Case Nos. 24-5280, 24-5285

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STATE OF ALASKA,
Plaintiff/Appellant,

v.

BRYAN NEWLAND *et al.*,
Defendants/Appellees,
and

CENTRAL COUNCIL OF TLINGIT & HAIDA INDIAN TRIBES OF ALASKA,
Intervenor-Defendant/Appellee/Cross-Appellant.

On Appeal from the U.S. District Court for the District of Alaska
Hon. Sharon L. Gleason, Chief Judge | Case No. 3:23-cv-00007-SLG

BRIEF OF *AMICI CURIAE* CRAIG TRIBAL ASSOCIATION AND ORGANIZED VILLAGE OF KAKE IN SUPPORT OF CENTRAL COUNCIL OF TLINGIT & HAIDA INDIAN TRIBES OF ALASKA

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), undersigned counsel certifies that *Amici Curiae* Craig Tribal Association and Organized Village of Kake are sovereign, federally recognized Tribal Nations, 91 Fed. Reg. 4,102, 4,105-06 (Jan. 30, 2026), and not non-governmental corporations.

/s/ Megan R. Condon
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

TREATIES AND STATUTES

RULES

EXECUTIVE MATERIALS

LEGISLATIVE MATERIALS

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*[1]

Amici Curiae Craig Tribal Association and Organized Village of Kake (together, "*Amici*") are federally recognized Tribal Nations, 91 Fed. Reg. 4,102, 4,105-06 (Jan. 30, 2026), with existing lands held in trust by the United States for their benefit (*i.e.*, "trust lands") within the State of Alaska.

In 1950, the United States acquired 15.9 acres of land in trust for *Amicus Curiae* Organized Village of Kake to support the Village's cannery. 1-TribeSER-33. The Organized Village of Kake continues to use this trust land to promote the health and welfare of its Tribal citizens. This land currently houses the Organized Village of Kake's Tribal court, which employs culturally relevant services based on Tlingit traditions to address Tribal citizens' public safety needs. 1-TribeSER-35-36.

[1] This brief is filed without leave of the Court because the Parties have consented to its filing. Fed. R. App. Pro. 29(a)(2). None of the Parties' counsel authored this brief in whole or in part, and no other person including Parties' counsel—other than *Amici*, their members, and their counsel—contributed money that was intended to fund the preparation of this brief. Fed. R. App. Pro. 29(a)(4)(E).

In 2017, the United States acquired 1.08 acres of land in trust for *Amicus Curiae* Craig Tribal Association. 82 Fed. Reg. 4,915 (Jan. 17, 2017). This parcel was taken into trust to enhance Craig Tribal Association's economic sovereignty and to generate revenues to provide governmental services, such as food security programs, scholarships, and medical travel. 1-TribeSER-30. The parcel also houses Tribal governmental offices and is used for cultural purposes, providing Tribal citizens with traditional services such as name giving and adoptions. 1-TribeSER-30.

Amici's existing trust lands places them in a unique position to understand the benefits of trust lands for Tribal Nations and the dire consequences that would result from the relief sought by Appellant State of Alaska ("the State"): namely, prohibiting the United States from even considering trust-land petitions submitted by Tribal Nations in Alaska and individual Alaska Natives. Accordingly, *Amici* have unique interests in ensuring the continued availability of the land-into-trust process for all Alaska Tribal Nations and individual Alaska Natives. *Amici* submit this brief in support of Appellee/Cross-Appellant

Central Council of Tlingit and Haida Indian Tribes of Alaska ("Central Council").

SUMMARY OF ARGUMENT

The Secretary of the Interior ("the Secretary") has had the authority to acquire lands in trust for Tribal Nations in Alaska since 1936, when Congress made Section 5 of the 1934 Indian Reorganization Act ("IRA"), 25 U.S.C. § 5108, applicable to Alaska through the Alaska Indian Reorganization Act ("Alaska IRA"). *Id.* § 5119. This authority remained unchanged by the Alaska Native Claims Settlement Act ("ANCSA"), which extinguished aboriginal title and claims. *See* 43 U.S.C. § 1603. Despite the State's arguments pointing to extratextual materials and historical anecdotes—both here and before the District Court—there is no evidence that Congress intended ANCSA to withdraw the Secretary's authority to place land into trust.

The District Court held correctly that because "ANCSA and Alaska IRA [Section 1] are capable of co-existence," the Secretary's authority to take land into trust in Alaska pursuant to Section 5 of the IRA remains intact. 1-ER-31. The land-into-trust authority granted to the Secretary in the Alaska IRA does not conflict with ANCSA or any other subsequent statute. Therefore, this Court should dismiss the State's implied repeal argument[2] and uphold the District Court's decision on this issue.

BACKGROUND

The statutory scheme and legislative history are straightforward: through a short, two-section act, Congress extended the land-into-trust provision of the IRA to Alaska. Despite no later statute explicitly revoking this authority, the United States Department of Interior ("Interior") subsequently questioned whether this authority continued to exist after the enactment of ANCSA. This led to Interior promulgating land-into-trust regulations that included the so-called "Alaska Exception," which stated the Secretary generally lacked the authority to acquire land in trust in Alaska. The history of this exception, its revocation, and the State's previous litigation to keep the exception in place are instructive in the present case.

