



The COVID-19 Response in Indian Country

A Federal Failure

By Sahir Doshi, Allison Jordan, Kate Kelly, and Danyelle Solomon June 2020

Center for American Progress



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Introduction and summary

Authors' note: *This report mostly uses the census-defined term "American Indian and Alaska Native (AI/AN)" in keeping with the majority of AI/AN organizations. It occasionally uses terms such as "Native," "tribal," and "Indian Country" in keeping with the conventions through which AI/AN communities refer to themselves.*

The COVID-19 pandemic's disproportionate and devastating harm to American Indian and Alaska Native (AI/AN) communities is a direct and damning consequence of the U.S. government's failure to uphold its legal trust and treaty obligations to Indian Country. Currently, the Navajo Nation has the highest infection rate in the country,¹ greater than that of the worst-hit state, New York; it is even greater than that of Wuhan at the height of the outbreak in China.² Native people make up only around one-tenth of New Mexico's population but more than 55 percent of its coronavirus cases; in Wyoming, AI/AN people are less than 3 percent of the state population but make up more than one-third of its cases.³ This crisis—and the underlying conditions tribal communities face—are the result of centuries of colonial violence and neglect that continue to this day.

Limited health services, broken infrastructure, and above-average rates of immunocompromising diseases all increase the vulnerability of AI/AN populations to the outbreak.⁴ In addition, many tribes also face the brunt of the economic downturn as their lifeblood enterprises in gaming and hospitality are closed for business during the pandemic. Casino closures in early March led to an estimated loss of more than \$4.4 billion in economic activity; \$997 million in lost wages; and the almost total drying up of business revenue-dependent tribal budgets. Tribal gaming revenues are equivalent to state tax revenues, and federal law requires tribes to use these to fund tribal government operations and programs. These losses have impaired tribes' ability to provide essential governmental services such as health care, education, and public safety at a time when the need is highest.⁵

At the root of all these vulnerabilities are the broken promises that the federal government made to tribes in the constitutional process of signing treaties to acquire their lands. Tribes ceded huge swaths of land to the United States with the formal, treaty-enshrined understanding that the federal government would protect

the tribes as sovereign political entities whose right to self-governance it would safeguard and to whom it would provide adequate resources to deliver essential services. This is the foundation of the government-to-government relationship that exists between the federal government and tribal nations, which function not as racial groups but as sovereign political entities to whom the United States has a recognized trust and treaty responsibility embodied in the Constitution, treaties, and federal statutes.

While tribes have continued to honor these treaties, however, the U.S. government has consistently fallen short of meeting its obligations by severely underfunding almost every dimension of the trust relationship through budget cuts, neglect, and usurpation of sovereign authority. The economic, ecological, infrastructural, and human health fallout of the federal government's failure is often most apparent during disease outbreaks; from the 1918 flu⁶ to the 2000s H1N1 virus⁷ to today's novel coronavirus, Indian Country has often been hit hardest—a devastating hark back to the weaponization of pathogens as a genocidal tool in the original settler-colonization of the continent.

Conscious of the unique vulnerabilities of Indian Country and recognizing their roots in this ugly and inexcusable history, most tribal governments have taken proactive virus containment measures that go beyond those of neighboring states and nontribal communities. Many were quick to enforce travel restrictions and stay-at-home orders.⁸ The Trump administration, however, is failing to support tribal leaders and their pandemic response efforts. Instead, the administration's neglectful, disjointed, and misguided response continues to compound Indian Country's suffering, undermine tribal sovereignty, kneecap tribal efforts, and renege on its legal treaty and trust obligations.⁹

Structural inequalities born out of the U.S. government's treaty-violating, trust-abrogating policy decisions have caused the disproportionate COVID-19 crisis in Indian Country today. This is evident in the immediate unmet need for test kits and equipment as well as the bureaucratic bungling of emergency relief measures. In order to allay the current crisis, enable tribes to recover, and prevent an even more devastating recurrence, the U.S. government needs to address the systemic inequalities that have held Indian Country back in its response to COVID-19—both as a matter of public safety and as one of legal and moral obligation.

