

No. 25-170

IN THE
Supreme Court of the United States

SUNCOR ENERGY (U.S.A.) INC., *et al.*,
Petitioners,
v.

COUNTY COMMISSIONERS OF BOULDER COUNTY, *et al.*,
Respondents.

**On Writ of Certiorari to the
Supreme Court of Colorado**

**BRIEF OF MAKAH INDIAN TRIBE,
SHOALWATER BAY INDIAN TRIBE, AND
ELEVEN OTHER FEDERALLY RECOGNIZED
INDIAN TRIBES; PROFESSOR MATTHEW L.M.
FLETCHER AND EIGHT OTHER FEDERAL
INDIAN LAW PROFESSORS; AND TRIBAL
ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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<i>Montana v. Crow Tribe of Indians</i> , 484 U.S. 997 (1988).....	31
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<i>Seminole Tribe v. Times Publ’g Co.</i> , 780 So. 2d 310 (Fla. Dist. Ct. App. 2001)....	34
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<i>Three Affiliated Tribes of Fort Berthold</i> <i>Reservation v. Wold Eng’g</i> , 467 U.S. 138 (1984).....	33, 36
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Alaska Native Tribal Health Consortium, <i>The Unmet Needs of Environmentally Threatened Alaska Native Villages: Assessment and Recommendations: Final Report</i> (2024), bit.ly/4fZJWvi ..	4, 5, 7-9, 12-16, 27
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3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (1768).....	3
Bureau of Indian Affairs, <i>Branch of Tribal Community Resilience</i> , bit.ly/4g0lnyk (last visited July 29, 2026)	25
Bureau of Indian Affairs, Div. of Resource Integration Servs., <i>Dataset: Tribal Community Resilience Annual Awards</i> , bit.ly/3RD73m0 (updated May 28, 2026).....	25, 26
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Alex Didion & Drew Mikkelsen, <i>Quinault Indian Nation To Receive \$25 Million for Climate Change Relocation</i> , K5 LOCAL NEWS (Nov. 30, 2022), bit.ly/4bjUMK5	19
Env'tl Sys. Research Inst., <i>Case Study: Shoalwater Bay Tribal Nation Uses GIS to Map and Communicate Relocation Strategy for Funding</i> , bit.ly/4pHOTfz (last visited July 29, 2026)	18
Fed. Emergency Mgmt. Agency, <i>FEMA Flood Map Service Center: Search By Address</i> , bit.ly/4x5P32N (last visited July 29, 2026)	24

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Christopher Flavelle, <i>Here's Where the U.S. Is Testing a New Response to Rising Seas: Native American Tribes Are Competing for the First Federal Grants Designed to Help Move Communities Away from High Water and Other Dangers Posed by Climate Change</i> , N.Y. TIMES (Nov. 10, 2022), bit.ly/4x6C5lx	17-19
Edward French, <i>Sipayik Eyes Moving Wastewater Treatment Plant</i> , QUODDY TIDES, (May 23, 2025), bit.ly/4hD9Ru0	24
<i>From Disaster to Resilience: Strengthening Tribal Communities through Federal Response, Mitigation and Relocation Programs & Tribal Leader Listening Session (Part II): Recorded Field Hearing Before the S. Comm. on Indian Affs.</i> , 119th Cong. (2026), bit.ly/3TpCHUK ...	9, 10, 28
Greg Kim, <i>Akiak Receives Funding To Move 6 Homes Closest To Eroding Riverbank</i> , KYUK (Sept. 3, 2019), bit.ly/4pG9W24	14
Greg Kim, <i>Napakiak is Number One Priority in State's List of School Construction Projects</i> , KYUK (Jan. 4, 2024), bit.ly/4pJusyI	15
Makah Tribe, <i>About Our History</i> , bit.ly/4yJhOnJ (last visited July 29, 2026).....	18

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Drew Mikkelsen, <i>Shoalwater Bay Indian Tribe Receives \$25 Million Grant to Move Above Sea Level: The Tribe Chair Says a \$25 Million Grant Is Seen as a Step Towards Survival</i> , K5 LOCAL NEWS (Aug. 2, 2023), bit.ly/4pKJpkg	18
Jenni Monet, ‘We Know This Land’: After Typhoon Halong Villages in Alaska Confront Costs of Climate Change, GUARDIAN (Oct. 21, 2025), bit.ly/4c0m5cr	9
NAT’L OCEANIC & ATMOSPHERIC ADMIN., ARCTIC REPORT CARD 2025 (Dec. 2025), bit.ly/4fDW9o6	6
Nat’l Oceanic & Atmospheric Admin., U.S. Climate Resilience Toolkit, Case Study: Relocating the Village of Newtok, Alaska Due to Coastal Erosion, bit.ly/3Rf02ba (last visited July 29, 2026)	12
Nat’l Park Serv., <i>Causes & Consequences of Climate Change at Glacier National Park</i> , bit.ly/4pUAigX (last visited July 29, 2026).....	22
Charlene Nelson and Geoffrey D. Strommer, <i>Seeking Higher Ground—How Congress Can Help the Shoalwater Bay Tribe and Other Indian Tribes Being Pushed to Their Limits Due to Climate Change</i> , ABA HUMAN RIGHTS MAGAZINE (Jan. 22, 2024), bit.ly/4wy2RU6	18

TABLE OF AUTHORITIES—Continued

	Page(s)
Press Release, Sen. Angus King, <i>Maine Congressional Delegation Announcement Regarding \$5 Million Relocation Planning Grant</i> (Dec. 2, 2022), bit.ly/4pIBRi5	24
Press Release, U.S. Dep’t of Interior, <i>Biden-Harris Administration Makes \$135 Million Commitment to Support Relocation of Tribal Communities Affected by Climate Change</i> (Nov. 30, 2022), bit.ly/4g2x3jd ...	15
M.H. Redsteer et al., <i>Unique Challenges Facing Southwestern Tribes</i> , in ASSESSMENT OF CLIMATE CHANGE IN THE SOUTHWEST UNITED STATES: A REPORT PREPARED FOR THE NATIONAL CLIMATE ASSESSMENT (G. Garin et al. eds., 2013) .	21
Ann M. Renker, <i>The Makah Tribe: People of the Sea and the Forest</i> , in UNIV. OF WASH. LIBRARIES DIGITAL COLLECTIONS: AM. INDIANS OF THE PAC. NW. COLLECTION, bit.ly/4fqLuON (last visited July 29, 2026)	18
RESTATEMENT OF THE LAW OF AMERICAN INDIANS (2022).....	33, 34
Quinault Indian Nation, <i>Taholah Village Relocation, Project Background</i> , bit.ly/4yPGuek (last visited July 29, 2026)	19
Shoalwater Bay Indian Tribe, <i>History</i> , bit.ly/3TpIUA7 (last visited July 29, 2026)	17

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Sage Smiley, <i>FEMA Awards \$2.4M to Napakiak as It Retreats from Kuskokwim Erosion</i> , ALASKA PUB. MEDIA (Mar. 11, 2024), bit.ly/ 4pLBjb6	15
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Corinne Smith, <i>Officials Estimate \$125 Million in Western Alaska Storm Damage So Far, and a Long Road to Recovery</i> , ALASKA BEACON (Feb. 5, 2026), bit.ly/ 4yIRuKr	11, 12
U.S. Bureau of Labor Statistics, <i>Consumer Price Index</i> , bit.ly/4gW0qFP (last visited July 29, 2026).....	13
U.S. DEP'T OF TRANSP., FHWA-HEP-23-005, IMPLEMENTING REGIONAL RESILIENCE PROJECTS: MAKAH TRIBE (2023), bit.ly/4pOcyeq	19
U.S. Geological Survey, <i>Status of Glaciers in Glacier National Park</i> , bit.ly/44Ucmkc (Apr. 6, 2016).....	22
U.S. Geological Survey, <i>Typhoon Merbok Coastal Community Impacts</i> , bit.ly/ 4pJat3a (last visited July 29, 2026)	8