[2] The State resists the categorization of its argument as one of "implied repeal" because it "recognizes that the Secretary can still take lands into trust for Metlakatla." Doc. 20.1 at 46. However, since there is nothing in the text of ANCSA or any other relevant statute that *expressly* limits the Secretary's trust-acquisition authority in Alaska to only the Metlakatla Indian Community, the State's argument is necessarily one of *implied* repeal.

I. The 1934 Indian Reorganization Act and the 1936 Alaska Indian Reorganization Act

The IRA "dramatically shifted the federal approach to Indian affairs." *Cohen's Handbook of Federal Indian Law* § 2.09[2], at 106 (Nell Jessup Newton & Kevin K. Washburn eds., 2024). In the decades prior to the IRA's 1934 enactment, federal Indian policy was defined by assimilation. "Perhaps the most significant federal Indian policies of the assimilation era" was allotment. *Id.* § 2.08[1][d], at 81. Allotment policies sought to break up Tribal landholdings and break apart Tribal communities. In less than fifty years, allotment reduced Tribal and Indian land ownership from 138 million to 48 million acres. *Id.* § 2.08[3][b], at 87. By the late 1920s, however, Congress sought to reform federal Indian policy. *See id.* § 2.09[1], at 103-05. A significant part of this reform was accomplished with the enactment of the IRA.

The IRA ended allotment policies and began "the process of rebuilding Native land ownership[.]" *Id.* § 2.09[2], at 106. The IRA also "addressed economic development" and "sought to further Native self-government." *Id.* § 2.09[2], at 107. While the IRA covers much more than Tribal and Indian lands, most relevant here is Section 5, which authorizes the Secretary "to acquire . . . any interest in lands . . . for the purpose of providing land for Indians." 25 U.S.C. § 5108.

Due to a drafting error, the IRA did not initially apply to Alaska. David S. Case & David A. Voluck, *Alaska Natives and American Laws* 98 (3d ed. 2012). Congress rectified its error in 1936 with the enactment of the Alaska IRA. Pub. L. No. 74-538, § 1, 49 Stat. 1250, 1250 (1936); *see* Case & Voluck, *supra* at 98. The Alaska IRA specified that several sections of the IRA—including Section 5—applied to "the Territory of Alaska." § 1, 49 Stat. at 1250.

Tribal Nations quickly took advantage of the extension of Section 5 to Alaska. By 1950, "over 80 villages" in Alaska had petitions pending with the Secretary "ask[ing] that reserves be established for them under the [IRA]." S. Rep. No. 92-405, at 93 (1971). The Secretary ultimately established six reservations in Alaska under the IRA, all of which were later disestablished by ANCSA. *See* Case & Voluck, *supra* at 106 n.142. Additionally, the Secretary took multiple properties throughout Southeast Alaska into trust during the 1940s and 1950s, none of which were extinguished by ANCSA. *See Akiachak Native Cmty. v. Salazar* ("*Akiachak*"), 935 F. Supp. 2d 195, 207 n.7 (D.D.C.

2013), *va'd as moot sub nom.*, *Akiachak Native Cmty. v. U.S. Dep't of Interior* ("*Akiachak II*"), 827 F.3d 100 (D.C. Cir. 2016); Solic. Op. M-36975, at 112 n.227 (Jan. 11, 1993) (3-ER-440). These properties included *Amicus Curiae* Organized Village of Kake's 15.9-acre trust parcel. 1-TribeSER-33. In 1978, seven years after ANCSA's enactment, Congress recognized the continued existence of the Organized Village of Kake's trust lands in legislation that authorized the Secretary, upon request from the Village, to convey 1.09 acres of the 15.9-acre trust parcel to the Village in fee simple so it could, in turn, convey it to a private corporation. *See* 1-TribeSER-33; Pub. L. No. 95-487, § 1, 92 Stat. 1635, 1635 (1978).

II. Alaska Statehood and Early Aboriginal Title Claims

Alaska became the 49th state on January 3, 1959. Section 4 of the Alaska Statehood Act required the state to "forever disclaim all right and title . . . to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts." Pub. L. No. 85-508, § 4, 72 Stat. 339, 339 (1958). Section 4 of the Statehood Act also "reserve[d] to the United States the 'absolute jurisdiction and control' of such property until Congress should dispose of it." Case & Voluck, *supra* at 166 (quoting § 4, 72 Stat. at 339). The Statehood Act allowed the State to select approximately 103 million acres from the "vacant, unappropriated, and unreserved" public lands in the new state. § 6(a), 72 Stat. at 340.

The State's land selections ran into direct conflict with Alaska Natives' and Alaska Tribal Nations' aboriginal land rights and claims, which had not been addressed when the United States acquired the Alaska Territory or with statehood. The United States acquired what is today Alaska from Russia in 1867 with the Treaty of Cession. *See* Treaty of March 30, 1867, 15 Stat. 539. The treaty was ambiguous about whether Alaska Native peoples held aboriginal title. *See* Case & Voluck, *supra* at 62-66. In *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955), the Supreme Court did not resolve whether the Treaty of Cession protected Alaska Native peoples' aboriginal rights.

