

MARSHALL PLAN FOR TRIBAL NATIONS

A Restorative
Justice and
Domestic
Investment Plan



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EXECUTIVE SUMMARY

“Despite th[e] recognition of the inherent sovereignty of tribal governments, . . . Native peoples have nonetheless been subject to enduring efforts to strip them of their land, their possessions, and even their identities.”¹

Introduction

It is long past time for the United States to honor its promises to its first peoples. While absent from common historical narrative, the United States’ wealth and ability to transform into the international power it is today is a consequence of the theft and unjust taking of Tribal Nations’ lands and resources. These forced sacrifices created a perpetual debt owed by the United States to Tribal Nations—a debt the United States has yet to fulfill at any point throughout its history.

This failure has compounded year after year, resulting in the many shameful and unacceptable health, social, and economic disparities that exist for Native people and Tribal governments. This failure has further resulted in the kinds of infrastructure deficiencies for Tribal Nations that are often only seen in the developing world. Despite the sacred promises made by the United States, these disparities and deficiencies exist within the domestic borders of one of the most wealthy and powerful nations the world has ever known. These realities are not only the consequence of centuries of ill-intended federal Indian policy, but they have also been intentionally suppressed so as to be invisible to the everyday American citizen.

The time is long past due for the United States to honor its promises. We are calling on the United States to make an immediate and significant financial investment in Tribal Nations after years of ignoring its debt. This investment will provide Tribal Nations with a foundation of economic and social stability to support our collective efforts to rebuild our governments so we may grow and prosper. Further, following the recommendations from the reports of the U.S. Commission on Civil

Rights (2003, 2018) we are proposing a major reform to the current diplomatic model that guides how the federal government executes its trust and treaty obligations—currently, piecemeal across disparate departments and agencies. We propose bundling all of these obligations into a single cabinet level department, the Department of Tribal Nation Relations. This department would consult directly with Tribal Nations and coordinate the full execution of the U.S. trust and treaty obligations.

In the 21st century, many Tribal Nations find our physical infrastructure, as well as economic, political, and social institutions, in crisis due to chronic underfunding and neglect. Analogies to post-World War II Europe are apparent, as are the potential remedies. The United States’ investment in European nations after World War II through the Marshall Plan offers a diplomatic example of a time when the United States understood that investment in rebuilding nations (damaged, in part, by its own actions) was favorable to its own interests. While the relationship between Tribal Nations and the United States shares similarities with the relationship between European nations and the United States, the federal government’s unique trust and treaty obligations to Tribal Nations serve as even greater reasons for a significant domestic diplomacy investment now.

Origins and Basics of Tribal Nation–United States Diplomatic Relations

Tribal Nations are inherently sovereign political entities, as recognized by the United States from its earliest interactions with Tribal Nations. However, over time, the United States has impeded our exercise of sovereignty and taken

our land and resources to generate its own land base, wealth, and strength. Through these takings, the United States has assumed unique trust and treaty obligations to Tribal Nations and Native people. However, it has consistently failed to live up to these obligations—both by failing to deliver on the funding it owes to Tribal Nations in exchange for its resource takings, and by restricting Tribal Nations’ full exercise of our inherent sovereign governmental authorities. These failures on the part of the United States have caused tremendous harm to Tribal Nations that remains evident today in all indicators of social, economic, and public well-being, including as recently recognized in the 2003 and 2018 reports of the U.S. Commission on Civil Rights.

Federal Indian law, including its current antiquated and paternalistic trust model between the United States and Tribal Nations, is inherently problematic, unfair, and discriminatory. Its main function is to maintain and grow the United States’ power to the detriment of Tribal Nations and our communities. Federal Indian law relies on the Doctrine of Discovery: a legal fiction that purports to provide authority to colonizers to unilaterally take lands and resources from Indigenous peoples based on the faulty and morally corrupt premise that Indigenous peoples are not deserving of true property rights. Even today, federal Indian law continues to permit the United States to unilaterally strip Tribal Nations of our rights—including our inherently sovereign rights and our bargained-for treaty rights—if only Congress strips these rights away clearly enough. The rules Tribal Nations must play by under U.S. laws are unfair and unjust, and these rules are designed to serve the interests of the United States.

It is time for a shift to a new relationship paradigm, a domestic diplomacy model that is based on mutual respect and recognizes the full exercise of Tribal Nations’ rights and authorities that inherently belong to us. This diplomacy model must include the following elements: (1) the United States’ dedication to fully carrying out its trust and treaty obligations, including by fully funding its obligations to Tribal Nations

as payment on the perpetual debt; and (2) the United States’ commitment to no longer hindering Tribal Nations’ full exercise of our inherent sovereign governmental rights and authorities, thereby allowing us to care for our own communities. Oversight of these goals, along with the execution of the Marshall Plan funding for Tribal Nations, is best achieved by establishing a Department of Tribal Nation Relations to coordinate and consult on a Nation-to-Nation basis. All pieces of the diplomacy model, including the Marshall Plan for Tribal Nations, must move forward together for Tribal Nations to achieve full self-governance and for the United States to fully live up to its trust and treaty obligations.

European Marshall Plan

After World War II, European nations faced massive physical and economic destruction. Meanwhile, the United States faced a potential recession as its bustling wartime economy slowed and its traditional European trading partners lay beneath rubble. The European Recovery Program, popularly known as the Marshall Plan, proposed an unprecedented U.S. foreign aid investment to rebuild Europe with the goal of achieving a stable economy and sustainable peace. It carried forth the idea that later came to be known in the international human rights sphere as the “Responsibility to Rebuild,” which is an obligation taken on by one country when it militarily intervenes in or occupies another. The intervening country then bears a responsibility to assist with the occupied nation’s recovery, and this assistance is premised upon adequate funding and close cooperation with the local people. It is important to remember that, while the Marshall Plan was the “right thing to do,” it was also designed to be mutually beneficial for the United States and Europe.

The Marshall Plan obligated the United States to provide financial aid to European nations. The contours of that aid, its allocation and disbursement, and its uses were determined by a European agency and U.S. agency

working together. In just the first year of the Marshall Plan, the United States appropriated approximately \$4 billion in aid, which amounted to 13% of U.S. budget expenditures at the time. The Congressional Research Service places the Marshall Plan's total cost at about \$13.3 billion in historical dollars. At the time, that amount represented about 1–2% of U.S. Gross Domestic Product. However, this funding number does not include U.S. monies invested in rebuilding Marshall Plan European nations immediately prior to or following implementation of the Marshall Plan. Inclusion of these monies would bring the total amount of U.S. aid up to \$43 billion in historical dollars. It is clear that the United States' financial investment in post-World War II Europe was significant.

Though not without its shortfalls, the Marshall Plan's unprecedented foreign aid investment generated decisive returns. Not least of all, the morale and confidence it raised throughout Europe helped to stimulate growth across the continent. Numerically, European industrial production rose by 55% over the course of about four years, with agricultural output increasing by nearly 37%. Europe's Gross National Product reached new heights, gaining more than 33%, translating to \$30 billion in 1949 prices. Beyond the benefits for Europe, the United States also reaped rewards, with the ability to maintain and grow its own economic stability with its European trading partners and to increase its status on the world stage. The United States also benefited from the ongoing intergovernmental coordination and stability that grew from the Marshall Plan, as the Marshall Plan's legacy lives on in European and global programs such as the European Union and the Organization for Economic Cooperation and Development (OECD). The Marshall Plan was heralded by contemporaries as “a great recovery” and “a near miracle.”

Tribal Nations Marshall Plan

The United States was willing to make a substantial investment in European nations after the destruction of World War II, yet it

has not been willing to make the same kind of investment domestically, where it bears a much greater responsibility. The concept of a Marshall Plan-like investment for Tribal Nations draws on the same restorative justice, political, and economic principles that underlay the European Marshall Plan.

It is crucial to reiterate, however, that the rationales and obligations of the European Marshall Plan apply with even greater force to an investment in Tribal Nations due to the current and historical reality faced as a direct result of U.S. actions and policies. Through a domestic Tribal Nations Marshall Plan, the United States would recognize and take responsibility for the trust and treaty obligations arising out of its permanent occupation of Tribal homelands and our massive cession of resources that built the foundation of today's America. The United States owes a perpetual debt to Tribal Nations that has been compounded by our displacement, infringements on our sovereignty, and ongoing conditions that impair and directly harm the welfare of Tribal Nations and our citizens.

Beyond generating payments on the United States' debt to Tribal Nations, a Tribal Nations Marshall Plan would develop mutually beneficial economic growth for Tribal Nations, surrounding communities, and the United States—creating stability, improved relations, and shared prosperity. Additionally, it would pave the way for the United States to become an international leader in the Indigenous rights sphere and adhere more closely to the United States' espoused moral values, providing an opportunity to take actions that exemplify the idea of American exceptionalism.

It is imperative to reinforce that the Tribal Nations Marshall Plan proposed in this document would represent a significant one-time payment on the United States' debt to Tribal Nations, but it would in no way put an end to that debt, which stems from the United States' trust and treaty obligations that exist in perpetuity. However, this one-time investment is sorely needed. Indeed, in Fiscal Year 2021, the United States appropriated only \$25.2 billion for Tribal Nations. That

appropriation amount represents only 0.07% of the value of land taken from Tribal Nations and 0.35% of the total federal budget for Fiscal Year 2021. In fact, each Tribal Nation on average receives less than 22% of the amount provided on average to each recipient country of U.S. foreign aid assistance. Whereas foreign aid is a discretionary expense, federal funding to Tribal Nations is a requisite consequence of the federal government’s trust and treaty obligations.

As depicted in the table below, if the United States made a similar investment in Tribal Nations as it did in the European Marshall Plan, by any calculation it would represent a drastic influx of funding beyond the \$25.2 billion of federal funding allocated for Tribal Nations in Fiscal Year 2021.

Calculation	Historical Dollars	Fiscal Year 2021 Dollars
Marshall Plan Cost (Congressional Research Service estimate)	\$13.3 billion	\$156 billion
1–2% GDP Representing Marshall Plan Cost	\$13.3 billion	\$232–464 billion
13% of Overall US Budget	\$13.3 billion	\$936 billion
Marshall Plan Cost Per Participating European Nation	\$831 million	\$9.75 billion
Marshall Plan Cost Including Associated Pre- and Post-Foreign Aid to Participating European Nations	\$43 billion	\$513 billion
Marshall Plan Cost Including Associated Pre- and Post-Foreign Aid to Participating European Nations per Participating European Nation	\$2.7 billion	\$32 billion

Nation Rebuilding

Tribal Nations are sovereign governments that must provide for the general welfare of our citizens just like other government units, including by providing governmental services to our communities. By failing each year to supply the full funding due to us pursuant to its trust and treaty obligations, the United States is depriving us of the funds we need to provide the governmental services to which our people have a right—which only serves to compound the challenges we experience that have already built up since the founding of the United States.

The current U.S. funding levels for Tribal Nations’ governmental services are drastically low, leading to inadequate foundations upon which Tribal Nations must serve our people. These underfunded governmental services include, for example: physical infrastructure, such as roads and homes; political infrastructure, such as judicial systems; and essential services, such as health, education, and environmental protection.

These funding levels, and the corresponding governmental services that flow from them, are vastly inadequate and unjust when compared to surrounding communities and the United States more generally.

A significant investment in Tribal Nations similar to the European Marshall Plan would be transformative, paving the way for true nation rebuilding for Tribal Nations. And it has the potential to allow the United States to stand proudly, knowing that Native people—who are dual citizens of the United States and our Tribal Nations—are not experiencing substandard conditions caused by the United States’ shirking of its trust and treaty obligations.

Funding Delivery Based on Inherent Sovereignty of Tribal Nations

The method of delivery and the use requirements attached to the Marshall Plan-like investment,

and to future funding, will play a large role in the effectiveness of the investment in Tribal Nations. The features of the investment must reflect the status of Tribal Nations as sovereign governments and the United States' trust and treaty obligations.

Funding must flow directly, consistently, and predictably to Tribal Nations. For this reason, funding must not take the form of competitive grants, must be mandatory rather than discretionary, and Tribal Nations must have the option to accept all federal funding directly and via a more streamlined channel than is often used now. It is time for the establishment of a Department of Tribal Nation Relations to carry out the United States' trust relationship with Tribal Nations—reflecting the diplomatic Nation-to-Nation relationship between the United States and Tribal Nations, facilitating comprehensive federal agency coordination, and ensuring the seamless flow of funds to Tribal Nations and our communities. Further, Tribal Nations must not be prevented from using federal funding to best meet the unique needs of our people, and, thus, there should be no restrictive use limitations or burdensome reporting requirements attached.

Execution of Tribal Nations Marshall Plan

Like the European Marshall Plan, the parameters of the Tribal Nations Marshall Plan must be determined in close consultation with, and subject to the consent of, the funding recipients: Tribal Nations. This process would be best served by establishing a Department of Tribal Nation Relations for consultation and coordination purposes. The Department would take the lead by establishing a Commission that includes Tribal Nations, the White House Council on Native American Affairs, the Office of Management and Budget, the Government Accountability Office, and others to make funding and allocation recommendations through a collaborative assessment of the United States' unfunded trust and treaty obligations. The Commission should present to Congress a reliable funding number

and allocation plan. Rather than studying the problem—as so many reports have already done—the Commission should focus on actions to execute the Tribal Nations Marshall Plan.



I. ORIGINS AND BASICS OF TRIBAL NATION—UNITED STATES DIPLOMATIC RELATIONS

“Since our nation’s founding, the United States and Native Americans have committed to and sustained a special trust relationship, which obligates the federal government to promote tribal self-government, support the general wellbeing of Native American tribes and villages, and to protect their lands and resources.”²

The long history of the United States’ failure to uphold its trust and treaty obligations to Tribal Nations, and, specifically, its funding obligations, has resulted in a dire situation requiring a significant investment to bring Tribal Nations up to an adequate baseline. A Marshall Plan for Tribal Nations would serve as the infusion of capital necessary for this task.

A. Tribal Nations Have Been Inherent Political Sovereigns Since Time Immemorial

“The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial”³

It is critical at the outset to have and hold a clear understanding of the status of Tribal Nations, which here refers to the 574 federally recognized Tribal Nations that are engaged in direct political relationships with the U.S. government today.⁴

Tribal Nations are independent political sovereigns, and our people are our citizens. We are not a conquered people, we are not membership groups, and we are not stakeholders in an interest group. Our Tribal citizens have been governed by our respective Tribal governments since time immemorial. This

self-governance of our communities continues today. In fact, it was not until 1924 that Tribal citizens became dual citizens of the United States pursuant to the Indian Citizenship Act.⁵ Our dual citizenship required an act of Congress, as the U.S. Supreme Court held that Native people were not citizens under the Fourteenth Amendment of the U.S. Constitution and had never been naturalized as American citizens through a treaty.⁶ We, the first peoples of this land, were the last to be collectively granted the rights that flow from American citizenship.

Each Tribal Nation is an individual political sovereign possessing inherent powers of self-governance and authority over our citizens, lands, and resources. We have exercised this authority since time immemorial. We are distinct in terms of our respective internal governing structures. We are also geographically, socio-politically, culturally, and linguistically diverse. Each of these aspects of Tribal sovereignty and identity must be respected and accounted for in the Nation-to-Nation relationship.

Tribal Nations have engaged in international diplomacy prior to and since our first sustained contact with European powers began. Before contact, Tribal Nations were sophisticated governments and economic powers in our own right with vast trading networks that stretched into modern-day Canada, Mexico, and Central America. After contact, we remained highly entrepreneurial in business arrangements, including with early European explorers and

Opposite page: In June 2022, the U.S. government and five Tribal Nations formally re-established a commission to oversee land management at Bears Ears National Monument. The Bears Ears Commission will be in charge of planning, management, conservation, restoration and protection of the sacred lands, and will be tasked with protecting ceremonies, rituals, and traditional uses that are part of the Tribal Nations’ way of life. In recent years, Bears Ears has been at the center of a fierce political battle over America’s public lands.



Tribal Communities utilize federal investments to support sustainable and local food systems. Revitalization of traditional crops and food programs, like the Mississippi Band of Choctaw Indians' Choctaw Fresh Produce, not only provide an additional investment into local economies but also contribute to community health programs.

colonists, involving furs, goods, agriculture, and other products and services. Trade with Tribal Nations became increasingly lucrative as colonial activity in the Americas spread. European powers fought with one another for political domination to monopolize Tribal trade opportunities and to exploit Tribal resources.

In addition to economic interactions, Tribal Nations have been involved in political relationships with the United States since before its founding. The governments of the colonies, the First and Second Continental Congresses, and the nascent United States sought co-existence with Tribal Nations. This was advanced through political, military, and trade alliances and peace agreements, as evidenced by the earliest legislative acts and treaties entered into by the United States.⁷

The Second Continental Congress recognized three sovereign units of government in the U.S. Constitution: Tribal Nations, the federal government, and state governments. For example, Article I, Section 8 of the Constitution gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”⁸ Known as the “Indian Commerce Clause,” this language is reflective of early federal leaders’ understanding of Tribal Nations as distinct political entities outside of the body politic of the U.S. government. As a result, the federal government was to engage with us directly in a diplomatic

Nation-to-Nation relationship. Further, the Second Continental Congress determined the apportionment of congressional representatives under Article I, Section 2 by “excluding Indians not taxed” from the U.S. population.⁹ This language was intended as a recognition of the distinct political status of Tribal Nations and Native people that sets us apart from the general American populace. This approach to congressional apportionment, rooted as it is in the recognition of Tribal sovereignty, was carried forward in the Fourteenth Amendment to the Constitution following the Civil War, in which Congress once again calculated population data by “excluding Indians not taxed.”¹⁰

Early U.S. Supreme Court cases also reflect the United States’ understanding that Tribal Nations are inherently sovereign governmental entities and that the Constitution recognized us as such. As the Supreme Court explained in one of its earliest Indian law cases:

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial The very term “nation,” so generally applied to them, means “a people distinct from others.” . . . The words “treaty” and “nation” are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning.

We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.¹¹

Thus, Tribal Nations were recognized at America's founding as vested with powers of inherent sovereign authority. Presumably, treaties are only made and acknowledged with other sovereign nations—and the United States negotiated over 600 treaties with the various Tribal Nations. Therefore, Tribal Nations are not a subordinate part of the American federalist system. We remain and have always been—despite legal fictions and other efforts to strip us of these powers and authorities—parallel governments exercising our own sovereignty alongside that of the federal government and the states.

B. America Is Built Upon Diminishment of Tribal Homelands and Sovereignty

"The birth of the [United States] rested upon the 'discovery' and annihilation of its original inhabitants."¹²

Although the United States has always recognized Tribal Nations as inherently sovereign entities, it has taken action throughout time to diminish our sovereign rights and authorities, including with regard to our land holdings and other resources. It is through this diminishment that the United States has amassed its land base, wealth, and power.

Federal Indian law sits atop the Doctrine of Discovery, which was articulated in a Papal Bull that colonizers have long used to justify taking Indigenous peoples' lands and resources.¹³ In 1493, Pope Alexander VI declared that all land not inhabited by Christians was available for "discovery" and colonization by the Spanish Crown.¹⁴ The declaration, of course, had no lawful impact on the inherent sovereignty of Tribal Nations. Yet it irrevocably shaped how European colonizers approached their territorial

expansion in the Americas to the detriment of Tribal interests and the sanctity of our cultures, religions, and citizens' welfare. European powers, and eventually the United States, used the Doctrine of Discovery to justify horrific crimes and abuses against Indigenous peoples, along with the seizure of our lands and resources. The doctrine was incorporated into American jurisprudence within the "Marshall Trilogy" of U.S. Supreme Court cases in the early 1800s, as we discuss elsewhere in this document.

Utilizing the Doctrine of Discovery, the United States took the vast majority of Tribal Nations' lands and resources. The land base that comprises the modern-day United States of America was, and remains, Tribal homelands. The United States' territory covers a cumulative area of approximately 2.274 billion acres.¹⁵ Of this, only 100 million acres (4.4%) is recognized by the United States as Tribal land today, and just over half of that meager amount—56.2 million acres—is held in trust by the federal government for the beneficial occupancy of Tribal Nations and Tribal citizens.¹⁶ The total amount of land held in trust thus represents just 2.47% of the United States' overall territory.

The land and resources (for example, coal, oil, natural gas, uranium, timber) the United States has taken from us are extremely valuable. As of 2019, the estimated total overall value of all lands and associated natural resources comprising the territory of the 50 states was worth over \$34.6 trillion.¹⁷ The tremendous value of U.S. land and resources is the foundation upon which the federal government has been able to build itself into one of the most powerful countries the world has ever known.

The United States' acquisition of Tribal Nations' lands and resources came largely as a result of one or more of the following: forced cessions, coercion, and outright theft. Later, acquisitions came through the gradual deterioration of federal policies toward Tribal Nations from those grounded in mutually respectful political negotiations to those that unilaterally sought the outright assimilation of our people and termination of Tribal sovereignty and societies.



More than 400 acres of ancestral homelands were returned to the Rappahannock Tribe in April 2022, including a section of Fones Cliffs, a four-mile stretch of wildlife habitat that is a major East Coast nesting place for bald eagles, considered sacred in Rappahannock culture. The Tribal Nation plans to construct a replica 16th-century village that will educate the public about their history and conservation efforts, and will train Tribal youth in traditional river knowledge and practices.

Over time, the original understandings of Tribal sovereignty recognized in the U.S. Constitution were skewed by the insidious expansion of the philosophical underpinnings of the Doctrine of Discovery into American jurisprudence and the willingness of Congress to develop federal Indian policies that satisfied the insatiable hunger of settlers and developers for the remaining homelands and resources of Tribal Nations. For example, the U.S. Supreme Court came to interpret the Indian Commerce Clause, Article I, Section 8 of the Constitution, to mean that Congress has “plenary power” over Indian affairs to act as it sees fit with regard to Tribal Nations and our rights¹⁸—a concept neither intended nor advanced in the Constitution nor by its drafters. As an outgrowth, according to Supreme Court precedent that has evolved to serve the interests of the United States as colonizer, even Tribal homelands and other rights protected via treaties may be unilaterally abolished, if done so clearly and explicitly by Congress.¹⁹

One of the most egregious examples of the United States’ outright theft of homelands is witnessed in its reaction to the discovery of gold on the Great Sioux Reservation in the Paha Sápa (Black Hills). The Paha Sápa are part of the origin story and recognized ancestral territory of the Oceti Šakowin or “Seven Council Fires” (more commonly known as the Great Sioux Nation)

of the Great Plains.²⁰ The Great Sioux Nation fought for and secured their continued Tribal sovereignty over their sacred lands pursuant to the Fort Laramie Treaty of 1868.²¹ The Treaty established the Great Sioux Reservation and designated the Paha Sápa for the exclusive use of the Lakota and the other members of the Great Sioux Nation.²² Just four years later, however, gold was discovered on the Treaty-reserved land.²³ The United States immediately sought to claim the land by renegotiating the Treaty, which failed time and again to meet the requisite ratification of three-fourths of the male population of the signatory Tribal Nations.²⁴ The United States ultimately reneged on the Treaty, relocating the signatory Tribal Nations by military force and confining their citizens to harsh reservations to open the way for gold mining.²⁵ The federal theft of the Paha Sápa was recognized by the Supreme Court in 1980.²⁶ The federal government was ordered to pay “just compensation” with interest;²⁷ however, the Great Sioux Nation has refused to accept the proposed settlement—today valued at nearly \$2 billion—and demand the return of the Paha Sápa to Tribal control.²⁸ Their demand remains unanswered.