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U.S. Gov't Accountability Off., GAO-22-104241, ALASKA NATIVE ISSUES: FEDERAL AGENCIES COULD ENHANCE SUPPORT FOR NATIVE VILLAGE EFFORTS TO ADDRESS ENVIRONMENTAL THREATS (2022).....	5, 7

INTERESTS OF AMICI¹

Amici federally recognized Indian tribes (the “Tribes”) have a significant interest in the Court’s proper resolution of this case.² They include (a) tribes that have state court cases pending against some or all of the Petitioners for harms caused by their deceptive marketing of fossil fuel products, a category of the Respondents’ claims in this case, (b) tribes that have such claims but have not yet brought them, and (c) tribes that support the right of all federally recognized Indian tribes to bring such state court actions in order to address the massive challenges that many tribes face to adapt to the destructive effects of climate change upon their communities and lands. The Tribes have a strong interest in elucidating for the Court the severe harms caused by Petitioners’ deceptive marketing practices, and in explaining why the decision of the Colorado Supreme Court is fully consistent with federal Indian law doctrines that protect tribal sovereignty. Climate change poses an existential threat to many of the Tribes, who are confronted with the need to spend staggering sums of money to protect (and in some cases rebuild or migrate) their communities and lack the budgetary capacity to do so.

Amici federal Indian law professors (the “Law Professors”) have a strong interest in countering any suggestion that federal Indian law principles call for the reversal of the decision below, when in fact the

¹ No counsel for a party authored any part of this brief and no such counsel or a party made any monetary contribution intended to fund the preparation or submission of this brief.

² A full listing of the amici Tribes is found in the Appendix.

opposite is true.³ The Law Professors are also cognizant of the existential threats that the climate crisis poses to federally recognized Indian tribes across the Nation. Hence, the Law Professors urge the importance of ensuring that tribes beset with the challenges of climate disruption have access to the state courts for state tort law remedies against responsible tortfeasors, here the Petitioners. NNALSA is a non-profit corporation founded in 1970 to support law students who are interested in the study of Federal Indian Law, Tribal Law, and traditional forms of governance. NNALSA shares the same interests in this case as the Law Professors.

Amicus Affiliated Tribes of Northwest Indians (“ATNI”), founded in 1953, is a non-profit corporation dedicated to the protection and advancement of tribal sovereignty and self-determination. It serves fifty-seven tribal nations in the greater Northwest, which includes tribes in Oregon, Idaho, Washington, Alaska, California, and Montana. For more than seventy years, the member tribes of ATNI have provided regional leadership and advocacy for Northwest tribal interests. ATNI shares the same interests in this case as the Tribes, the Law Professors, and NNALSA.

INTRODUCTION AND SUMMARY OF ARGUMENT

Tropical typhoons are not supposed to make their way into the arctic waters of the Bering Sea, but now they do, where upon landfall in western Alaska they wreak unprecedented havoc upon Alaska’s federally recognized Indian tribes. The ancient glaciers of

³ A full listing of the amici Law Professors is found in the Appendix.

Glacier National Park in Montana, the aboriginal territory of the Blackfeet Tribe (known as *mistakiiks* or “the ceded strip”), are not supposed to disappear, but now they do, wreaking havoc not only upon the Tribe’s water resources, but upon a landscape that has defined Blackfeet culture for millennia. The seas upon the shores of western Washington are not supposed to swallow up indigenous communities that have occupied those shores since time immemorial, but now they do, again wreaking havoc upon those communities and forcing them to find ways to move to higher ground.

As detailed below, the costs associated with these and other climate disruptions across Indian country are enormous, and sufficient funds to meet them are nowhere to be found. The *conservative* estimated costs for just a sampling of regions is roughly \$8 billion. Indian tribes have no appreciable tax bases, and federal funding is a drop in the bucket. Indeed, the *total* amount of federal funds thus far provided to *all* tribes threatened by climate disruptions, under \$400 million, does not even match the costs for a *single* tribe (an *amicus curiae* here) that must migrate to escape them.

State courts and state tort laws provide a mechanism by which Indian tribes may at least be able to cope with the financial aspects of this crisis. And well they should. For the common law tort system ensures that tortfeasors bear economic responsibility for the harms they cause. See *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 727 (1999) (Scalia, J., concurring in part and concurring in the judgment) (noting that “tort causes of action” are “designed to provide compensation for injuries arising from the violation of legal duties” (citing, *inter alia*, 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 115-19 (1768))).

This Court has long endorsed the right of Indian tribes to access state law remedies in the exercise of tribal self-determination. In the face of unprecedented challenges from the climate crisis, and with minimal federal funds available to address them, recourse to such remedies is essential for many tribes. Reversal of the decision below would severely handicap tribal governments as they struggle to deal with the consequences of the climate crisis: harms caused by Petitioners’ decades-long campaign to hide from the public the exceptional, and now accelerating, disruptions their products have caused, and will continue to cause, to the Earth’s climate.

ARGUMENT

I. Indian Tribes Face Oversized Financial Burdens From Climate Disruption.

A. Alaska

Alaska is the aboriginal homeland of 229 federally recognized Indian tribes, or forty percent of the total nationwide.⁴ Alaska Native Tribal Health Consortium, *The Unmet Needs of Environmentally Threatened Alaska Native Villages: Assessment and Recommendations: Final Report* 14 (2024) (“ANTHC 2024”), bit.ly/4fZJWvi. The tribes retain, and principally speak, twenty Indigenous languages. *See id.* All sustained themselves through millennia of highly sophisticated adaptations to the cold of the North, regularly migrating to adapt to both seasonal and more macro-level changes to the

⁴ The dire circumstances confronting Alaska’s federally recognized Indian tribes are set out in substantial detail because, as explained below, they sit on the front lines of the climate crisis with the attending extraordinary challenges presented by that geographic location.

environment to sustain their subsistence way of life. *See id.* at 14-15. All continue to be dependent upon subsistence food sources: moose, caribou, salmon and other fish, berries, and marine mammals, to name a few—with individuals consuming, on average, 295 pounds of subsistence food sources per year. *See id.* at 10.

A central feature of the federal government’s native Alaskan policy was to put an end to the migratory cycle that had been so important to survival. “Native villages occupy their current precarious locations because the federal government built schools in what were seasonal encampments and mandated that Alaska Native children attend those schools.” U.S. GOV’T ACCOUNTABILITY OFF., GAO-22-104241, ALASKA NATIVE ISSUES: FEDERAL AGENCIES COULD ENHANCE SUPPORT FOR NATIVE VILLAGE EFFORTS TO ADDRESS ENVIRONMENTAL THREATS 7 (2022) (“USGAO 2022”). Now, in these historically unfamiliar settlements, Alaska’s tribes find themselves at the frontline of climate disruption.

A recent NOAA report lays out the stark facts now confronting Alaska’s tribes:

- The last 10 years are the 10 warmest on record in the Arctic.
- Since 2006, Arctic annual temperature has increased at more than double the global rate of temperature changes.⁵

⁵ Air temperatures in Alaska “are expected to increase by 7°F to 13°F by 2100.” ANTHC 2024 at 17.

- Arctic precipitation totals [in 2025] for winter, spring, and autumn were each among the top five since 1950.
- All of the 19 lowest September minimum ice extents have occurred in the last 19 years.
- Alaskan glaciers have lost an average of 125 vertical feet of ice since the mid-20th century, dramatically lowering ice surfaces statewide.
 - Ongoing glacier loss contributes to steadily rising global sea levels, . . . driving destructive floods and increasing landslide and tsunami hazards that endanger people, infrastructure, and coastline.
- In over 200 Arctic Alaska watersheds, iron and other elements released by thawing permafrost have turned pristine rivers and streams orange . . . , compromising aquatic habitat and eroding biodiversity.

