHEDULED FOR ORAL ARGUMENT

Case No. 24-5193

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NARRAGANSETT INDIAN TRIBE,

Plaintiff-Appellant,

v.

KRISTIN WHITE, in her official capacity as Acting Administrator of the
FEDERAL HIGHWAY ADMINISTRATION, et al.

Defendants-Appellees.

Appeal from the United States District Court
for the District of Columbia
Case No. 1:22-cv-02299 (Hon. Rudolph Contreras)

**AMICUS CURIAE BRIEF OF UNITED SOUTH AND EASTERN TRIBES
SOVEREIGNTY PROTECTION FUND IN SUPPORT OF PLAINTIFF-
APPELLANT’S OPENING BRIEF AND REVERSAL**

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Cir. Rule 28(a)(1), undersigned counsel certifies the following:

PARTIES AND AMICI

1. District Court

- Narragansett Indian Tribe, *plaintiff*
- Shailen Bhatt, Administrator of the Federal Highway Administration, *defendant*
- Federal Highway Administration, *defendant*

2. Circuit Court of Appeals

- United South and Eastern Tribes Sovereignty Protection Fund, *amicus curiae*
- Narragansett Indian Tribe, *plaintiff-appellant*
- Kristin White, Acting Administrator of the Federal Highway Administration, *defendant-appellee*
- State of Rhode Island, *defendant-appellee*
- Claire Richards, Executive Counsel, Rhode Island Office of the Governor, *defendant-appellee*
- Rhode Island Department of Transportation, *defendant-appellee*

RULINGS UNDER REVIEW

- *Narragansett v. Bhatt*, No. 1:22-cv-02299 (D.D.C. July 23, 2024) (J. Rudolph Contreras), Doc. 51 and 52 (Order and Memorandum Opinion).

RELATED CASES

Resolved in the D.C. Circuit:

- *Narragansett v. Hendrickson*, No. 1:20-cv-00576 (D.D.C. Mar. 15, 2022) (J. Rudolph Contreras) (dismissed without prejudice).

Resolved in the First Circuit:

- *Narragansett Indian Tribe v. Rhode Island Dep't of Transp.*, 903 F.3d 26 (1st Cir. 2018) (affirming dismissal for lack of subject matter jurisdiction).

Resolved in the U.S. District Court for the District of Columbia:

- *Narragansett Indian Tribe v. Pollack*, No. 1:22-cv-02299-RC, 2023 WL 4824733 (D.D.C. 2023) (disposing various motions).

Dated: March 20, 2025

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CORPORATE DISCLOSURE STATEMENT

I, the undersigned, counsel of record for the United South and Eastern Tribes Sovereignty Protection Fund, certify that to the best of my knowledge and belief, there are no parent companies, subsidiaries, affiliates, or companies which own at least 10% of the stock of the United South and Eastern Tribes Sovereignty Protection Fund which have any outstanding securities in the hands of the public. These representations are made in order that judges of this Court may determine the need for recusal.

Dated: March 20, 2025

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STATEMENT OF AMICUS CURIAE'S IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF)¹ is a non-profit, inter-Tribal organization advocating on behalf of 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.² USET SPF was formed in 2014 as an affiliate of the United South and Eastern Tribes, Inc. to advocate on behalf of USET SPF's Tribal Nation members by upholding, protecting, and advancing inherent sovereign

¹ No counsel for any party authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparation or submission of this brief, and no other person or entity other than *Amicus*, its members, and its counsel provided any monetary contribution to fund the preparation or submission of this brief.

² USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA), and Wampanoag Tribe of Gay Head (Aquinnah) (MA).

authorities and rights. The Narragansett Indian Tribe (Narragansett) is a federally recognized Tribal Nation and a member of USET SPF.