Less than a year after statehood, however, the United States Court of Claims held that Alaska Natives' aboriginal title claims were "not extinguished by the Treaty of 1867[.]" *Tlingit & Haida Indians of Alaska v. United States*, 177 F. Supp. 452, 463-64 (Ct. Cl. 1959). The court held that the Tlingit and Haida Indians—the predecessor government of Appellee/Cross-Appellant Central Council—held aboriginal title to most of Southeast Alaska prior to the federal withdrawals in the region. *Id.* at 468. As the State made its land selections in the late 1960s, Alaska Tribal Nations and Alaska Natives became concerned that these selections would compromise their aboriginal title claims. Case & Voluck, *supra* at 167.

Accordingly, Secretary Stewart Udall imposed a freeze on all federal patents and federal approval of State land selections in Alaska until the issue of Alaska Native land claims could be resolved. *Id.* This conflict coincided with the discovery of the Prudhoe Bay oil field on Alaska's North Slope and the resulting need to construct an 800-mile pipeline to transport the newly discovered oil to port along the Gulf of Alaska. *Id.* After this discovery, discussions about Alaska Native land claims became much more urgent. *Id.*

III. The Alaska Native Claims Settlement Act

To resolve the conflict between Alaska Native land claims and the State's land selections, Congress enacted ANCSA in 1971. In relevant part, ANCSA extinguished "[a]ll aboriginal titles . . . and claims of aboriginal title in Alaska based on use and occupancy." 43 U.S.C.

§ 1603. In exchange, Congress authorized the payment of $962.5 million, *id.* § 1605, and the conveyance of 45.7 million acres of land to Alaska Natives. Case & Voluck, *supra* at 171.

In a unique structure never employed before or since, ANCSA established 13 regional and over 200 village corporations and made individual Alaska Natives shareholders in these corporations. ANCSA's $962.5-million-and-45.7-million-acre settlement was paid out to these corporations, not individual Alaska Natives nor Tribal Nations. *See* 43 U.S.C. §§ 1606, 1607. ANCSA corporations are not Tribal Nations; they are "state-chartered and state-regulated private business corporations[.]" *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 534 (1998). ANCSA did not terminate the sovereignty of Alaska Tribal Nations or government-to-government relationship that each has with the federal government. *See, e.g.*, *John v. Baker*, 982 P.2d 738, 750-53 (Alaska 1999) (recognizing Tribal Nations in Alaska as sovereign entities and noting that ANCSA did not divest the Tribal Nations of their self-governance authority).

IV. Early Trust Acquisition Requests Post-ANCSA and the Establishment of the Alaska Exception

A. Establishment of the Alaska Exception

The question of whether the Secretary has the authority to acquire land into trust for Tribal Nations in Alaska after the enactment of ANCSA first arose when the Native Village of Venetie Tribal Government requested that the Secretary acquire in trust the Tribe's former reservation. *See Akiachak*, 935 F. Supp. 2d at 200. In considering the request, Associate Solicitor for Indian Affairs Thomas Fredericks issued an opinion letter in 1978 concluding:

> [I]t would, in my opinion, be an abuse of the Secretary's discretion to attempt to use Section 5 of the IRA (which, along with §§ 1, 7, 8, 15, and 17 of the IRA still apply to Alaska pursuant to the unrepealed portion of the Act of May 1, 1936) to restore the former Venetie Reserve to trust status.

Mem. from Thomas W. Fredericks, Assoc. Solic., Indian Affs., Dep't of Interior 3 (Sept. 15, 1978) ("Fredericks Opinion") (3-ER-467).

The Fredericks Opinion came shortly after Interior proposed regulations to govern the land-into-trust process. *See* 43 Fed. Reg. 32,311 (July 19, 1978). The proposed regulations "made no special mention of Alaska." *Akiachak*, 935 F. Supp. 2d at 200. Following the notice-and-comment period for the proposed regulations and after the

Fredericks Opinion, Interior noted in the preamble of the final land-into-trust regulations that "[i]t was also pointed out that [ANCSA] does not contemplate the further acquisition of land in trust status, or the holding of land in such status, in the State of Alaska, with the exception of acquisitions for the Metlakatla Indian Community[.]" 45 Fed. Reg. 62,034, 62,034 (Sept. 18, 1980).

Interior responded by adding a sentence in the final regulations stating, "[t]hese regulations do not cover the acquisition of land in trust status in the State of Alaska, except acquisitions for the Metlakatla Indian Community of the Annette Island Reserve or it[s] members." *Id.* at 62,036. This prohibition on trust acquisitions for all Tribal Nations in Alaska and Alaska Natives, except the Metlakatla Indian Community, became known as the Alaska Exception. *See, e.g., Akiachak*, 935 F. Supp. 2d at 201.

B. Subsequent Rulemaking and Withdrawal of the 1978 Fredericks Opinion.

Three Alaska Tribal Nations later petitioned the Secretary in 1994 to revise the land-into-trust regulations to "'include within [their] scope all federally recognized Alaska Native tribes.'" *Id.* (citation omitted, alterations in original). The Secretary put this petition out for notice and comment in 1995 but did not propose revisions to the land-into-trust regulations until 1999. *Id.* In the 1999 proposed rule, the Secretary noted that the 1978 Fredericks Opinion served as the basis for the Alaska Exception. *See* 64 Fed. Reg. 17,574, 17,577-78 (Apr. 12, 1999). The Secretary explained that while the "opinion has not been withdrawn or overruled, we recognize that there is a credible legal argument that ANCSA did not supersede the Secretary's authority to take land into trust in Alaska under the IRA." *Id.* at 17,578.