NAT'L OCEANIC & ATMOSPHERIC ADMIN., ARCTIC REPORT CARD 2025 at 2 (Dec. 2025), bit.ly/4fDW9o6.

All of this leads to what the United States Department of the Interior's Bureau of Indian Affairs describes as "existential threats" to Alaska's federally recognized Indian tribes. DEP'T OF INTERIOR, BUREAU OF INDIAN AFFS., INFORMATIONAL REPORT: THE UNMET INFRASTRUCTURE NEEDS OF TRIBAL COMMUNITIES & ALASKA NATIVE VILLAGES IN PROCESS OF RELOCATING TO HIGHER GROUND AS A RESULT OF CLIMATE CHANGE 4 (2020) ("BIA 2020"), bit.ly/4vXRbbY.⁶ The key,

⁶ While BIA 2020 involved marshalling the best available data and consultations across numerous federal agencies, *see* BIA 2020 at 3, 11-12, the COVID-19 pandemic constrained the Agency's

interrelated contributing factors to the threats are three: erosion, both coastal and riverine; flooding; and permafrost thawing caused by the following now-established climate trends: (a) increased precipitation leading to flooding and attendant erosion, (b) increased windspeeds, amplifying storm impacts, (c) rising air temperatures leading to melting permafrost and sea ice, (d) the loss of sea ice itself that used to buffer coastal areas from battering seas, and (e) sea level rise, contributing to coastal flooding and erosion. *See* ANTHC 2024 at 18, 25-41; BIA 2020 app. A at 7, 12-14. *See also* USGAO 2022 at 2 (“continued warming of the Earth’s climate will exacerbate” these effects).

The climate crisis for Alaska’s tribes expresses itself in various forms.

1. Immediate, Acute Disasters from Unprecedented Storms

At one extreme is the outright decimation of low-lying coastal communities caused by events—like the unprecedented landfall of tropical typhoons—that leave affected communities with no option but to migrate to higher ground, assuming it can be found. Notably, the number of presidentially declared

ability to fully consult with tribes, *id.* at 3. And the Agency had to finish its work on Alaska in two months, further limiting its ability to properly consult with tribes and (importantly) account for “the cost of mitigating climate impacts to cultural and subsistence infrastructures.” *Id.* app. A at 4. As for assessments in the lower forty-eight, the Agency states that the value of implementation estimates “*significant[ly] underestimate*” real costs because most tribes have not yet conducted infrastructure planning. *Id.* app. B at 6 (emphasis in original).

disasters for flooding and severe storms in Alaska has more than doubled over the past two decades. ANTHC 2024 at 40.

a. Typhoon Merbok (2022)

In one such disaster in September 2022, tropical Typhoon Merbok severely damaged the homes and infrastructures of thirty-five federally recognized Indian tribes in western Alaska. As the USGS reported:

As Typhoon Merbok barreled across the Bering Sea and western Alaska, hurricane-strength winds, extreme storm surge, and high waves impacted more than 35 Alaska Native communities along a 1,300-mile stretch of coast. Flooding and winds destroyed or damaged homes, infrastructure, property, utilities, and subsistence fish camps, while eroding large sections of coast.

U.S. Geological Survey, *Typhoon Merbok Coastal Community Impacts*, bit.ly/4pJat3a (last visited July 29, 2026). At the Native Village of Shaktoolik on the eastern shore of Norton Sound, the typhoon destroyed a recently (and consistently) fortified berm—a sea barrier made of local sand, gravel, and driftwood—leading the community to determine that it must move. ANTHC at 35. Another federally recognized Indian tribe, Chinik Eskimo Community (Golovin), on the Seward Peninsula faced extreme flooding from Typhoon Merbok. “[A]ll infrastructure” on the spit by Golovin Bay, where the Tribe is located, including “the school, power plant, clinic, and homes,” suffered damage. ANTHC 2024 at 36. The Tribe “plans to implement a managed retreat solution, in which all community infrastructure will be moved from the spit to higher ground adjacent to the community, an

immensely complex process that will require time and technical assistance to complete.” *Id.*

b. Typhoon Halong (2025)

More recently, last October, tropical Typhoon Halong “pummeled as many as 15 villages across the Yukon-Kuskokwim delta, an expanse the size of Oregon[,] . . . where the Yukon and Kuskokwim rivers meet the Bering Sea.” Jenni Monet, *‘We Know This Land’: After Typhoon Halong Villages in Alaska Confront Costs of Climate Change*, GUARDIAN (Oct. 21, 2025), bit.ly/4c0m5cr. As an on-the-ground journalist reported just days after the disaster:

As Saturday turned to Sunday 11 October, hurricane-force winds unleashed towering waves that sent rivers and sloughs spilling over their banks. Kwigillingok saw record tides – above 6 ft. Kusilvak registered category 2 winds at 107mph. Homes were swept away, power lines were downed, and fuel tanks spilled into winding wetlands.

Id. Unearthed coffins lay about the landscapes: thirty-four in the Native Village of Kipnuk and fifty-seven in the Native Village of Kwigillingok. Sage Smiley et al., *What We Know About Recovery, a Month After Ex-Typhoon Halong*, KYUK (Nov. 15, 2025), bit.ly/45cnObb.

One FEMA official, who has worked on 198 disasters, described it as “by far the most catastrophic” he had seen, requiring “the largest domestic evacuation in Alaska’s history.” *From Disaster to Resilience: Strengthening Tribal Communities through Federal Response, Mitigation and Relocation Programs & Tribal Leader Listening Session (Part II): Recorded*

Field Hearing Before the S. Comm. on Indian Affs., 119th Cong., at 01:03:00-04:00 (2026) (“Field Hearing II”) (statement of Brian Fisher, State of Alaska Div. of Homeland Sec. & Emergency Mgmt.), bit.ly/3TpCHUK. “Approximately 1600 people were evacuated from the region by the Alaska National Guard in what many described as a wartime scale logistical operation.” *Id.* at 01:09:00 (statement of Jocelyn Fenton, Dir., Denali Comm’n).

The brunt of the Typhoon befell two tribes in particular: *amicus curiae*, the Native Village of Kwigillingok, and the Native Village of Kipnuk. The typhoon destroyed ninety percent of Kipnuk’s infrastructure and left the subsistence lands of both tribes contaminated “by salt, water, oil fuel, human waste and other debris.” *Alaska Native Voices: A Roundtable with Kipnuk and Kwigillingok on Disaster Impacts, Recovery, and Resilience (Part I): Recorded Field Hearing Before the S. Comm. on Indian Affs.*, 119th Cong., at 00:10:00, 00:47:30 (2026) (“Field Hearing I”) (statement of Lucy Martin, Tribal Resilience Assistant, Native Vill. of Kipnuk), bit.ly/3RAURCs. *See also id.* at 00:31:00 (statement of Dustin Evon, Tribal Resilience Coordinator, Native Vill. of Kwigillingok); *id.* at 01:12:00-13:00 (statement of Rayna Paul, Tribal Adm’r and Env’t Dir., Native Vill. of Kipnuk). As of May, close to 1,000 displaced citizens of these tribes were living in shelters in Anchorage. *Field Hearing II* at 00:53:30 (statement of Patricia Smith, Interim President and CEO, Yukon-Kuskokwim Health Corp.).

It is accordingly no exaggeration to say that the very survival of many Alaska tribes and their cultures is at stake. Kipnuk’s Tribal Administrator, Rayna Paul, explained the dire situation to the Senate Committee on Indian Affairs:

[Our] people are suffering from mental health issues, including suicides, depression, isolation, the lack of community. People are using alcohol and drugs to cope with the trauma and stress of being forced out of their village. Children are being bullied at school and don't want to attend. We lack access to traditional foods and subsistence activities. We are at risk of losing our language and our culture. We cannot practice our subsistence way of life, gathering, fishing and hunting by the seasons, and we cannot teach the next generation of our traditional subsistence way of life in an urban city. We cannot teach our children our traditional knowledge that is passed from generation to generation, such as how to listen to and understand our lands and nature. We are losing our close ties and relationship to the lands. We are a genuine people with traditional values and culture that we pass from generation to generation, our heritage, our culture, our very way of life, is under threat.