USET SPF has an interest in protecting the rights of Tribal Nations to have a seat at the table when the federal government makes decisions that affect our sacred places. The federal government has taken steps to bind itself under its own domestic laws to uphold that obligation, enacting the National Historic Preservation Act, (NHPA) and creating the “Section 106” process. USET SPF submits this brief to paint a fuller picture for the Court of how the Federal Highway Administration (Agency) stripped Narragansett of its agency to make decisions for its people about how best to protect and steward its sacred sites using the already-insufficient legal tools to which it has access under United States law. This Court granted USET SPF’s motion to file an amicus and set forth a deadline for this Amicus Curiae Brief.

SUMMARY OF ARGUMENT

Tribal Nations are and have always been inherently sovereign governments. Before the arrival of colonizing forces, our territorial jurisdictions and our sacred places stretched across the continent. We held sovereign rights to govern all of our lands, as well as obligations to steward the cultural resources within them. But the United States and its predecessor colonizers through war, coerced treaty making, and unilateral actions dispossessed us of or removed us from the vast majority of our homelands. United States actions and federal Indian law principles have also

limited our ability to exercise our inherent sovereign authorities to protect our sacred places.

The United States in taking our lands and resources assumed trust and treaty obligations to Tribal Nations and Native people. In furtherance of those obligations, the United States enacted the NHPA and created the Section 106 process, whereby federal agencies must take into account effects of federal undertakings on properties of traditional religious and cultural importance to Tribal Nations in consultation with those Tribal Nations. The NHPA in some circumstances requires Tribal Nations to sign off on agreements before such federal undertakings may proceed, bringing federal Indian law into closer alignment with international human rights standards.

In this case, the Agency properly brought Narragansett to the table to engage in Tribal consultation before providing the State of Rhode Island (Rhode Island) funding for bridge construction, which all parties agreed would result in adverse effects to historic properties important to Narragansett. The Agency decided to pursue a Programmatic Agreement (PA) under the NHPA Section 106 process to mitigate those harms, and Rhode Island agreed as mitigation to transfer ownership to Narragansett of three parcels of land that have historic, cultural, and religious significance to Narragansett. But, after construction began and an entire lane of the bridge was constructed, Rhode Island reneged on its obligations under the PA and refused to transfer the properties to Narragansett for stewardship, as required by the

PA. In the end, the Agency executed a new PA with Rhode Island, to which Narragansett did not agree and which Narragansett did not sign.

The Agency's ratification of Rhode Island's breach of its obligations under the first PA, the Agency's disguised amendment of the PA without Narragansett's signature, and the Agency's failure to provide a sufficient explanation for treating Narragansett differently across the two PAs are arbitrary and capricious actions that violate the law. The Agency unjustly trampled on Narragansett's governmental right to protect and steward its sacred places on behalf of its people.

ARGUMENT

I. The United States Has Taken Tribal Nations' Lands, Leaving Sacred Places Outside of Our Ownership and Territorial Jurisdiction

Tribal Nations are and always have been inherently sovereign governments, a status that predates the arrival of colonizing forces and does not depend on the United States' affirmation. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55–56 (1978); *Haaland v. Brackeen*, 599 U.S. 255, 308 (2023) (Gorsuch, J., concurring) (explaining that, before colonization, Tribal Nations “existed as ‘self-governing sovereign political communities’” and that “such entities do not ‘cease to be sovereign and independent’”) (quoting *United States v. Wheeler*, 435 U.S. 313, 322–23 (1978), and *Worcester v. Georgia*, 31 U.S. 515, 561 (1832)). Tribal Nations' inherent sovereignty is further supported by international law principles. *Worcester*, 31 U.S.

at 520 (stating Tribal sovereignty is “settled doctrine of the law of nations”); *Brackeen*, 599 U.S. at 308 (Gorsuch, J., concurring) (referring to Tribal Nations’ enduring sovereignty as “long-held tenet of international law”); Daniel I.S.J. Rey-Bear & Matthew L.M. Fletcher, *We Need Protection From Our Protectors: The Nature, Issues, and Future of the Federal Trust Responsibility to Indians*, 6 Mich. J. Env’t & Admin. L. 397, 412 (2017) (“[T]he relationship of Indian tribes with the United States is founded on ‘the settled doctrine of the law of nations[.]’”).