The federal deceit illustrated by the Paha Sápa story is but a single example representative of the repeated broken promises and unjust actions committed by the United States against

Tribal Nations. Where Tribal presence becomes an “inconvenience” to federal or private development of certain lands or resources, our communities have been the ones who pay the price in forced relocations,²⁹ denied rights to our historic and sacred lands,³⁰ and diminished areas of occupancy within our ancestral lands.³¹ Further, allotment and the loss of Tribal land through fraud, nefarious dealings, and outright theft were also frequent.³² The compounding effects of these injustices continue to negatively impact our communities today.

Historically, the federal government sought to seize control of Tribal lands and resources in primarily one of two ways: through relocation of Tribal Nations to new land bases, sometimes hundreds of miles away, often with limited natural resources and development potential; or by authorizing Tribal Nations to remain in our ancestral homelands but with a significant diminishment in size of Tribally-held territory and usually in the least agriculturally productive area of those lands. The ancestral lands Tribal Nations lost under treaties of cession were coerced by threat and theft and were generally rich in timber, wildlife, waterways, fertile soils, and other characteristics that supported thriving populations. These valuable lands are now held as federal, state, or private property and represent an additional source of systemic poverty, degraded jurisdictional authority, and loss of access to sacred and ceremonial sites. The story of the sacred Paha Sápa is a critical illustration of the United States’ policy of disenfranchising Tribal Nations to obtain control of resources on Tribal lands despite Tribal rights and federal promises to honor our territorial sovereignty.

Today, the territorial jurisdiction of Tribal Nations is confined to a mixture of reservation, limited fee, and trust land.³³ The federally imposed Tribal land system (i.e., reservation and trust land) does not align with Tribal realities or values. Our interests and practices extend beyond Western concepts of jurisdictional boundaries. For instance, Tribal Nations are intimately tied to countless sacred and culturally significant sites whose importance almost defies comprehension.

They hold the bones of our ancestors, connect us to our origin stories, are sites of ceremony and spiritual presence, grow our medicinal plants and traditional foods, and, in some cases, the places themselves are alive and deeply respected as such. These sites may be located at great distances from federally designated Tribal lands. Yet, Tribal Nations continue to fight to preserve our interests beyond the reservation system and to regain our homelands, which are central to our existence as peoples and as governments in service to our communities. All the while, the United States has profited from essential environmental, agricultural, and cultural knowledge that Tribal Nations have cultivated over countless generations of intimate connection to our ancestral lands.³⁴

The American public has directly benefited from the diminishment of Tribal homelands and resources. Each acre ceded or stolen from Tribal Nations became an acre available for settlement and development, whether by private citizens or federal, state, or local governments. It should go without saying—and yet still requires persistent reiteration—that the “American dream” is only made possible by the direct and ongoing occupation of Tribal homelands. The American people, as individuals and as a whole, are the beneficiaries of this ongoing, pervasive, and long-lasting harm.

C. United States Owes Perpetual Trust and Treaty Obligations to Tribal Nations

“For centuries, Native Americans ceded or were displaced from culturally and historically vital territories on the agreement that the federal government would, in perpetuity, assume trust responsibility for them.”³⁵

Rooted in its taking of Tribal Nations’ lands and resources and in its actions to prevent the exercise of our sovereign rights and authorities, the United States owes unique trust and treaty

obligations to Tribal Nations and Native people. The United States' removal of Tribal Nations' resources and authorities often took away the very means necessary for Tribal Nations to provide for our people. So long as the United States and its citizens continue to benefit from these takings, the country must fully honor its promises and obligations. The uneven exchange of Tribal lands and resources for federal trust and treaty obligations is a debt that exists in perpetuity.

The United States' recognition of its own trust and treaty obligations owed to Tribal Nations is almost as old as the country itself. The dominant jurisprudential framework associated with the federal trust obligation is articulated in a trio of early nineteenth century U.S. Supreme Court cases referred to as the "Marshall Trilogy." Chief Justice John Marshall penned the decisions ostensibly to determine the legal status of Tribally occupied lands. However, they were actually used to justify the United States' forced removal and restrictions on the exercise of sovereignty of Tribal Nations. Pursuant to the Doctrine of Discovery, the Supreme Court held in the first Marshall Trilogy case that Tribal Nations had only a right to "occupy" our ancestral lands, and this right of aboriginal occupation could be extinguished by the United States.³⁶ In the second case, the Supreme Court conceptualized Tribal Nations as "domestic dependent nation[s]" involved in a ward-guardian relationship in which the United States was obliged to protect our interests.³⁷ In the third case, the Supreme Court held that this relationship was exclusively between Tribal Nations and the federal government, meaning states had no power over the internal affairs of Tribal Nations, as we retained inherent rights of self-governance within our territorial boundaries that were "not only acknowledged, but guaranteed by the United States."³⁸

Despite the racist and paternalistic frameworks of these decisions, the Marshall Trilogy clearly establishes the foundations of the federal government's politically based trust obligations to protect the interests of Tribal Nations.³⁹ Other units of government, including states and

localities, have no place in this relationship. Similarly, Tribal Nations are the only units of government to which the federal government owes such a trust obligation. No other entities, domestic or foreign, share this type of political relationship with the United States.

The United States' trust obligation extends throughout each branch of the federal government and applies to all federal officials and employees at all levels, without exception. This obligation manifests in federal policies such as the legal requirement to consult with Tribal leaders on any federal action that may impact Tribal interests,⁴⁰ as well as in the appropriations process through which Congress funds programs serving Tribal Nations.

Additionally, the trust obligation extends to all federally recognized Tribal Nations, regardless of the treaty status of an individual Tribal Nation. While the specific taking of certain Tribal land and resources was memorialized through treaties, the application of the trust obligation extends to all Tribal Nations.

The trust obligation, including with regard to federal funding, exists in perpetuity. The purpose of funding delivered to Tribal Nations by the federal government is often misunderstood to be solely for alleviating poverty within Tribal Nations. While some Tribal Nations and Native people do experience extreme lingering poverty as a result of actions taken by the federal government, this is not the reason for the United States' required investment of resources in Tribal Nations. These resources and services are delivered to Tribal Nations as payment on a debt for our massive cession of land and resources to the federal government to create the United States. This permanent obligation does not change with our economic status. It is not a "needs-based" obligation.

As a result, all actors within the federal government must consistently protect the interests of all Tribal Nations in every policy and action they undertake. The United States must also pay the debt it owes to us in perpetuity for taking our lands and resources, including

through providing funding to Tribal Nations so that we may fund our governments and provide services to our citizens. This solemn responsibility is affirmed in the U.S. Constitution, treaties, federal statutes, executive orders, U.S. Supreme Court precedent, and other agreements,⁴¹ which demonstrate the United States' collective trust and treaty obligations owed to all Tribal Nations.

D. Unfulfilled Trust and Treaty Obligations

For all the invaluable lands and resources that Tribal Nations have provided to the federal government, and despite the United States' own recognition of the trust obligation it owes in exchange, the United States has consistently failed to uphold its trust and treaty obligations.

i. Failures of Past Federal Indian Policy Eras

"On the far end of the Trail of Tears was a promise. . . . While there can be no question that Congress established a reservation for the Creek Nation, it's equally clear that Congress has since broken more than a few of its promises to the Tribe."⁴²

The United States has adopted different policies over the centuries toward Tribal Nations, and the federal government's perceived obligations to us have shifted in response to the prevailing political winds of each era.

The variance across federal policies has caused severe disruption to and disequilibrium in federal Indian affairs, with negative impacts on Tribal sovereignty and economies. It has also led to departure from the original model of the Nation-to-Nation diplomatic relationship founded on a mutual recognition of the sovereignty of Tribal Nations and the United States. Instead, Tribal Nations are now generally, and inappropriately, treated as subordinate to the federal government

and, at times, even to the states. Indeed, these inconsistent federal policies have only resulted in further takings and thus heightened the trust obligations already owed by the United States to Tribal Nations.

Federal Indian policy between 1830 and 1968 was primarily designed to restrict Tribal sovereignty, assimilate Native people, and limit the provision of programs and services by the federal government to Tribal Nations. It began with the enactment of the Indian Removal Act of 1830,⁴³ authorizing the forced relocation of Tribal Nations to make way for seizure of lands and resources in violation of Tribal sovereignty and treaty rights. The effects of this policy were devastating, impacting those Tribal Nations that relocated as well as those that remained in their ancestral lands. Numerous treaties were entered into in which Tribal Nations ceded vast tracts of land in exchange for reservations and the preservation of usufructuary (hunting, fishing, and gathering) rights in our ceded territories.⁴⁴ Despite these promises, thousands of Tribal communities were displaced and hundreds of millions of acres of ancestral homelands were lost. The bitterness of the United States' betrayal of its trust and treaty obligations has become a familiar taste in federal Indian policy.

The United States turned next toward a policy of assimilation with the intent of eradicating Tribal identities and, correlatively, weakening Tribal sovereignty. The generic term "assimilation policy" actually masks the true policy: ethnocide. Ethnocide is the intentional killing of culture and is considered an act of genocide under the U.N. Convention (1948). The U.S. took a bifurcated approach. The first core policy systemically targeted Native children for "civilization" through a national network of boarding schools run in alignment with the doctrine of "Kill the Indian and Save the Man."⁴⁵ The second core policy aimed to break apart Tribal land bases under the General Allotment Act of 1887, which decreased and fractionated Tribal lands already drastically reduced by treaties of cession and forced removal.⁴⁶ Together, these policies devastated Tribal Nations, disrupting the transmission of cultural identities and fractionating Tribal

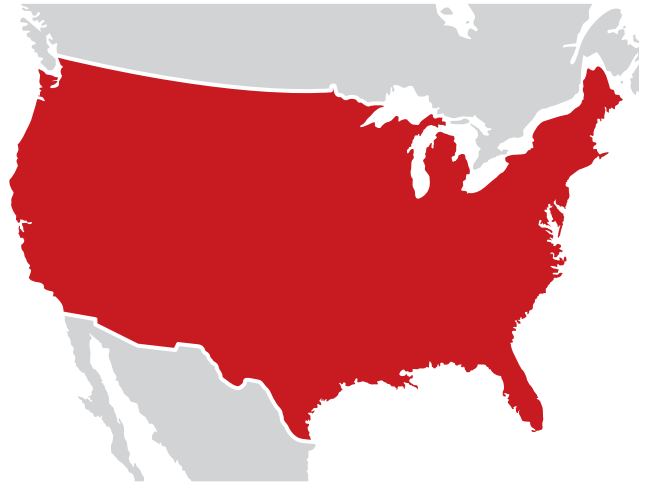
lands with ramifications that echo starkly into the present day. More than 90 million acres of Tribal lands were lost during this period, and that number grew over the ensuing decades.⁴⁷ Today, fractionation remains a jurisdictional nightmare for many Tribal governments.⁴⁸

After over 100 years of direct attacks on Tribal sovereignty and identity, the detrimental effects of the federal government’s Indian policies became impossible for Congress to continue to ignore, both morally and legally. Yet, it took a privately published report in 1928 commissioned by the Institute for Government Research and funded by the Rockefeller Foundation to provide the public pressure needed for Congress to act. Known colloquially as the “Meriam Report,” this document compiled data and analyzed the effects of federal policies on the quality of life on Tribal reservations and within the boarding schools.⁴⁹ It outlined major changes that needed to be made at the national level to address historic injustices inflicted on Tribal Nations.

Congress responded to the Meriam Report with the Indian Reorganization Act (IRA) of

1934, which ended the policy of allotment and reoriented the federal government to restoring Tribal homelands.⁵⁰ The IRA also focused on strengthening Tribal governments through the dedication of resources to assist Tribal Nations in conducting elections, enacting governing documents (such as constitutions), and other actions. While a step in the direction of Tribal sovereignty, the IRA was developed unilaterally

Native American Lands Pre-Colonization



Native American Lands in 2022



by Congress and, as such, lacked the nuance necessary to adapt to the internal governing structures of each Tribal Nation. Many of the challenges that we now face as Tribal governments have their roots in this era, during which foreign governing frameworks, decision-making methods, and civic engagement rules were imposed on our people and governments. The incompatibility of these approaches with our traditional governing and leadership structures is becoming increasingly manifest today.

Mere decades later, in 1953, Congress shifted gears again, this time seeking to terminate the United States’ diplomatic relationship with and federal services to Tribal Nations pursuant to House Concurrent Resolution 108.⁵¹ The Resolution declared that the official policy of the federal government toward Tribal Nations would be to sever federal recognition of our political statuses and cease the provision of services, despite the United States’ ongoing trust and treaty obligations.⁵² Most, though not all, of the Tribal Nations whose federal recognition was severed during that time have since been re-recognized. Those Tribal Nations that were restored to their rightful status under federal law have faced socio-economic difficulties due to the compounding effects of decades of unfulfilled trust and treaty obligations, lost economic development opportunities, and hampered exercise of Tribal sovereignty. Even Tribal Nations whose federal recognition was not terminated faced similar consequences during this harmful era and beyond.

In yet another instance of change in federal Indian policy, with the passage of the Indian Self-Determination and Education Assistance Act in 1975, Congress appropriately pivoted away from termination toward a policy favoring the restoration of Tribal self-determination. Presidents Lyndon Johnson and Richard Nixon issued messages to Congress in 1968 and 1970, respectively, in which they acknowledged the Nation-to-Nation relationship with, and federal trust and treaty obligations to, Tribal Nations.⁵³ President Nixon stressed in his address that the trust obligation is owed to all Tribal Nations regardless of our progress towards

self-sufficiency.⁵⁴ In the decades since federal implementation of Tribal self-determination policies, action has been taken to assess historic failings of the United States with regard to Tribal Nations, restore the exercise of Tribal sovereignty, and address the unfulfilled trust and treaty obligations that continue to compound with each passing year. This has been a positive step compared to previous policies of the United States, but it is still one that fundamentally falls short of full recognition of our Tribal sovereignty and upholding the United States’ trust and treaty obligations to their full extent.

The federal Indian policies of each era were largely adopted unilaterally by the federal government. Tribal Nations have repeatedly been denied a voice in shaping our own destinies. Federal Indian policy continues to be imbued, as the scholar and attorney Walter Echo-Hawk observed, “with the law and mindset of colonialism imported from the early law of nations, complete with all of its legal trappings, such as the doctrines of discovery, plenary legislative power, and unfettered guardianship, accompanied by notions of racism and legal fictions created to achieve unjust results in Indian cases.”⁵⁵ This pattern of unilateral federal decision-making regarding the authorities and rights of Tribal Nations must stop.

ii. U.S. Commission on Civil Rights Findings Document Chronic Failure in Modern Era

“[F]ederal funding for services purported to compensate Native peoples for their sacrifices is unequal to the task.”⁵⁶

If most Americans were asked about the United States’ mistreatment of Native people and Tribal Nations, they might think such topics were ancient history, but the sad reality is that this mistreatment continues to the present day. The federal government’s shortcomings relating to the provision of funding for Tribal Nations are cataloged in the Findings of the 2003 and 2018



USET SPF President Kirk Francis was one of three Tribal leaders invited to appear on a Congressional Panel to begin to take action on the findings and recommendations of the Broken Promises Report.

reports of the U.S. Commission on Civil Rights (USCCR),⁵⁷ among other sources.

In July 2003, the USCCR transmitted to Congress and the President a report titled “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.”⁵⁸ The Quiet Crisis Report examined the funding of federal programs intended to assist Native people at the U.S. Departments of Interior, Health and Human Services, Housing and Urban Development, Justice, Education, and Agriculture.⁵⁹ In the Quiet Crisis Report, the USCCR assessed the “adequacy of funding provided via programs administered by these six agencies and the unmet needs that persist” across Tribal communities.⁶⁰ The USCCR found that federal funding was not sufficient to address “basic and very urgent needs,” including health care, education, public safety, housing, and rural development, and “that significant disparities in federal funding exist between Native Americans and other groups in our nation, as well as the general population.”⁶¹

In December 2018, the USCCR transmitted to Congress and the President the successor report to the Quiet Crisis Report, which was titled “Broken Promises: Continuing Federal Funding Shortfall for Native Americans.”⁶² The Broken Promises Report updated and expanded upon the Quiet Crisis Report. The USCCR’s transmittal letter stated: “Despite some progress, the crisis the Commission found in 2003 remains, and the federal government continues to fail to support

adequately the social and economic wellbeing of Native Americans.”⁶³ The Commission’s Findings included the following:

Federal programs designed to support the social and economic wellbeing of Native Americans remain chronically underfunded and sometimes inefficiently structured, which leaves many basic needs in the Native American community unmet and contributes to the inequities observed in Native American communities. The federal government has also failed to keep accurate, consistent, and comprehensive records of federal spending on Native American programs, making monitoring of federal spending to meet its trust responsibility difficult. Tribal nations are distinctive sovereigns that have a special [Nation-to-Nation] relationship with the United States. Unequal treatment of tribal governments and lack of full recognition of the sovereign status of tribal governments by state and federal governments, laws, and policies diminish tribal self-determination and negatively impact criminal justice, health, education, housing and economic outcomes for Native Americans.⁶⁴

The “unmet needs” described in the USCCR reports are in fact a symptom of the federal government’s unfilled trust and treaty obligations. Both the Quiet Crisis Report and its successor Broken Promises Report aim to convey the depth and breadth of the inadequacy

of federal funding to meet the United States’ obligations, which in turn creates the very serious “unmet needs” of Tribal Nations. However, as previously discussed, the federal government’s trust and treaty obligations should not be understood and treated as needs-based obligations; rather, it is these unfulfilled funding obligations that have in fact created the “need” among Tribal Nations. The United States’ trust and treaty obligations, and the funding obligations that grow from them, exist in perpetuity as a debt owed for its occupation of Tribal Nations’ lands.

iii. U.S. Policies Have Caused Additional Inequities and Have Not Facilitated Recognition of Inherent Sovereign Authorities and Powers Over Tribal Nations’ Economies

“Coupled with the discrimination that Native Americans face in many aspects of life—housing, education, employment, and access to voting—perpetual underfunding at the federal level presents significant barriers for economic development and for Native American self-determination.”⁶⁵

Historic and modern federal policies have created barriers and inequities for Tribal Nations’ attempts to rebuild and grow our own economies, as well as generate our own government revenues. Today’s federal economic policies continue to fail to support Tribal Nations’ modern efforts to revitalize our economies. The hampering of Tribal Nations’ abilities to generate Tribal government revenues has compounded the harms done by the United States’ failure to fully fund its trust and treaty obligations, contributing to the current need for a Marshall Plan-like investment in Tribal Nations.

Tribal Nations in the United States endured a long history of asset deprivation. Colonization, forced removal, war, the loss of homelands, and restricted access to traditional lands and resources pushed Tribal Nations “into a near-assetless state for at least a century.”⁶⁶ The

many consequences of this sustained economic deprivation persist to this day. They manifest themselves in the form of obstacles to economic development that include, but are not limited to: insufficient access to capital; lack of small business capacity; insufficient workforce development, financial management training, and business education; regulatory constraints on land held in trust and land designated as restricted use (prohibiting such land from being used as collateral or as property subject to Tribal taxes); and underdeveloped physical infrastructure.⁶⁷

In response to the longstanding and persistent consequences of these historical harms to Tribal economies, federal policies regarding economic growth have generally offered only short-term, piecemeal approaches directed at specific functions or programs. Most of these programs have had only modest impact due to their complex schemes, high start-up costs, limited availability, and lack of sustained support over time.⁶⁸

Furthermore, federal policies have not evolved to reflect that “the real drivers of recent economic change in Native communities are self-determination and self-governance . . . over Native Community resources, programs, government infrastructure, and plans for the future.”⁶⁹ Research has shown that economic factors—such as availability of natural resources, high levels of educational attainment, and access to markets—yield greater returns once a Tribal Nation has the ability to harness the value of those factors through “culturally legitimate institutions of self-government.”⁷⁰ Respect for and facilitation of Tribal Nations’ full exercise of sovereignty would level the playing field so that Tribal Nations would be positioned to make economic decisions according to our own objectives and generate revenues to support the social and economic wellbeing of our citizens.

Some Tribal Nations have succeeded in producing economic growth and improved per capita incomes in the past few decades by employing self-determined economic development approaches. Even so, estimates



Federal investments support strategic economic investments in Tribal communities and contribute to the multiplier of dollars staying in local economies, like with the Indian Pueblo Cultural Center. The Center's annual revenue started at less than \$1 million and grew in recent years to more than \$30 million, with almost 200 staff—44% of whom are Native American.

indicate that at current rates of growth, the per capita income of Tribal citizens will not achieve parity with the rest of the United States for at least four more decades.⁷¹

Depressed economies have a circular effect. Without the ability to stimulate economic growth, diversify economic activities, and generate revenues to fund governmental programs and services, Tribal Nations lack the resources to invest in building the essential physical and human infrastructure necessary to attract the capital investment needed for Tribal economies to compete in the regional, national, and global marketplace.

Compounding the harm caused by the United States' failure to adopt economic growth policies that enable Tribal Nations to create conditions to build our economies on a broader scale, the United States has left in place older policies, practices, and court rulings that continue to limit or thwart Tribal Nations from exercising our sovereign authority to stimulate our economies and generate government revenue. In one very significant example, the United States has taken a series of actions that have limited Tribal Nations' ability to generate government revenue through a tax base—as the federal, states, and

local governments do. The historical loss of territory and the federal government's continued ownership of Tribal lands in trust status, for example, foreclose Tribal Nations' ability to levy property taxes.

Lacking the ability to rely on taxation mechanisms available to other governments within the federal system, Tribal Nations have created Tribally owned businesses and enterprises whose earnings provide governmental revenues for services for our citizens. While these enterprises operate as "commercial" entities, their profit-making purpose is the generation of governmental revenue. Additionally, Tribal Nations have sought to attract non-Native businesses to locate within Tribal lands to create jobs, provide services, and pay Tribal taxes. Yet, federal policy and U.S. Supreme Court case law have made Tribal Nations' revenue generation through its business enterprises and taxation of non-Native economic activities on Tribal land extremely difficult.