Field Hearing I at 01:18:36-20:30. Indeed, both tribes must now migrate to as-yet-to-be-identified locations. "Our lands have been forever changed," explained Paul. *Id.* at 01:13:00. "We are no longer safe there. We do not want to go back there, even temporarily, we want to relocate, and as a sovereign tribal nation, we have the right to determine our future." *Id.*

The costs of Typhoon Halong in terms of infrastructure damage alone are estimated to be at least \$125 million. Corinne Smith, *Officials Estimate \$125 Million in Western Alaska Storm Damage So Far, and a Long Road to Recovery*, ALASKA BEACON (Feb. 5,

2026), bit.ly/4yIRuKr. As of February, FEMA had distributed roughly \$33.5 million in individual and household assistance, \$30.3 million in other needs assistance, and \$3.19 million for housing assistance. *Id.*

If lessons can be drawn from the experience of the only Alaska tribe that has been able to move to higher ground, the Native Village of Newtok, the costs could be in the order of \$150 million for each tribe. Nat'l Oceanic & Atmospheric Admin., *U.S. Climate Resilience Toolkit, Case Study: Relocating the Village of Newtok, Alaska Due to Coastal Erosion*, bit.ly/3Rf02ba (last visited July 29, 2026). It could also be painstakingly slow with unsatisfactory results: Newtok started its efforts in the 1970's and was not able to begin moving homes until 2019, and the new homes in the new location are substandard. *See* 172 Cong. Rec. S2393 (2026) (statement of Sen. Murkowski). Moreover, as described in more detail in section II, there is no adequate source of federal funds for such migrations, nor any federal agency available to coordinate these monumental undertakings. *See* ANTHC 2024 at 55 ("There is no clear direction from federal leadership to agencies to assist Alaska Native communities in responding to environmental threats, no resources for agencies to do so, nor a framework to implement a governmental response."). As Senator Murkowski explained, "this is something that . . . our systems are not set up to do." Field Hearing I at 01:23:30.

Everyone observing this crisis with knowledge of the established data knows, as Senator Murkowski put it, "Typhoon Halong was not just a one off." *Id.* at 01:40:30. Proactive preparedness is essential. Indeed, "spending \$1 on hazard mitigation saves \$6 in

recovery costs.” ANTHC 2024 at 3. But “there’s a [\$103] million annual funding gap over the next decade, crucial for averting costly damage responses.” *Id.*⁷

2. Flooding, Erosion, And Melting Permafrost

Although not as immediate, but ultimately no less destructive than storms like Typhoons Merbok and Halong, “144 Alaska Native communities face significant infrastructure damage from erosion, flooding, permafrost degradation, or a perilous combination of all three.” ANTHC 2024 at 1. Roughly \$5.5 billion is needed to proactively mitigate damage to existing infrastructures in these Alaska Native villages over the next 50 years. ANTHC 2024 at 3, 7. Such measures “could save around [\$27.4] billion in response and recovery costs.” *Id.* at 3.

For the most threatened Alaska tribes, a daunting dilemma overshadows all of this: is it worth the effort and expense to try to protect critical infrastructure or does it make more sense to migrate? Two neighboring tribes in the Yukon-Kuskokwim Delta—*amicus curiae*, the Native Village of Akiak, and the Native Village of Napakiak—exemplify this dilemma.

Erosion of Akiak’s homelands on the banks of the Kuskokwim River is marked by a traumatic event in 2010, when the eroding bank unearthed human remains and coffins from a cemetery that had been in

⁷ The figures from ANTHC 2024 and BIA 2020 set forth in herein have been adjusted for inflation using the Bureau of Labor’s latest information from the Consumer Price Index. See generally U.S. Bureau of Labor Statistics, *Consumer Price Index*, bit.ly/4gW0qFP (last visited July 29, 2026).

use since the 1880's. BIA 2020 app. C at 3. Community members had to dig up and relocate more than 200 graves to prevent their loved ones' remains from being swept into the river. *Id.* Then, in 2019, Akiak experienced an extreme erosion event, now known in Yup'ik as *usteq*, when roughly 75-100 feet of land collapsed from the riverbank. ANTHC 2024 at 124.⁸ That year, the tribe had to move six houses away from the river. Greg Kim, *Akiak Receives Funding To Move 6 Homes Closest To Eroding Riverbank*, KYUK (Sept. 3, 2019), bit.ly/4pG9W24. One year later, another erosion event placed several homes in immediate danger of collapsing into the river. ANTHC 2024 at 116. Akiak has since decided to pursue "managed retreat," meaning strategic relocation of some of the community and related infrastructure at a projected cost of roughly \$30 million. *See id.*

In contrast, Napakiak has had to abandon its decades-long managed retreat efforts because the acceleration of erosion beyond previous projections rendered those efforts futile. ANTHC 2024 at 29. By 2024, the Tribe's sole well-watering point ended up just forty-nine feet from the eroding riverbank and the

⁸ As BIA 2020 explains:

Usteq, from the Yup'ik word meaning "surface caves in," is a catastrophic form of permafrost thaw collapse that occurs when frozen ground disintegrates under the compounding influences of thawing, permafrost, flooding, and erosion. . . . In combination with flooding (including storm surge) and erosion, permafrost thaw causes the ground to collapse at rapid rates—up to 100 feet per year—resulting in damage that occurs much faster than through individual processes alone Usteq is expected to increase as a result of climate change.

BIA 2020 app. A at 14.

school just sixty-four feet. See Sage Smiley, *FEMA Awards \$2.4M to Napakiak as It Retreats from Kuskokwim Erosion*, ALASKA PUB. MEDIA (Mar. 11, 2024), bit.ly/4pLBjb6; Greg Kim, *Napakiak is Number One Priority in State's List of School Construction Projects*, KYUK (Jan. 4, 2024), bit.ly/4pJusyI. “Soon, most of the current site of Napakiak”—land the Tribe had seasonally occupied, prior to forced settlement, since 1000 AD—“will not exist.” ANTHC 2024 at 29. It will cost the Tribe on the order of \$200 million to move its community to the site it has chosen, two miles inland from the river. Smiley, *FEMA Awards \$2.4M, supra*.⁹

* * *

In 2020, the BIA estimated that between \$99 million and \$125 million per year would be “needed to meet the unmet infrastructure needs of the Alaska Native villages that are in the process of relocating to higher ground” over the course of the next decade: or between \$994 million and \$1.3 billion total. BIA 2020 app. A at 17. This assumed, *optimistically*, “that projects can be implemented as pre-disaster mitigation projects prior to disaster events requiring emergency response.” *Id.* At the time of the BIA’s 2020 report, moreover, the devastating impacts of Typhoon Merbok (in 2022) and Typhoon Halong (in 2025) had not occurred. So it is fair to say that BIA’s estimate, as significant as it is, undershoots the mark substantially.

⁹ In 2022, Napakiak secured a \$25 million grant from the Bureau of Indian Affairs to assist in its relocation planning efforts. Press Release, U.S. Dep’t of Interior, *Biden-Harris Administration Makes \$135 Million Commitment to Support Relocation of Tribal Communities Affected by Climate Change* (Nov. 30, 2022), bit.ly/4g2x3jd.