This report recommends the U.S. government take urgent action on seven areas of high priority:

1. Ensure the inclusion of AI/AN people in COVID-19 data
2. Develop executive branch infrastructure to address bureaucratic barriers
3. Support the development of tribal economies
4. Address the chronic underfunding of the Indian Health Service system
5. Support the development of Indian Country's critical infrastructure
6. Support vulnerable populations by funding tribal public safety and justice needs
7. Restore tribal homelands and support tribal ecocultural resource management

Ensure the inclusion of AI/AN people in COVID-19 data

Central to the federal and state failure to support tribes during this crisis is the deliberate exclusion of AI/AN from COVID-19 demographic data collection. As late into the pandemic as May, nearly half of the states that had released racial demographic data failed to identify AI/AN people as a distinct group, instead lumping them under the category of “Other.”¹⁰ In all likelihood, this has obscured a clearer picture of disproportionate outcomes. For example, New Mexico—a state that released comprehensive racial data—found AI/ANs to have a five times higher infection rate than the state’s general population.¹¹ The failure of all states to produce comprehensive data collection hurts the national response by limiting data-informed policymaking and prioritized resource distribution to tribes.

This is another iteration of a long history of AI/AN data deficits, including in census data. The 2010 census, which overcounted non-Hispanic whites, undercounted AI/AN people by 5 percent more than any other demographic group.¹² AI/AN communities are seeing the impact of this undercounting in real time, as the U.S. Department of the Treasury, relying on census-based data to determine distribution of the Coronavirus Relief Fund, listed 20 tribes as having a population of zero and therefore only eligible for \$100,000 in emergency relief.¹³ More immediate and effective relief efforts could have happened by respecting tribal sovereignty and using the enrollment numbers of the tribes themselves. Egregiously, tribes were required to certify their enrollment data under penalty of law, but the federal government still chose to use its flawed census figures instead.¹⁴

Immediate policy solutions:

- Base relief and fund distribution formulas on tribal enrollment data rather than flawed census figures
- Require that states and cities disaggregate COVID-19 racial data to accurately reflect its effect on AI/AN communities

Long-term policy solutions:

- Fund an interagency working group that substantively includes tribes to overcome challenges such as rural data collection, language barriers, and mistrust of federal agencies to end the erasure and invisibility of AI/AN people
- Acknowledge and respect tribal enrollment data as a matter of sovereignty

Develop executive branch infrastructure to address bureaucratic barriers

COVID-19 has exposed the broken nature of the federal-tribal relationship, which is legally meant to be one of sovereign governments implementing treaties. The U.S. government has a duty to structure federal aid and resources in a manner that is both readily accessible to tribes and free for them to use toward the areas they deem most critical. Instead, federal support during the pandemic has been meager and counterproductive, structured through agencies that have no experience or familiarity with Indian Country. The grant-based funding model is forcing tribes that are already overextended and strained by the pandemic to spend unnecessary resources on a duplicative reporting process simply to access aid that is already designated for them. This burdensome process has been exacerbated by a severe lack of interagency coordination, meaningful tribal consultation, and transparency.

For example, bureaucratic holdups at the Treasury Department have denied tribes access to the full \$8 billion promised to them in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Treasury, with little experience with tribes and underfunded and dysfunctional tribal relations infrastructure, did not disburse any federal dollars until well after Congress' deadline.¹⁵ The allocation formula was flawed and ignored the forms it had previously forced tribes to submit in April—to disburse only \$4.8 billion.¹⁶ Data leaks,¹⁷ legal challenges, and inexcusable delays have marred the entire process, forcing tribes to spend money that they don't have to run basic services.

Similarly, a misinterpretation by the Small Business Administration (SBA) led to the exclusion of tribal gaming enterprises from the \$349 billion set aside for business relief. When tribes protested and Congress clarified that tribal casinos, which are the lifeblood of tribes that lack a tax base due to the land-trust structure, did indeed qualify for the emergency relief, the SBA took almost a month to consult with tribes and resolve the issue, by which time the first round of funding had already run out.¹⁸

In addition, the Federal Reserve's placement of tribes under the Main Street Lending Program—despite legislation clearly indicating that tribes should be eligible for government relief—has halted emergency efforts. Instead of receiving financial support, tribes are stuck in consultation with the Fed, while many banks have begun refusing tribes for the program, leaving them with enormous debt as other industries and governments receive relief.¹⁹