As sovereign governments, Tribal Nations have the right and authority to tax economic activity within our territories, including the activities of Natives and non-Natives alike, should we choose to do so.⁷² The U.S. Supreme Court affirmed

this authority, stating: “The power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management. This power enables a tribal government to raise revenue for its essential services.”⁷³ Yet, the Supreme Court soon undermined this authority by creating a “flexible preemption analysis” that has, under certain conditions, allowed states and local governments to reach into Tribal lands to levy taxes on the economic activities of non-Natives within Tribal Nations’ borders.⁷⁴ In so doing, the Supreme Court walked away from its prior decisions barring state intrusion into the regulatory affairs of Tribal Nations.⁷⁵

Under the Supreme Court’s “flexible preemption analysis,” a state or local government may be permitted to impose its taxes on non-Native business activity within a Tribal Nation’s jurisdiction if a court finds the state or local government’s interest in the tax outweighs the Tribal and federal interests in preempting that tax.⁷⁶ Thus, instead of wholly ousting state authority from Tribal Nations’ lands, state and local governments have been allowed to tax certain on-reservation economic activity. In effect, they are even able to tax the economic activity of a Tribal Nation itself when it engages in commerce with non-Natives.⁷⁷ Their taxation reach is permitted even if the Tribal Nation’s commerce is conducted solely for the purpose of generating tax revenues for government operations.⁷⁸

Under this scenario, since both the Tribal Nation and the state governmental entity have the authority to tax the same transaction, the problem has been characterized as one of “dual taxation.” As a practical economic matter, however, the state governmental entity’s tax operates to displace the Tribal Nation’s tax. A Tribal Nation’s sovereign choice to levy its own taxes on business activity within its borders is wholly undermined. A Tribal Nation would profoundly alter its ability to attract businesses to locate on its Tribal lands when those businesses are subject to both the outside state jurisdiction’s tax and a Tribal tax. Thus, with state taxation applicable to non-Natives conducting business

on Tribal lands, Tribal Nations are required, as a matter of economic necessity, to forego our own authority to tax.⁷⁹

Further, even if a Tribal Nation offers complete Tribal tax immunity to locate on Tribal lands, the non-Native business does not yield a tax rate any lower than the existing state tax rate that is available off-reservation—creating no tax incentive to locate on Tribal land. And the additional tax uncertainties created by the U.S. Supreme Court’s flexible preemption analysis often chill investment and further limit opportunities for Tribal Nations to generate revenues from business activities within our borders. Despite the stated federal policy of promoting Tribal self-determination, the modern federal policies discussed here serve to perpetuate an uneven playing field on which Tribal Nations must make economic decisions for the social and economic wellbeing of our citizens.

E. Shifting to New Diplomacy Model of Tribal Nation–United States Relations

“[T]he magnitude of a legal wrong is no reason to perpetuate it. . . . Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law.”⁸⁰

Federal Indian law—and its current trust model between the United States and Tribal Nations—is inherently paternalistic, unjust, antiquated, and discriminatory. It is time for a change.

As discussed previously, federal Indian law relies on the Doctrine of Discovery, a legal fiction that purports to provide authority to colonizers to unilaterally take lands and resources from Indigenous peoples based on the faulty and morally corrupt premise that Indigenous peoples are not deserving of full property rights. With this dark underpinning, federal Indian law as it currently exists sits on a morally decayed foundation.

The Marshall Trilogy recognizes Tribal Nations' inherent sovereignty and the United States' trust and treaty obligations owed to us, but it also carries forward the Doctrine of Discovery and purports to vest within the federal government supreme and unilateral power over Tribal Nations. In this way, the underlying reasoning of federal Indian law is antiquated and serves a distinct purpose in facilitating Tribal Nations' losses for the United States' gain. The Marshall Trilogy has been, and still is, used by the federal government to validate encroachments on Tribal sovereignty and restraints on the exercise of our inherent rights and authorities to ever-diminishing spheres. When exposed to the weathering forces of history, a legal framework built on such unjust principles will necessarily fail to deliver on federal trust and treaty obligations, and it will never provide full justice for Tribal Nations. Indeed, federal Indian law continues to allow the United States to unilaterally strip Tribal Nations of our rights—including our inherently sovereign rights and treaty rights—if only Congress strips these rights away clearly enough. The rules Tribal Nations must play by under federal law are not fair and never have been. Continuing to rely on a framework rooted in the Doctrine of Discovery, as does our current system, therefore is untenable.

It is time for a modernized relationship model between Tribal Nations and the United States marked by mutual respect and mutual recognition of the rights and authorities that inherently belong to Tribal Nations. This new diplomacy model must include the following elements:

- the United States' dedication to fully carrying out its trust and treaty obligations, including by fully funding its obligations to Tribal Nations as payment on the perpetual debt it owes to us; and
- the United States' commitment to no longer hindering Tribal Nations' full exercise of our inherent sovereign governmental rights and authorities, thereby allowing us to care for our own communities.

This document argues for a significant upfront financial investment in Tribal Nations, which would further the United States' trust and treaty obligations to Tribal Nations with regard to funding. This upfront investment must move forward concurrently with the full, consistent funding of trust and treaty obligations and a return to our unimpeded exercise of Tribal sovereignty. Together, these elements will facilitate the achievement of full self-governance for Tribal Nations and enable the United States to fully live up to its trust and treaty obligations.

II. EUROPEAN MARSHALL PLAN

“With foresight, and a willingness on the part of our people to face up to the vast responsibility which history has clearly placed upon our country, the difficulties I have outlined [with regard to Europe] can and will be overcome.”⁸¹

The Marshall Plan employed in Europe after World War II serves as a compelling case study of the United States’ acceptance of its responsibility to fund other sovereigns’ efforts to rebuild in the wake of destruction caused by the United States. The reasons for and the outcomes of the United States’ investment in the European Marshall Plan counsel a similar investment in Tribal Nations.

A. Rationale for European Marshall Plan

“It is logical that the United States should do whatever it is able to do to assist in the return of normal economic health in the world, without which there can be no political stability and no assured peace.”⁸²

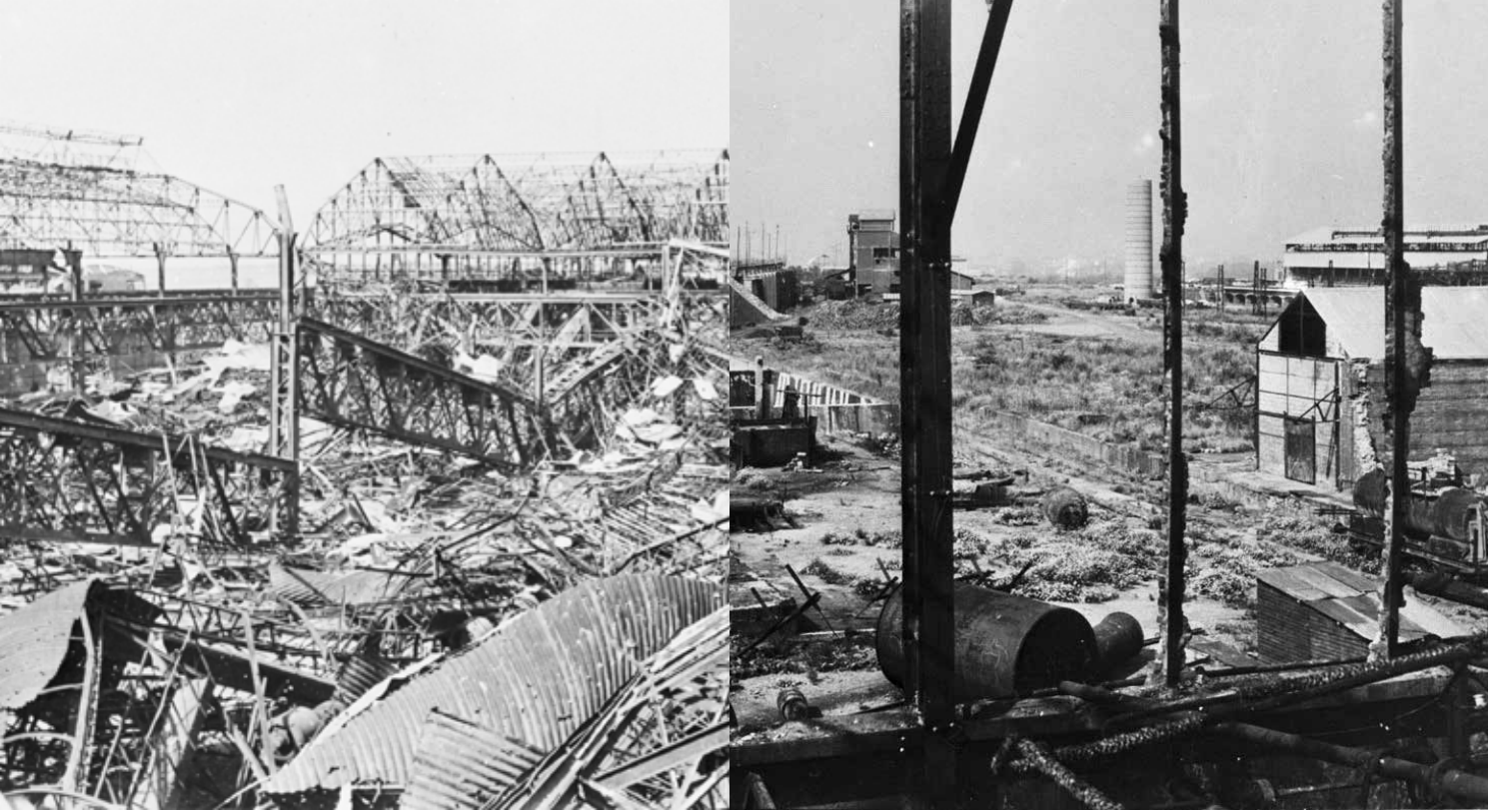
In 1947, U.S. Secretary of State George C. Marshall announced the European Recovery Program—popularly known as the Marshall Plan—in a speech at Harvard University.⁸³ The Marshall Plan proposed an unprecedented U.S. foreign aid investment that aimed to rebuild Europe after the massive physical and economic destruction of World War II.

The Marshall Plan carried forth an idea that later came to be known in the international human rights sphere as the “Responsibility to Rebuild.” The Responsibility to Rebuild is one of the three pillars of the “Responsibility to Protect” (or R2P, as it is commonly known), which is an international guiding principle rooted in the responsibilities inherent in state sovereignty, including the responsibility every nation has for the protection of its own people.⁸⁴ Long before the R2P was formally developed, the Marshall Plan served similar goals. Though the Marshall

Plan’s motivations at the time focused on the concern that poor economic conditions in Europe would contribute to political instability,⁸⁵ the Marshall Plan can now be understood as foundational to the concept of international development assistance, including current U.S. foreign aid spending policy.⁸⁶

The R2P officially emerged in 2001 in response to a need for international guiding principles to govern the increasing number of United Nations (UN) humanitarian interventions in the aftermath of the Cold War.⁸⁷ It is composed of three pillars: the Responsibility to Prevent, the Responsibility to React, and—as is most relevant to the Marshall Plan—the Responsibility to Rebuild.⁸⁸ In this context, rebuilding means “to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.”⁸⁹ The Responsibility to Rebuild is an obligation taken on by the intervening nation “to follow through and rebuild.”⁹⁰ It is focused on durable peace and sustainable development “involv[ing] the commitment of sufficient funds and resources and close cooperation with local people” to attain “[t]rue and lasting reconciliation” where there are “sustained daily efforts at repairing infrastructure, at rebuilding housing, at planting and harvesting, and cooperating in other productive activities.”⁹¹ The aim of the nation(s) leading the rebuilding should be “to do themselves out of a job,” as the ultimate goal is to transfer full authority and responsibility to the newly strengthened local government and citizenry.⁹²

The idea that nations carrying out the Responsibility to Rebuild should “do themselves out of a job” accords with the Marshall Plan’s goal of “helping Europe help itself,” and its steadfast



Left: In 1945, rolling mills in Normandy were destroyed by bombing. Right: In 1948, the site had been cleared of rubble and reconstruction had begun.

commitment to a European-led recovery.⁹³ In this way, the Marshall Plan shaped modern U.S. foreign aid policy that aims “to support partners to become self-reliant and capable of leading their own development journeys.”⁹⁴

As Secretary Marshall said himself, there could be no political stability or assured peace in Europe without U.S. assistance.⁹⁵ It was only “logical,” he argued, that the United States should work to restore the world’s economic health.⁹⁶ A U.S. Department of State committee report dedicated to developing the Marshall Plan concluded: “To withhold our aid would be to violate every moral precept associated with our free government and free institutions.”⁹⁷

While it is important to remember that the Marshall Plan investment was the “right thing to do,” it was also designed to be mutually beneficial, rebuilding the United States’ allies and trading partners to achieve a stable economy and sustainable peace. These benefits are discussed in more detail in Section D, Impact of European Marshall Plan.

B. Implementation of European Marshall Plan

“Our policy is directed not against any country or doctrine but against hunger, poverty, desperation and chaos. . . . Such assistance, I am convinced, must not be on a piecemeal basis as various crises develop.”⁹⁸

In Secretary Marshall’s own words, the Marshall Plan had to be robust enough to “provide a cure rather than a mere palliative” for European nations’ economic woes.⁹⁹ Only with full, sustained funding would the Marshall Plan be a success. Millions of Europeans across the continent were on the brink of starvation, while German cities alone were buried in an estimated 500 million cubic tons of rubble.¹⁰⁰ With individual and joint economies in tatters, European nations faced severe challenges in rebuilding without a comprehensive development strategy. The United States accepted responsibility for the fact that its own actions in the war had caused some of Europe’s destruction, and, with this and its own economic interests in mind, it sought to develop such a strategy.

The Marshall Plan would foster a European-led recovery through joint implementation via two new agencies—one European, one American—working together. From the beginning, Secretary Marshall stressed that “it would be neither fitting nor efficacious for this Government to undertake to draw up unilaterally a program designed to place Europe on its feet economically. . . . The program should be a joint one, agreed to by a number, if not all, European nations.”¹⁰¹ Businessman Paul Hoffman, leader of the newly established Economic Cooperation Administration (ECA), the American implementation agency, later reinforced this notion, stating:

*I had a strong belief that no pattern imposed by a group of planners in Washington could possibly be effective. . . . I had learned from experience that if you want enthusiastic cooperation, you have to get those concerned to do the planning, or at least to participate in it.*¹⁰²

Thus, it was the 16 participating European nations themselves that jointly assessed their needs and calculated the initial Marshall Plan investment, calling for a four-year program and requesting \$19 billion in U.S. aid.¹⁰³

Financial aid from the Marshall Plan officially began to flow in June 1948, just one year after Secretary Marshall’s speech.¹⁰⁴ The United States established the ECA as an independent agency to implement the American side of the Marshall Plan.¹⁰⁵ The ECA operated a regional office in Paris with 600 staff and maintained “missions” in each participating European nation to monitor progress at the local level.¹⁰⁶

Meanwhile, the participating European nations established the Organization for European Economic Cooperation (OEEC), which determined and coordinated the division of aid among themselves.¹⁰⁷ The OEEC’s structure reinforced a sense of mutual responsibility among the participating countries, strengthened further by its requirement that every decision be made with total unanimity.¹⁰⁸ This rule, though sometimes difficult, ensured that each nation,

large and small, received consideration from the others, and it secured compromise even after the most contentious debates.¹⁰⁹ Reportedly, not a single veto was ever exercised.¹¹⁰ Consensus model decision making is a traditional practice found among many of our Tribal Nations.

True to its nature as a robust upfront investment in Europe, more than 90% of Marshall Plan aid never had to be repaid.¹¹¹ While loans were also used, administrators quickly recognized that such funding was far less effective than outright investment. Accordingly, the use of loans dramatically decreased after the Marshall Plan’s first year, from \$1 billion to just \$150 million the following year.¹¹²

Because Marshall Plan aid could be tailored to each European nation’s needs and circumstances, it was adapted over time. While much of the initial aid arrived in the form of food and other basic necessities, it later shifted to raw materials for production, and then to consumer goods and support for tourism.¹¹³ Meanwhile, the Marshall Plan also included a substantial technical assistance program focused on capacity building. By the end of 1951, more than 6,000 Europeans had come to the United States to tour production facilities and to study methods for boosting technical and economic efficiency.¹¹⁴

Nevertheless, the Marshall Plan’s implementation was not without its shortfalls. One major issue resulted from the fact that, despite the initial proposal for a full four years’ worth of funds, Marshall Plan funding was subject to reauthorization by Congress each year.¹¹⁵ While this may have provided an opportunity to assess progress and adjust funding measures,¹¹⁶ it also hampered European nations’ ability to plan for long-term infrastructure projects on the ground.¹¹⁷ Another issue extended from the fact that, as flexible as it was, Marshall Plan aid was still subject to some restrictions, including U.S. approval for certain expenditures.¹¹⁸ As contemporary observers recognized, the Marshall Plan was not a cure-all, but rather it represented “the first steps on a long road” to “a secure and workable free world system.”¹¹⁹



Homes in the Netherlands that were bombed and gutted during World War II were rebuilt with the help of Marshall Plan funds and technical assistance.

C. Costs of European Marshall Plan

"[I]t has become obvious during recent months that [Europe's] visible destruction was probably less serious than the dislocation of the entire fabric of European economy."¹²⁰

The Marshall Plan was clearly a top priority for the United States, which recognized that an enormous upfront investment was not only a moral necessity, but it would also pay dividends in the long-term for both the United States and Europe.

In the Marshall Plan's first year alone, the United States appropriated about \$4 billion in aid, which amounted to a whopping 13% of total U.S. budget expenditures at the time.¹²¹ For reference, 13% of U.S. budget expenditures in 2021 would have amounted to approximately \$936 billion.¹²² This means that, if the same percentage of today's budget were dedicated to the Marshall Plan as was in 1948, the United States would be making a nearly \$1 trillion investment in just the first year.

The Congressional Research Service places the total cost of the Marshall Plan at about \$13.3 billion in historical dollars, which, when adjusted for inflation, exceeds the total amount of U.S. development and humanitarian assistance allocated to more than 212 nations and other entities between 2013 and 2016.¹²³ In the late 1940s, that cost was about 1–2% of U.S. Gross

Domestic Product (GDP), or approximately \$80 per U.S. citizen.¹²⁴ To put those numbers in perspective, 1–2% of U.S. GDP today is about \$232–464 billion,¹²⁵ or approximately \$700–1400 per American citizen.¹²⁶ Accounting for inflation, the expense per U.S. citizen remains fairly consistent, as \$80 in 1948 translates to \$938 in 2021.¹²⁷

Total cost estimates of the Marshall Plan vary depending on whether one includes associated prior and subsequent funding and how one determines the Marshall Plan's official date span.¹²⁸ For example, according to the Senate Report that accompanied the Marshall Plan legislation in 1948, the United States had already provided the European nations that later participated in the Marshall Plan with more than \$11 billion between July 1, 1945, and December 31, 1947.¹²⁹ Even the Marshall Plan itself did not capture all the U.S. aid provided to Europe during its implementation, as another \$2.9 billion went to the participating European nations for mutual defense and other purposes.¹³⁰ The calculations are further complicated because Congress disestablished the Marshall Plan's American implementation agency, the ECA, in 1951, six months earlier than planned, and rolled Marshall Plan funding into the newly established Mutual Security Program in response to the Korean War and intensifying Cold War relations.¹³¹ Via the Mutual Security Program, the United States sent another \$10.4 billion to the original Marshall Plan European nations through 1961,¹³² though it was focused on military rather than socio-economic reconstruction.¹³³ In total, then, the United States spent approximately \$43 billion in historical

dollars on Marshall Plan European nations between 1945 and 1961. Importantly, this number excludes any foreign aid the United States also spent on Eastern Europe and the rest of the world during that period. Nor has U.S. foreign aid to Europe or the rest of the world ceased since

the Marshall Plan ended; it existed before the Marshall Plan and continues to this day.

The table below sets out some of the methods for calculating the costs of the European Marshall Plan and what those dollar amounts would look like today.

Calculation	Historical Dollars	Fiscal Year 2021 Dollars
Marshall Plan Cost (Congressional Research Service estimate)	\$13.3 billion ¹³⁴	\$156 billion ¹³⁵
1–2% GDP Representing Marshall Plan Cost	\$13.3 billion ¹³⁶	\$232–464 billion ¹³⁷
13% of Overall US Budget	\$13.3 billion	\$936 billion
Marshall Plan Cost Per Participating European Nation	\$831 million ¹³⁸	\$9.75 billion ¹³⁹
Marshall Plan Cost Including Associated Pre- and Post- Foreign Aid to Participating European Nations	\$43 billion ¹⁴⁰	\$513 billion ¹⁴¹
Marshall Plan Cost Including Associated Pre- and Post- Foreign Aid to Participating European Nations per Participating European Nation	\$2.7 billion ¹⁴²	\$32 billion ¹⁴³

D. Impact of European Marshall Plan

“The remedy lies in breaking the vicious circle and restoring the confidence of the European people in the economic future of their own countries and of Europe as a whole.”¹⁴⁴

Generally, the Marshall Plan was a huge achievement that generated decisive returns. Though Europe was not yet independent from external aid by the Marshall Plan’s official end, the rate of reconstruction compared to that after World War I was a “phenomenal success.”¹⁴⁵ The Marshall Plan’s forestalling of a plunge into worsening conditions after World War II “was a preventive accomplishment of incalculable significance”¹⁴⁶ that advanced “the restoration of the economic health and vigor of European society.”¹⁴⁷ The overall results were heralded by contemporaries as “a great recovery” and “a near miracle.”¹⁴⁸ Problems still persisted, but participating nations emerged more unified and cooperative than ever, and “[t]he European

picture as a whole was much more hopeful” than before.¹⁴⁹ As Secretary Marshall had emphasized from the beginning, the Marshall Plan was “the business of the Europeans” and, though U.S. aid was crucial, it was “[r]ooted firmly in conceptions of mutual interest, self-help, and voluntary cooperation.”¹⁵⁰

In just four years, European industrial production rose by 55% and agricultural production increased by nearly 37%,¹⁵¹ with participating nations surpassing most of the individual production goals they had set for themselves.¹⁵² Europe’s total Gross National Product (GNP) reached new heights, increasing by roughly 33%¹⁵³ and gaining more than \$30 billion in 1949 prices.¹⁵⁴ This represented a rise in annual production several times as great as the average annual cost of the Marshall Plan.¹⁵⁵ Meanwhile, human food consumption per capita reached prewar levels and, in West Germany, one house of every five built since 1948 received Marshall Plan aid.¹⁵⁶

Other significant benefits of the Marshall Plan were not direct aims of the program. The effect it had on raising morale in Europe, for example, helped to stimulate growth.¹⁵⁷ Even before the



Left: A French steel plant in 1945. Center: The steel plant was almost back to prewar production level in 1948, thanks to reconstruction and raw material supplies under the Marshall Plan. Right: The same plant newly reconstructed in 1948.

first aid shipment arrived, “a wave of new hope swept across Western Europe.”¹⁵⁸ George Kennan, head of Policy Planning at the U.S. Department of State, remarked that “[t]he psychological success at the outset was so amazing that we felt that the psychological effect was four-fifths accomplished before the first supplies arrived.”¹⁵⁹

By the end of the Marshall Plan in the 1950s, Western Europe was more united than ever.¹⁶⁰ The Marshall Plan contributed to a more collaborative mindset among nations and thus to “the stability and prosperity of modern Europe.”¹⁶¹ In fact, the European implementation agency established by the Marshall Plan European nations, the OEEC, was the direct precursor to the Organization for Economic Cooperation and Development (OECD), which was formed in 1960 and is now a global organization with 38 member nations tackling a broad range of policy issues from taxation in a global digitized economy to the sustainability of the world’s oceans.¹⁶² The Marshall Plan’s legacy also persists in the North Atlantic Treaty Organization (NATO), the European Union, and in other collective European and global programs.¹⁶³ A timely, and tragic, example of the Marshall Plan’s enduring reputation as a paragon of collective action is the ever-increasing chorus of calls for a Marshall Plan for Ukraine in the face of Russia’s unprovoked invasion in February 2022.¹⁶⁴

The Marshall Plan brought success for America, too. In the words of ECA Administrator Paul Hoffman, the United States “derived enormous

benefits from the bread it figuratively cast upon the international waters.”¹⁶⁵ More than 70% of European purchases under the Marshall Plan were made in the United States, helping to build and maintain a vital post-war economy.¹⁶⁶ Also, the reputational gains for the United States cannot be overstated. The Marshall Plan “demonstrated, in unprecedented fashion, the possibility of organizing and carrying out vast international endeavors—not for destruction, but for construction and peace.”¹⁶⁷ The United States had fulfilled its international obligations and emerged an undeniable world power, granting it “a new stature in the world as a leader to be trusted.”¹⁶⁸

III. TRIBAL NATIONS MARSHALL PLAN

“The conditions in Indian Country could be greatly relieved if the federal government honored its commitment to funding, paid greater attention to building basic infrastructure in Indian Country, and promoted self-determination among tribes.”¹⁶⁹

The same restorative justice principles and the return on investment that the United States sought to advance under the European Marshall Plan justify a Marshall Plan for Tribal Nations. The same “logic” that applied to the European Marshall Plan applies with even greater force domestically to the Tribal Nations whose homelands the United States occupies today and to whom the United States owes perpetual trust and treaty obligations. Yet, the United States’ funding for Tribal Nations has consistently fallen short, even while it continues to fund far more in foreign aid spending. The time for a Marshall Plan for Tribal Nations is now.