For those Alaska tribes that are not planning to move, the BIA estimates that approximately \$4.5 billion will be needed over the next fifty years “to protect infrastructure in Alaska Native villages from damage due to flooding, erosion, or permafrost degradation.” BIA 2020 app. A at 18. When \$1 billion in costs required by so-called “hub” communities—in Bethel (the Native Village of Bethel, governed by the Orutsaramiut Traditional Council); Dillingham (the Curyung Tribal Council, and the Native Village of Ekuk); Kotzebue (the Native Village of Kotzebue), Nome (Nome Eskimo Community and King Island Native Community), Unalaska (Qawalangin Tribe of Unalaska); and Utquiagvik (Native Village of Barrow Inupiat Traditional Government)—is included, that amount comes to \$5.5 billion. *See* ANTHC 2024 at 60.¹⁰

B. The Northwest

The BIA’s Northwest Region, encompassing Washington, Oregon, and Idaho, is home to forty-four federally recognized Indian Tribes. BIA 2020 app. B at 33. Climate change in this region is transforming Indian country, largely as a result of the same factors affecting Alaska’s tribes: rising sea levels, flooding and coastal and riverbank erosion. *Id.* at 35. But declining snowpack, resulting in increasing flood risks, and wildfires, which are increasing in frequency and intensity, are also negatively affecting these tribes. *Id.* at 36.

¹⁰ These regional hub communities serve as commercial and industrial centers, and some have large non-native populations. *See* BIA 2020 app. A at 23. But as listed in the text, they are also homes to federally recognized Indian tribes.

Amici, the Shoalwater Bay Indian Tribe and the Makah Indian Tribe, are exemplary.

The Shoalwater Bay Indian Tribe is adjacent to Willapa Bay in Tokeland, Washington. *See* Shoalwater Bay Indian Tribe, *History*, bit.ly/3TpIUA7 (last visited July 29, 2026). The Tribe’s 355-acre reservation, which spans from the Bay into the watershed of the Chehalis River (and is but a sliver of its original territory), was set aside for the Tribe by Executive Order in 1866. *See id.* Occupying these lands for over 2,000 years, the Tribe has subsisted on hunting, and fishing and shellfish harvesting from the Bay and related waterways. *Id.*

The reservation is barely above sea level, mostly coastal marsh, which makes it especially vulnerable to erosion. Christopher Flavelle, *Here’s Where the U.S. Is Testing a New Response to Rising Seas: Native American Tribes Are Competing for the First Federal Grants Designed to Help Move Communities Away from High Water and Other Dangers Posed by Climate Change*, N.Y. TIMES (Nov. 10, 2022), bit.ly/4x6C5lx. Indeed, the Tribe loses around 100 feet of coastal land per year to sea water inundation. *See id.* Efforts to “protect-in-place” have proven futile. In 2013, the U.S. Army Corps of Engineers spent \$8.4 million to construct a dune-like barrier to protect the reservation, but it was soon demolished by three storms. *See id.* The Corps rebuilt the barrier in 2018, but storms destroyed it again. *See id.* By 2022, with a \$40 million budget, the Corps commenced working on a rampart-like structure, “25 feet high, 200 feet wide at the top and 4,000 feet long, protected by a 75-foot-wide stone revetment to hold the sand in place.” *Id.* It will be swallowed by the rising sea in ten years. *Id.*

Thus, the Tribe has no choice but to move to higher ground. *See id.* The anticipated cost is in the order of \$400 million. Env'tl Sys. Research Inst., *Case Study: Shoalwater Bay Tribal Nation Uses GIS to Map and Communicate Relocation Strategy for Funding*, bit.ly/4pHOTfz (last visited July 29, 2026). In 2023, after applying four times for the same federal grant, the Tribe secured \$24.98 million to build a four-mile road to its nearby new location, 250 feet above sea level. Drew Mikkelsen, *Shoalwater Bay Indian Tribe Receives \$25 Million Grant to Move Above Sea Level: The Tribe Chair Says a \$25 Million Grant Is Seen as a Step Towards Survival*, K5 LOCAL NEWS (Aug. 2, 2023), bit.ly/4pKJpkg. But there are no other appreciable federal funds to support the Tribe's migration to higher ground, nor any single federal agency to turn to for guidance. *See* Charlene Nelson and Geoffrey D. Strommer, *Seeking Higher Ground—How Congress Can Help the Shoalwater Bay Tribe and Other Indian Tribes Being Pushed to Their Limits Due to Climate Change*, ABA HUMAN RIGHTS MAGAZINE (Jan. 22, 2024), bit.ly/4wy2RU6.

The aboriginal territory of the Makah Indian Tribe encompasses the coastal areas bounded by the Pacific Ocean to the west and the Strait of Juan de Fuca to the north at the northwest tip of what is now Washington State and well inland. *See* Makah Tribe, *About Our History*, bit.ly/4yJhOnJ (last visited July 29, 2026). In 1855, the Tribe ceded title to 300,000 acres of these lands to the United States in the Treaty of Neah Bay, and was thereafter confined to a 27,000-acre reservation. *See* Ann M. Renker, *The Makah Tribe: People of the Sea and the Forest*, in UNIV. OF WASH. LIBRARIES DIGITAL COLLECTIONS: AM. INDIANS OF THE PAC. NW. COLLECTION, bit.ly/4fqLuON (last visited July 29, 2026).

Like the Shoalwater Bay Indian Tribe, the Makah Indian Tribe faces increasing erosion from encroaching seas due to climate change. “[A]s the storms worsen, the Tribe is beginning to move.” Flavelle, *supra*. It started with the construction of a new apartment complex and preschool on a hill above the Tribe’s central village of Neah Bay. *See id.* The Tribe must next move its medical clinic to higher ground at an estimated cost of \$20 million. *See id.* Climate impacts—including, increasingly intense winter storms that flood and erode the Tribe’s low-lying area between the village and the ocean, where critical infrastructure is located; related mudslides that now regularly shut down the only paved road into and out of the remote reservation; and new, extended summer droughts, which tax the Tribe’s water reserves—all combine to place the Makah Indian Tribe in significant jeopardy. *See* U.S. DEPT OF TRANSP., FHWA-HEP-23-005, IMPLEMENTING REGIONAL RESILIENCE PROJECTS: MAKAH TRIBE (2023), bit.ly/4pOcyeq.¹¹

* * *

¹¹ Two coastal Washington tribes have been fortunate enough to secure some help from Congress for their migration efforts. *See* Hoh Indian Tribe Safe Homelands Act, Pub. L. No. 111-323, 124 Stat. 3532 (2010) (transferring federal land to the Tribe for migration); Quileute Indian Tribe Tsunami and Flood Protection Act, Pub. L. No. 112-97, 126 Stat. 257 (2012) (same). The Quinault Indian Nation was able to obtain \$25 million to plan the relocation of its village, including 175 homes, a school, senior center, police and fire services, and its tribal court, to 200 acres of higher ground half a mile from the existing village center. *See* Quinault Indian Nation, *Taholah Village Relocation, Project Background*, bit.ly/4yPGuek (last visited July 29, 2026); Alex Didion & Drew Mikkelsen, *Quinault Indian Nation To Receive \$25 Million for Climate Change Relocation*, K5 LOCAL NEWS (Nov. 30, 2022), bit.ly/4bjUMK5.

In 2020 the BIA estimated the planning and implementation costs for tribes in the Northwest region to deal with the climate crisis as follows:

Needs	Estimated Costs
Planning	\$ 598,870,942
Implementation	\$ 699,740,232
TOTAL	\$ 1,298,611,174

BIA 2020 app. B at 33-34. Given the ever-increasing severity of climate impacts, which are outstripping all projections, these numbers almost certainly understate the costs that will be incurred.

C. The Pacific, Navajo, Western and Southwest

The BIA's Pacific, Navajo, Western, and Southwest Regions—covering California, Arizona, New Mexico, Montana, and Wyoming—are home to 171 federally recognized Indian Tribes. *Id.* app. B at 38, 41. All face the familiar threats from climate disruption. The coastal tribes face increasingly severe flooding, shoreline erosion, storm surge, and sea-level rise. Tribes within the interior contend with landslides triggered by extreme precipitation and increasingly destructive wildfires. *See id.* app. B at 38-39, 42-45. Those in the desert southwest face a historic drought, and increasing aridity threatens water supplies, food security, ecosystems, and culturally important plants and animals. *Id.* app. B at 41-45. The drought also leads to increased wildfires which, in turn, exacerbate the consequences of floods from routine seasonal storms and less routine, but increasingly frequent,

“atmospheric rivers”; wildfires leave the ground charred and less able to absorb water, priming conditions for flash floods and mudslides. *Id.* app. B at 43-45.