Trust and treaty responsibilities require that the executive branch build infrastructure to overcome these hurdles as a nation-to-nation duty. Responding to tribal leadership's request for an interagency coordination platform, former President Barack Obama established the White House Council on Native American Affairs through executive order. The Trump administration flouted this EO for years and only announced the reestablishment of the council after COVID-19 was already ravaging Indian Country. There is no evidence that the White House council has held a principal-level meeting yet—and its revival looks, so far, to be on paper only, lacking the authority and structure it had under President Obama.²⁰

Immediate policy solutions:

- Clearly define distribution formulas and requirements formed in consultation with tribal leaders in future COVID-19 legislation
- Allow tribes greater flexibility with COVID-19 relief, effective retroactively on existing funds
- Relieve and reduce duplicative and hefty reporting and application requirements during the pandemic
- Automatically include tribal governments whenever state and local governments are named in COVID-19 legislation

Long-term policy solutions:

- Ensure that every federal agency has a fully funded and staffed Office of Tribal Relations
- Streamline federal funding through agencies with the most robust relationship with tribes
- Create a navigable portal for tribes and AI/AN organizations to access all funding opportunities and programs to reduce the administrative burden on tribes
- Switch from a grant-based funding model to one that allows tribes greater sovereignty and self-determination through direct funding
- Ensure that all federal funding is provided directly to tribes rather than through states or local governments

Support the development of tribal economies

Tribal governments, which were mostly underfunded before COVID-19, are under incredible strain. Congress' highest priority should be to get the funds already authorized for Indian Country out of bureaucratic paralysis and into the hands of tribes. Congress needs to make good on its treaty and trust obligations by providing much more direct relief during this downturn and investing in a robust recovery.

The trust relationship obligates the federal government to enable the socioeconomic well-being of tribes as payment for acquired lands. Nevertheless, funding for AI/AN programs has remained stagnant since 2003, creating a civil rights crisis in which the AI/AN poverty rate is twice the national average and the unemployment rate on some reservations stood at 80 percent even before the onset of COVID-19.²¹ Due to the land-trust relationship with the federal government that ensures tribal lands remain in tribal ownership, most tribes have no tax base and largely derive revenue from their businesses.²² Now, lockdowns and stay-at-home orders have cut off critical revenue streams such as the \$32.8 billion tribal casino industry, leaving tribes unable to fund law enforcement, education, health care, and other critical services. COVID-19 will cost Indian Country an estimated \$50 billion in economic activity and place the livelihoods of 1.1 million tribal business workers—both Native and non-Native—at risk.²³

In March, the National Congress of American Indians (NCAI) requested at least \$20 billion in direct relief for tribal economic stability.²⁴ To date, Congress has authorized only \$8 billion through the CARES Act, some of which remains stuck in agency limbo. Congress should honor tribes' request for \$20 billion in direct relief and ensure that the money reaches tribes with immediate effect to meet their budgetary shortfalls.

Immediate policy solutions:

- Increase appropriations to the Coronavirus Relief Fund tribal set-aside by \$20 billion—which tribes originally requested—or 10 percent of additional Coronavirus Relief Fund appropriations
- Provide a tribal set-aside in Title IV of the CARES Act to address the economic stabilization and assistance needs of tribal governments and their enterprises
- Require immediate distribution of funds based on data submitted by tribes
- Ensure easily accessible emergency assistance and unemployment support to all tribal businesses and workers
- Provide additional funding for Native Community Development Financial Institutions (CDFIs) and the Native American Contractors Association (NACA)
- Waive the cost-share requirements to excess Federal Emergency Management Agency (FEMA) funds

Long-term policy solutions:

- Remove the dual taxation of tribal business activities by local and state governments
- Simplify and make permanent the Indian employment tax credit
- Allow tribes to receive the same exemption from federal excise taxes as state and local governments and provide tribes tax-exempt bond parity with state and local governments

Address the chronic underfunding of the Indian Health Service system

AI/AN communities are suffering the highest COVID-19 infection rates, just as they bore the brunt of past disease outbreaks, due to the chronic, long-term underfunding of health care across Indian Country. It is important to note that AI/AN individuals also experience above-average rates of immunocompromising diseases and conditions such as diabetes,²⁵ asthma,²⁶ heart disease,²⁷ cancer,²⁸ lower respiratory disease,²⁹ hypertension,³⁰ post-traumatic stress disorder, and serious psychological distress³¹—all of which increase the risk and lethality of COVID-19.