In 2001, Interior proposed updated revisions to the land-into-trust regulations. *See* 66 Fed. Reg. 3,452 (Jan. 16, 2001). At the same time, Interior Solicitor John Leshy issued a memorandum withdrawing the Fredericks Opinion. *See Akiachak,* 935 F. Supp. 2d at 201. In his 2001 memorandum, Solicitor Leshy concluded "that there is substantial doubt about the validity of the conclusion" in the Fredericks Opinion that the Secretary lacked the authority to acquire land into trust in Alaska after the enactment of ANCSA. Mem. from John Leshy, Solic., Dep't of Interior 1 (Jan. 16, 2001) ("Leshy Memorandum") (2-ER-294). The Leshy Memorandum noted:

> The 1978 Opinion gave little weight to the fact that Congress had not repealed section 5 of the IRA, which is the generic

> authority by which the Secretary takes Indian land into trust, and which Congress expressly extended to Alaska in 1936. The failure of Congress to repeal that section, when it was repealing others affecting Indian status in Alaska, five years after Congress enacted [ANCSA] in 1971, raises a serious question as to whether the authority to take land in trust in Alaska still exists.

Id. (internal citation omitted). Despite withdrawing the Fredericks Opinion, Interior kept the Alaska Exception in place in the 2001 proposed rule stating:

> [T]he position of the Department has long been, as a matter of law and policy, that Alaska Native lands ought not to be taken in trust. Therefore, the Department has determined that the prohibition in the existing regulations on taking Alaska lands into trust (other than Metlakatla) ought to remain in place for a period of three years during which time the Department will consider the legal and policy issues involved in determining whether the Department ought to remove the prohibition on taking Alaska lands into trust.

66 Fed. Reg. at 3,454. This proposed rule was never finalized and was withdrawn later that year. *See* 66 Fed. Reg. 56,608 (Nov. 9, 2001).

V. *Akiachak Native Community v. Salazar*

Following Interior's decision not to pursue further rulemaking to revise the land-into-trust regulations, four Alaska Tribal Nations sued Interior over the Alaska Exception. *See Akiachak*, 935 F. Supp. 2d at 197. The Tribal Nations argued that the Alaska Exception violated "25

U.S.C. [§ 5123(g)], which nullifies regulations that discriminate among Indian tribes." *Id.* The United States District Court for the District of Columbia concluded that the Secretary retained the "statutory authority to take land into trust on behalf of all Alaska Natives, and that his decision to maintain the exclusion of most Natives from the land-into-trust regulation violates 25 U.S.C. [§ 5123(g)], which provides that contrary regulations 'shall have no force or effect.'" *Id.*

After examining the statutory and regulatory history, the D.C. District Court turned to the "relatively straightforward" question of "whether the Secretary still possesses the statutory authority to take land into trust for the benefit of Alaska Natives outside of Metlakatla." *Id.* at 203. The court noted that "unlike some other claims settlement acts, ANCSA did not explicitly revoke the Secretary's land-into-trust authority." *Id.*

The State, who intervened in the suit, argued that ANCSA "implicitly repealed the Secretary's statutory authority to take Alaska land into trust outside of Metlakatla." *Id.* at 204. The State made several unpersuasive arguments in support of its implied repeal theory. First, the State pointed to "ANCSA's extinguishment of '[a]ll claims against the United States, the State [of Alaska], and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land . . . or that are based on any statute or treaty of the United States relating to Native use and occupancy.'" *Id.* at 204-05 (quoting 43 U.S.C. § 1603(c)) (alterations in original). The court noted that "[t]he State d[id] not argue with any particular force that petitions to have land taken into trust are 'claims' within the usual meaning of that word," and concluded "because they are not, the Secretary's authority to consider them is unaffected by ANCSA § 4(c) [43 U.S.C. § 1603(c)]." *Id.* at 205-06.

The State also argued that ANCSA's declaration of purpose—"that 'the settlement should be accomplished . . . without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges'"—barred the Secretary from taking additional land in trust in Alaska. *Id.* at 206 (quoting 43 U.S.C. § 1601(b)) (alteration in original). The State asserted that taking land into trust after the enactment of ANCSA would create the "lengthy . . . trusteeship" that Congress sought to avoid. *Id.* (alteration in original).

Having noted that repeals by implication were disfavored, the district court stated that for ANCSA's statement of purpose to give rise to an implicit repeal it would have to be "in 'irreconcilable conflict' with the Secretary's land-into-trust authority[.]" *Id.* (quoting *Branch v. Smith*, 538 U.S. 254, 273 (2003)). An implicit repeal could also occur, the court said, if such repeal "was 'absolutely necessary in order that the words of the later statute shall have any meaning at all[.]'" *Id.* (quoting *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662 (2007)). The court determined that "the terms of the settlement are 'capable of co-existence' with the power to take Alaska land into trust[.]" *Id.* (quoting *Traynor v. Turnage*, 485 U.S. 535, 548 (1988)). The court noted that "[t]here may be a tension between ANCSA's elimination of most trust property in Alaska and the Secretary's authority to create new trust land, but a tension is not an irreconcilable conflict." *Id.* at 207 (quotation marks omitted). Lacking an irreconcilable conflict, the court held that "[b]ecause it is possible to give effect to both ANCSA and the statute giving the Secretary land-into-trust authority in Alaska, it is the court's obligation to do so." *Id.*