A. Substantial Investment in Tribal Nations Is Necessary and Justified

i. Restorative Justice Requires Substantial Investment in Tribal Nations

“[T]he U.S. government forced many Native Americans to give up their culture and did not provide adequate assistance to support their interconnected infrastructure, self-governance, housing, education, health, and economic development.”¹⁷⁰

The same restorative justice principles that fueled the United States’ Marshall Plan investment in Europe support the fact that a substantial investment is warranted for Tribal Nations today.

As discussed previously, Tribal Nations have engaged in sophisticated forms of self-government since time immemorial. The

governments of the colonies, the First and Second Continental Congresses, and the nascent United States recognized and honored our status as inherently sovereign nations. In the late eighteenth and early nineteenth centuries, the United States began an inexorable, unilateral erosion of its recognition of Tribal sovereignty. Federal policies—including those articulated under the Marshall Trilogy, Indian Removal Act of 1830, General Allotment Act of 1887, and House Concurrent Resolution 108 in 1953—all sought in different forms to diminish the exercise of our inherent powers and authorities by perniciously shifting the balance of power away from Tribal Nations to the federal government. The result has been an almost complete departure from the foundations of the diplomatic relationship that must exist between our sovereigns.

Time and again, the United States sacrificed the interests of Tribal Nations to advance federal goals and accumulate additional wealth and power. The United States’ failure to provide Tribal Nations the funding it owes us in exchange for the lands and resources it took—coupled with the steps the United States has taken to prevent our exercise of our full sovereign authorities—has wreaked havoc on our ability to provide the governmental services to which our people have a right.

The United States’ inadequate funding and other failures have had real consequences on our communities. One need only look to the persistent statistics related to poverty,¹⁷¹ unemployment,¹⁷² negative health outcomes,¹⁷³ diaspora,¹⁷⁴ graduation rates,¹⁷⁵ environmental injustice,¹⁷⁶ and mortality¹⁷⁷ to grasp how Tribal Nations and Native people must grapple with existential challenges on a daily and unforgiving basis. The USCCR Quiet Crisis Report and Broken



Oglala Lakota County, which is entirely within the Oglala Sioux Tribe's lands, is among the poorest counties in the U.S., with more than 50% below the poverty line, per capita income around \$8,768, unemployment in the 80% range, and a high school dropout rate of over 60%. The Oglala concept of tiospaye, the unity of the extended family, means that homes are often overcrowded, especially with the severe housing shortage in the community. Investing in home construction on Tribal land would create jobs and improve the lives of Tribal citizens.

Promises Report, and the Meriam Report before them, together document in detail the high rates of poverty and unemployment on Tribal lands,¹⁷⁸ under- and undeveloped Tribal economies,¹⁷⁹ negative health outcomes for Native people,¹⁸⁰ inadequate community infrastructure,¹⁸¹ below national average graduation rates,¹⁸² and other dire conditions that are directly attributable to the United States' funding failures and intentionally harmful policies toward Tribal Nations over the course of history.

The United States, in its alternating roles as hostile aggressor, duplicitous treaty-maker, and paternalistic colonizer, has stripped Tribal Nations of a future of our own making. The devastating cumulative effects of the abject neglect and outright hostility of the United States toward Tribal Nations are without measure.

These outcomes, which represent violations of basic human rights, would not be, and are not, accepted in U.S. international foreign policy. The United States would actively and robustly intervene to alleviate such a humanitarian crisis if it were occurring overseas. Yet, this crisis has been allowed to unfold on a daily basis here at home for generations without corrective action by the federal government. The intolerable

injustice of this reality strikes at the very heart of our humanity.

The precedent set by the European Marshall Plan, as well as international norms to which the United States has ascribed and continues to implement via foreign aid spending, require helping governments back on their feet after the United States or other nations disrupt their internal functioning and in the wake of humanitarian crises. In alignment with these international norms as heightened by the unique Nation-to-Nation relationship and trust and treaty obligations, the United States owes a clear Responsibility to Rebuild to Tribal Nations.

This obligation would be furthered through a significant investment in Tribal Nations that, like the European Marshall Plan, is adapted to the individual circumstances of each Tribal Nation without expectation of repayment or paternalistic federal oversight. This is a matter not just of restoring the baseline of economic and social stability—but of restorative justice for the United States' atrocities, coercion, and takings of Tribal lands and resources over centuries and federal actions that have resulted in multi-generational trauma, the erosion of Tribal sovereignty, and the criminalization and attempted eradication of Tribal identities and cultures. The United

States owes Tribal Nations “full assistance with recovery, reconstruction and reconciliation”¹⁸³ to an even higher degree than the obligations it owed European nations in the Marshall Plan.

A domestic Marshall Plan for Tribal Nations would also align federal actions toward Tribal Nations with the moral principles that it has long espoused as foundational to its national character: justice and American exceptionalism. The United States must be honest in publicly acknowledging its past and current mistreatment of Tribal populations to address the historic wrongs that have been perpetrated against our people since the time of first contact. The ongoing failure of the United States to give voice to this dark history is a thunderous silence. As a nation, the United States has long viewed itself as exceptional for its efforts in advancing justice and humanitarian relief in the international sphere, and it should be doing the same domestically. Being a leader on the world stage requires the United States to first lead with justice and integrity for its first peoples: Tribal Nations.

Not only would a Marshall Plan for Tribal Nations carry forth the international norms to which the United States subscribes with regard to the Responsibility to Rebuild and associated foreign aid, but it would also carry forth international norms applicable to Indigenous peoples’ rights. The United States passed a resolution to support the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).¹⁸⁴ The UNDRIP delineates and affirms the individual and collective rights of Indigenous peoples across a scope of key areas, including cultural and ceremonial expression, identity, health, and education. The UNDRIP calls on member countries to “provide effective mechanisms for prevention of, and redress for” the following:

- Any action which has the aim or effect of depriving [Indigenous peoples] of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

- Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- Any form of forced assimilation or integration;
- Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.¹⁸⁵

Further, the UNDRIP states that member countries “shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process . . . to recognize and adjudicate [their rights] pertaining to their lands, territories, and resources.”¹⁸⁶

In 2010, President Obama endorsed the UNDRIP as a matter of federal policy during his address to Tribal Leaders at the White House Tribal Nations Conference, stating:

*The aspirations [the UNDRIP] affirms—including the respect for the institutions and rich cultures of Native peoples—are ones we must always seek to fulfill. . . . But I want to be clear: What matters far more than words—what matters far more than any resolution or declaration—are actions to match those words.*¹⁸⁷

Through a Marshall Plan for Tribal Nations, the United States has an opportunity to move beyond mere aspirational support and take measurable action. The United States has perpetrated the harmful actions identified in the UNDRIP, among others, against Tribal Nations for generations, and a domestic Marshall Plan for Tribal Nations would serve as a process of restorative justice to redress them. Further, the actions taken in implementing a Tribal Nations Marshall Plan would help fulfill the commitments the United States has imprinted in the Constitution and countless treaties, agreements, laws, policies, regulations, resolutions, and U.S. Supreme Court decisions regarding fulfilling its trust and treaty obligations to Tribal Nations.

To be truly restorative, a Tribal Nations Marshall Plan investment must be substantial enough

to bring Tribal Nations up to a long-promised baseline, which, when paired with subsequent sustained funding, would implement the United States’ permanent trust and treaty obligations to Tribal Nations with regard to funding, as we strive to provide for our people. This investment “aim[s] at nothing less than healing inherited legacies of injustice through acts of atonement and reconciliation so that civil society can move forward with a more just culture.”¹⁸⁸ The time for change is now—and a Marshall Plan-like investment in Tribal Nations is a necessary step along the path to a new diplomacy model.

ii. U.S. Commission on Civil Rights
Recommendations Support Substantial
Investment in Tribal Nations

“The United States expects all nations to live up to their treaty obligations and it should live up to its own.”¹⁸⁹

The significant investment envisioned in the Marshall Plan for Tribal Nations builds upon and represents a next step forward from the groundbreaking work of the USCCR in its Quiet Crisis and Broken Promises Reports. These reports not only document the United States’ serious underfunding of Tribal Nations and the compounding harms this underfunding has caused, as discussed previously, but they also recommend a significant financial investment in Tribal Nations to redress these harms.

In its 2003 Quiet Crisis Report, the USCCR recommended immediate increases in funding for: Tribal infrastructure development, “without which tribal governments cannot properly deliver services”; Tribal courts, “which preserve order in tribal communities, provide for restitution of wrongs, and lend strength and validity to other tribal institutions”; and Tribal priority allocations, “which permit tribes to pursue their own priorities and allow tribal governments to respond to the needs of their citizens.”¹⁹⁰ Further, the USCCR recommended that all federal agencies administering Native American programs identify and regularly assess

so-called “unmet needs” within their authority.¹⁹¹ The USCCR stated:

*The federal government, through laws, treaties, and policies established over hundreds of years, is obligated to ensure that funding is adequate to meet these needs. Moreover, the government must work diligently to elevate the standard of living among Native Americans to that of other Americans by ensuring that federal agencies create attainable resource-driven goals toward this end.*¹⁹²

In its 2018 Broken Promises Report, the USCCR called on the federal government to live up to its trust and treaty obligations, and to invest in Tribal communities “because such investment strengthens America.”¹⁹³ The USCCR, “recognizing the federal government’s ongoing and historic failure to honor its trust obligations,”¹⁹⁴ recommended that Congress undertake certain actions. It called on Congress to: determine the funding necessary for the buildout of core utilities and infrastructure across Tribal communities in an amount sufficient to equitably provide the same opportunities as non-Native communities, and to pass a comprehensive spending package dedicated to this buildout; to periodically reevaluate this spending package and provide increased funding over time to ensure that these objectives are fully met; and to ensure these funds are available and accessible to all Tribal Nations.¹⁹⁵

The USCCR further recommended that the federal government “provide steady, equitable, and non-discretionary funding directly to tribal nations to support the public safety, health care, education, housing, and economic development of Native tribes and people.”¹⁹⁶

Additionally, the USCCR recommended the federal government adopt policies for programs affecting Native Americans “that promote equal treatment of tribal governments as compared to other governments,” and it argued the federal government “should provide sufficient funding, training, tools, and resources to tribal nations to provide their citizens the opportunity to exercise

self-government and self-determination.”¹⁹⁷ The USCCR specified for this recommendation that “Congress should provide long-term funding to tribes, analogous to the mandatory funding Congress provides to support Medicare, Social Security, and Medicaid, avoiding pass-through of funds via states.”¹⁹⁸

As previously emphasized, the USCCR’s use of the phrase “unmet needs” is inappropriate to describe the lasting problems created by the federal government’s unfulfilled trust and treaty obligations and imbalanced Nation-to-Nation relationship. However, the USCCR’s recommendations do appropriately assert that funding for Tribal Nations is indeed the federal government’s obligation—in essence an unpaid debt—and that the federal government’s failure to meet this obligation is what has created a need for funding within Tribal Nations.

The USCCR’s Quiet Crisis and Broken Promises Reports make starkly clear that the United States must significantly invest in Tribal Nations to bring our economies up to a baseline that is acceptable and commensurate with states and local governments. These reports also unambiguously acknowledge that the current need within Tribal Nations for this investment is a direct consequence of the United States’ failure to provide Tribal Nations with the funding required by its trust and treaty obligations. The Marshall Plan-like investment this document proposes would serve as this significant investment.

iii. Investment in Tribal Nations Will Strengthen United States as Whole

“The federal government should invest in Native American communities because such investment strengthens America.”¹⁹⁹

Tribal Nations have provided the very foundation on which the United States is built through our land and resources, and we remain vibrant and integral components of the cultural and economic fabric of American society today.

Despite substantial impediments, Tribal Nations are still finding ways to succeed through our determination, ingenuity, and resilience—as we have for thousands of years. In so doing, we contribute to our surrounding communities and to the country as a whole. Thus—like the financial benefits the United States saw as a result of the European Marshall Plan²⁰⁰—investment in Tribal communities not only means prosperity for Tribal Nations, but also new opportunities for the United States and our fellow American citizens. Further—like the international standing benefits the United States reaped from the European Marshall Plan²⁰¹—a Marshall Plan for Tribal Nations translates to a better moral standing in line with international norm, as discussed previously.

Where Tribal economies are successful, they also generate significant positive impacts for neighboring communities. The Harvard Project on American Indian Economic Development²⁰² team estimates that, directly and through spillover effects into surrounding communities, Tribal economic enterprises and Tribal governments together annually support:

- \$127 billion in national economic output;
- 1.1 million jobs, 915,000 of which are held by non-Native workers;
- \$49.5 billion in worker income (wages and benefits), \$40.2 billion of which goes to non-Native workers;
- \$9.4 billion in state and local tax revenue; and
- \$15.9 billion in federal tax revenue.²⁰³

A study in Washington State, for example, found that non-Natives made up 70% of Tribal Nations’ workforces in the State, and that Tribal Nations purchased more than \$3 billion in goods and services, nearly all of it (more than 94%) from off-reservation vendors.²⁰⁴ Tribal economic activity increases Gross State Product and contributes substantially to state and local government revenue through both payroll and purchasing.²⁰⁵ Non-Native communities also benefit from Tribal investment in social, environmental, and human capital in the states in which they are located.²⁰⁶

The Center for Indian Country Development at the Federal Reserve Bank of Minneapolis²⁰⁷ found



Chikasha House hospitality house, for family members/caregivers traveling with patients to Chickasaw Nation Medical Center, utilized housing and community programs to supply safe, decent, and affordable housing to Native American families. Federal investments have supported the building or acquisition of 41,496 affordable housing units, and rehabilitation of more than 102,148 units to improve living conditions and create economic opportunities for Tribal communities.

that “Tribes are active participants in an array of industries, including hospitality, tourism, energy, technological manufacturing and development, and financial services.”²⁰⁸ The Center also “built and examined a dataset of nearly 1,200 tribally owned small businesses drawn from a U.S. Small Business Administration registration system” and found that:

- “Over the last 25 years, the number of tribal enterprises outside of gaming has grown significantly.”²⁰⁹
- “Seventy percent of all tribal enterprises are located away from reservations (i.e., in counties without any federally recognized reservation land).”²¹⁰
- “Tribal enterprises are widely distributed across the country: while reservations are mostly located in the rural parts of the Great Plains and Western states, non-gaming tribal enterprise contractors can be found in the majority of the lower 48 states.”²¹¹

Against all odds, Tribal Nations have made great strides and bring significant economic activity to our surrounding communities, but there remains so much untapped potential and success to be had, which a Marshall Plan-like investment would help spark, foster, and bring to fruition.

Additionally, a Marshall Plan-like investment in Tribal Nations would largely be used to build and repair necessary infrastructure within Tribal Nations’ communities, and these improvements would also benefit surrounding communities.

As discussed elsewhere, when it comes to infrastructure investments generally, it is widely understood that the benefits accrue not only to the immediate community where they occur and at the time of construction, but they also facilitate shared, sustained economic growth for decades to come. The converse is also true: lack of investment in Tribal Nations’ communities negatively impacts not just our Tribal citizens and our governments, but also our fellow American citizens. A Marshall Plan for Tribal Nations would produce widely shared and lasting benefits for all Americans.

Organizations such as the Business Roundtable,²¹² the U.S. Chamber of Commerce,²¹³ and the Bipartisan Policy Institute²¹⁴ all recognize the critical role infrastructure plays in growing and sustaining America’s strong economy and long-term competitiveness. The U.S. Agency for International Development (USAID), the United States’ primary foreign aid agency, also recognizes the mission-critical role infrastructure investments play in its international aid and development work, stating: “Infrastructure is a vital pathway to achieving USAID’s development objectives across every sector. How the world grows, advances, and develops is built on a foundation of infrastructure.”²¹⁵

The Business Roundtable partnered with the University of Maryland Inforum modeling group to conduct “a macroeconomic modeling study of the impact of increasing infrastructure

investment on the U.S. economy.”²¹⁶ The study, titled “Delivering for America,” was published in 2019 and modeled the impacts of a potential \$737 billion investment in areas such as aviation, water resources and water transportation, drinking water and waste water, and surface transportation infrastructure over 10 years.²¹⁷ The Business Roundtable and Inforum found that “[i]nfrastructure investment unlocks meaningful productivity growth and boosts U.S. household income,” stating as follows:

- Investing in infrastructure pays for itself several times over. Every additional \$1 invested in infrastructure delivers roughly \$3.70 in additional economic growth over 20 years.
- It adds \$5.9 trillion to real GDP over 20 years as a result of a 0.10 percentage point increase in the average annual real GDP growth rate over that period.
- It increases labor productivity, the benefits of which reach all corners of the economy. Over 20 years, average annual labor productivity is 0.56 percent higher than baseline, and the gap widens with time.
- It contributes to higher job growth, with 1.1 million additional jobs created by year 10 of the policy scenario (2028).
- It raises worker wages, adding \$1.34 to average real hourly wages by 2038, compared to the baseline scenario.
- It adds to bank accounts, boosting household real disposable income by an average of \$1,400 every year, or \$28,300 over 20 years.
- It catalyzes private investment, adding an additional \$1.9 trillion in investment over 20 years.²¹⁸

In 2021, the Business Roundtable and the University of Maryland Inforum modeling group published an update and continuation of their 2019 study. The 2021 update modeled a slightly larger \$979 billion investment in the United States’ infrastructure over 10 years, with a category added for broadband.²¹⁹ It produced similar findings.

The 2021 study examined both short-term and long-term impacts of investing in infrastructure. With regard to short-term impacts, the study

found the following: “[P]ublic spending on infrastructure has high short-term stimulative potential at a relatively low long-term cost. The injection of investment spending creates jobs, pulls additional workers into the labor market, stimulates demand, and prompts a temporary acceleration in consumption spending and business investment.”²²⁰ With regard to long-term impacts, the study concluded:

Over the longer term, it is not the additional dollars spent on infrastructure that generate meaningful and sustained economic benefits, but the productivity-enhancing effects of the infrastructure itself. Chief among these benefits is a steady, accelerating increase in labor productivity. An increase in productivity is like tightening the gears of the economy—a frame shift that allows you to do more for less, boosting efficiency and generating positive ripple effects throughout the entire economy. . . .

The impacts of productivity growth are reflected most clearly in the increase in potential U.S. GDP, driven by increased consumption and investment, which accelerates economic growth for the foreseeable future. Households also see tangible benefits from increased productivity—in higher wages, increased disposable income, lower prices, and lower spending on key goods and services like transportation. Meanwhile, American industry supports a sustained increase in private investment and output, strengthening their competitive edge and continuing to propel economic growth.²²¹

Essentially, infrastructure investments work most effectively for the United States when they work in concert and connect communities.

In early January 2021, over 100 national and local organizations, led by the U.S. Chamber of Commerce and the Bipartisan Policy Center, launched the “Build by the Fourth of July” coalition to advocate for robust federal legislation to meet America’s infrastructure needs and to recognize the importance of strong national



Federal investments support Tribal enterprises and Native American businesses, and their contributions to the domestic and global success of the United States economy. Revenue from these business activities supports Tribal investments in community programs for education and health, provide high quality jobs and careers for citizens, and contribute to a sustainable tax revenue base.

infrastructure.²²² This and other efforts ultimately resulted in the enactment of the Infrastructure Investment and Jobs Act (known as the Bipartisan Infrastructure Law) in 2021. The Bipartisan Infrastructure Law provided a \$1.2 trillion investment in America’s infrastructure in the form of funding for roads, bridges, water, and broadband.²²³ However, only roughly \$11 billion (or less than 1%) of the funding was designated for or available to Tribal Nations.²²⁴ While this infusion of resources for Tribal Nations is beneficial, it is nevertheless insufficient to address the cumulative effects of deficient infrastructure conditions in Tribal communities, nor to provide the breadth, depth, and flexibility of resources needed for a true transformation of our economies. The resources for Tribal Nations in the Bipartisan Infrastructure Law represent a small down payment, of sorts, on a Marshall Plan for Tribal Nations.

Unfortunately, we can also clearly see the consequences of inadequate investments in Tribal Nations’ infrastructure up to now—from unequal health outcomes, poverty, wasted individual and community potential, and lowered labor force productivity, to a lowered national GDP and reduced national competitiveness.