From the beginning, the United States and its predecessor colonizing governments demonstrated their recognition of Tribal Nations as sovereign governments by interacting with us as such. *United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188, 196 (1876) (“From the commencement of its existence, the United States has negotiated with the Indians in their tribal condition as nations . . . capable of making treaties. This was only following the practice of Great Britain before the Revolution.”); Matthew L.M. Fletcher, *The Original Understanding of the Political Status of Indian Tribes*, 82 St. John’s L. Rev. 153, 180 (2008).

Before the arrival of colonizers, Tribal Nations and our territorial jurisdictions spread across the continent, known to many of us as Turtle Island. And our sacred places—including individual sacred sites as well as our interconnected sacred landscapes—stretched throughout our lands. *See* Alex Tallchief Skibine, *Towards*

A Balanced Approach for the Protection of Native American Sacred Sites, 17 Mich. J. Race & L. 269, 270 (2012) (“There are certain geographical sites or physical formations that are held to be ‘sacred’ as an integral part of [Native American] religion[s]. . . . These places used to be located within the tribes’ ancestral territories, but as a result of conquest, land cessions, and other historical events, many sacred sites are now located on federal land.”). Embedded within our sovereign rights to govern over our lands and to engage in our cultural and religious practices is the *obligation* to steward those lands and the cultural resources within them. Hillary Hoffman et al., *A Third Way: Decolonizing the Laws of Indigenous Cultural Protection* 41 (2020) (“Simultaneously, as place protects people, people must protect place, both to demonstrate their gratitude for the protection they have received and to . . . ensure their future health and prosperity.”).

Today, the United States recognizes only 4.4% of the United States land base as Tribal lands, and it holds only 2.47% in trust status for Tribal Nations.³ Our lands

³ The United States’ territory covers a cumulative area of approximately 2.274 billion acres. Carol Hardy Vincent et al., Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data* 1 (2020). Of this, only 100 million acres is recognized by the United States as Tribal land, U.S. Comm’n on Civ. Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* 160, 165 (2018), <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>, and just over half of that meager amount—56.2 million acres—is held in trust by the federal government on behalf of Tribal Nations, *id.* at 160. See also Justin Farrell et al., *Effects of Land Dispossession and Forced Migration on Indigenous Peoples in*

were taken through war, coerced treaty making, and unilateral federal actions dispossessing us of or removing us from our lands. *See Morton v. Mancari*, 417 U.S. 535, 552 (1974) (quoting *Bd. of Cnty. Comm'rs v. Seber*, 318 U.S. 705, 715 (1943)).

To make matters worse, under federal Indian law principles, we are only recognized as possessing governmental jurisdiction—and even that is limited—on what the United States has defined to constitute “Indian country.” *See, e.g., United States v. Antelope*, 430 U.S. 641, 643 n.2 (1977). Under the United States’ definition, “Indian country” includes land within the limits of our reservation boundaries as they exist today, so-called dependent Indian communities, and trust and allotment land. 18 U.S.C. § 1151 (defining “Indian country” for criminal jurisdiction purposes); *Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991) (referencing trust land as Indian country); *Alaska v. Native Vill. of Venetie Tribal Gov’t.*, 522 U.S. 520, 526–27 (1998) (noting courts interpret 18 U.S.C. § 1151 to apply to questions of both civil and criminal jurisdiction).

While our territorial and jurisdictional footprints have shrunk, our sacred places still extend throughout Turtle Island. United States actions and federal Indian

North American, Science, Oct. 2021, at 1, 3 (discussing 98.9% reduction in Tribal Nations’ documented association with land).

law principles limit our inherent sovereign authorities to protect and access those places. This puts Tribal Nations in a difficult and unjust position, and one that requires us to use the tools we *do* have under federal Indian law to the very fullest extent possible to ensure the survival of the cultures that make us who we are.