These tribal communities that suffer from preexisting conditions in addition to significant shortages in hospital and treatment capacity are not receiving enough test kits, personal protective equipment (PPE), and technical information during the pandemic.³² The lack of resources is part of a deep-rooted structural violation of the federal government's trust and treaty obligations—specifically, neglect of the Indian Health Service (IHS) system.

The IHS is the federal agency that oversees and provides health care to AI/AN communities through Indian tribes, tribal organizations and urban Indian organizations, together known as the I/T/U system. Before COVID-19, the IHS was already so underfunded that expenditures per patient were just one-fourth of the amount spent in the veteran's health care system and one-sixth of what is spent for Medicare.³³ IHS facilities are, on average, understaffed by 25 percent.³⁴ Now, the IHS is scrambling to provide crisis services to a vulnerable and hard-hit constituency with its stretched-thin staff, inadequate facilities, and severe lack of funds.

While the CARES Act provided \$1 billion to the IHS, unmet needs are estimated at \$32 billion.³⁵ Federal assistance during the pandemic has not been forthcoming; the Sault Ste. Marie Tribe of Chippewa Indians, for example, received only two test kits for a tribe of 44,000 people.³⁶ The Oyate Health Center, a major health provider in Rapid City, South Dakota, which transitioned into tribal management in 2019, received almost no tests, PPE, or cleaning supplies.³⁷ The Seattle Indian Health Board was sent body bags when it asked for more medical supplies

to fight COVID-19.³⁸ Urban Indian organizations are some of the worst hit, with 83 percent forced to reduce services and almost half unable to deliver medicine.³⁹ Overwhelmed facilities are forced to fly patients into larger cities for treatment and must foot the transportation bill.⁴⁰

The I/T/U system requires an urgent injection of funds and investment in capacity, but the likelihood of a prolonged COVID-19 pandemic lasting months or years necessitates that the federal government not renege on its duties to support the treatment of diabetes, asthma, substance abuse, and other immunocompromising diseases that are increasing the AI/AN fatality rate.

Immediate policy solutions:

- Increase immediate funding to the IHS and prioritize urban Indian health, including access to the national service supply center for essential testing equipment; equipment purchases and replacements; and IHS hospitals and health clinic on-site treatment capacity
- Expedite the reauthorization of the IHS Special Diabetes Program for Indians (SDPI) and other programs that deal with immunocompromising conditions that require uninterrupted care
- Provide all I/T/U facilities access to the Strategic National Stockpile and Public Health Emergency Fund
- Include pharmacists, licensed marriage and family therapists, licensed counselors, and other providers as eligible provider types under Medicare for reimbursement to I/T/U facilities in order to lessen the burden of mental health on immunity
- Extend waivers under Medicare for the use of telehealth in Indian Country
- Remove restrictions and barriers on care provision through urban Indian health organizations

Long-term policy solutions:

- Increase funding for the IHS and strengthen coordination among federal, tribal, state, and local health agencies
- Fund job-training programs to address staff shortages through the Indian Health Care Improvement Act
- Provide a tax incentive for IHS professionals similar to other public sector health workers
- Ensure an explicit mention of urban Indian organizations in I/T/U-related legislation to combat the invisibility of urban AI/AN suffering

Support the development of Indian Country's critical infrastructure

Significant numbers of AI/AN people do not have basic utilities such as electricity and running water, both of which are critical in federal COVID-19 prevention guidelines. There is an immediate need for the federal government to provide stopgap solutions such as clean drinking water and hand sanitizer supplies in some tribal communities. However, the next stimulus package is also an opportunity to address the underlying tribal infrastructure crisis that makes infectious diseases more lethal in Indian Country.

When the virus struck, safe water and sewage disposal services were already unavailable in 13 percent of AI/AN homes on reservations, compared with 1 percent of homes overall.⁴¹ Moreover, AI/AN families face an acute housing shortage and are eight times more likely to live in an overcrowded home, making these communities more susceptible to the virus.⁴² Some 35 percent of Indian Country residents lack access to broadband internet—a necessary resource for remote education, tribal consultation, communications, and telehealth during the pandemic.⁴³ Most Bureau of Indian Education (BIE) schools are underfunded and face additional barriers to switch to remote functioning while student nutritional health suffers in the absence of school meals. Many of these challenges are even more pronounced in Alaska, where remote Native communities face food shortages due to reduced air traffic and limited flexibilities to fly test samples and even patients out to health care centers.