As USAID has explained: “Inadequate access to infrastructure is a key barrier to economic growth. It inhibits access to health care, education, and markets.”²²⁵ For example, the “dead zones” of cellular and broadband service, dangerous roads disintegrating into mud after storms, and nonexistent or corroded drinking water pipes detailed by the USCCR in its Quiet Crisis and Broken Promises Reports²²⁶ harm not only our Tribal citizens and communities, but they also hamper the progress and prosperity of America as a whole. In the Broken Promises Report, the USCCR found the following:

- There are many barriers to positive social, physical, mental, and economic prosperity in Indian Country. Barriers include lack of employment opportunities, historic underfunding and underdevelopment of physical infrastructure such as roads, and lack of access to basic utilities including, but not limited to, electricity, broadband, and clean drinking water. Additional barriers include restrictions in accessing natural resources, regulatory burdens, climate change impacts, and limited access to capital.
- The federal government has failed to honor its trust responsibility to promote Native American self-determination via

its support of economic development in Indian country. Each tribe's relationship to economic development differs. The federal government has failed to assist the tribes with the individualized economic development necessary for tribes to exercise self-determination and make a knowledgeable decision as to how to best develop and manage their nation's resources for the tribe's benefit. Most tribal lands are in locations requiring major infrastructure to support development.²²⁷

Through a Marshall Plan for Tribal Nations, the United States would have the ability to invest in Tribal Nations' infrastructure and economies in a way that will help surrounding communities and America flourish as well. The return on investment cannot be overstated.

B. Current and Historic U.S. Appropriations for Tribal Nations Fall Far Short of United States' Trust and Treaty Obligations

i. Appropriations Have Never Fully Delivered upon United States' Trust and Treaty Obligations to Tribal Nations, Thus Compounding Prior Harm

"Due at least in part to the failure of the federal government to adequately address the wellbeing of Native Americans over the last two centuries, Native Americans continue to rank near the bottom of all Americans in terms of health, education, and employment."²²⁸

Current U.S. funding levels as a reflection of the United States' commitment to fulfilling its trust and treaty obligations are shameful and represent a mere fraction of full funding. According to the Office of Management and Budget's (OMB) most recent Native American Budget Crosscut,

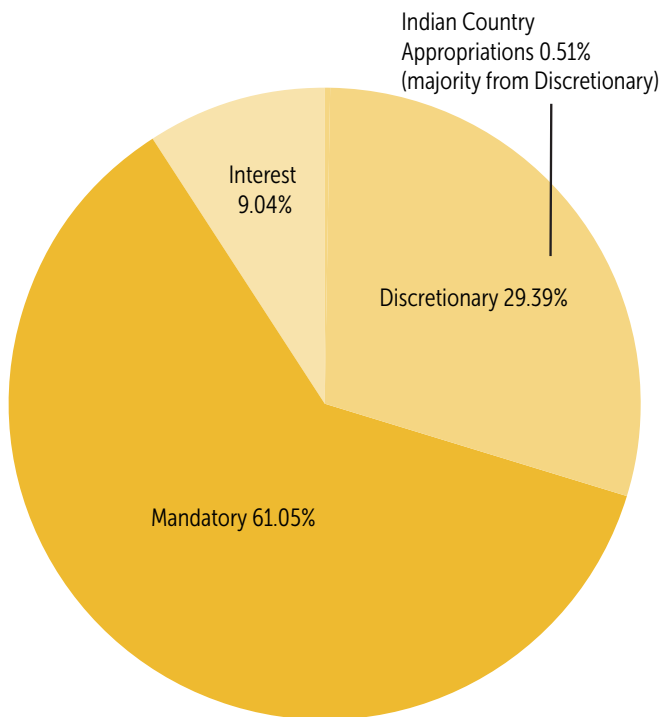
which tracks "Federal Funding for Programs that Benefit Native Americans," approximately \$25.2 billion in federal dollars was appropriated to Tribal Nations or federal agencies for our benefit in Fiscal Year (FY) 2021.²²⁹ This number represents less than 0.35% of the total federal budget for FY 2021,²³⁰ and it is only 0.07% of the value of land taken from Tribal Nations.²³¹

As is painstakingly documented by the USCCR reports, every category of federal funding for Tribal Nations and Native people—including housing, schools and education, roads and transportation, utilities and energy, Tribal courts and law enforcement, health, environmental protection, and economic development—has been, and continues to be, massively underfunded and often inefficiently structured, with devastating impacts.²³² This comes at a time when there has been increased bipartisan focus on the wholesale inadequacy of federal funding to meet the federal government's trust and treaty obligations, and an increasingly detailed understanding of the compounding devastation and lost potential that this pattern of underfunding has wrought across generations of Native people.

The OMB's Native American Budget Crosscut provides information on U.S. spending on programs for Tribal Nations and Native people broken down by fiscal year and the federal agency administering the funds. The 10 main federal agency categories, in order of budget percentage, are the Departments of: (1) Health and Human Services; (2) Education; (3) Interior; (4) Agriculture; (5) Housing and Urban Development; (6) Justice; (7) Transportation; (8) Federal Communications Commission; (9) Environmental Protection Agency; and (10) Other (total of all other departments not listed).²³³ The Budget Crosscut depicts \$25.2 billion appropriated across these 10 categories in FY 2021, some of which was then allocated among Tribal Nations through varying methods, from formula funding to competitive grants.²³⁴ This total allocation amounts to an average of a mere \$43.9 million to support each Tribal Nation for FY 2021.

Federal Indian Programs as a Percentage of Total Fiscal Year 2019* Spending

TOTAL FEDERAL SPENDING: \$4.4 TRILLION



*FY 2019 (pre-COVID appropriations) best represents historical funding levels for Indian Country.

However, it is important to understand that even this low number includes funds that are used for federal operational costs rather than services provided directly to Native people, which is reflective of an outdated, paternalistic, and bureaucratic approach to federal funding for Tribal Nations and communities. Further, some of the funding depicted is also funding for which Tribal Nations are eligible but are not, in fact, guaranteed recipients.

Reviewing OMB’s Native American Budget Crosscuts for data from enacted FYs 2014–2021²³⁵ and indexing those amounts for inflation to FY 2021 dollars,²³⁶ there is a modest 17.5% increase in the amount of federal funding for programs that benefit Native Americans during that time period. This is not nearly sufficient progress to fulfill all trust and treaty obligations.

Drilling down into component parts of the Native American Budget Crosscut and comparing

inflation-adjusted increases over time for Indian Affairs at the U.S. Department of the Interior (which includes the Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE), and other associated offices and accounts)²³⁷ and for the Indian Health Service (IHS) at the U.S. Department of Health and Human Services,²³⁸ two slightly different pictures emerge. The Indian Affairs and IHS budgets comprise 13% and 24%, respectively, of the FY 2021 enacted Native American Budget Crosscut, for a combined total of 37%.²³⁹ Yet, looking at the appropriated amounts for Indian Affairs and for the IHS from FYs 2014–2021, inflation-adjusted appropriations increased a modest 26% for the IHS, while inflation-adjusted appropriations increased just 19% for the Indian Affairs budget.²⁴⁰

However, to further put this increase into perspective and illustrate how much progress must still be made, we turn to a 2018 Government Accountability Office (GAO) report comparing the spending levels and characteristics of the IHS with three other federal healthcare programs: Veterans Health Administration (VHA), Medicaid, and Medicare.²⁴¹ While the programs indeed differ in terms of design and structure, funding, and populations served, what stands out the most clearly is the substantial difference in per capita spending.²⁴² The programs in order of per capita spending are: Medicare (\$13,185); VHA (\$10,692); Medicaid (\$8,109); and, far and away the lowest, the IHS (\$4,078).²⁴³ Just to reach the average per capita spending level for VHA and Medicaid patients, the IHS budget would need more than a 200% increase in one year, not a mere 26% increase over seven years.

These significant underfunding levels apply across the board to all federal programs providing resources for Tribal Nations and Native people. The current funding levels and their corresponding services are vastly inadequate when compared to surrounding communities and to the United States as a whole. Further, thanks to the complex and burdensome nature of federal Indian law, Tribal Nations are often forced to spend a disproportionate amount of our limited funds and resources on overcoming administrative hurdles, such as writing grant

applications and filing reports, rather than investing directly in our communities. The United States must take ownership of the damage it has inflicted on Tribal Nations, which has resulted in the state of affairs laid out in the USCCR reports, and fulfill its promises to Tribal Nations through adequate funding.

ii. Funding Shortfall for Tribal Nations Is Especially Stark When Compared to U.S. Foreign Aid Spending

“Civil rights concerns are manifest in the fact that Native Americans often receive fewer services and less funding than other populations.”²⁴⁴

The United States invests in foreign aid today for similar reasons that it made the European Marshall Plan investment; for similar reasons, the United States should invest more heavily and appropriately in Tribal Nations. The United States’ annual funding levels for foreign aid provide an enlightening comparison.

The federal government’s foreign aid website, maintained by the U.S. Department of State and USAID, provides information broken down by “sector,” managing agency, funding phase, objective, and recipient country/region from FYs 1947–2021.²⁴⁵ According to the most recently available data for FY 2021, \$37 billion was obligated to 182 countries/regions for an average of \$203.3 million per recipient country/region.²⁴⁶ For FY 2021, the nine “sectors” of U.S. foreign aid in order of spending were: (1) Health; (2) Humanitarian Assistance; (3) Program Support; (4) Economic Development; (5) Multi-sector; (6) Democracy, Human Rights, and Governance; (7) Education and Social Services; (8) Peace and Security; and (9) Environment.²⁴⁷

The eleven “managing agencies” for U.S. foreign aid in order of their FY 2021 foreign aid budget size were: (1) USAID; (2) U.S. Department of Defense; (3) U.S. Department of the Treasury; (4) Millennium Challenge Corporation; (5) Peace Corps; (6) U.S. Department of Agriculture; (7) U.S.

Department of State; (8) U.S. Department of the Interior; (9) U.S. Department of Labor;; (10) U.S. Department of Health and Human Services; and (11) “Others.”²⁴⁸ USAID was the largest managing agency by far, handling \$31.7 billion of the total \$37 billion in foreign aid obligated for FY 2021.²⁴⁹ USAID’s website explains that its work “advances U.S. national security and economic prosperity, demonstrates American generosity, and promotes a path to recipient self-reliance and resilience.”²⁵⁰

In addition to the United States’ willingness to expend significant resources on foreign aid spending, the United States has also shown its respect for those foreign nations’ sovereignty by allowing recipients to utilize funds as they see fit without burdensome reporting requirements.

Amounts currently provided to Tribal Nations do not come close to foreign aid spending, nor do they come with the flexibilities worthy of Tribal Nations’ sovereign status. The FY 2021 enacted Native American Budget Crosscut depicts \$25.2 billion administered across 10 federal agency categories.²⁵¹ In comparison, this equals only 68% of the \$37 billion U.S. foreign aid budget obligation for that same fiscal year.²⁵² Even more egregious, the average amount of \$43.9 million in federal funding supporting each Tribal Nation in FY 2021 is less than 22% of the average amount of \$203.3 million in federal foreign aid obligated to each recipient country/region the same year.²⁵³

Looking back at FYs 2014–2020, it becomes clear that the disparity is even worse. For each fiscal year between FY 2014 and FY 2020, the Native American Budget Crosscut equaled only 50% of the roughly \$50 billion in U.S. foreign aid obligated for each of those same fiscal years.²⁵⁴ This stark disparity is even more shameful considering the fact that most of the U.S. foreign aid budget is simply discretionary spending, while the federal government is bound by its trust and treaty obligations to provide sufficient funding to Tribal Nations.

iii. Recently Enacted Laws Do Not Amount to Marshall Plan for Tribal Nations

“Even when federal funding for Native American programs has increased, these funding levels have not kept pace with declines in real spending power, let alone fulfilled the trust obligations to which the federal government has committed itself for Native Americans.”²⁵⁵

Over the last two decades, Congress has passed significant legislation to respond to a global recession,²⁵⁶ a national health care crisis,²⁵⁷ and the COVID-19 pandemic,²⁵⁸ as well as to rebuild the United States’ infrastructure, as discussed previously.²⁵⁹ These laws have each cost hundreds of billions, or, in some cases trillions, of dollars. None of these pieces of legislation serve to fill the void the Marshall Plan for Tribal Nations would address. Additionally, while political forces in Washington tend to respond to crisis situations with appropriations, they fail to understand the cost of a crisis ongoing and unheeded—in this case, the lack of support for its trust and treaty obligations to Tribal Nations.

While each of these laws included funding specifically for Tribal Nations, that funding was generally a modest percentage of the overall amount made available by the law. These laws did not provide the funding level necessary to bring Tribal Nations up to the baseline advocated for here. Further, the funding made available to Tribal Nations was hampered by reporting and program requirements, deadlines for applying for and spending funds, and, in many cases, cost shares. These laws did not provide funding to Tribal Nations with the flexibility required for the exercise of sovereign governmental decision-making about the funding’s use. Further, these laws were tailored to address the particular national crisis of the moment—not to repair and rebuild Tribal Nations from the harm caused by more than a century of massively underfunded trust and treaty obligations. None of these laws nor the funding made available under them address the underlying problems that created a

disproportionate impact on Tribal Nations in the first place—and none were designed to do so.

Although these laws represent important steps forward in ensuring that Tribal Nations are meaningfully included in large pieces of legislation of national scope, simply including us in laws designed to respond to specific large-scale disasters and problems is not enough. Going forward, Tribal Nations must continue to be included in broad legislation of national scope, albeit with higher set-aside percentages, provisions designed with Tribal Nations in mind, and significantly fewer requirements attached. However, we must also have legislation of our own uniquely designed to provide the necessary funding and structural changes envisioned by the Marshall Plan for Tribal Nations.

iv. All Numerical Comparisons Support Need for Investment in Tribal Nations

“Native Americans have suffered too long from inattention and halfhearted efforts, and the crisis in Indian Country must be addressed with the urgency it demands.”²⁶⁰

As demonstrated in the following table, the United States has consistently failed to live up to its trust and treaty obligations—providing annual funding to Tribal Nations that is far below the value of lands and resources taken from us, far below amounts provided to other countries through foreign diplomatic aid, and representing only a fraction of the total federal budget. These annual funding failures have compounded, resulting in generations of severe deficiencies and lost potential, which a Marshall Plan-like investment in Tribal Nations would address.

Calculation	Total Amount (FY 2021)	Native American Budget as % of Total
Native American Budget Crosscut (FY 2021) <i>*Higher than most recent average due to COVID funding.</i>	Approx. \$25.2 billion ²⁶¹ (\$43.9 million per Tribal Nation on average)	n/a
Value of Land and Natural Resources Taken from Tribal Nations (2019 Data)	Approx. \$34.6 trillion ²⁶²	0.07%
Total Federal Budget (FY 2021)	Approx. \$7.2 trillion ²⁶³	0.35%
U.S. Foreign Aid Budget (FY 2021)	Approx. \$37 billion ²⁶⁴ (\$203.3 million per country/region on average)	Approx. 22% ²⁶⁵

As depicted in the following table, if the United States made a similar investment in Tribal Nations as it did in the European Marshall Plan, by any calculation it would represent a drastic

influx of funding beyond the \$25.2 billion of federal funding allocated for Tribal Nations in FY 2021.

Calculation	Historical Dollars	Fiscal Year 2021 Dollars
Marshall Plan Cost (Congressional Research Service estimate)	\$13.3 billion ²⁶⁶	\$156 billion ²⁶⁷
1–2% GDP Representing Marshall Plan Cost	\$13.3 billion ²⁶⁸	\$232–464 billion ²⁶⁹
13% of Overall US Budget	\$13.3 billion	\$936 billion
Marshall Plan Cost Per Participating European Nation	\$831 million ²⁷⁰	\$9.75 billion ²⁷¹
Marshall Plan Cost Including Associated Pre- and Post-Foreign Aid to Participating European Nations	\$43 billion ²⁷²	\$513 billion ²⁷³
Marshall Plan Cost Including Associated Pre- and Post-Foreign Aid to Participating European Nations per Participating European Nation	\$2.7 billion ²⁷⁴	\$32 billion ²⁷⁵



IV. NATION REBUILDING

"[B]roken treaties have left many reservations without adequate access to clean water, plumbing, electricity, internet, cellular service, roads, public transportation, housing, hospitals, and schools."²⁷⁶

Tribal Nations are sovereign governments with all the responsibilities that government status entails, and we must provide a full range of government services for our citizens. Yet, the United States' failure to fulfill its trust and treaty obligations by continually underfunding Tribal Nations has inhibited our ability to properly care for our communities, resulting in dire consequences for our citizens' quality of life. A significant investment in Tribal Nations similar to the European Marshall Plan would be transformative, paving the way for true nation rebuilding.²⁷⁷

A. Infrastructure

i. Housing

"There is a pervasive housing crisis in Indian Country, which is reflected in substandard housing conditions as well as a shortage of affordable housing."²⁷⁸

The housing crisis in Tribal communities has been well documented. Even in the intervening years between the USCCR reports the problem worsened, with a greater number of Native Americans "living in overcrowded households or households without adequate kitchens or plumbing" in 2018 than did in 2003.²⁷⁹ According to a comprehensive 2017 U.S. Department of Housing and Urban Development study, housing problems in Tribal communities "are extreme by any standard."²⁸⁰ The study revealed that 34% of Native households had one or more physical problems compared with a 7% national



Housing infrastructure is often bound up with other infrastructure challenges facing Tribal Nations.

average,²⁸¹ and 16% of Native households were overcrowded compared with a 2% national average.²⁸² A 2013 study by the Native American Indian Housing Council estimated that 70% of existing homes in Tribal communities needed upgrades or repairs, many of them extensive.²⁸³

As deplorable as these numbers are, they actually represent some improvement since the enactment of the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996, which consolidated existing funds into a single Indian Housing Block Grant (IHBG).²⁸⁴ However, improvement has been frustrated by the failure of funding for the IHBG to keep up with inflation, thus eroding Tribal Nations' ability to develop new affordable housing in addition to maintaining existing housing over time.²⁸⁵

Opposite page: In recent years, more than 500 acres of redwood forest were returned to the InterTribal Sinkyone Wilderness Council, a consortium of 10 Tribal Nations whose ancestors were forcibly removed from the land generations ago. The land will again be called Tc'ih-Léh-Dũñ, which means "Fish Run Place" in the Sinkyone language.



Many of the roads on Tribal lands, like the Navajo Nation, are unpaved and become impassable during bad weather. Investments in Indian Country would allow Tribal Nations to improve their transportation infrastructure and provide essential services to Tribal communities.

Housing infrastructure is often bound up with other infrastructure challenges facing Tribal Nations. The United States forcibly removed many Tribal Nations from our traditional homelands, often to remote or inhospitable environments, which today translates to increased material and labor costs for housing construction and other infrastructure projects.²⁸⁶ Tribal Nations that lack general infrastructure due to these conditions “must first build roads, basic utilities, and sanitation systems before home construction can begin.”²⁸⁷ The result is that otherwise manageable housing projects turn out to be cost-prohibitive due to associated infrastructure needs. In some circumstances, Tribal governments are unable to take advantage of resources that are meant to fund increased housing because Tribal governments are restricted from using those resources to develop the prerequisite infrastructure. A vicious catch-22.

Additionally, lack of sufficient housing is a contributing factor to other problems, such as many Tribal Nations’ inability to attract and retain qualified teachers, doctors, and other professionals to work and live in Tribal communities. The U.S. Department of Housing and Urban Development has also found that overcrowded housing has negative effects on family (especially children’s) health and contributes to poor academic performance.²⁸⁸ Overcrowding has had additional devastating consequences during the COVID-19 pandemic, contributing to disproportionate rates of infection and death among Tribal communities.²⁸⁹

Without sufficient funding from the United States to support housing, as required by the United States’ trust and treaty obligations, Tribal Nations are not able to meet the housing needs of our citizens. Each year that housing is not properly funded, the problem compounds.

ii. Roads and Transportation

“Transportation infrastructure is critically important both to the ability of tribal governments to provide citizens with essential services, and the overall economic development of Indian Country.”²⁹⁰

Transportation infrastructure is a basic need for any functional government. Without safe, adequate, and well-maintained roads, bridges, and public transportation, Tribal Nations are unable to provide essential services to our citizens, including suitable access to schools, jobs, health and emergency facilities, and even the ballot box.²⁹¹ Over 154,400 miles of public roads traverse Tribal lands,²⁹² often serving Tribal citizens, non-Native residents, and visitors alike. A lack of sufficient transportation infrastructure not only hampers economic development opportunities for Tribal Nations and our citizens, but it also increases risks for all who travel these roads.