II. Congress Designed the NHPA to Bring Tribal Nations to the Table for Decisions Affecting our Sacred Places in Furtherance of its Trust and Treaty Obligations

By taking our lands and resources through war and treaty-making with Tribal Nations, the United States assumed ongoing debt-based trust and treaty obligations to Tribal Nations and Native people that are political in nature. *See Mancari*, 417 U.S. at 551–52; *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942) (“In carrying out its treaty obligations with the Indian tribes the Government is . . . more than a mere contracting party. . . . [I]t has charged itself with moral obligations of the highest responsibility and trust.”). The United States has utilized its constitutional Indian affairs powers to enact many laws in furtherance of those obligations. *Antelope*, 430 U.S. at 648 n.8 (1977) (“[L]egislation directed toward Indian tribes is a necessary and appropriate consequence of federal guardianship under the Constitution.”); *see also Brackeen*, 599 U.S. at 275; *Mancari*, 417 U.S. at 552.

The NHPA is one such example. *See* 54 U.S.C. §§ 300101–307108. One very important aspect of the NHPA is the Section 106 process, which requires

federal agencies to “take into account” the effects of a federal or federally assisted undertaking on historic properties before moving forward with that undertaking. *Id.* § 306108; 36 C.F.R. Part 800.

Congress embedded within the statutory language of the NHPA the recognition that places of “traditional religious and cultural importance” to Tribal Nations are historic properties deserving of NHPA protection. 54 U.S.C. § 302706(a). And the NHPA recognizes that Tribal Nations have the right to be consulted—and indeed, are required to be consulted—when the federal government makes decisions affecting not just our current tribal landholdings, 54 U.S.C. § 302702; 36 C.F.R. §§ 800.2(c)(2)(i)(A), 800.3(c)(1), but also lands no longer under our control but that hold historic properties to which we attach religious or cultural significance, 54 U.S.C. § 302706(b); 36 C.F.R. §§ 800.2(c)(2)(ii), 800.3(f)(2).

The Section 106 process involves identifying historic properties, 36 C.F.R. § 800.4, assessing adverse effects on them, *id.* § 800.5, and resolving those adverse effects, *id.* § 800.6—all in consultation with relevant Tribal Nations. The Section 106 process often culminates in a Memorandum of Agreement (MOA), *id.* § 800.6(b), (c), or a Programmatic Agreement (PA), *id.* § 800.14(b), after sufficient consultation and consideration of mitigation has taken place.

Tribal Nations that attach religious or cultural significance to historic properties, no matter where located, may be an MOA signatory. *Id.* § 800.6(c)(2)(ii);

see also id. § 800.6(c)(3). For PAs, the federal agency must identify and consult both with Tribal Nations with jurisdiction over Tribal lands where a proposed PA has the potential to affect historic properties on those Tribal lands, and with Tribal Nations attaching religious or cultural significance to historic properties off Tribal lands. *Id.* § 800.14(b)(2)(i), (f); *see also id.* § 800.14(b)(3).

The NHPA—while a federal law designed to create a process rather than demand a particular outcome—can require a federal agency to go back to the table after making a decision that did not comport with the requirements of the NHPA. *See, e.g., Nat’l Parks Conservation Ass’n v. Semonite*, 916 F.3d 1075, 1089 (D.C. Cir. 2019) (requiring Army Corps of Engineers to “reconsider its [NHPA] analysis using . . . proper definition[s]”). Thus, in enacting the NHPA, Congress made the federal government’s Tribal consultation requirements associated with effects on sacred places statutorily enforceable.