Drought conditions and high winds in the southwest are resulting in the most active fire seasons on record. In 2002, the Rodeo-Chediski fire in Arizona set the first new record, burning 467,000 acres. M.H. Redsteer et al., *Unique Challenges Facing Southwestern Tribes*, in ASSESSMENT OF CLIMATE CHANGE IN THE SOUTHWEST UNITED STATES: A REPORT PREPARED FOR THE NATIONAL CLIMATE ASSESSMENT 391 (G. Garin et al. eds., 2013). Approximately twenty-five percent of the area burned was timber and grazing land belonging to the White Mountain Apache Tribe. Record-breaking wildfires soon followed to affect Indian tribes in California. *Id.* In 2007, the Poomacha fire, one of nine simultaneous fires burning across San Diego County, caused severe damage to homes and businesses within the reservations of the La Jolla Band of Luiseño Indians and the Rincon Band of Luiseño Indians. *Id.* It “burned 94% of the La Jolla reservation,” destroying thick forests of live oak that once shaded homes and provided acorns, a historic staple, for the tribe’s citizens. *Id.* Forced to close their reservations because of the fire, both tribes suffered food shortages. *Id.*

Amicus curiae the Blackfeet Tribe has experienced measurable and accelerating climate impacts across its 1,525,712-acre reservation in northwestern Montana, bordering Glacier National Park, its original aboriginal domain, known as *mistakiiks* or “the ceded strip.” Regional temperature data show an average increase of 0.51°F per decade since 1950 (over 6°F increase in total) for the North Central Climate Division (where the Nation is located). See BLACKFEET NATION AGRIC. RES. MGMT. PLANNING TEAM, BLACKFEET AGRICULTURAL

RESOURCE MANAGEMENT PLAN (2022), bit.ly/4bhd7aB. This trend is corroborated by federal glacier monitoring showing that high-elevation areas immediately adjacent to the reservation are warming faster than the global average: the number of glaciers in the Park has fallen from roughly 150 in 1910 to 25 today, and this parallels a loss of seventy-three percent of ice area between 1850 and 1979. *See* U.S. Geological Survey, *Status of Glaciers in Glacier National Park*, bit.ly/44Ucmkc (Apr. 6, 2016); Nat'l Park Serv., *Causes & Consequences of Climate Change at Glacier National Park*, bit.ly/4pUAigX (last visited July 29, 2026). These shifts compound existing environmental stressors on the reservation, including agricultural erosion, stream dewatering, and habitat alteration. *See* BLACKFEET INDIAN TRIBE, PRIORITY CLIMATE ACTION PLAN 2 (2024), bit.ly/3Thh0X0. The Nation's agriculture, fisheries, wildlife, forestry, water, human health, and cultural and ceremonial practices tied to traditional lifeways are in substantial jeopardy because of climate change. *See generally* BLACKFEET NATION, BLACKFEET CLIMATE CHANGE ADAPTATION PLAN (2018), bit.ly/4pHtVgN.

* * *

The BIA estimates the planning and implementation costs for tribes in the Pacific, Navajo, Western, and Southwest Regions to meet the challenges of the climate crisis as follows:

Need	Cost
Planning (Pacific)	\$ 179,726,025
Implementation (Pacific)	\$ 10,876,791
Planning (Navajo, Western, and Southwest)	\$ 104,365,401
Implementation (Navajo, Western, and Southwest)	\$ 1,098,944,365
TOTAL	\$ 1,393,912,582

BIA 2020 app. B at 40-42. Again, given the accelerating ferocity of climate impacts, these numbers likely understate the real costs these tribes face.

* * *

The foregoing does not include no-less-challenging, chronic climate disruptions affecting other tribes in the BIA Regions of the Rocky Mountains (nine tribes), Great Plains (sixteen tribes), Southern Plains (twenty-five tribes), and Eastern Oklahoma (twenty tribes). *See id.* app. B at 45-57 (describing climate change challenges and expected costs). Nor does it include the Midwest Region (thirty-six tribes, including tribes bordering the Great Lakes) or the Eastern Region (thirty-five tribes from Maine to Florida, west to Louisiana and north to Illinois). *See id.* app. B at 58-69 (describing climate change challenges and expected costs).

Amicus curiae the Passamaquoddy Tribe (Sipayik), which is located on a low-lying peninsula in the Atlantic Ocean on the eastern coast of Maine,

demonstrates the significant challenges from climate change faced by tribes in the Eastern Region. FEMA data show that large portions of the reservation are likely to be inundated with regular flood waters within 100 years. See Fed. Emergency Mgmt. Agency, *FEMA Flood Map Service Center: Search By Address* (showing area 23029C1208E), bit.ly/4x5P32N (last visited July 29, 2026). This poses imminent risks to core community infrastructures, including the tribal-operated wastewater treatment plant, an elder residential center, and numerous homes. Engineering analyses show that portions of the existing wastewater treatment plant sit two to three feet below FEMA's currently projected 100-year flood elevation, and other models place portions of the facility up to six feet underwater. See Edward French, *Sipayik Eyes Moving Wastewater Treatment Plant*, QUODDY TIDES, (May 23, 2025), bit.ly/4hD9Ru0. Hence, the Tribe has no choice but to move the plant to higher ground at an estimated cost, *at present*, of between \$44 million and \$55 million. See *id.*

Federal funding for the Tribe to begin planning for such infrastructure relocation (and to construct protective walls in the meantime)—let alone to address threats to its elderly complex and other vulnerable residences—is meager: a mere \$10 million. See, e.g., Press Release, Sen. Angus King, *Maine Congressional Delegation Announcement Regarding \$5 Million Relocation Planning Grant* (Dec. 2, 2022), bit.ly/4pIBRi5. Funding for actual migration is nowhere in sight.

* * *

The foregoing is intended to provide the Court with just a partial picture of the large burdens that Indian tribes face in adapting to the climate crises caused by

the Petitioners' tortious conduct. As noted, the picture is limited in significant respects: by not including (other than the above account of the Passamaquoddy Tribe's situation) descriptions of the climate challenges that tribes in the Rocky Mountain, Great Plains, Southern Plains, Eastern Oklahoma, Midwest, and Eastern Regions (together encompassing over 100 tribes) are confronting and by relying upon limited (and conservative) currently available data. But even just for the regions canvassed above, the undoubtedly low estimate of needed funds to deal with severe climate threats exceeds \$8 billion. And, of course, monetary estimates capture only a small portion of the human and environmental toll being exacted by those threats.

II. Federal Funding To Meet The Needs Of Indian Tribes To Adapt To The Climate Crisis Is Woefully Inadequate And The Process To Secure Any Such Funds Exceptionally Difficult.

The only federal agency that has assisted tribes in addressing the impacts of climate change in any proactive way (as opposed to after-the-fact disaster relief or sporadic projects like the Corps constructing or fixing storm barriers) is the BIA's Branch of Tribal Community Resilience (TCR), established in 2011 to provide technical and financial assistance to federally-recognized tribes across the twelve BIA Regions. *See* Bureau of Indian Affairs, *Branch of Tribal Community Resilience*, bit.ly/4g0lnty (last visited July 29, 2026). The total amount distributed to all tribes nationwide as of the last data available for Fiscal Year 2024 is \$368.5 million. *See* Bureau of Indian Affairs, Div. of Resource Integration Servs., *Dataset: Tribal Community Resilience Annual Awards*, bit.ly/3RD73m0 (updated May 28, 2026). According to TCR metrics, no grants

were awarded in 2012 or 2025, and no new solicitations have been issued beyond the 2024 cycle. *See generally id.*

For the regions examined above with respect to funding needs totaling \$8 billion, the TCR program awards totaled \$288.1 million, or a mere 0.04%, breaking down as follows:

- **Alaska Region:** \$133.3 million
- **Northwest Region:** \$82.4 million
- **Pacific, Navajo, Western, and Southwest Regions:** \$72.4 million

Id. While these figures do not account for disaster relief funds distributed by FEMA or other state or federal agencies for sporadic projects, they reveal a profound lack of any serious federal support for proactively addressing climate disruptions across Indian country.