Like so many other issues in Tribal communities, much of the road development and maintenance falls under federal control. Currently, the BIA is responsible for more than 29,000 miles of roads

and more than 1,000 bridges on Tribal lands,²⁹³ while about 13,650 miles of roads and trails are owned and maintained by Tribal Nations.²⁹⁴

The lack of transportation infrastructure is especially severe among the more remote Tribal Nations, and the state of BIA-controlled roads and bridges highlights some of the most extreme and appalling circumstances. For example, the vast majority of BIA roads—17,200 miles—are “unimproved and earth surface roads,” compared to only 7,500 miles of paved roads and 5,000 miles of gravel roads.²⁹⁵ According to the BIA itself, only 12% of its roads and 69% of its bridges would “be in acceptable condition” by FY 2022.²⁹⁶ Collectively, these are some of the most “underdeveloped, unsafe, and poorly maintained road networks in the nation.”²⁹⁷

Tribal governments cannot provide for our citizens when so much basic infrastructure is inaccessible or unsafe. Again, this is an impediment to our use of resources, including the COVID-19 relief funds, which could provide much-needed assistance but may be restricted from use for prerequisites like roads. The United States must honor its trust and treaty obligations by providing Tribal Nations with unrestricted funds to put toward our unique infrastructure requirements.

iii. Utilities and Energy

“There is a problematic utility infrastructure in Indian Country due in part to the locations of many tribal lands, but also from an unmet funding need at the federal level.”²⁹⁸

a. Water and Sanitation

Approximately 13% of Tribal households lack safe drinking water or adequate sewage systems, compared to less than 1% nationwide.²⁹⁹ As of 2020, households on Tribal lands are 3.7 times more likely to lack indoor plumbing altogether than all other households in the United States.³⁰⁰ In 2016, the federal government funded just 11% of the existing demand for developing,



The Seneca Nation of Indians’ Utilities Department ensures that drinking water provided to the Seneca Nation territories meets or exceeds the Seneca Nation Health Departments requirements and Federal regulations.

constructing, or repairing drinking water and wastewater infrastructure projects in Tribal communities.³⁰¹

These numbers, while appalling in their own right, have much broader impacts by contributing to health disparities between Tribal Nations and the rest of the United States. Research shows that those with safe water and sanitation systems in their homes require significantly fewer medical services, to such a degree that the IHS estimates that every dollar spent on sanitation facilities in existing homes achieves “at least a twentyfold return in health benefits.”³⁰² However, inflation, population growth, and federal regulations combined with severe underfunding have resulted in a backlog of maintaining and updating these facilities.³⁰³

b. Broadband and Communications

Many Tribal Nations lack the broadband and telecommunications access necessary to function in the 21st century. According to the Federal Communications Commission (FCC) and its Office of Native Affairs and Policy, broadband is “a basic infrastructure necessary for



In 2017, investments from the U.S. Department of Energy allowed the Southern Ute Indian Tribe to complete a photovoltaic (PV) system on more than 10 acres of Tribal land that was mostly unusable due to naturally occurring selenium contamination. During its first year of operation, the Oxford Solar Facility exceeded expectations for the year, generating 112% of kilowatts for buildings selected to benefit.

improving economic growth, job creation, global competitiveness, and a better way of life,” while “[t]he lack of robust communications services presents serious impediments to Tribal Nations’ efforts to preserve their cultures and build their internal structures for self-governance, economic opportunity, health, education, public safety, and welfare.”³⁰⁴ Impediments to broadband deployment unique to Tribal Nations include remote, sometimes rugged, terrain, insufficient road accessibility, and complex permitting processes to obtain rights-of-way.³⁰⁵

Compared to the United States generally, Tribal Nations “stand out as being among the most unserved or underserved populations with respect to broadband deployment.”³⁰⁶ The FCC has stated that, “[b]y virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population.”³⁰⁷ As of December 2017, the FCC estimated that approximately 32% of individuals living on Tribal lands lacked sufficient broadband access (measured at speeds of at least 25 Mbps download/3 Mbps upload).³⁰⁸ And yet, the GAO has countered that the FCC’s methodology actually overestimates broadband deployment on Tribal lands,³⁰⁹ indicating that the digital divide in reality is even greater.

c. Energy

Tribal Nations have vast, largely untapped energy resources, and yet approximately 14% of Tribal households have no access to electricity—a figure that is 10 times higher than the national

average.³¹⁰ These energy resources largely “remain undeveloped due to the mismanagement of the development of trust lands by the federal government and the bureaucracy that complicates development.”³¹¹

If Tribal Nations were free to exercise full sovereignty over our lands and resources, energy development could provide a substantial boost to Tribal economies while also serving the United States’ goals of energy security and independence, and contributing to worldwide efforts to reduce greenhouse gases. The U.S. Department of Energy’s Office of Indian Energy estimated in 2018 that the utility-scale renewable energy potential on Tribal lands is 6.5 times greater than the national potential.³¹² Tribal Nations hold nearly 25% of the country’s on-shore oil and gas reserves, 33% of the country’s western low-sulfur coal, almost 3.5% of the country’s wind energy, and approximately 5% of the country’s total solar energy potential.³¹³

Despite a general lack of commercial-scale energy developments in Indian Country, energy resources have still provided over \$1 billion in revenue to Tribal Nations and individuals.³¹⁴ There is evidence that energy investments in Tribal Nations pay significant dividends for Tribal and rural communities. For example, between 2010 and 2020, the U.S. Department of Energy’s Office of Indian Energy invested over \$100 million in more than 190 Tribal energy projects, which were valued at nearly \$180 million.³¹⁵ To date, these projects have collectively provided a savings of more than \$275 million.³¹⁶

With these promising figures, imagine the potential if the United States reaffirmed Tribal Nations' sovereignty over our lands and resources and provided the funding we need for development—not just for our own communities, but for the benefit of surrounding communities and the United States. The energy context provides a relatively concrete example of the fact that, by continually refusing to fulfill its trust and treaty obligations to Tribal Nations, the United States is harming its own interests.

B. Political Infrastructure and Support

i. Constitutional Reform

“Unequal treatment of tribal governments and lack of full recognition of the sovereign status of tribal governments by state and federal governments, laws, and policies diminish tribal self-determination and negatively impact criminal justice, health, education, housing and economic outcomes for Native Americans.”³¹⁷

While we are now in an era of self-determination for Tribal Nations, many Tribal governments still struggle with legacies of colonialism in our governing documents and the structures imposed on us by the federal government long ago via the IRA of 1934 and other actions. Tribal governments, including those whose federal recognition was “terminated” by the federal government, are still recovering from generations of imbalance in the Nation-to-Nation relationship with the United States. The ability of Tribal Nations to fully exercise our sovereignty and jurisdiction today hinges on strong self-governance rooted in a constitution tailored to each Tribal Nation's values and needs.

However, many existing Tribal constitutions were not created with these concerns in mind and are not equipped for the complex challenges faced by Tribal Nations today.³¹⁸ IRA constitutions took a one-size-fits-all approach that limited

Tribal sovereignty and established governments that were heavy with federal oversight and often vulnerable to exploitation.³¹⁹ Yet, for a variety of reasons, amending or adopting a new constitution is no simple matter—and it costs money to navigate the process. IRA constitutions, for example, provide only for two-year, non-staggered terms of elected office and often have a lack of separation of powers, allowing a small faction or even a single person to upend the process.³²⁰ Additionally, changing such a Tribal constitution is often still subject to federal approval (at least in the first instance) and can result in a confusing bureaucratic and politically fraught process. In this way, “[o]ften the very policies that [tribal] nations are trying to get out from under by engaging in constitutional reform are the actual things that hinder constitutional reform.”³²¹

An infusion of federal funding would allow Tribal Nations to invest in ensuring our core governing documents are in place, strong, and reflective of our self-determined governing structures and traditional values.

ii. Tribal Courts

“[I]n addition to ensuring order and justice, tribal courts are a key to economic development and self-sufficiency.”³²²



Penobscot Indian Nation's Healing to Wellness Court uses the principles of restorative justice to work with citizens and incorporates parts of Penobscot culture to improve social problems within the community on Indian Island.



Friends and family of slain Ho-Chunk Nation citizen Kozee Decorah stand with MMIW activists outside the federal courthouse in Omaha, Nebraska, during a rally held on June 15, 2020.

Needed support for Tribal Nations' political infrastructure has been challenging to quantify because, among other reasons, the U.S. Department of the Interior and other federal agencies do not believe they are required to estimate the full unmet obligations within their Indian Affairs programs.³²³ But there is no doubt that Tribal courts are severely underfunded. In 2011, for example, representatives from the GAO visited 12 Tribal Nations and "found that funding for Tribal courts is often inadequate to allow them to carry out their judicial duties."³²⁴ In 2018, funding for Tribal courts, law enforcement, and corrections was only covering 14.7% of estimated operational requirements.³²⁵

Despite this, Tribal Nations have been leading the way nationally in developing community-oriented specialty courts focused on peacemaking, healing to wellness, child welfare, juvenile justice, and other sensitive topics. Many Tribal Nations favor treatment or supervision programs over incarceration, as they align better with our traditions and more directly address root issues, such as poverty and substance abuse.³²⁶

And yet, Tribal Nations could be doing so much more. A 2010 survey of Tribal courts "revealed that securing and sustaining funding are significant impediments to the development of incarceration alternatives."³²⁷ Instead, Tribal

Nations must often develop and implement judicial systems by piecing together short-term ad hoc grants with various requirements and restrictions of their own. With an infusion of federal funding, our innovation could truly flourish, with the added benefit of decreasing the load on federal courts and law enforcement officials as Tribal court capacity expands.

iii. Public Safety and Law Enforcement

"Although overall funding for public safety in Indian Country has increased, it does not come close to meeting the public safety needs in Indian Country or the needs to police and protect natural resources."³²⁸

Tribal Nations, like all governments, must enforce our laws and protect our citizens. Unlike other governments, however, Tribal Nations face a web of severe underfunding combined with an inability to prosecute many crimes, including many committed by non-Natives against our people and our homelands.³²⁹ As the 2013 Indian Law and Order Commission ultimately concluded, "criminal jurisdiction in Indian Country is an indefensible morass of complex, conflicting, and illogical commands, layered in over decades via congressional policies and

court decisions and without the consent of Tribal nations.”³³⁰

The United States’ wrongful impediment to our exercise of criminal jurisdiction is one major cause of the public safety issues our communities face. Early U.S. Supreme Court decisions recognized that Tribal Nations’ inherent sovereignty includes jurisdiction over our land and people, including inherent jurisdiction over crimes.³³¹ But the United States has slowly chipped away at Tribal Nations’ jurisdiction. For example, in the 1978 decision of *Oliphant v. Suquamish Indian Tribe*,³³² the Supreme Court struck what may be the largest and most harmful blow to Tribal Nations’ criminal jurisdiction.

In that case, the Supreme Court held that Tribal Nations lacked criminal jurisdiction over non-Native people, even for crimes committed within Indian Country.³³³ The Supreme Court based this harmful decision on the faulty reasoning that—while the Supreme Court’s own precedent recognizes that Tribal Nations possess aspects of our inherent sovereignty unless expressly divested—in the case of criminal jurisdiction over non-Native people, retention of such inherent sovereignty was simply impractical for the United States.³³⁴ While the Supreme Court acknowledged that Tribal Nations’ jurisdiction flows from our inherent sovereignty, it held the continued existence of criminal jurisdiction over non-Native people would be “inconsistent” with Tribal Nations’ status, where our inherent sovereignty is now “constrained so as not to conflict with the interests of [the United States] overriding sovereignty.”³³⁵ Not only is this decision immoral and harmful, it is also illogical, as other governmental entities, such as states, routinely exercise criminal jurisdiction over non-citizens present in their boundaries. It is this very exercise of jurisdiction that keeps everyone safe—something that is clearly in the United States’ best interests. After this case, Tribal Nations were not able to exercise criminal jurisdiction over non-Native peoples’ crimes on our own land and against our own people.³³⁶

Congress, through the Indian Civil Rights Act,³³⁷ also restricted Tribal Nations’ criminal

jurisdiction by prohibiting Tribal Nations from imposing more than one year of incarceration and a \$5,000 fine for an offense.³³⁸ After this statute was enacted, Tribal Nations were not able to exercise criminal jurisdiction in excess of these relatively low penalties, even over our own people. Some have even argued the Major Crimes Act,³³⁹ which vested the federal government with jurisdiction over many serious crimes, altogether removes Tribal Nations’ jurisdiction over serious crimes committed by our own people.

There are very real and practical consequences of the United States’ wrongful taking of Tribal Nations’ criminal jurisdiction. This taking has left a vacuum that allows crime to grow unabated. Compared to the national average, for example, Indigenous women are 10 times more likely to be murdered and four times more likely to be sexually assaulted.³⁴⁰ Underfunding of safety and security needs in Indian Country directly fuels the ongoing crisis of Missing and Murdered Indigenous Women and Girls, as Tribal Nations are left without the resources and jurisdiction to pursue many cases ourselves. Instead, investigations and prosecutions are often left to the federal government, and the reality is that missing Indigenous women are rarely a priority for Assistant U.S. Attorneys. This gap in jurisdiction only encourages perpetrators to travel to our lands to act unlawfully.

Even beyond jurisdictional complications, Tribal Nations are at a severe operational disadvantage in protecting our citizens. Tribal Nations have “less officers per capita than law enforcement agencies nationwide, leaving residents of Indian Country less safe and subject to higher rates of crime.”³⁴¹ In 2009, federal funding met only 42% of the operational requirements for law enforcement officials in Indian Country, and the BIA found that “an additional \$337 million in funding was needed in 2016 to bring Indian Country law enforcement staffing levels up to par with those of county government law enforcement nationwide.”³⁴²

Though the United States’ infringement on Tribal Nations’ criminal jurisdiction has been lifted in recent years in small but important ways via laws



An innovative hospital run by the Eastern Band of Cherokee Indians showcases an alternative model of health care that could have lessons for other Tribal communities and beyond.

such as the Tribal Law and Order Act (TLOA)³⁴³ and the Violence Against Women Act (VAWA),³⁴⁴ underfunding is nevertheless an obstacle to implementation. Of 109 Tribal Nations surveyed by the GAO in 2012, 86 of them (nearly 80%) “cited funding limitations as a major obstacle to implementing their newly enhanced sentencing authority” under TLOA.³⁴⁵ And, while VAWA expanded criminal jurisdiction over certain non-Indian individuals, only 18 Tribal Nations (about 3%) were able to implement it as of March 2018.³⁴⁶ Other laws, like the Victims of Crime Act,³⁴⁷ provide billions in aid, but they allocate funding to Tribal Nations only via “pass-through” funding from states.³⁴⁸ Between 2013 and 2018, less than 1% of these funds had been passed through states to Tribal governments.³⁴⁹

If underfunding were not enough, some Tribal Nations are subject to federal laws that further limit their exercise of jurisdiction over their land in ways that hinder application of jurisdiction reaffirming statutes such as VAWA. Tribal Nations in Maine, for example, were forced to advocate for their specific inclusion in VAWA in order to exercise the law’s special criminal jurisdiction due to a restrictive settlement act.³⁵⁰ In states that have “Public Law 280” jurisdiction to prosecute crimes occurring on Tribal lands, a

policy stemming from the termination era in the 1950s, many Tribal Nations have faced barriers to accessing justice under VAWA in state courts, resulting in an increase in unreported crimes.³⁵¹ And many unique circumstances apply to Tribal Nations in Alaska, including a general lack of “Indian Country” land, leading to the exclusion from VAWA of all but one of the 229 Tribal Nations within Alaska’s boundaries.³⁵²

Examples exist that demonstrate what Tribal Nations can do when our public safety and law enforcement costs are fully funded *and* we are free to apply that funding ourselves as we see fit. A recent U.S. Department of the Interior pilot program called the Tiwahe Initiative managed to reduce violent crime by 56% over a three-year period in selected Tribal communities simply “by applying the significant or necessary resources.”³⁵³ This drastic reduction far surpassed the Tiwahe Initiative’s original goal of reducing violent crime by a mere 5% over two years.³⁵⁴ The program was “a Tribal-led best practice approach”³⁵⁵ that lasted for a total of five years, and the six pilot Tribal Nations were not just fully funded, but they were also “invited to do what they wanted to do”—something that had never before occurred “in the history of tribal collaboration with the BIA.”³⁵⁶

Unsurprisingly, “being invited to identify their Tribal community needs and envision and create their own plans was an immediate positive outcome.”³⁵⁷ Each Tribal Nation was able to tailor its funding according to its citizens’ needs and values, resulting in 80,000 Native individuals eligible to receive services in new ways at the end of the five-year program.³⁵⁸ Unrestricted funds provided stipends for elders working on a language dictionary, classes in traditional arts and cooking, equine therapy, and sweat lodges.³⁵⁹ It allowed for the ability to follow cultural traditions such as providing food at meetings and to pursue holistic remedies such as purchasing a trailer and truck to deliver furniture for families in need, a simple act that enabled them to reunify or stay together.³⁶⁰ While each Tribal Nation involved in the Tiwahe Initiative faced different obstacles, the overall results speak for themselves. The Red Lake Nation alone realized cost savings of over \$8 million, a return on investment of about 3.2 to 1.³⁶¹

Tribal Nations are strongest when we are best positioned to control our own destiny—including with regard to our public safety. As the BIA stated in its final report to Congress, the Tiwahe Initiative “prove[d] that when Tribes have the freedom to design programs and integrate services with Tribal culture and tradition, the outcomes are powerful and beneficial to Indian communities and families.”³⁶² Empowerment not only benefits us directly, but the United States as well, generating a “return in investment” that “is both exciting and powerful.”³⁶³ At the core of the United States’ trust and treaty obligations is its duty to honor its promises, so that Tribal Nations can thrive and prosper and effectively address the needs of our communities.

C. Essential Services

Tribal Nations deserve full recognition of our sovereign status at the local, state, and federal level. Failure to accord this recognition “diminish[es] tribal self-determination and negatively impact[s] criminal justice, health, education, housing and economic outcomes for Native Americans”³⁶⁴—in addition to the

harms in these areas caused by insufficient federal funding. These are essential services all citizens expect from their governments, and Tribal Nations have a responsibility to provide them utilizing the funding the United States has trust and treaty obligations to transfer to Tribal Nations for this purpose.

i. Healthcare

“Funding for the IHS and Native American health care is inequitable and unequal. IHS expenditures per capita remain well below other federal health care programs, and overall IHS funding covers only a fraction of Native American health care needs, including behavioral health needs to address the suicide epidemic in Indian Country.”³⁶⁵

The health disparities that persist among Tribal Nations are stark, and they are a direct result of ineffective or damaging federal Indian policies throughout history. Compared to the national average, Native Americans live 5.5 years fewer, experience infant mortality 1.3 times more often, experience suicide 1.6 times more often, require substance use treatment nearly twice as often, and have a diabetes rate over twice as high.³⁶⁶ Limited resources are often drained by treatment of chronic diseases, leaving little for prevention.³⁶⁷

Though there have been steps in the right direction, such as the permanent authorization of the Indian Health Care Improvement Act (IHCA),³⁶⁸ the IHS has never received funding sufficient to fully implement this statute and its affirmed trust and treaty obligations.³⁶⁹ As previously discussed, IHS appropriations fall well below operational requirements. In 2017, the IHS spent only \$4,108 per beneficiary, equating to 50% of per capita spending for Medicaid beneficiaries, less than 40% for Veterans’ Affairs beneficiaries, and 30% for Medicare beneficiaries.³⁷⁰ The United States even spends more per capita on healthcare for federal prisoners.³⁷¹



The lease for the Gila Crossing Community School was executed as part of the Department of the Interior's section 105(l) leasing program contained in the Indian Self-Determination and Education Assistance Act (ISDEAA).

Funding for basic medical equipment, let alone services, has been outpaced by growing demand and inflation. According to the IHS, “medical and laboratory equipment, which has an average useful life of six years, generally is used at least twice that long in Indian healthcare facilities.”³⁷² IHS facilities themselves are often aging and in need of repair, contributing to existing infrastructure deficiencies that create unsafe and unsanitary conditions and severely compromise the quality of care for patients.³⁷³

In addition to funding, inadequate staffing remains a constant issue for federal healthcare providers for Tribal Nations. For example, IHS officials have cited “the agency’s insufficient workforce” as “the biggest impediment to providing timely primary care.”³⁷⁴ In 2016, the IHS had over 1,550 vacancies nationwide, and the overall vacancy rate for clinical providers in 2018 was 25%.³⁷⁵ As with other sectors, insufficient and inadequate housing also provides a barrier for attracting and retaining qualified health professionals who would work in Tribal communities—if they had a place to stay.³⁷⁶

A substantial influx of unrestricted federal funding would allow Tribal Nations to address these interrelated issues according to our unique circumstances. Additionally, the United States must deliver upon its obligations to fully fund

agencies, such as the IHS, that deliver health-related programs and services to Tribal Nations. Continued failure is simply unacceptable.

ii. Education

“The federal government has failed in its trust obligation to provide educational services that address the unique situation of Native American students.”³⁷⁷

Native students “experience discernable disparities in access to educational opportunity, compared to their non-Native peers.”³⁷⁸ Native students have the lowest high school graduation rates in the country, and students in BIE-operated schools, specifically, have math and reading scores that lag behind even their Native peers who attend public schools.³⁷⁹ This is a direct consequence of the United States’ failure to provide fully for the interests of Native children.

The federal government, via the BIE, funds 183 elementary and secondary schools, serving approximately 46,000 Native students in 64 Tribal communities.³⁸⁰ The BIE directly operates 53 of these schools, while the other 130 are operated by Tribal Nations under BIE contracts or grants.³⁸¹ In 2017, the GAO found that many of the then-

185 BIE schools “were in poor conditions and had safety hazards,” yet the BIA “did not have a comprehensive capital asset plan to guide funding for construction projects to maintain, repair, or replace infrastructure” at these schools.³⁸² Two years later, despite agreeing to implement the GAO’s recommendation, the BIA still did not have a comprehensive long-term plan.³⁸³

The USCCR reports recognized a need for funds to “bring all BIE schools up to minimum standards of habitability for their students.”³⁸⁴ The current state of infrastructure inhibits learning and relates directly to the provision of adequate services, such as the ability of Tribal Nations to attract and retain a sufficient number of qualified teachers for our schools,³⁸⁵ especially considering the fact that 48% of BIE staff housing sites are rated in poor condition.³⁸⁶ As of March 2019, only about 50% of all BIE positions were filled.³⁸⁷

Given the exhaustively documented long-term benefits of education, it is obvious that the failure to invest in the education of Native people harms the United States. Studies show that educated individuals live longer and vote more frequently, while high rates of education lead to improved labor markets and reduced incidents of violence.³⁸⁸ In addition to the requirement of fulfilling its trust and treaty obligations, the United States has much to gain by empowering Tribal Nations with education funding.

Our Native children are precious, and the United States’ obligations to Tribal Nations in this regard are especially grave. Many Tribal Nations follow teachings that hold it is our responsibility to provide for subsequent generations, and our ancestors undoubtedly had this in mind when they signed treaties with the United States to secure our communities’ livelihoods. The United States must live up to its promises to our future generations by fully funding Tribal schools and updating them, including beyond the minimum standards of habitability called for by the USCCR, and by fostering the educational growth of our citizens.

iii. Environmental Protection

“The impacts of climate change have the potential of significantly undermining the way of life for many Native communities.”³⁸⁹

As this land’s original stewards, Tribal Nations maintain strong cultural, spiritual, and physical relationships with our homelands and natural resources. Our very existence “is inextricably intertwined with our homelands,”³⁹⁰ and, thus, we are uniquely and directly impacted by climate change and other forms of environmental degradation. Despite these deep interconnections, state and federal authorities have failed to recognize our wisdom or our traditional ecological knowledge (TEK).³⁹¹ Only recently have more visible steps been taken to incorporate TEK at the federal level, as demonstrated by a November 2021 memorandum from the Biden Administration titled “Indigenous Traditional Ecological Knowledge and Federal Decision Making”³⁹² and TEK’s role in the Fourth National Climate Assessment.³⁹³ Meanwhile, experience has shown time and again that, when Tribal Nations are not prevented from exercising our full environmental and cultural stewardship, the benefits extend far beyond our people and our lands.

Historically, the United States has been slow to recognize its responsibilities with regard to environmental justice for Tribal Nations. For example, there was no federal funding dedicated to environmental protection for Tribal lands until more than 20 years after the Clean Water Act³⁹⁴ and Clean Air Act³⁹⁵ were passed.³⁹⁶ Even now, only 45 Tribal Nations have government-approved water quality standards under the Clean Water Act, while states have been operating under these standards for decades.³⁹⁷ Tribal Nations are forced to play catchup with limited funding and on unequal ground.