III. Congress Designed the NHPA to Give Tribal Nations More Than Consultation Rights in Certain Circumstances, Bringing Federal Indian Law into Closer Alignment with International Human Rights Standards

In some circumstances, the NHPA makes clear that neither an MOA nor a PA may be executed under the normal protocols until the Tribal Nation signs the agreement. *See, e.g.,* 36 C.F.R. § 800.6(c)(1)(i), (ii) (MOA); *id.* § 800.14(b)(2)(iii) (PA). Additionally, when a Tribal Nation assumes a specific role or responsibility

in an MOA, the federal agency must invite the Tribal Nation to the table. *Id.* § 800.6(a)(2), (c)(2)(iii).

Requiring signature gives Tribal Nations more leverage to secure protections on behalf of our people. Indeed, free, prior, and informed consent is now an international human rights standard for Indigenous peoples. *See, e.g.*, U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, A/RES/61/295, arts. 10–11, 19, 28–29 (Oct. 2, 2007). Additionally, the right of access to and enjoyment of cultural heritage is guaranteed by international human rights law, *see, e.g.*, U.N. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), art. 15 (Dec. 16, 1966), and the destruction of cultural heritage is now recognized as a war crime in the international community, *see, e.g.*, International Criminal Court, Rome Statue, art. 8(2)(b)(ix) (July 17, 1998); U.N. General Assembly, Report of the Special Rapporteur in the field of cultural rights, A/71/317 (Aug. 9, 2016). It is time the United States part ways with the insidious and outdated international “Doctrine of Discovery” upon which so much of federal Indian law is based, and instead keep up with the international community as international human rights standards evolve toward justice.⁴

⁴ Pope Alexander VI, *Inter caetera* [Among other] (May 4, 1493) (“[W]e, of our own accord, . . . give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever . . . all islands and mainlands found and to be found, discovered and to be discovered. . . .”). This doctrine served as the basis of the Marshall Trilogy upon which federal Indian law is built. *Worcester*, 31 U.S. at

IV. The Agency's Actions Trampled on Narragansett's Right to Steward its Sacred Places and Allowed Rhode Island to Reneg on Its Obligations to Narragansett

We support Narragansett's arguments that it did not receive the Tribal consultation and signatory status required by the NHPA and its implementing regulations for the second PA executed by the Agency, and that the Agency thus violated the Administrative Procedure Act (APA). We do not restate those arguments here. Instead, we focus on why and how the Agency's actions were arbitrary and capricious and in violation of the law for purposes of establishing an APA violation by unjustly trampling on Narragansett's governmental right to protect and steward its sacred places on behalf of its people and by allowing Rhode Island to renege on its obligations.

As recounted by the District Court in this case, the Agency understood that the bridge construction for which it intended to provide funding to Rhode Island would result in adverse effects to historic properties, and it decided to pursue a PA to mitigate those harms. *Narragansett Indian Tribe v. Bhatt*, No. 22-2299 (RC), 2024 WL 3509491, at *2 (D.D.C. July 23, 2024). As mitigation, the PA required Rhode Island to transfer ownership to Narragansett of three parcels of land that have historic, cultural, and religious significance to Narragansett. *Id.* Narragansett was

543–54; *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831); *Johnson v. M'Intosh*, 21 U.S. 543, 574 (1823).

properly at the table for these discussions, using its governmental authority to weigh how best to use the tools it had to protect and steward its people's sacred places, and determining that approval of the bridge construction in exchange for its ability to steward the mitigation parcels was in its people's best interest. *See id.* at *12 (acknowledging Narragansett treated as required signatory to first PA).

However, after construction began and an entire lane of the bridge was constructed, Rhode Island “reneged” on its obligations under the PA and refused to transfer the properties to Narragansett for stewardship, as required by the PA. *Id.* at *3. The Agency terminated the PA, and it executed a new PA to which Narragansett did not agree and which Narragansett did not sign. *Id.* For that PA, Narragansett was no longer treated as a required signatory but rather as a concurring party. *Id.* at *12. Under this second PA, rather than transfer the properties to Narragansett for stewardship, Rhode Island agreed to create academic documentation, a video documentary, and teaching curriculum about Narragansett, to provide a Section 106 training for Narragansett, and to possess and preserve the properties itself. *Id.* at *3. These measures are a far cry from returning three culturally significant properties back to Narragansett for stewardship, and the measures rest on the incorrect assumption that Rhode Island is well-suited for these important tasks related to Narragansett's own cultural traditions and lifeways.