VI. Post-*Akiachak* Decisions by Interior

After the district court issued its decision in *Akiachak* in 2013, Interior promulgated new land-into-trust regulations in 2014 that no longer contained the Alaska Exception. *See* 79 Fed. Reg. 76,888 (Dec. 23, 2014). Following its initiation of this rulemaking, Interior voluntarily dismissed its appeal pending before the United States Court of Appeals for the District of Columbia Circuit. *See Akiachak II*, 827 F.3d at 105. Interior also filed a motion to dismiss the State's appeal for lack of standing after the agency proposed removing the Alaska Exception from the land-into-trust regulations. *Id.* After Interior finalized the rule, it moved to dismiss the State's appeal as moot. *Id.* The D.C. Circuit dismissed the State's appeal and vacated as moot the district court's underlying decision. *Id.* at 113.

Since the conclusion of the *Akiachak* litigation, successive Trump Administrations have attempted to reinstate Interior's previous—and unlawful—position that the Secretary cannot take land into trust in Alaska. Two years after formally repealing the Alaska Exception, *see* 79

Fed. Reg. at 76,888, Solicitor Hilary Tompkins issued a new opinion affirming "[t]he Secretary's authority to acquire land into trust for Alaska Natives[.]" Solic. Op. M-37043, at 22 (Jan. 13, 2017) ("Tompkins Opinion") (2-ER-251). Four days later, the Secretary acquired 1.08 acres of land in trust for *Amicus Curiae* Craig Tribal Association. 82 Fed. Reg. at 4,915.

Four years later, during the first Trump Administration, Solicitor Daniel Jorjani revoked the Tompkins Opinion. *See* Solic. Op. M-37064 (Jan. 19, 2021) ("Jorjani Opinion") (2-ER-188-90). Solicitor Jorjani called the Tompkins Opinion "a departure from earlier Department precedent[,]" *id*. at 1 (2-ER-188), and opined that there was "legal uncertainty . . . with regard to land in trust in Alaska[.]" Mem. from Daniel Jorjani, Solic., Dep't of Interior 34 (Jan. 19, 2021) ("Jorjani Memorandum") (2-ER-224). It is unclear what "legal uncertainly" this memorandum referred to, considering the D.C. District Court had previously concluded "that ANCSA left intact the Secretary's authority to take land into trust throughout Alaska[.]" *Akiachak*, 935 F. Supp. 3d at 208. Perhaps recognizing that there was no actual "legal uncertainty," the memorandum, conveniently, *does not* conclude that the Secretary lacks this authority. Instead, the memorandum equivocates and states only that "further substantial legal analysis is required" and that without "clear direction," the Secretary's exercise of land-into-trust authority "in Alaska would likely be subject to protracted litigation[.]" Jorjani Mem., *supra* at 33-34 (2-ER-223-24).

The following year, during the Biden Administration, Solicitor Robert Anderson resolved the uncertainty purportedly identified in the Jorjani Opinion and Memorandum. *See* Solic. Op. M-37076 (Nov. 16, 2022) ("Anderson Opinion") (2-ER-146-81). Consistent with *Akiachak* and Interior's previous position articulated in the Tompkins Opinion, Solicitor Anderson concluded "that the Secretary's land into trust authority and reservation proclamation authority for Alaska Natives and Alaska Tribes remains intact." *Id.* at 37 (2-ER-181). Thirteen days later, the Secretary acquired 0.02 acres in trust for Appellee/Cross-Appellant Central Council. 87 Fed. Reg. 73,321 (Nov. 29, 2022). The District Court in this case subsequently affirmed, consistent with *Akiachak*, "that the Secretary has the authority to take land into trust in Alaska[.]" 1-ER-31.

Despite Solicitor Anderson resolving this issue, and in the face of both the District Court's underlying decision and *Akiachak*, the second Trump Administration has again attempted to curb the Secretary's authority to take land into trust in Alaska. On February 24, 2026, in a one-page opinion, Solicitor William Doffermyre withdrew the Anderson Opinion and reinstated the Jorjani Opinion and Memorandum. Solic. Op. M-37087 (Feb. 24, 2026) ("Doffermyre Opinion"). The Doffermyre Opinion states that the Anderson and Tompkin Opinions "conflict with over five decades of consistent policy and legal determinations regarding the Secretary's land-into-trust authority in Alaska." *Id.* at 1. Contrary to this statement, however, there has *not* been five decades of consistent policy and legal determinations that conflict with the Anderson and Tompkins Opinions.

To be sure, the 1978 Fredericks Opinion articulated Interior's *initial* position was that "it would[] . . . be an abuse of discretion to" take land into trust in Alaska. Fredericks Op., *supra* at 3 (3-ER-467). But the opinion espoused in the Fredericks Opinion has not remained the prevailing position of Interior. The Fredericks Opinion was withdrawn in 2001, when Solicitor Leshy concluded that "serious questions" remained "as to whether the authority to take land into trust in Alaska still exists[.]" Leshy Mem., *supra* at 1 (2-ER-294). Following the Leshy Memorandum, Solicitor Tompkins affirmed the Secretary's authority to take land into trust in Alaska. Tompkins Op., *supra* at 22 (2-ER-251). While Solicitor Jorjani withdrew the Tompkins Opinion, he *did not* conclude that the Secretary lacked the authority to take land into trust in Alaska. Jorjani Mem., *supra* at 33-34 (2-ER-223-24). Solicitor Anderson then restored Interior's legally correct position that the Secretary holds such authority. Anderson Op., *supra* at 37 (2-ER-181).

