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Statement by USET Sovereignty Protection Fund President Kirk Francis in Response to Today's Joint Statement by Treasury Secretary Steven T. Mnuchin and Secretary of the Interior David L. Bernhardt on Distribution of Coronavirus Relief Fund Dollars to Native American Tribal Nations

On Monday, April 27th, the Federal District Court of the District of Columbia rendered its decision in the case of *Chehalis et al v. Mnuchin*. In its [opinion](#) [linked], Judge Amit P. Mehta ruled, "Because the court finds that Plaintiffs have made a clear showing that they are likely to suffer irreparable harm in the absence of preliminary relief, that they are likely to succeed on the merits, and the balance of the equities and the public interest favor an injunction," the court granted Plaintiffs' motions—but only in part. In doing so, the court preliminarily enjoined the Secretary from disbursing Title V funds to any ANC, but did not direct Treasury to disburse the entire \$8 billion in emergency relief to Plaintiffs and other federally recognized tribes. Importantly, the court found that Alaska Native Claims Settlement Act (ANCSA) corporations are not Tribal governments under Title V of the Coronavirus Aid, Response, and Economic Security (CARES) Act, which set aside \$8 billion to be distributed to Tribal governments.

The case was brought in direct response to the Administration's position that ANCSA corporations meet the definition of "Indian Tribe" under Title V of the CARES Act, making them eligible to be direct recipients of the \$8 billion Tribal governmental set aside in the Coronavirus Relief Fund (CRF). The plaintiffs sought to enjoin the distribution of CRF funding to any ANCSA corporation and instead ensure that the entire \$8 billion is distributed to federally-recognized Tribal Nations only. In addition to the Tribal Nations that are party to *Chehalis*, many Tribal organizations, including the USET Sovereignty Protection Fund, joined an amicus brief in support of the plaintiff's complaint that ANCSA corporations are not Indian Tribes. The amicus brief sought to help the court better understand the foundations of our government-to-government relationship.

"With Judge Mehta's decision last week, we were pleased that the court recognized the government-to-government relationship that exists between federally recognized Tribal Nations and the United

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States, and that Congress could not have intended Tribal government funding to go to for-profit corporations. In understanding this relationship, the judge saw clearly the irreparable harm that would come to Tribal Nations if the Administration's dangerous interpretation of Title V was allowed to stand," said USET SPF President, Kirk Francis.

Following the court decision, a joint intertribal organization letter was sent on April 28th [link [here](#)] strongly encouraging the Treasury Department to follow the wisdom of the court by releasing the entire \$8B to federally-recognized Tribal Nations. In addition, a bi-partisan Senate letter [link [here](#)], as well as a letter from House Democrats, was sent to the Treasury Department imploring the same. Despite these entreaties, today's announcement [link [here](#)] reveals the Administration is choosing to disregard the urgent need for Tribal governmental relief in the midst of a national emergency, as well as Congressional intent, in choosing to not immediately distribute the full \$8 billion to Tribal Nations, after much delay already.

Further, with this action today, this Administration is challenging the principles of our government-to-government relationship by continuing to insist that ANCs meet the definition of Indian Tribe [link [here](#)][—]to the detriment of the actual Tribal governments for whom relief funds are intended. Additionally, the formula the Treasury Department appears to be using in the partial distribution, which relies upon known old and inaccurate data, fails to honor the stated objective of the CRF, which is to mitigate the impacts of COVID-19 on Tribal Nations by taking into account each Tribal Nation's unique experience with the pandemic. Finally, after a long and unnecessary wait for this emergency funding, today's announcement introduces further confusion into an already burdensome and secretive process by leaving open the question of how and when the remaining 40% of funding will be distributed, as well as failing to make clear the allocation to ANCs.

"We are disappointed by the continued defense of a fundamentally incorrect position put forward by this Administration—one that is resulting in a significant sum being held back, as well as the use of a flawed and murky distribution process, but unfortunately, Indian country is not completely surprised. We are all too familiar with the myriad of complications and challenges that plague our relationship with the United States. At its core is a historical and modern day pattern of decisions and actions that fail to treat our relationship with the reverence that it rightfully deserves, a disregard for our inherent sovereign rights and authorities, an often superficial execution of government-to-government diplomacy, and unfulfilled and broken trust and treaty responsibilities and obligations," said USET SPF Executive Director, Kitcki A. Carroll.

These actions today by the Treasury Department demonstrate a deep lack of understanding and are contrary to the principles and foundation of our sovereign-to-sovereign diplomatic relationship. This is yet another example of the United States undermining and chipping away at these principles and foundation. "Our fight to protect our inherent sovereignty and the principles of our centuries old nation-to-nation, government-to-government relationship with the United States is at the core of our disagreement with these actions. Indian Country must always remain vigilant in the face of those who seek to undermine our government status. This dispute is not about whether any CRF monies should go to Alaska, but about ensuring the funding is distributed to federally-recognized Alaska Native village governments versus for-profit corporations. The inherent sovereignty of Alaska Native village governments, and of all Tribal Nation governments, was disregarded and disrespected by the Administration today," said USET SPF President, Kirk Francis.

The USET Sovereignty Protection Fund has long held that the current Tribal Nation-United States relationship is antiquated, not reflective of true diplomacy between two sovereigns, and ultimately, failing us. This is yet another example of the need for Indian country to embrace a fundamental rethink and devise a new strategy for this relationship, if we are ever to advance beyond its current confines, limits, and inadequacies.

In the immediate term, the USET Sovereignty Protection funds stands in unity with those who have called for a Department of Interior and the Department of Treasury Office of Inspector General Investigation regarding (1) the conflict of interest and role of DOI Assistant Secretary Tara Sweeney in influencing the distribution of the CRF funds to include ANCs in likely violation of federal ethics laws and regulations, and (2) the careless release and distribution of Tribal Nation sensitive and confidential information that was uploaded to the Treasury CRF web portal. We further call upon Treasury to immediately provide additional clarity on how and when the full \$8 billion will be distributed to Tribal Nations.

Longer term, today's action, and its broader meaning, must serve as a call to action and wake up call for all of Indian country. We must redirect our frustration in a manner that serves to inspire all Tribal Nations to work aggressively to ensure that every Administration, every Congress, every court, is held accountable to fully respect, honor, and fulfill the promises made by this nation. We must ensure that our mutual behaviors appropriately reflect the special and unique nature of our relationship. Finally, we must work to dismantle the chaotic web of federal Indian policy that often creates confusion, disregards and/or dismisses our government status, and places limits on the free exercise of our inherent sovereignty.

Established in 2014, the USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-Tribal organization advocating on behalf of thirty (30) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

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