The Agency's ratification of Rhode Island's breach of its obligations under the first PA was arbitrary and capricious and in violation of the law. Rhode Island violated an obligation it undertook pursuant to the first PA and upon which Narragansett relied in agreeing to sign the first PA, and that signature allowed construction to begin. The Agency initially threatened to withhold project funds due to Rhode Island's defiance of the agreement it made in the first PA, *Narragansett Indian Tribe v. Pollack*, No. 22-2299 (RC), 2023 WL 4824733, at *8 (D.D.C. July 27, 2023), demonstrating the Agency's ability to exercise this power, but the Agency eventually allowed the project to move forward anyway.

The Agency's disguised amendment of the PA without Narragansett's signature was also arbitrary and capricious and in violation of the law. The NHPA regulations recognize that entities that signed a Section 106 document have certain rights with regard to the amendment of those agreed-upon documents. *See, e.g.*, 36 C.F.R. § 800.6(c)(2)(i) ("The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories."); *id.* § 800.6(c)(7) ("The signatories to a memorandum of agreement may amend it."); *see also id.* § 800.14(b)(2)(iii) (stating Tribal Nation may terminate PA's application within its jurisdiction). As Narragansett was a signatory to the first PA, which was

effectively amended by the Agency and Rhode Island to alter the mitigation measures, it is only right that Narragansett should be a required signatory on the second PA.

The Agency's failure to provide a sufficient explanation for treating Narragansett differently across the two PAs was also arbitrary and capricious. As the District Court acknowledged in this case, an agency must either be consistent with its prior decisions or offer a reasonable and reasonably explained justification for its departure. *Narragansett Indian Tribe*, 2024 WL 3509491, at *12. The Agency recognized Narragansett's proper status as a required signatory in the first PA and then quietly took a different position when it re-issued the PA without Narragansett's signature and against its wishes. The Agency briefly mentioned that Narragansett did not have responsibilities under the second PA when saying Narragansett would have only concurring party status, *id.*, but this justification is hardly a reasonable explanation when the "responsibility" Narragansett no longer had was the right for which it bargained in the first PA: stewardship of the mitigation parcels on behalf of its people.

The NHPA—if implemented fully—is a step in the right direction by the United States to hold itself accountable for its trust and treaty obligations with regard to Tribal Nations' sacred places. The NHPA creates judicially-enforceable Tribal consultation and consent requirements designed to protect cultural heritage in line

with international human rights standards. But here, the Agency did not live up to its obligations under the NHPA or otherwise with regard to Narragansett, and the Court should hold the Agency accountable for its failures.

CONCLUSION

For the foregoing reasons, Amicus Curiae USET SPF urges this Court to grant Plaintiff-Appellant's request for reversal of the District Court's decision.

Respectfully submitted this 20th day of March, 2025.

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CERTIFICATE OF COMPLIANCE WITH D.C. CIR. RULE 29

Pursuant to D.C. Cir. Rule 29(d), the undersigned counsel certifies that joinder in a single brief with any other Amicus Curiae would be impracticable and a separate Amicus Curiae Brief is necessary because USET SPF is uniquely positioned to present its perspective to the dispute in this case.

Dated: March 20, 2025

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**CERTIFICATE OF COMPLIANCE WITH TYPE VOLUME LIMITATION,
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I certify that this brief complies with the type volume limitations of Fed. R. App. P. 29(a)(4) and (5), Fed. R. App. P. 32(a)(7)(B)(i), and D.C. Cir. Rule 32(e)(3) because this brief contains 3,775 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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Dated: March 20, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2024, I electronically filed the foregoing document 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, which will send notification of this filing to the attorneys of record and all registered participants.

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