The Leshy Memorandum and the Tompkins and Anderson Opinions hardly constitute "over five decades of consistent policy" within Interior that the Secretary lacks authority to take land into trust in Alaska. Moreover, *Akiachak* and the District Court's underlying decision here hardly constitute "over five decades of consistent . . . legal determinations" that the Secretary lacks this authority. Notably—and conveniently—absent from the Doffermyre Opinion is any mention of the *two* federal district court decisions that have held that the Secretary retains authority to take land into trust in Alaska. Undoubtedly in light of this history, the Doffermyre Opinion does not reach a conclusion on the Secretary's authority. This opinion should be given no weight.

ARGUMENT

I. Congress did not Withdraw the Secretary's Land-into-Trust Authority with the Passage of ANCSA

No provision of ANCSA produces the result the State seeks. The State attempts to manufacture an irreconcilable conflict between the Alaska IRA and ANCSA. Yet, unable to identify an actual conflict between the two statutes, the State asks this Court to subvert the will of Congress and reconcile the Alaska IRA and ANCSA to infer a repeal of the Secretary's trust-acquisition authority. The State also gives ANCSA's settlement terms an expansive reading to broadly argue that its one-time settlement forever precludes the Secretary from exercising the authority to acquire land into trust, without explicitly repealing the statute that gives the Secretary that authority. As they did before the D.C. District Court over a decade ago in *Akiachak*, these arguments fail.

A. The Secretary's Land-into-Trust Authority does not Need to be Reconciled with Subsequent Statutes because Congress has "Spoken Directly" to that Authority

Unable to identify a provision in ANCSA or any other post-Alaska IRA enactment that repeals the Secretary's land-into-trust authority in Alaska, the State argues that the trust-acquisition authority must be "reconcile[d]" with the many other laws enacted over time. Doc. 20.1 at 49 (quoting *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000)) (internal quotations omitted in original). Not only does the State proceed to cite irrelevant legal propositions to support the need for a "reconciliation" of the Alaska IRA and subsequent statutes,[3] there is no need for a reconciliation because Congress "has spoken directly to the [Secretary's] authority" to acquire land in trust in Alaska. *Brown & Williamson*, 529 U.S. at 143.

[3] The State also asserts that the District Court's decision conflicts with *Venetie*. *Venetie* does not relate to the Secretary's land-into-trust authority. Rather, *Venetie* simply holds that land initially conveyed to a village corporation in fee simple pursuant to ANCSA and then reconveyed to a Tribal Nation does not qualify as a "dependent Indian community" under 25 U.S.C. § 1151(b). 522 U.S. at 531-32. This case does not concern the status of fee land conveyed pursuant to ANCSA; thus, *Venetie* is irrelevant.

The situation the Court addressed in *Brown & Williamson* is markedly different than the present case. There, the Supreme Court determined that the Food and Drug Administration ("FDA") lacked authority under the 1965 Food, Drug, and Cosmetic Act to regulate tobacco products. *Id.* at 142. In reaching this determination, the Court noted that Congress had "enacted six separate pieces of legislation since 1965 addressing the problem of tobacco use and human health" and that Congress "acted against the backdrop of the FDA's consistent and repeated statements that it lacked authority" to regulate tobacco products. *Id.* at 143-44. Because Congress took the FDA's word that it lacked authority to regulate tobacco, the Court observed, Congress created a regulatory system that left no role for the agency to regulate tobacco. *Id.* at 144.

Although Interior has previously said it lacked the authority to acquire land in trust in Alaska, that is where the similarities between this case and *Brown & Williamson* end.[4] Congress has spoken directly

[4] Unlike in *Brown & Williamson*, Interior has not maintained a consistent position on this issue. While Interior initially asserted the Secretary did not have authority to take land into trust in Alaska, it has since changed its official position at least five times since. *See supra* 18-22.

on the issue of the Secretary's trust-acquisition authority once: in the Alaska IRA. Congress has not proceeded to legislate a complex web of land-into-trust statutes around Interior's position. The State incorrectly conflates ANCSA and other statutes as a "distinct regulatory scheme" that precludes any role for the Secretary to acquire land in trust in Alaska. Doc. 20.1 at 52. But this disingenuous framing attempts to equate *Brown & Williamson* with the present case. *Brown & Williamson* addressed a situation where Congress spoke directly to the relevant authority in the later-enacted statute, whereas here the Alaska IRA directly speaks to the Secretary's authority, but later statutes do not.

When two statutes can co-exist, "it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 551 (1974). The State is unable to point to a provision of ANCSA or any other statute that conflicts with the Alaska IRA so, instead, asks this Court to assume the role of policymaker and declare that the Secretary can no longer make trust acquisitions in Alaska. In short, while the Secretary's land-into-trust authority has plainly survived ANCSA, there is no need to reconcile the two statutes because Congress has spoken clearly to that authority.