Immediate policy solutions:

- Provide immediate funding for essential facility construction and solutions related to health care, sanitation, sewage and waste disposal, drinking water, quarantine housing, air transport flexibilities for remote communities, and broadband services
- Establish a tribal broadband fund at the Federal Communications Commission and extend the period for tribal governments to complete applications for wireless broadband and increased mobile coverage in Indian Country in light of COVID-19

- Invest in tribal programs on infrastructure, construction, rural development, and waste management that are identified as relevant to the long-term COVID-19 response
- Provide wireless hotspots and technological equipment for BIE schools along with nutrition access for students and expanded benefits for teachers
- Increase funding for the Bureau of Indian Affairs Housing Improvement Program and the Indian Housing Block Grant Program and include AI/AN in any new housing assistance programs

In the face of COVID-19, infrastructural obligations should be seen as urgent, life-or-death priorities and health investments. Congress should honor its responsibilities and pass a comprehensive package to address the most immediate needs in Indian Country—but then must also continue to take longer-term action as the pandemic continues to prevent new disparities from emerging in the wake of COVID-19.

Long-term policy solutions:

- Take proactive steps to increase funding for both BIE schools as well as broadband development on tribal lands
- Reauthorize programs such as the Reclamation Water Settlements Fund (RWSF) to live up to its obligations to ensure tribes' access to amenities that are taken for granted in nontribal communities without a history of dispossession

Support vulnerable populations by funding tribal public safety and justice needs

The COVID-19 crisis is exacerbating basic safety and human rights issues that already disproportionately hurt AI/AN communities due to vicious cycles of marginalization, loss of sovereignty, and federal neglect. Domestic violence rates increase during natural disasters and economic depression, and the combined effects of COVID-19 have led to a rise in incident reporting in 48 states. AI/AN women are already significantly likelier to be reported missing, four times more likely to experience sexual assault, and 10 times more likely to be murdered than the national average.⁴⁴ In addition, 40 percent of AI/AN women experience intimate partner violence during their lifetime.⁴⁵ Despite these stark numbers, an even greater percentage of their cases remain underreported, under-investigated, or unresolved.

In addition, as state and federal prisons become infection hotspots, AI/AN people again bear a disproportionate burden of the impact due to their 38 percent higher-than-average incarceration rate.⁴⁶ Sixty percent of all youth in federal juvenile detention are AI/AN individuals.⁴⁷ This is a stark and devastating example of the government's violation of treaty obligations on two fronts: underfunding tribal justice systems, and then usurping their jurisdiction. This displacement denies tribal citizens access to culturally competent programs and rehabilitation resources; during a pandemic, it also denies them access to the resources their tribes deployed to contain the virus.

The solution is, and has always been, to defer to the tribes themselves on how best to handle social issues in a culturally competent manner. Treaty obligations mandate that the federal government not only respect their ability to do so but also direct funding and resources toward that end. For too long, the federal government has been an aggressor when it should respect tribal sovereignty and absent when it has the responsibility to act. It has never been more apparent or urgent that this double-headed disaster be reversed and redressed.

Immediate policy solutions:

- Reauthorize the Violence Against Women Act with strong tribal provisions, including:
 - Expanding tribal jurisdiction over non-Native perpetrators so that tribes can protect their citizens from the rise in domestic violence cases as well as pandemic-linked racist attacks
 - Protocols to improve reporting and investigation of missing and murdered persons cases
 - Increased access to federal criminal databases for tribal law enforcement
- Support tribal public safety, justice, and juvenile justice systems through robust funding that meets the current asks of tribes affected by the economic downturn
- Automatically include tribal equivalents whenever state and local justice systems are mentioned in COVID-19 funding legislation

In the long run, the federal government needs to acknowledge and internalize that the best it can do for Indian Country is to listen and work with tribes and tribal leaders. This is not only the most effective but also the lawful path forward. Measures that support rather than supplant tribal authority are the likeliest to translate into actual outcomes on the ground—both for COVID-19 response and for Indian Country’s overall well-being. In the case of COVID-19, many tribes have developed guidelines that are rooted in local context, make cultural sense, and go further than those of neighboring states and nontribal communities. It is time that nontribal governments underscore—not undermine—these efforts.