The current climate crisis has made the need for environmental protection more urgent than ever. Due to climate change and development activity, countless cultural and sacred sites are endangered, many critical natural resources are



Coastal erosion reveals the extent of ice-rich permafrost underlying active layer on the Arctic Coastal Plain in the Teshekpuk Lake Special Area of the National Petroleum Reserve.

disappearing faster than they can be restored, and federal funding is severely inadequate in this regard. For example, Tribal fire suppression and forest rehabilitation needs have far outpaced current funding levels.³⁹⁸ Many woodland areas have degraded due to grazing, lack of appropriate management, and climate impacts in recent decades, making restoration efforts ever more important to protect and preserve these resources for the future benefit of Tribal Nations.³⁹⁹

Meanwhile, coastal erosion rates in the U.S. Arctic over the past 50 years have been among the highest in the world.⁴⁰⁰ This crisis is intensifying as temperatures rise and sea ice recedes, and several Alaska Native Villages have already suffered substantial adverse impacts, including buildings falling into the sea.⁴⁰¹ Nor is coastal erosion specific to the Arctic, as Tribal Nations on the East Coast, Pacific Northwest, and elsewhere battle similar problems and prepare for projected sea level rise.⁴⁰² So far, there has been no coordinated effort from the federal government to address this problem, resulting in a patchwork of temporary solutions, including relocating entire communities.⁴⁰³

Where barriers to the exercise of our sovereignty and treaty rights are removed, Tribal Nations are able to restore and maintain fragile natural resources.⁴⁰⁴ Tribal Nations are engaged in ongoing efforts, sometimes with sporadic or even absent federal resources, to protect and support local and traditional waters, plants, and animals.⁴⁰⁵ These efforts also benefit

surrounding communities “because protection and enhancement of ceded territory, natural resources, and habitats benefit all users of those resources.”⁴⁰⁶ For example, Tribal hatcheries in the Pacific Northwest “now contribute the majority of salmon harvested in all Washington fisheries, both treaty and non-treaty,” and are thus “a major contributor” to the state’s economy.⁴⁰⁷ In the Great Lakes Region, stocking trout, walleye, and other species provides for Tribal subsistence while also creating recreational opportunities for sport fishermen that bolster Tribal and local economies.⁴⁰⁸

With a Marshall Plan-like investment, Tribal Nations could create the regulatory and physical infrastructure necessary to care for our environment and natural resources, preserving them for generations to come.

D. Enhancing Economic Development Using Inherent Sovereignty of Tribal Nations

A Marshall Plan-like investment for Tribal Nations must be accompanied by policy changes so that we may exercise our inherent sovereignty to generate Tribal government funds through our own economic development and other means. With Tribally-led unimpeded economic activities, coupled with full funding of existing federal obligations, Tribal Nations will be able to maintain the benefits of the upfront Marshall Plan investment well into the future.

Under a new diplomatic relationship model, the United States should adopt policies and practices that respect and strengthen Tribal sovereignty over economic development and revenue generation. The new diplomatic model must depart from the federal government's existing offerings of short-term, piecemeal economic policies and programs that make federal officials the arbiters of forced competition between Tribal Nations for limited resources. Federal policy can and must evolve to establish and operate economic development efforts based upon each Tribal Nation's laws and cultural values, with Tribal Nations determining how best to develop our economies to support the social and economic wellbeing of our citizens. In so doing, federal policy would align itself with decades of research showing that Tribal self-determination and self-governance are the essential ingredients for economic growth among Tribal Nations.⁴⁰⁹

The challenges of this policy transformation can only be met through genuine partnerships of cooperation and collaboration with Tribal Nations. Five decades into the self-determination era, the objective of establishing strong, self-determined Tribal governments remains elusive in many Tribal communities. By honoring its trust and treaty obligations to protect Tribal Nations' right to continue to exist as self-governing entities and by embracing Tribal Nations' exercise of sovereignty over matters of economic development and revenue generation, the United States would position itself as an ally in sustainable nation rebuilding.

i. Putting Sovereignty to Work for Tribally Determined Economic Development

"The federal government has failed to honor its trust responsibility to promote Native American self-determination via its support of economic development in Indian Country."⁴¹⁰

The exercise of Tribal sovereignty is vital in each phase of the development and establishment of a Tribal economy. The actions of Tribal

Nations as sovereigns include defining "economic development" according to our terms, establishing economic development objectives, choosing the business opportunities that best fit those Tribal objectives, and creating the institutions and regulatory frameworks to administer, implement, and guide economic development.

Research, practice, and inter-generational understanding has emphasized that the definitions of economic development in Tribal communities can be very different from those used in non-Native communities. For instance, Tribal definitions of economic development are often directly tied to the preservation and transmission of culture, and identify sovereignty and self-determination as essential objectives. The following exemplifies a Tribal definition of "economic development:"

Economic pursuits that are culturally, ceremonially, tribally sensitive that generate revenue for tribes while still structurally embracing the jurisdictional sovereign issues of the tribal governments maintaining environmentally, culturally, and social ways.⁴¹¹

Many Tribal Nations see ensuring the ability to sustain and support Tribal sovereignty as outweighing any other purpose of economic development. Economic development shores up sovereignty by providing the means to accompany "the authority to live in a way that honors both [ou]r heritage and self-determination."⁴¹²

Also, when Tribal Nations exercise our sovereignty in determining our business opportunities, we outperform outsider-led development decisions (whether it is federal agency programs or outside business interests that are driving those decisions).⁴¹³ The principles of direct control and ownership of decision-making—and bearing the consequences of those decisions—have shown to be more reliable guides for success than some of the federal approaches that have been introduced because they worked in other contexts outside of Tribal Nations. Indeed, research shows that the fundamental



The Colville Confederated Tribes' Chief Joseph Hatchery is a state-of-the-art facility that was built to increase spring, summer, and fall Chinook salmon in the Okanogan and Columbia Rivers. Salmon have been important to Native Americans for generations, but salmon populations have declined drastically due to federal and state policies that allowed activities such as mining, logging, and the construction of dams. Tribal Nations are working to restore salmon populations.

error of many federal economic development programs in Indian Country has been a reliance upon the “what works in one place, will work here” theory of development.⁴¹⁴

A new diplomatic model must operate not only to provide the financial investment and flexibility necessary to allow Tribal Nations to foster economic development in our communities, but it must also emphasize consolidation of federal programs and resources in one package. It should allow for greater flexibility in funding mechanisms, longer timeframes for support, and diverse forms of technical assistance. Under a Tribal Nations Marshall Plan framework, consultation must be conducted on a truly Nation-to-Nation basis (like the European Marshall Plan national strategies and plans), reflecting the “free, prior, and informed consent” of sovereigns that is required under the UNDRIP.⁴¹⁵ As a result, economic development programs delivered pursuant to a Marshall Plan-like investment would respond to specific objectives identified by each Tribal Nation according to its sovereign nation-rebuilding development plan.

Each Tribal Nation must be able to determine the regulatory environment for business

activity in its territory as a vital exercise of its Tribal sovereignty. The federal government’s economic development initiatives for Tribal Nations have not been accompanied by the technical assistance Tribal Nations requested or needed. This deficiency has inhibited the impact of past economic development programs and failed to foster greater self-determination, as potential business partnerships faltered and the desired investments never materialized. Research shows that “[t]he lack of a commercial code, zoning regulations and tax policies presents administrative barriers that can deter potential investors and business partners.”⁴¹⁶ Successful economic development depends upon the exercise of Tribal sovereignty and self-determination to establish institutions and to enact, administer, and enforce laws, ordinances, and regulations governing economic activities within Tribal lands.⁴¹⁷ Under the new diplomatic relationship with Tribal Nations, the federal government must support the regulatory institution-building efforts of Tribal Nations as integral to successful economic development.

ii. Economic Development Built upon and Reinforcing Tribal Culture

“Each tribe’s relationship to economic development differs. The federal government has failed to assist the tribes with the individualized economic development necessary for tribes to exercise self-determination and make a knowledgeable decision as to how to best develop and manage their nation’s resources for the tribe’s benefit.”⁴¹⁸

Economic development creates “entrepreneurial ventures that promote history, tradition, culture and language and traditional territory.”⁴¹⁹ Entrepreneurship is understood as having been part of Tribal Nations’ cultures for centuries, but it was largely displaced by the reservation system.⁴²⁰ Reclaiming Tribal culture and lifestyle is a vital aspect of rebuilding Tribal Nations. With respect to Tribal business culture, studies show that entrepreneurship and small business development in many Tribal Nations is becoming a more popular means for Tribal citizens to generate household revenue.⁴²¹

For many Tribal Nations, economic development has been a process of bringing jobs and goods from the outside economy into Tribal communities while keeping traditional ways protected. In healthy, thriving Tribal economies, cultural values provide additional tools and guidelines for establishing business development priorities and decision-making.

In one study discussing the Seminole Tribe of Florida’s cattle industry, the researcher evaluated how the Seminole cultural commitment to sustainability of the land played a key role in guiding a significant business decision. The Seminole Tribe’s cattle business opted to retain local Tribal decision-making and quality control rather than enter into a national beef production venture, produce for a national grocery store chain, or pursue a joint venture with other Tribal beef producers.⁴²² While brand recognition, quality control, and standards were also vital business considerations, the Seminole Tribe’s

cultural commitment to the sustainability of the land and a strong commitment to Tribal independence and decision-making control steered the business toward an approach that emphasized expansion at the local, state, and regional level by partnering with local independent cattle ranches.⁴²³

Maintaining cultural continuity as a path to achieving true self-determination is of utmost importance—a Tribal Nation no longer subject to external or paternalistic definitions of economic success.⁴²⁴ Although the imperative of the United States to fund its trust and treaty obligations will never lessen, cultural integrity and self-sufficiency are critical components of Tribal Nation self-determination. A common objective of Tribal Nations is the effort to design an economic structure that allows its society to maintain its cultural integrity while developing new and improved methods of living.⁴²⁵ With cultural aspects at times outweighing economic objectives, business models and approaches that may have been successful in other communities may not serve the nation rebuilding objectives of Tribal Nations seeking to respect and incorporate their cultural values into their business decisions.

Tribal Nations have also explored methods to diversify business institutions and institutional capacity. For example, Tribal Nations have established a variety of business-creation initiatives, such as “Tribal economy incubators” that cultivate entrepreneurship and new businesses. Among the objectives of these incubators is “the long-range creation of an institution that will create opportunities to achieve [a Tribal Nation’s] economic and social sovereignty goals.”⁴²⁶

Successful Tribal economies use their own cultural values and traditions not only to define economic development and guide business decision-making, but also to set standards and criteria for monitoring progress and assessing results. This puts Tribal Nation sovereignty to work in creating a Tribal economy oriented to the task of rebuilding Tribal Nations.



V. FUNDING DELIVERY MUST BE BASED ON INHERENT SOVEREIGNTY OF TRIBAL NATIONS

“The federal government should provide steady, equitable, and non-discretionary funding directly to tribal nations to support the public safety, health care, education, housing, and economic development of Native tribes and people.”⁴²⁷

The method of delivery and the requirements attached to receipt and use of Tribal Nations Marshall Plan funding will drastically affect the impacts this investment is able to achieve. Federal funding that flows to Tribal Nations now is insufficient, short-term, often competitive grants-based, prescriptive, difficult to administer, and tied to extensive, burdensome, and duplicative reporting requirements. Funding delivery methods, use, and reporting requirements must be restructured to reflect Tribal Nations’ status as sovereign governments, along with the trust and treaty obligations owed by the United States.

A. No Competitive Grants

“Congress often provides funding for Native American programs in a manner that makes long-term planning and budgeting difficult for tribal governments.”⁴²⁸

Funding provided to Tribal Nations through a Marshall Plan investment and otherwise should not be provided via grants.

Because funding for Tribal Nations is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to a grants-based mentality. Disbursing federal funding via grants requires Tribal Nations to invest time and resources in monitoring and applying for many separate funding streams, to compete against one another to secure funding, and to suffer the uncertainty of whether funding will be received and/or renewed. This is no way

to operate a government and no way to deliver upon the obligations owed to us.

Further, the European Marshall Plan and other federal funding directed to foreign aid was and is not subject to the same grants process. Grant funding fails to reflect Tribal Nations’ sovereignty by treating Tribal Nations as non-profits rather than governments. We reiterate the need for the United States to treat and respect Tribal Nations as sovereigns, as opposed to grantees, as it delivers upon its fiduciary obligations.

B. Mandatory Rather Than Discretionary Funding

“Congress should provide direct, long-term funding to tribes, analogous to the mandatory funding Congress provides to support Medicare, Social Security, and Medicaid, avoiding pass-through of funds via states.”⁴²⁹

In delivering upon the Marshall Plan-like investment in Tribal Nations and in subsequent funding, the United States must fulfill its trust and treaty obligations to provide funding to Tribal Nations in perpetuity. In doing so, full and guaranteed federal funding must be provided to Tribal Nations through mandatory rather than discretionary funding.

Most funding for Tribal Nations is still categorized as discretionary and is subject to the annual appropriations process. As with grant

Opposite page: In 2020, more than 11,000 acres of forest service lands in the Chippewa National Forest were returned to the Leech Lake Band of Ojibwe. The lands were illegally transferred by the Interior to the Chippewa National Forest in the 1940s and 50s without consent of the band or individual allottees.



Tribal Nations including the Southern Cheyenne and Arapaho Tribe, the Northern Cheyenne Tribe, and the Rosebud Sioux Tribe have purchased hundreds of acres of land around the sacred site Bear Butte. The Black Hills, including Bear Butte, were reserved for the exclusive occupation and use of Indian people by the Fort Laramie Treaties of 1851 and 1868, but the land was illegally taken by the United States a few years later. In 1961, Bear Butte was designated a state park but much of the immediate surrounding area was left in private ownership. Located near Sturgis, S.D., this cultural and holy site has been under siege in recent years by encroaching commercial development fueled by the annual Sturgis Motorcycle Rally and other growth in the region. Tribal Nations and Tribal citizens have struggled to acquire private properties in the area so that religious ceremonies held on Bear Butte can be conducted without disruption from other land uses.

funding, subjecting funds to these conditions creates real hurdles for Tribal Nations in the delivery of services to our communities. Discretionary and annual appropriations create uncertainty regarding funding levels and the date on which funds will become available, while also exposing Tribal Nations to the effects of government shutdowns. Payments on the debt to Tribal Nations should not be vulnerable to year-to-year discretionary decisions by appropriators, and Tribal Nations should not be required to invest resources in advocating for our federal funding every year.

Further, subjecting Tribal Nations to discretionary and annual funding fails to uphold the United States' trust and treaty obligations. Due to our history and political relationship with the United States, the federal government's trust and treaty obligations, as reflected in the federal budget, are fundamentally different from ordinary discretionary or annual spending and should be considered mandatory in nature. Federal funding for Tribal Nations is provided in fulfillment of clear legal and historic obligations.

The effects of uncertain annual funding plagued the original European Marshall Plan. Despite the initial proposal for full four-year funding upfront, European Marshall Plan aid was subject to reauthorization by Congress each year. This hampered European nations' ability to plan for long-term infrastructure projects on the ground.⁴³⁰

To avoid the same pitfalls and better account for Tribal Nations' sovereignty and the federal government's perpetual fiduciary obligations, the Tribal Nations Marshall Plan must be structured in a forward-looking way so that Tribal Nations may properly plan for the projects we seek to accomplish. Additionally, the sustainability of the investment is dependent on full, mandatory funding going forward. The Marshall Plan-like investment would provide the substantial lift to raise Tribal Nations to the baseline at which we should have been had the United States appropriately honored its promises, but adequate funding must thereafter continue in order to sustain that lift.

Recently, some in Congress have called for advance appropriations for the IHS, the BIE, and the BIA,⁴³¹ and others have called on Congress to take up mandatory appropriations for IHS, contract support costs and Section 105(l) lease costs under the Indian Self-Determination and Education Assistance Act (ISDEAA).⁴³² Such proposals are more consistent with federal trust and treaty obligations, and we urge that this forward-looking funding methodology be realized via an entirely new budget component—one that contains all the funding dedicated to Tribal Nations and Indian affairs. Not only would such consolidation streamline access to these dollars, but this mandatory funding mechanism would also reflect true prioritization of and reverence for the Nation-to-Nation relationship. It would also allow Tribal Nations to plan ahead with greater certainty and insulate us from government shutdowns, and it would allow for more substantial funding that is able to grow with economic conditions.

C. Tribal Nation Discretion to Choose Direct Funding

“Self-determination ultimately requires that Indian nations govern their own resources.”⁴³³

Funding delivered through a Tribal Nations Marshall Plan and subsequent funding should flow directly to Tribal Nations for the provision direct services, where a Tribal Nation exercises that option.

Throughout U.S. history, Tribal Nations were required to receive the programs and services owed to them from federal agencies, and those programs and services were often wholly inadequately run. The United States has entered a phase of federal Indian policy focused on self-government, which it primarily approaches from the framework of the ISDEAA.⁴³⁴ The ISDEAA allows Tribal Nations to enter into agreements with federal agencies whereby the Tribal Nation receives funding for programs or services the

federal agency would otherwise provide, so that the Tribal Nation may instead provide those services itself for its community. However, it applies only to certain departments of the executive branch, and it requires inappropriate federal administrative oversight as part of the contracting and compacting of federal responsibilities by Tribal Nations.

True self-governance, as intended by a Marshall Plan for Tribal Nations, can only be fulfilled by the provision of all federal funding and resources directly to Tribal governments without interference or bureaucratic strings so that we can meet our citizens’ needs—should we choose to accept such funding directly. Expanding and improving upon the ISDEAA model is, thus, imperative.

D. No Use Limitations or Reporting Requirements

“Funding for Native American programs often comes with restrictions that hamper tribal access to funds.”⁴³⁵

When delivering Marshall Plan and other funding to Tribal Nations, use limitations and reporting requirements should be streamlined and eliminated, where possible.

Many federal sources of funding contain severe limitations on their use, preventing Tribal Nations from directing the funding in ways that best suit our circumstances and priorities. Many also contain burdensome reporting requirements. While obtaining data on Tribal programs is critical to measuring how well we as Tribal governments are serving our citizens and how well the federal government is delivering upon its obligations, Tribal Nations find ourselves expected to report data to justify further investment in our communities. This runs counter to trust and treaty obligations, which exist in perpetuity and for which no further justification is necessary. The data collected by Tribal Nations must be understood as a tool

to be utilized in our own sovereign decision-making, not to validate the federal government's fulfillment of its own promises. Further, reporting burdens take away from the resources we are able to use to provide direct services to our communities.

Although allowing for more self-determination in its use, the original European Marshall Plan suffered from some of these issues. As flexible as the European Marshall Plan was, much of the aid was subject to some level of restriction, including U.S. approval for certain expenditures, which hampered its success.⁴³⁶ Even so, the European Marshall Plan was designed to deliver funding to each recipient nation for the needs they themselves determined—which should be reflected in the Tribal Nations Marshall Plan as well.

The Public Law 477 Program is not perfect, but it serves as a positive model of increased flexibility and reduced reporting requirements for federal funding provided to Tribal Nations.⁴³⁷ It allows Tribal Nations to combine federal funding from many sources and across multiple federal agencies, design our own programs for providing employment, training, and related services to our people, and reallocate that federal funding as we see fit.⁴³⁸ Unfortunately, federal agencies, in implementing the Public Law 477 Program, have hampered its effectiveness.⁴³⁹ Further, the Program is limited in scope by the subject matter and federal agencies that it is designed to cover.⁴⁴⁰ However, if implemented fully and expanded in scope, the Public Law 477 Program model of delivering federal funding to Tribal Nations to use as we see fit serves as a valuable example. It also serves as a positive model with regard to reduced reporting burdens, as it eliminates underlying reporting requirements for federal programs integrated into each 477 plan and replaces them with a single annual report. Another potential example of better funding delivery is that of the block grant model, which requires less oversight and increases flexibility compared to many current federal funding schemes.⁴⁴¹

Tribal Nations are sovereign governments that should have the room necessary to allocate our funds where most useful—without spending valuable resources on reporting such uses to the federal government.

E. Creation of Federal Agency that Will Operate Solely to Carry Out Tribal Nation–United States Diplomatic Trust Relationship

"A system of centralized services, according to function, would reduce the government's redundancy and wasteful spending, and streamline the bureaucratic hurdles that often limit or delay tribal and individual participation in programs."⁴⁴²

To implement a Marshall Plan-like investment and otherwise carry out its obligations to Tribal Nations, the federal government must create a cabinet-level U.S. Department of Tribal Nation Relations designated to carry out the diplomatic trust relationship with Tribal Nations.

Despite centuries of diplomatic relations between Tribal Nations and the United States, the federal officials charged with the most direct engagement with Tribal Nations (and the administration of a majority of our funding) lack the seniority necessary to conduct these relations in a manner reflective of our Nation-to-Nation relationship. For example, the IHS Director and the Assistant Secretary of the Department of the Interior for Indian Affairs each oversee bureaus with sweeping influence over Tribal Nations' affairs but both leadership positions are nested within much larger executive departments, subordinate to their respective Secretaries. Therefore, they lack direct access to the President and are not fully empowered to act on the federal government's trust and treaty obligations.

The European Marshall Plan was successful, in part, because it utilized both European and

American implementation agencies to interface together on a government-to-government basis. In fact, the United States established the ECA, an independent agency, solely for the purpose of implementing the European Marshall Plan. The ECA operated a regional office in Paris with 600 staff and maintained “missions” in each participating nation to monitor and assist with progress at the local level.⁴⁴³ Today, the United States maintains a federal agency—the U.S. Department of State—dedicated specifically to carrying out its diplomatic relationships with foreign nations.

Similarly, Tribal Nations should have a U.S. Department of Tribal Nation Relations through which trust and treaty obligations are fulfilled and the diplomatic Nation-to-Nation relationship is exercised. The time has come for the United States to acknowledge and respect our nationhood and its promises by elevating our interests to the level of the President’s cabinet.

Having one federal agency through which to interact with the federal government would also streamline and facilitate the delivery of federal funds to Tribal Nations. A Tribal Nation would only be required to contract with one federal agency to receive all of its federal funding, thus relieving administrative burdens on that Tribal government, as well as the federal government.



VI. EXECUTION OF TRIBAL NATIONS MARSHALL PLAN

“The problems in Indian Country have been studied extensively, yet no coordinated, comprehensive federal effort has been made to audit spending and develop viable solutions. The result has been a patchwork of assorted programs, not a functioning results-oriented system with appropriate program delivery and tracking.”⁴⁴⁴

Historically, major changes in federal Indian policy have been guided by reports—whether federally mandated or driven by non-governmental entities—that assessed the status of Tribal Nations and identified recommendations for corresponding action. Based on the research conducted by Tribal leadership and other entities thus far, we do not believe further study of the problem is necessary to justify action now.

For example, as discussed previously, the Meriam Report⁴⁴⁵ on historic injustices inflicted on Tribal Nations by the federal policies of allotment and assimilation led directly to the passage of the IRA that pivoted federal Indian policy toward the restoration of Tribal lands and sovereignty. Additionally, the American Indian Policy Review Commission issued a congressional report in 1977 with recommendations for improving the United States’ administration of its trust and treaty obligations, which laid the groundwork for the self-determination and self-governance legislation that followed.⁴⁴⁶ The USCCR’s Quiet Crisis and Broken Promises Reports included recommendations that Congress enact a series of infrastructure packages (i.e., Marshall Plan-like investments in Tribal Nations); restructure the annual appropriations process to better reflect the obligations the federal government owes in perpetuity to Tribal Nations; and reorient the Nation-to-Nation diplomatic relationship to better reflect Tribal sovereignty. These reports clearly establish the need for a Tribal Nations Marshall Plan today.