B. The State Misinterprets and Overinflates ANCSA

The State's argument that the District Court's decision undermines ANCSA rests on a fundamental misunderstanding of several core mechanisms of federal Indian law. That Congress extinguished all aboriginal title and claims in Alaska, including "all *future* claims based on aboriginal right, title use or occupancy[,]" Doc. 20.1 at 50, has no bearing on the Secretary's land-into-trust authority. The Secretary's authority to take land into trust is *discretionary* and does not require Tribal Nations to assert claims based on aboriginal title. Congress, in enacting ANCSA, sought to address questions of aboriginal title in the State and it is exhaustive in that regard. But the State, like it did in *Akiachak*, attempts to read much more into ANCSA than exists.

The relevant provision of ANCSA Section 2 provides that "*the settlement* should be accomplished . . . without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges[.]"

43 U.S.C. § 1601(b) (emphasis added). The operative term is "the settlement[.]" It is *the settlement* which cannot establish a lengthy trusteeship. Nothing in ANCSA speaks to other sources of trust-like relationships, such as the federal government's general trust relationship with Alaska Tribal Nations.[5] Nor does ANCSA address trust relationships established under other statutes, such as the IRA or the Alaska IRA. By its very terms, Section 2 speaks to ANCSA, and ANCSA alone, not the IRA, the Alaska IRA, or the numerous other statutes that reflect the continued and active trust relationship between the United States and Alaska Tribal Nations and individual Alaska Natives.[6]

Absent explicit language in ANCSA that revokes the Secretary's land-into-trust authority, the State makes a large logical leap, asserting ANCSA's settlement supports the conclusion that *surely* Congress

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[5] *See, e.g.*, *Eric v. Sec'y of U.S. Dep't of Hous. & Urb. Dev.*, 464 F. Supp. 44, 46-47 (D. Alaska 1978) (noting that the federal trust responsibility applies to Alaska Natives); Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, 86 Fed. Reg. 7,491, 7,491 (Jan. 26, 2021) (acknowledging that the United States maintains "trust . . . responsibilities to Tribal Nations").
[6] *See, e.g.*, Indian Health Care Improvement Act, 25 U.S.C. § 1601(1); Indian Child Welfare Act, *id.* § 1901(3); Indian Self-Determination and Education Assistance Act, *id.* § 5301(a).

intended to preclude any future trust acquisitions outside of the settlement. The State recites several key provisions of ANCSA—the disestablishment of reservations, extinguishment of claims based on aboriginal title, discontinuation of conveying new individual allotments—and proceeds to say that nothing in the statute suggests that Congress intended to leave anyone with the "authority to ignore this intent." Doc. 20.1 at 51.

But nothing about the Secretary exercising his *discretionary* land-into-trust authority conflicts with the terms of ANCSA's settlement. This is the same argument the State made in *Akiachak*, which was rejected. Then, the D.C. District Court reasoned that land claims can be settled without removing the Secretary's authority to take Tribally owned fee lands into trust in the future, and "the fact that the settlement would not create a trusteeship does not necessarily mean that it prohibits the creation of any trusteeship *outside* of the settlement." *Akiachak*, 935 F. Supp. 2d at 207 (emphasis added).

Congress enacted a one-of-a-kind settlement with ANCSA. The State now takes an atextual approach to stretch, expand, and reshape the terms of that settlement in support of its arguments.

C. What ANCSA and Subsequent Acts did Repeal Highlight Congress's Deliberate Choice to Leave the Land-into-Trust Authority in Place

The State correctly observes that ANCSA and later statutes brought significant changes to federal land policy in Alaska. Yet the explicit statutory repeals included in ANCSA cut against the State's position, as they demonstrate Congress's precision in modifying or eliminating pre-ANCSA statutory provisions. Among the many provisions Congress explicitly modified or repealed, the Secretary's land-into-trust authority under Section 1 of the Alaska IRA is not one of them.

Congress did not subject Alaska to the General Allotment Act. Case & Voluck, *supra* at 117. Thus, in the early 1900s, Congress enacted two Alaska-specific allotment acts: the Alaska Native Allotment Act, Pub. L. No. 59-171, 34 Stat. 197 (1906), and the Alaska Native Townsite Act, Pub. L. No. 69-280, 44 Stat. 629 (1926). ANCSA repealed the Alaska Native Allotment Act. 43 U.S.C. § 1617(a).[7] The

[7] The State incorrectly argues that this repeal means that the Secretary cannot take land into trust for individual Alaska Natives. Doc. 20.1 at 51. Individual allotments granted under the Alaska Native Allotment Act are entirely separate from trust acquisitions made under the IRA.

Alaska Native Townsite Act was repealed by the Federal Land Policy and Management Act ("FLPMA") in 1976. Pub. L. No. 94-579, § 703(a), 90 Stat. 2743, 2790 (1976).[8] FLPMA also repealed the Secretary's authority to proclaim Indian reservations within Alaska in certain circumstances. *Id.* § 704(a), 90 Stat. at 2792, *repealing*, § 2, 49 Stat. at 1250.

Congress's precision here is illuminating. Section 1 of the Alaska IRA extended Section 7 of the IRA, which gives the Secretary the general authority to proclaim reservations, to Alaska. § 1, 49 Stat. at 1250. Separately, Section 2 of the Alaska IRA established an Alaska-specific reservation proclamation authority, which specifically authorized the Secretary to withdraw public lands for reservations for Alaska Natives. *Id.* § 2, 49 Stat. at 1250-51. FLPMA only repealed Section 2 of the Alaska IRA; FLPMA did not repeal Section 7 of the IRA, which still applies to Alaska.