Indeed, the total amount provided to tribes nationwide (\$368.5 million) would just cover the current projected costs for the Native Villages of Kipnuk and Kwigillingok to migrate in the wake of Typhoon Halong. And it would not cover the roughly \$400 million costs that the Shoalwater Bay Indian Tribe faces to move its community to higher ground.

For the BIA regions where estimated needs are set out above, the percentages of needs covered by the TCR program are as follows: Alaska (2%: \$5.5 billion needed, \$133.3 million provided), Northwest (0.06%: \$1.3 billion needed, \$82.4 million provided), Pacific, Navajo, Western, Southwest (0.05%: \$1.4 billion needed, \$72.4 million provided). Needless to say, these funding gaps are staggering.

And even beginning the process of accessing *any* federal funds to proactively address needs is daunting. To start with, the federal bureaucracy presents its own barrier:

The federal government's system for providing resources and services to address climate change and environmental threats remains inequitable and inefficient. Both legislation and program design create persistent barriers for disadvantaged communities and perpetuate historical underinvestment. . . . Lack of funding, technical assistance, local capacity, community-specific hazard data collection, and risk assessments all hinder mitigating environmental threats. [A]d-hoc coordination and inefficiency in implementing projects with multiple funding sources are also primary barriers.

ANTHC 2024 at 7 (cleaned up). For any given tribe that must migrate, the technical challenges to navigate this woefully inadequate system add another layer of difficulty:

It is difficult to understate the enormous complexities tribes face to relocate, and the lengthy processes and timelines involved. Acquiring funds, assessing real risk, developing an official plan for the community, implementing coordination at a statewide or regional level, all while under the pressure to keep the community's economy and resolve afloat while [dealing the ongoing disruptions from the climate crisis].

BIA 2020 app. A at 27. Thus, as Senator Murkowski stated during the recent hearing of the Senate

Committee on Indian Affairs on the devastation caused by Typhoon Halong, while the “federal government has a trust responsibility to [these] tribes,” it “hasn’t figured out how to address the challenges.” Field Hearing I, at 00:10:00-10:56. The system “just doesn’t work.” Field Hearing II, at 00:29:00-29:30. Moreover, competition for the meagre federal grants available is tangled in intractable bureaucratic red tape, with the time consumed to meet reporting requirements dwarfing that for “actually doing the work.” *Id.* at 01:26:30 (statement of Jocelyn Fenton, Director, Denali Comm’n). The process ends up rewarding “the best grant writers and not the communities that have the most risk.” *Id.*

Access to state courts for remedies under the well-established common law of torts is, therefore, critical for Indian tribes facing these challenges. Indeed, it is the means for their autonomy and self-determination. It is also the time-tested purpose of the law: to allocate the economic costs of tortious conduct upon the tortfeasor, freeing those harmed through no fault of their own from such burdens.

III. Affirmance Will Not Interfere With Tribal Sovereignty.

Amicus curiae the Coalition of Large Tribes (“COLT”) asserts that the Colorado Supreme Court’s decision is barred by principles of federal Indian law protecting tribal sovereignty. *See generally* COLT Br.¹²

¹² Serious questions surround the submission of the COLT Brief. For example, while the Blackfeet Tribe is a member of COLT and while it is specifically named in the COLT Brief’s Statement of Interest, it does not subscribe to the arguments made in that brief and expressly disavows them here.

There is no merit to this argument.¹³ On the contrary, reversal risks *undermining* the sovereign prerogative of Indian tribes, long endorsed by this Court, to look to state common law tort remedies to protect their citizens and territories—here, to abate existential threats to their communities caused by Petitioners’ tortious acts.

A. COLT, Like Petitioners, Misconstrues Respondents’ Deception-Based Claims as Involving State Regulation of Fossil Fuel Production.

This case, like others brought by state, local, and tribal governments across the country, raises state-law claims seeking remedies for harms caused by Petitioners’ sophisticated campaign to mislead consumers and the public about their products’ known dangers.¹⁴ By pushing consumption of their fossil fuel products, Petitioners’ misconduct has exacerbated the very climate-change-related injuries their marketing disavowed and minimized. Respondents simply seek to hold Petitioners accountable so that they do not alone bear the costs of abating and adapting to climate harms caused, in significant part, by Petitioners’ violations of basic state-law obligations: to market products truthfully and warn of known dangers.

COLT, like Petitioners, blanketly miscasts the Respondents’ deception claims as involving state

¹³ As of this writing on August 3, the COLT Brief that was filed on May 21, 2026 is no longer available on the docket; the docket notation simply states “To be corrected – July 24, 2026.” But no replacement brief has been filed, leaving *amici* here with no choice but address the original brief.

¹⁴ *Amici* focus primarily on the Respondents’ deception-based claims, the only ones brought by any of the *amici* Tribes.

control over “developing . . . fossil-fuel resources.” COLT Br. 4. *See also id.* at 25 (“State attempts to regulate energy companies’ contributions to global emissions are void because they interfere with federal Indian policy and violate inherent tribal sovereignty.”); *id.* at 30 (accusing Respondents of “attempt[ing] an end-run” around tribal sovereign immunity by regulating tribes “for developing the energy resources of [their] sovereign territor[ies]”). Nothing could be further from the truth. The Respondents’ deception claims leave Petitioners free to “sell as much fossil fuels as they wish without fear of incurring further liability” so long as they provide warnings and refrain from deceptive marketing. Respondents’ Br. 33 (quoting *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1186 (Haw. 2023)).

B. COLT Misapplies This Court’s Governing Principles of Federal Indian Law.

COLT attempts to marshal this Court’s precedents that limit state authority over Indian tribes and their territories. *See* COLT Br. 16-25. But that body of law has no application here.

COLT first seeks to leverage a line of this Court’s cases prohibiting assertions of state “power to regulate the affairs of Indians on a reservation.” *See* COLT Br. 18 (quoting *Williams v. Lee*, 358 U.S. 217, 220 (1959)). Under this so-called “infringement” barrier, state power over Indians tribes or their lands is barred if it would “infringe[] on the right of reservation Indians to make their own laws and be ruled by them.” *Williams*, 358 U.S. at 220, 223. *See also California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (state’s attempt to regulate an Indian tribe’s generation of governmental revenue through on-reservation gaming would infringe upon the tribe’s sovereign authority).

The Colorado Supreme Court's decision that the Respondent's deception claims are not preempted does no such thing.¹⁵

COLT next relies upon the Indian preemption doctrine. See COLT Br. 18-25. But the cases COLT cites involve affirmative assertions of state regulatory authority over the activities of non-tribal members or businesses within a tribe's territorial jurisdiction, thereby threatening tribal authority and federal laws and policies undergirding it. See *Montana v. Crow Tribe of Indians*, 484 U.S. 997 (1988) (summarily affirming *Crow Tribe of Indians v. Montana*, 819 F.2d 895 (9th Cir. 1987) (state taxes on non-tribal corporation's coal mining activities within Crow reservation preempted by federal regulatory scheme)); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983) (state's attempt to regulate hunting and fishing by non-tribal members within tribe's reservation concurrently with the tribe preempted; it would threaten federal and tribal regulatory schemes and Congress's encouragement of tribal self-government); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1981) (state's attempt to tax non-tribal timber company operating on tribe's reservation preempted by federal regulatory scheme and would interfere with tribe's authority over reservation economic activity). Again, this does not remotely describe Respondents'

¹⁵ Further, nothing in the decision rejecting Petitioners' federal preemption defense for Respondents' production claims could possibly be construed as infringing on any Indian tribe's authority to regulate fossil fuel production in Indian country. Indeed, there is no suggestion, anywhere, that if the Respondents ultimately win their production claims, the ruling would affect oil and gas production on tribal lands.

deception claims, or the decision of the Colorado Supreme Court that such claims are not preempted.¹⁶

In short, COLT provides no legal basis for the proposition that the Colorado Supreme Court's decision would run afoul of tribal sovereignty.