We propose creating a plan of action to execute the Tribal Nations Marshall Plan that draws

from the model used for the European Marshall Plan. For the European Marshall Plan, the 16 participating European nations themselves acting jointly assessed their needs and calculated the initial investment.⁴⁴⁷ The participating nations established the OEEC through which they coordinated the division of aid, and the United States established the ECA as its implementation counterpart.⁴⁴⁸ These entities worked together to ensure the investment’s effectiveness.

Like the European Marshall Plan, the parameters of the Tribal Nations Marshall Plan should be determined in close coordination with, and upon the consent of, the recipients of the funds: Tribal Nations. For this reason, the federal government should establish a Commission that includes Tribal Nations, the newly created U.S. Department of Tribal Nation Relations, the White House Council on Native American Affairs, the Office of Management and Budget, the GAO, and others to make funding and allocation recommendations through a collaborative assessment of the United States’ unfunded trust and treaty obligations owed to Tribal Nations. The Commission should then engage in consultation with all Tribal Nations on these recommendations. Thereafter, the Commission should present to Congress a reliable funding number and plan for allocation that reflects the input of Tribal leaders. Rather than studying the problem—as so many reports have already done—the Commission should focus on the necessary strategy and procedures to execute the Marshall Plan for Tribal Nations, which should be done by the U.S. Department of Tribal Nation Relations.

Opposite page: In 1908 the U.S. government seized some 18,000 acres of land from the Confederated Salish and Kootenai Tribes to create the National Bison Range in the heart of their lands. In 2021, the U.S. government restored ownership of the land to the Confederated Salish and Kootenai Tribes.



VII. CONCLUSION

“The severity of the situation [facing Tribal Nations] constitutes a flagrant civil rights violation, as Native Americans are in essence denied equal opportunity by the federal government’s failure to live up to its promises.”⁴⁴⁹

The urgency of a Marshall Plan-like investment in Tribal Nations cannot be overstated.

In this document, we have set forth the dire situation in which Tribal Nations and Native people find ourselves as a consequence of generations of harmful actions on the part of the United States designed to take our lands and resources and restrict the exercise of our sovereign rights and authorities. As a consequence of these actions, the United States took on trust and treaty obligations to us—including responsibilities regarding the federal funding we must use to provide our citizens with the foundational governmental services to which they are entitled. The United States’ consistent failure to live up to its financial obligations has resulted in an urgent need to infuse Tribal Nations with aid so that we may bring our communities up to an acceptable baseline level of infrastructure and services.

The United States has demonstrated its willingness to make such investments through its participation in the European Marshall Plan and through subsequent foreign aid spending. Its participation in these endeavors was based on its understanding that it owed a Responsibility to Rebuild Europe after World War II, and also that it stood to reap significant economic and political gains from such an investment. Its spending on the European Marshall Plan amounted to 13% of U.S. budget expenditures in its first year alone.

These same principles counsel a Marshall Plan-like investment in Tribal Nations, and the devastation wrought on Tribal Nations by the United States and the unique trust and

treaty obligations owed to us further solidify its justification. Additionally, the economic and political benefits the United States stands to gain from a Tribal Nations Marshall Plan would be felt even closer to home than with the European Marshall Plan, and the United States would also demonstrate domestically and internationally that it is truly deserving of the ideals of American exceptionalism.

Yet, Tribal Nations’ current funding levels fall far below the amount owed by the United States and far below the amount it has shown itself willing to invest in other countries’ efforts to rebuild. In FY 2021, only 0.35% of the total federal budget was allocated to Tribal Nations or our services. In fact, each Tribal Nation on average received less than 22% of the average amount provided in foreign aid assistance to each recipient country. This glaring discrepancy persists despite the fact that foreign aid is a discretionary expense, while federal funding to Tribal Nations is a consequence of the United States’ binding trust and treaty obligations.

On May 11, 2022, the U.S. Department of Interior released its investigative report as parts of its Federal Indian Boarding School Initiative. “This investigative report is a significant step by the federal government to comprehensively address the facts and consequences of its federal Indian boarding school policies—implemented for more than a century and a half—resulting in the twin goals of cultural assimilation and territorial dispossession of Indigenous peoples through the forced removal and relocation of their children.” While the initiative is specific to boarding schools, boarding schools were the linchpin in

Opposite page: In 1877, the U.S. Army forced the Nez Perce people to leave their Wallowa homeland. In 1996, a 10,000-acre former cattle ranch in the Wallowa Mountains was returned to the Nez Perce Tribe. More recently, the Tribal Nation secured a conservation easement on 9 acres, guaranteeing that the sockeye spawning and rearing habitat will be ensured for posterity.

the federal Indian policy known as “Assimilation Policy.” The boarding school system symbolizes the broader and deeper misguided, immoral, and unjust effort by the U.S. to commit cultural genocide (ethnocide), a key component in support of its deleterious policies of assimilation, termination, and dispossession.

As stated by DOI Secretary Haaland, “The Department’s work thus far shows that an all-of-government approach is necessary to strengthen and rebuild the bonds within Native communities that federal Indian boarding school policies set out to break. With the President’s direction, we have begun working through the White House Council of Native American Affairs on the path ahead to preserve Tribal languages, invest in survivor-focused services, and honor our obligations to Indigenous communities. We also appreciate the ongoing engagement and support for this effort from Members of Congress and look forward to continued collaboration.” Again, while this initiative is specific to boarding schools, the expressed intent, principles, and goals behind the effort offers an opportunity for the U.S. to dig even deeper to finally address the root causes that are responsible for a majority of the failures and challenges that continue today as Indian Country rebuilds after policies of assimilation and termination. U.S. ownership of its actions is the necessarily foundational step to healing and recovery and, ultimately, support for a Marshall Plan for Tribal Nations effort.

If provided with the necessary infusion of federal funding, Tribal Nations could invest those monies in our governance structures, governmental services, and communities to accomplish true nation rebuilding. When coupled with effective U.S. facilitation of Tribal Nations’ endeavors to grow our economies, the impacts could be truly transformational for us and for the United States as a whole.

If the United States moves forward in creating a Marshall Plan for Tribal Nations, it must be thoughtful in its design and execution. The method of delivery, use restrictions, and reporting requirements tied to the Marshall Plan-like investment and future funds will have

significant impacts on the monies’ effectiveness. Similarly, the method for calculating the overall Tribal Nations Marshall Plan investment amount and subsequently allocating it among various Tribal Nations will be critical. Tribal Nations must be consulted throughout and remain closely involved in those processes.

The time is long past due for the United States to keep its word and make good on the debts it owes to Tribal Nations and Native people through a Marshall Plan for Tribal Nations.

ENDNOTES

- 1 U.S. Comm’n on Civ. Rights, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country 2* (2003), <https://www.usccr.gov/files/pubs/na0703/na0204.pdf>.
- 2 U.S. Comm’n on Civ. Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans 1* (2018), <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>.
- 3 *Worcester v. Georgia*, 31 U.S. 515, 559 (1832).
- 4 See *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 86 Fed. Reg. 7554 (Jan. 29, 2021).
- 5 *Indian Citizenship Act of 1924*, Pub. L. No. 68-175, 43 Stat. 253.
- 6 *Elk v. Wilkins*, 112 U.S. 94, 109 (1884) (citation omitted) (“[A]n Indian cannot make himself a citizen of the United States. . . . To be a citizen of the United States is a privilege which no one, not born to, can assume without its consent in some form.”).
- 7 See, e.g., *Treaty with the Delaware Nation*, art. VI, Sept. 17, 1778, 7 Stat. 13 (promising the United States would “guarantee to the aforesaid nation of Delawares, and their heirs, all their territorial rights in the fullest and most ample manner, as it hath been bounded by former treaties, as long as they the said Delaware nation shall abide by, and hold fast the chain of friendship now entered into”).
- 8 U.S. Const. art. I, § 8, cl. 3.
- 9 U.S. Const. art. I, § 2, cl. 3.
- 10 U.S. Const. amend. XIV, § 2.
- 11 *Worcester v. Georgia*, 31 U.S. 515, 559–60 (1832).
- 12 U.S. Comm’n on Civ. Rights, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country 2* (2003), <https://www.usccr.gov/files/pubs/na0703/na0204.pdf>.
- 13 Pope Alexander VI, *Inter caetera* [Among other] (May 4, 1493).
- 14 Pope Alexander VI, *Inter caetera* [Among other] (May 4, 1493) (“[W]e, of our own accord, . . . give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever . . . all islands and mainlands found and to be found, discovered and to be discovered . . .”). The Papal Bull has never been rescinded.
- 15 Carol Hardy Vincent & Laura A. Hanson, Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data 1* (2020), <https://sgp.fas.org/crs/misc/R42346.pdf>.
- 16 U.S. Comm’n on Civ. Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans 160, 165* (2018), <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>; see also Off. of Indian Econ. Dev, Dep’t of the Interior, *Benefits of Trust Land Acquisition (Fee to Trust)*, <https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition> (last visited Dec. 13, 2021).
- 17 See *Financial Accounts of the United States: Table B.1 Derivation of U.S. Net Wealth*, Fed. Rsrv. Sys. (June 10, 2021), <https://www.federalreserve.gov/releases/z1/20210610/html/b1.htm> (reporting federal government’s net worth of \$7.21 trillion in 2019); Catherine Cullinane Thomas & Lynne Koontz, Dep’t of the Interior, *Natural Res. Report NPS/NRSS/EQD/NRR--2021/2259, 2020 National Park Visitor Spending Effects: Economic Contributions to Local Communities, States, and the Nation*, at v (2021), <https://doi.org/10.36967/nrr-2286547> (stating National Parks generated \$41.7 billion in 2019); *Natural Resources Revenue Data*, Dep’t of the Interior, <https://revenue.data.doi.gov/explore> (last visited Apr. 7, 2022) (select “Revenue” in data type field, “All” in commodity field, “2020” and “Calendar Year” in period field) (totaling the revenue associated with the United States’ land base and natural resources at \$34.6 trillion); Carol Hardy Vincent & Laura A. Hanson, Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data 1* (2020), <https://sgp.fas.org/crs/misc/R42346.pdf> (reporting the 2.27

billion acres of land comprising the United States is worth approximately \$12,000 per acre for a total of over \$27.24 trillion); Bureau of Land Mgmt., Dep’t of the Interior, The BLM: A Sound Investment for America 2020, at 1 (2020), <https://www.blm.gov/sites/blm.gov/files/SoundInvest2019-6pages-FINAL-083019.pdf> (stating BLM-managed lands generated \$111 billion in 2019); William Larson, Dep’t of Com., New Estimates of Value of Land of the United States 1 (2015), <https://www.bea.gov/research/papers/2015/new-estimates-value-land-united-states>.

- 18 See, e.g., *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163,192 (1989) (citations omitted) (“[T]he central function of the Indian Commerce Clause is to provide Congress with plenary power to legislate in the field of Indian affairs.”); *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903) (“Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning . . .”).
- 19 See, e.g., *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 202 (1999) (citation omitted) (“Congress may abrogate Indian treaty rights, but it must clearly express its intent to do so”); *Washington v. Wash. State Com. Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 690 (1979) (“Absent explicit statutory language, we have been extremely reluctant to find congressional abrogation of treaty rights.”); *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339, 353–54 (1941) (requiring a “clear and plain indication” of congressional intent to extinguish Tribal rights, as “an extinguishment cannot be lightly implied in view of the avowed solicitude of the Federal Government for the welfare of its Indian wards”).
- 20 See, e.g., Alexandra New Holy, *The Heart of Everything That Is: Paha Sapa, Treaties, and Lakota Identity*, 23 Okla. City U. L. Rev. 317 (1998); Amanda Takes War Bonnett, *Paha Sapa Connect Girls to Culture*, *Lakota Times* (Sept. 23, 2021), <https://www.lakotatimes.com/articles/paha-sapa-connect-girls-to-culture/>.
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- 22 *Fort Laramie Treaty art. II*, Apr. 29, 1868, 15 Stat. 635.
- 23 See *United States v. Sioux Nation of Indians*, 448 U.S. 371, 376–77 (1980).
- 24 See *United States v. Sioux Nation of Indians*, 448 U.S. 371, 378–84 (1980).
- 25 See *United States v. Sioux Nation of Indians*, 448 U.S. 371, 379–83 (1980).
- 26 *United States v. Sioux Nation of Indians*, 448 U.S. 371, 378 (1980) (“[T]he Government decided to abandon the Nation’s treaty obligation to preserve the integrity of the Sioux territory.”).
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- 28 Nick Estes, *The Battle for the Black Hills*, *High Country News* (Jan. 1, 2021), <https://www.hcn.org/issues/53.1/indigenous-affairs-social-justice-the-battle-for-the-black-hills>.
- 29 E.g., Nell Jessup Newton, *Federal Power Over Indians: Its Sources, Scope and Limitations*, 132 U. Pa. L. Rev. 195, 203 (1984) (describing the forced relocation of the Cherokee Nation from the southeast to present-day Oklahoma despite only negotiating a removal treaty with a minority faction of the bands).
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- 32 See, e.g., Letter from George W. Lee, Indian Agent for Michigan, to Ezra A. Hayt, Acting Commissioner of Indian Affairs (Sept. 29, 1877), Entry 1131 in *Letters Received by the Michigan Superintendency and*

- Mackinac Agency, 1849-1882, Box 3, NARA-DC, RG75 (documenting a federal investigation carried out in the 1870s into the fraudulent activities, illegal homesteading, and outright theft of lands reserved to the Ottawa and Chippewa Indians under the 1855 Treaty of Detroit, 11 Stat. 633).
- 33 See, e.g., U.S. Comm’n on Civ. Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* 165 (2018), <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>.
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- 36 *Johnson v. M’Intosh*, 21 U.S. 543, 574 (1823).
- 37 *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831).
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- 39 See *Morton v. Mancari*, 417 U.S. 535, 541–42, 553–54 (1974).
- 40 See *Consultation and Coordination with Indian Tribal Governments*, Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 6, 2000).
- 41 See, e.g., *Establishing the White House Council on Native American Affairs*, Exec. Order No. 13,647, 78 Fed. Reg. 39,539 (July 1, 2013); *Patient Protection and Affordable Care Act (ACA) of 2010*, Pub. L. No. 111-148, § 10221, 124 Stat. 119, 935 (permanently reauthorizing the *Indian Health Care Improvement Act of 1976*, 25 U.S.C. § 1601 et seq.); *American Indian Trust Fund Management Reform Act of 2000*, 25 U.S.C. § 4021 (noting its purpose is “consistent with the trust responsibility of the United States”); *Consultation and Coordination with Indian Tribal Governments*, Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (Nov. 6, 2000); *Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996*, 25 U.S.C. § 4101(4) (“[T]he Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes . . .”); *Morton v. Mancari*, 417 U.S. 535, 551–52 (1974).
- 42 *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459, 2462 (2020).
- 43 *Indian Removal Act of 1830*, Pub. Law No. 21-148, 4 Stat. 411.
- 44 See, e.g., *Treaty of Detroit art. V*, Nov. 17, 1807, 7 Stat. 105 (“It is further agreed and stipulated, that the said Indian nations shall enjoy the privilege of hunting and fishing on the lands ceded as aforesaid . . .”); *Treaty of Greenville arts. V, VII*, Aug. 3, 1795, 7 Stat. 49 (“[T]he Indian tribes who have a right to those lands, are quietly to enjoy them, hunting, planting, and dwelling thereon, so long as they please, without any molestation from the United States The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hindrance or molestation . . .”).
- 45 *Cohen’s Handbook of Federal Indian Law* § 1.04 (Nell Jessup Newton ed., 2012) (citing Richard H. Pratt, *The Advantages of Mingling Indians with Whites*, excerpted in *Americanizing the American Indians: Writings by the “Friends of the Indian” 1880–1900*, at 260–61 (Francis Paul Prucha ed., 1973)). The U.S. Department of the Interior is currently investigating the traumatic legacy of federal boarding school policies that the federal government now recognizes as “contrary to the doctrine of trust responsibility, under which the Federal Government must promote Tribal self-governance and cultural integrity.” *Memorandum on Federal Indian Boarding School Initiative* from Deb Haaland, Sec’y of the Interior, to Assistant Secretaries, Principal Deputy Assistant Secretaries, and Heads of Bureaus and Offs., Dep’t of the Interior (June 22, 2021), <https://www.doi.gov/sites/doi.gov/files/secint-memo-esb46-01914-federal-indian-boarding-school-truth-initiative-2021-06-22-final508-1.pdf>; see also Press Release, Dep’t of the Interior, Secretary Haaland Announces Federal Indian Boarding School Initiative (June 22, 2021),

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- 77 *Washington v. Confederated Tribes of Colville Indian Rsrv.*, 447 U.S. 134, 156 (1980) (citations omitted) (“Washington does not infringe the right of reservation Indians to ‘make their own laws and be ruled by them’ merely because the result of imposing its taxes will be to deprive the Tribes of revenues which they currently are receiving”); see also *id.* at 169–72 (Brennan, J., dissenting in part); Richard D. Pomp, *The Unfulfilled Promise of the Indian Commerce Clause and State Taxation*, 63 *Tax Law.* 897, 1092–93 (2010).
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- 253 However, because FY 2021 U.S. foreign aid spending data is only partially reported as of this writing, an FY 2020 comparison is informative. With an FY 2020 U.S. foreign aid budget of \$51 billion to 212 countries/regions, the amount per country/region was 240.6 million on average. See Dashboard, ForeignAssistance.Gov, <https://foreignassistance.gov/> (last visited Apr. 11, 2022) (search “2020” in fiscal year field and “Obligations” in funding phase field). Meanwhile, the FY 2020 Native American Budget Crosscut was approximately \$23.4 billion in total, equating to about \$40.7 million per Tribal Nation. See Off. of Mgmt. & Budget, Fiscal Year 2022 President’s Budget, Native American Programs 11 (2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/FY-2022-Native-American-Funding-Crosscut.pdf>. That puts the average U.S. funding amount per Tribal Nation in FY 2020 at just 17% of the average amount obligated to each recipient country/region the same year.
- 254 The reason for the difference in percentage for the FY 2021 comparison is mostly due to the fact that, for FY 2021, the U.S. foreign aid budget reports only \$37 billion instead of its usual figure hovering around \$50 billion. See Trends, ForeignAssistance.Gov, <https://foreignassistance.gov/> (last visited Apr. 11, 2022) (search “2021” in fiscal year field). FY 2021 may also be an anomaly because the U.S. foreign aid budget is only partially reported as of this writing. Id.
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Concept, Content, and Vision Architects:
Kitcki A. Carroll, USET/USET SPF Executive Director
Liz Malerba, USET SPF Policy & Legislative Affairs Director

Hobbs Straus Dean & Walker, LLP
Lead Drafter: Katie E. Klass
Taylor A. Boboltz, Lisa M. Meissner, Moriah K.
O'Brien, Gregory A. Smith, F. Michael Willis

Additional Reviewers: Doug Hoekstra,
Dr. Beth Ritter, Tihtiyas Sabattus

Report Design: Vicki French

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ABOUT USET AND USET SPF

On October 4, 1968, the Eastern Band of Cherokee Indians, the Mississippi Band of Choctaw Indians, the Miccosukee Tribe of Indians of Florida, and the Seminole Tribe of Florida met in Cherokee, North Carolina, with the shared idea that some form of unity between the Tribes would facilitate their dealings with the federal government. Today, USET is a non-profit, inter-tribal organization that collectively represents its member Tribal Nations at the regional and national level. USET has grown to include 33 federally recognized Tribal Nations, operating through various workgroups and committees and providing a forum for the exchange of ideas and information amongst Tribal Nations, agencies and governments.

Statement of Unity

We, the [collective Tribal Nations of USET/USET SPF] being numbered among the Nations People of the South and Eastern United States, desiring to establish an organization to represent our united interest and promote our common welfare and benefit, do of our own free will in Council assembly, affirm our membership in the organization to be known as United South and Eastern Tribes, Inc.

United South and Eastern Tribes, Inc. (USET)

Established in 1969, USET is a non-profit, inter-Tribal organization serving thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET is dedicated to enhancing the development of Tribal Nations, improving the capabilities of Tribal governments, and improving the quality of life for Indian people through a variety of technical and supportive programmatic services.

USET Sovereignty Protection Fund (USET SPF)

Established in 2014, USET SPF is a non-profit, inter-Tribal organization advocating on behalf of thirty-three (33) 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.

USET/USET SPF TRIBAL NATIONS

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Eastern Band of Cherokee Indians
Ani'Yunwiya 2. Miccosukee Tribe of Indians of Florida
Mikasuki 3. Mississippi Band of Choctaw Indians
Chahta 4. Seminole Tribe of Florida
I:laponathli 5. Chitimacha Tribe of Louisiana
Sitimaxa 6. Seneca Nation of Indians
Onondowa'ga' 7. Coushatta Tribe of Louisiana
Koasati 8. Saint Regis Mohawk Tribe
Akwesasne 9. Penobscot Indian Nation
Panawahpskek 10. Passamaquoddy Tribe – Pleasant Point
Peskotomuhkati 11. Passamaquoddy Tribe – Indian Township
Peskotomuhkati 12. Houlton Band of Maliseet Indians
Metaksonikewiyik 13. Tunica-Biloxi Tribe of Louisiana
Yoroniku-Halayihku 14. Poarch Band of Creek Indians
Mvskoke 15. Narragansett Indian Tribe
Nanaanongseuk 16. Mashantucket Pequot Tribal Nation
Pequot 17. Wampanoag Tribe of Gay Head (Aquinnah)
Aquinnah 18. Alabama-Coushatta Tribe of Texas
Alibamu & Koasati | <ol style="list-style-type: none"> 19. Oneida Indian Nation
Onyota'a:ká: 20. Mi'kmaq Nation
Mi'kmaq Nation 21. Catawba Indian Nation
Ye Iswah h'reh 22. Jena Band of Choctaw Indians
Chahta 23. The Mohegan Tribe
Maheehkanuwak 24. Cayuga Nation
Gayogoho:no' 25. Mashpee Wampanoag Tribe
Mâseepee Wôpanâak 26. Shinnecock Indian Nation
Shinnecock 27. Pamunkey Indian Tribe
Pamunkey 28. Rappahannock Tribe
Rappahannock 29. Chickahominy Indian Tribe
Chickahominy 30. Chickahominy Indian Tribe – Eastern Division
Chickahominy – Eastern Division 31. Upper Mattaponi Indian Tribe
Mattaponi 32. Nansemond Indian Nation
Nansemond 33. Monacan Indian Nation
Monacan 34. USET Headquarters 35. USET SPF Office |
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