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[8] While Congress repealed the Alaska Native Allotment and Townsite Acts, it did not terminate the federal government's trust-related fiduciary duties over existing restricted-fee allotments and townsites. *See People of S. Naknek v. Bristol Bay Borough*, 466 F. Supp. 870, 875 (D. Alaska 1979) (holding that Alaska Native allotments and townsites continued to enjoy federal protections notwithstanding ANCSA).

Congress very well could have repealed the entirety of the Alaska IRA when it enacted FLPMA. It also could have repealed Section 5 of the IRA alongside Section 2 of the Alaska IRA—a clear statement that the Secretary's land-into-trust authority no longer applied in Alaska. But Congress did neither. Because the Secretary's land-into-trust authority was not included in the provisions expressly repealed by FLPMA (or ANCSA), there is no reasonable argument that this authority has somehow been withdrawn.[9]

II. Other Statutes Demonstrate that Congress Knows How to Clearly Articulate its Intent to Revoke the Secretary's Land-into-Trust Authority

Congress's intent to preserve the Secretary's land-into-trust authority in Alaska is underscored by the contrast between ANCSA and other statutes enacted both before and after it, in which Congress terminated Tribal Nations' eligibility for federal programs and services, including their eligibility to place land into trust.

[9] ANCSA's legislative history makes it abundantly clear that while Congress was providing for "the full and fair extinguishment of any and all claims based on aboriginal right . . . [r]*emaining in effect and unextinguished* by this Act are all claims which are based upon grounds other than the loss of original Indian title land." S. Rep. No. 92-405, at 110 (emphasis added).

In ANCSA, Congress stated: "All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy . . . are hereby extinguished." 43 U.S.C. § 1603(b). And: "All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy . . . are hereby extinguished." *Id.* § 1603(c). In contrast, when Congress enacted legislation terminating the United States's trust responsibilities with certain Tribal Nations in Oregon in 1954, it made its intent to extinguish trust lands clear:

> The purpose of this Act is to provide for the termination of Federal supervision over the trust and restricted property of certain tribes and bands of Indians located in western Oregon and the individual members thereof, . . . and for termination of Federal services furnished such Indians because of their status as Indians.

Pub. L. No. 83-588, § 1, 68 Stat. 724, 724 (1954). Similarly, Congress spoke unambiguously when it extinguished the trust lands and terminated the trust relationship with certain Tribal Nations in Texas that same year:

> Upon the conveyance to the State of Texas of the lands held in trust by the United States for the Alabama and Coushatta Tribes of Texas, the Secretary of the Interior shall publish in the Federal register a proclamation declaring that the Federal trust relationship to such tribe and its members has

> terminated. Thereafter, such tribe and its members shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians.

Pub. L. No. 83-627, § 2, 68 Stat. 768, 769 (1954). Numerous other termination statutes include similar explicit and unambiguous language.[10]

Post-ANCSA statutes also show that Congress is fully capable of addressing future trust-land acquisitions when it intends to do so. For example, the 1980 Maine Indian Claims Settlement Act states that "the United States shall have no other authority to acquire lands or natural resources in trust for the benefit of Indians or Indian nations, or tribes, or bands of Indians in the State of Maine." Pub. L. No. 96-420, § 5(e), 94 Stat. 1785, 1791 (1980). When Congress *excluded* similar language from the Mashantucket Pequot Tribe's 1983 land claims settlement act in Connecticut, Pub. L. No. 98-134, 97 Stat. 851 (1983), the United States

[10] *See, e.g.*, Pub. L. No. 83-587, §§ 8, 19, 68 Stat. 718, 720, 722-23 (1954) (Klamath Tribes); Pub. L. No. 83-762, §§ 17-18, 68 Stat. 1099, 1103-04 (1954) (Paiute Indians); Pub. L. No. 87-629, § 10, 76 Stat. 429, 431 (1962) (Ponca Tribe); 25 U.S.C. §§ 791, 803-804 (Wyandotte Tribe) (repealed); *id.* § 821 (Peoria Tribe) (repealed); *id.* § 841 (Ottawa Tribe) (repealed); *Id.* § 891 (Menominee Tribe) (repealed); *id.* § 935 (Catawba Tribe) (repealed).

Court of Appeals for the Second Circuit gave full effect to Congress's different choice:

> We have compared both statutes and find in the Maine Settlement Act an obvious demonstration that Congress knew how to prohibit the Secretary from taking into trust any lands outside of specifically designated settlement lands. The absence of an analogous provision in the [Mashantucket Pequot Indian Claims] Settlement Act at issue in this case confirms that the Settlement Act was not meant to eliminate the Secretary's power under the IRA to take land purchased without settlement funds into trust for the benefit of the Tribe.

Connecticut ex rel. *Blumenthal v. U.S. Dep't of Interior*, 228 F.3d 82, 90 (2d Cir. 2000).

The absence of any language in ANCSA expressly repealing the Secretary's authority to take land into trust in Alaska commands the same result here. As the above examples demonstrate, Congress is fully capable of removing the Secretary's authority to take land into trust when it enacts legislation. Its decision not to do so in ANCSA cannot be avoided and must be given its effect.

CONCLUSION

The Secretary has had the authority to acquire land in trust for Tribal Nations in Alaska since 1936. That authority remains intact and should be affirmed by the Court.

RESPECTFULLY SUBMITTED this 18th day of March, 2026.

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

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