* * *

A moment's reflection shows why COLT's position is baseless. It would mean that any time a state court could impose a tort remedy upon a corporation that has (or in the future may have) business relations with an Indian tribe to exploit the tribe's natural resources, some ill-defined, entirely speculative, implication of "tribal sovereignty" would bar the action *only* because of the mere possibility that the corporation might be held to account to some unknown plaintiff, *anywhere*, for the economic consequences of its wrongdoing. That is not the law, and no principle of federal Indian law established by this Court supports such an extraordinary proposition.

IV. Affirmance Will Further Tribal Sovereignty.

A. Indian Tribes' Access to State Courts To Obtain Common Law Tort Remedies for Climate Disruption Is a Sovereign Prerogative.

In *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering*, this Court made clear that federally recognized Indian tribes have a sovereign

¹⁶ As with the infringement barrier, nothing in the decision under review rejecting Petitioners' federal preemption defense (nor anything flowing from it) interferes with any tribal or federal interests in regulating fossil fuel production on tribal lands. Nor would a ruling in favor of Respondents on the merits of their production claims.

prerogative to proceed in the state courts to attain state law tort remedies against non-Indian entities for damages arising within their territories. 467 U.S. 138, 148-49 (1984) (“tribal self-government” is furthered when a tribe “enter[s] [state] courts . . . to seek relief against a non-Indian concerning a claim arising in Indian country”). *See also Outsource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 333 P.3d 380, 383-384 (Wash. 2014) (en banc) (applying *Wold Eng’g* to hold that honoring Indian tribe’s consent to be sued in state court respects the tribe’s “right to self-rule”). *See generally* RESTATEMENT OF THE LAW OF AMERICAN INDIANS § 55 cmt. e (2022) (“The decision [of an Indian tribe] to proceed in the state court has the imprimatur of the tribe and, therefore, the action is not barred by any infringement upon tribal self-governance otherwise protected by federal common law.”).

Thus, Indian tribes (just like states and local governments) regularly access state courts to obtain appropriate state law remedies when injured by the wrongful acts of tortfeasors, including claims similar to those brought the Respondents. *See, e.g., Wold Eng’g*, 467 U.S. at 148 n.7 (citing cases); *Hopi Tribe v. Ariz. Snowbowl Resort Ltd. P’ship*, 430 P.3d 362, 364 (Ariz. 2018) (suit for public nuisance affecting tribal land); *Sauk-Suiattle Indian Tribe v. City of Seattle*, 525 P.3d 238, 743 (Wash. App. 2023) (suit for public and private nuisance for interference “with the [t]ribe’s use and enjoyment of its property right to fish on the Skagit River”); *N. Cheyenne Tribe v. Roman Catholic Church*, 2013 MT 24, ¶ 18, 296 P.3d 450 (2013) (suit for tort claims); *Rosebud Sioux Tribe v. Strain*, 432 N.W.2d 259, 260-61 (S.D. 1988) (legal malpractice related to project on tribal land); *Havasupai Tribe v. Ariz. Bd. of Regents*, 204 P.3d 1063, 1077 (Ariz. Ct. App. 2008) (suit for violation of the tribe’s privacy rights and “dignitary

torts”); *Navajo Nation v. MacDonald*, 885 P.2d 1104, 1106, 1109 (Ariz. Ct. App. 1994) (tortious interference with contract); *Seminole Tribe v. Times Publ’g Co.*, 780 So. 2d 310, 314 (Fla. Dist. Ct. App. 2001) (suit for “tortious interference” with the business relationship “between the [t]ribe and its ‘past and present’ employees”); *Tunica Biloxi Tribe v. Blalock*, 23 So. 3d 1041, 1042 (La. Ct. App. 2009) (tort claims related to “[t]ribal land”); *Oneida Indian Nation v. Burr*, 522 N.Y.S.2d 742, 742 (App. Div. 1987) (suit for trespass and intentional injury to the tribe’s physical property).

Indeed, state courts are *essential* fora for tribes to secure state tort remedies; the federal courts lack subject matter jurisdiction to entertain these claims. *See* RESTATEMENT OF THE LAW OF AMERICAN INDIANS § 56(a) (explaining that Indian tribes are not citizens of any state for the purpose of establishing diversity jurisdiction); *Makah Indian Tribe v. Exxon Mobil Corp.*, No. 2:24-cv-157, 2025 U.S. Dist. LEXIS 56448, at *13-27 (W.D. Wash. Mar. 26, 2025) (holding that tribes’ tort claims for climate damages cannot establish federal question jurisdiction).

Faced with unprecedented threats to their communities from climate disruption, the exercise of this sovereign prerogative is critical for tribes (just as it is for states and local governments) to place the economic burden of the climate crisis—which they cannot afford—upon the responsible parties. The decision under review furthers the ability of tribes, as sovereign governments, to protect their lands and their citizens.

B. Affirmance Will Further Tribal Self-Determination and Autonomy Consistent with Federal Indian Policy and This Court’s Indian Law Jurisprudence.

The Constitution allocates to Congress “plenary authority” over Indian affairs, *United States v. Lara*, 541 U.S. 193, 200 (2004), and this Court has consistently recognized Congress’s policy of supporting tribal self-determination and independence. *See, e.g., Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 510 (1991) (given Congress’ promotion of “Indian self-government,” Court will not tamper with the established doctrine of tribal sovereign immunity from suit); *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 14-17 (1987) (given “the Federal government’s longstanding policy of encouraging tribal self-government,” Court will not construe diversity jurisdiction statute to undermine inherent adjudicatory authority of tribal courts); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 (1978) (Court will not construe Indian Civil Rights Act to provide for rights of action outside of tribal forums “unless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent”); *Bryan v. Itasca County*, 426 U.S. 373, 386, 388 & n.14 (1976) (Court will construe “the effect of legislation affecting reservation Indians in light of intervening legislative enactments” that further tribal self-government).

Faced with profound threats from climate disruption—including the absolute devastation of tribal land bases, watersheds and infrastructure—and the lack of resources to deal with those threats, access to the state courts in pursuit of long-recognized state law remedies promises the best hope for Indian tribes to deal with

the crisis in a manner that furthers their self-determination and independence. Affirmance of the Colorado Supreme Court will safeguard the opportunity for tribes to engage in this exercise of “tribal autonomy.” *Wold Eng’g*, 467 U.S. at 149. Reversal threatens to undermine it.

CONCLUSION

The Court should affirm the decision of the Colorado Supreme Court.

Respectfully submitted,

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APPENDIX

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APPENDIX: LIST OF *AMICI CURIAE*

Federally Recognized Indian Tribes

Akiachak Native Community

Akiak Native Community

Blackfeet Tribe

Confederated Tribes of the Umatilla Indian Reservation

Jamestown S’Klallam Tribe

Passamaquoddy Tribe (Sipayik)

Paskenta Band of Nomlaki Indians

Penobscot Nation

Organized Village of Kwethluk

Makah Indian Tribe

Native Village of Kwigillingok

Quileute Tribe

Shoalwater Bay Indian Tribe

Tribal Organizations

Affiliated Tribes of Northwest Indians

National Native American Law Students Association

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