Long-term policy solutions:

- Ensure that tribes have the resources that they are owed to run culturally competent public safety and justice systems

COVID-19 containment conflict: Tribes vs. adjacent nontribal communities

While some states and local governments have lived up to their obligations to tribal neighbors, too many have actively harmed or undermined the efforts tribes made to contain the spread of the virus.

Cheyenne River Sioux and Oglala Sioux tribes

Tribal measure: In April, when the state refused to issue a lockdown order even as infection rates soared, the two Lakota tribes closed their reservations to nonresidents engaging in non-sensational travel without a permit through tribal checkpoints. These checkpoints are not only legal but can mean life or death to tribes that cannot afford to deal with additional exposure from outsiders. The Cheyenne River Sioux's only health center—located three hours from the nearest critical care facility—has just eight beds. The Oglala Sioux have only four beds, six ventilators, and 24 COVID-19 tests set aside for a tribe of 50,000 people.

State of South Dakota's response: In response, South Dakota Gov. Kristi Noem (R) threatened the tribes with an ultimatum: Remove the checkpoints in 48 hours or face legal repercussions. In issuing this threat, Gov. Noem threatened the sovereign right of the Oglala Sioux and Cheyenne River Sioux tribes to make their own laws; violated numerous legal decisions and the 1868 Treaty of Fort Laramie, which gave tribes superior authority over highways running through tribal land; and undermined tribal efforts to protect their peoples. However, Oglala and Cheyenne River leaders, supported by a chorus of tribal organizations across the country, have refused to remove the checkpoints. Notably, the checkpoints do not shut down any nontribal roads, take less than one minute to pass through, and have allowed the Cheyenne River Sioux to trace their only positive case of COVID-19 on the reservation.⁴⁸

Yurok Tribe

Tribal measure: On April 6, the Yurok Tribe in California closed its borders to all nonmembers and issued a shelter-in-place order for all those living on the reservation. Additionally, the tribe established a curfew within its borders. These proactive measures were established to protect those living on the reservation, 60 percent of whom are either elders or have an underlying health condition.

Nontribal community members' response: Instead of respecting the tribe's reservation closure and shelter-in-place order, a nontribal diner located on the reservation began providing dine-in services. Despite a warning from the tribe, the owners continued to serve patrons. Adding insult to injury, a local official posted on Facebook encouraging people to join him in a sit-in protest at the diner, openly defying the reservation's standing order and putting the tribes' most treasured cultural gatekeepers at risk.⁴⁹

Walker River Paiute Tribe

Tribal measure: Concerned with a lack of medical services, high rates of underlying medical conditions, and a significant elder population, the Walker River Paiute Tribe in Nevada closed its borders to nonmembers and established tribal curfews.

Nontribal community members' response: The tribe's "NO VISITORS" sign posted outside the reservation was shot up on May 3 by nontribal members in an act of clear disrespect for tribal sovereignty. In addition, nonmembers have continued to force their way onto the tribe, bringing trailers and vehicles to camp on the reservation's reservoir.⁵⁰

Yerington Paiute Tribe

Tribal measure: The Yerington Paiute Tribe does not have access to clean water, as their supply has been contaminated with toxins due to nonnative corporations. In order to provide their tribal members with water, a biweekly delivery is sent to the tribe.

Nontribal community members' response: In March, non-members stole about 120 cases of water from the tribe, forcing the tribe to limit the availability of drinking water to residents.⁵¹

Navajo Nation

Tribal measure: Navajo Nation—arguably the country's hardest-hit place by COVID-19, with infection and death rates among the highest in the world—closed its borders and established strict curfew and social-distancing orders until June 7.

State of Arizona and National Park Service response: Arizona Gov. Doug Ducey (R) and the National Park Service reopened Grand Canyon National Park, which houses about 2,500 Navajo residents, without informing visitors of the Navajo Nation's emergency order.⁵²

Restore tribal homelands and support tribal ecocultural resource management

Homelands are essential to the economic, cultural, and political survival and well-being of tribes. Placement of land into trust is the main vehicle through which the federal government acts on its legal obligation to ensure tribes have the ability to pursue prosperity.⁵³ Tribal homelands form the base on which tribes provide housing, health care, justice, education, and other essential services to their citizens. Through agriculture and natural resource management, tribes use lands to build economic and nutritional security.⁵⁴ COVID-19 has brought into focus the importance of homelands as tribes use this autonomy to set curfews, stay-at-home and travel restrictions, and other measures that exceed those of their neighboring states. Moreover, homelands are significant to tribal identity and cultural continuity during a pandemic that disproportionately kills elders—the traditional cultural gatekeepers of many tribes.⁵⁵

In 2009, the U.S. Supreme Court went against decades of legal precedent in its decision on *Carcieri v. Salazar*, ruling that federally recognized tribes cannot place land under trust unless they meet the ambiguous definition of being “under federal jurisdiction” in 1934.⁵⁶ Intergovernmental and legal conflict ensued and continues to drain already-strained tribal resources. The Trump administration is using the ruling to not just oppose new land-trust acquisitions but also to take existing lands out of trust from tribes. Egregiously, on March 27, the Trump administration took the Mashpee Wampanoag Tribe’s lands out of trust, rescinding its reservation designation and effectively stripping the tribe of its sovereignty as the COVID-19 pandemic ravaged tribes nationwide.⁵⁷

This is just one of several destructive actions that the administration has taken—at a time when its focus should be solely on responding to the pandemic—that disproportionately harm AI/AN communities. It is moving ahead with nonessential rulemakings and decisions such as oil and gas lease sales,⁵⁸ land management plan changes, and loosening of environmental standards.⁵⁹ In recognition of tribal sovereignty and the ecocultural significance of public lands and other natural resources, these decisions are required to go through tribal consultations and a

public comment period—neither of which is feasible during a pandemic.⁶⁰ Tribal leaders have joined a chorus of voices⁶¹—from governors to mayors to county commissioners—that have called on the Trump administration to formally pause all open comment periods in light of the national crisis.

Pueblo governors in New Mexico, for example, requested an extension of a comment period on a proposal to expand oil and gas development near the culturally significant Chaco Canyon landscape.⁶² Alaska Native villages and tribal advocates are seeking more time to comment on a massive oil drilling project proposed on Alaska’s North Slope.⁶³ Instead of heeding many of these requests, the administration has offered virtual public meetings that are farcical and discriminate against AI/AN communities on various levels.⁶⁴ These meetings exclude the 35 percent of Indian Country residents who lack sufficient internet access; unfairly expect public engagement during a crisis that disproportionately affects tribes; and erode tribal sovereignty.

Moreover, AI/AN communities stand to lose the most from the ecological, economic, and sociocultural effects of these decisions. This is obvious in cases such as the Chaco Canyon plan but also applies to broader decisions such as the Environmental Protection Agency relaxing enforcement of air pollution standards⁶⁵ during a respiratory epidemic when AI/AN people suffer the highest rates of asthma.⁶⁶

The administration is, at best, ignoring tribal concerns; at worst, it is using the COVID-19 pandemic to circumvent tribal consultation to jam through controversial actions. It is time to heed tribal leaders’ call to suspend these nonessential comment periods and decisions, not least because the usurpation of land and natural resources is a terrible callback to settler-colonial policies used to disenfranchise AI/AN individuals and communities and deliberately erode their resilience to disease.⁶⁷

Immediate policy solutions:

- Reverse *Carcieri v. Salazar* through legislation and return to the pre-2009 system allowing all federally recognized tribes to have homelands placed into trust
- Reaffirm the status of all existing land-trust relationships and homelands under trust, specifically that of the Mashpee Wampanoag Tribe through a reversal of the administration's decision
- Suspend and extend all active consultations, comment periods, and agency rulemakings unrelated to COVID-19 until the affected tribes declare an end to the pandemic
- Direct all federal agencies to focus all resources on COVID-19 response and recovery and not take actions that exacerbate conditions in AI/AN communities
- Invest in tribal natural resource conservation programs to boost rural economies and safeguard ecocultural heritage

Long-term policy solutions:

- Move from the current system of engaging in tribal consultation after an agency decision has been taken to a co-management model in which tribes are active participants in the conceptualization and design of rules and policies that affect their lands, ecocultural heritage, and sovereign right to access natural resources
- Ensure that tribal participation in federal rulemaking is robust through in-person meetings, active outreach, and multilingual engagement
- Create more structures to legitimize and support tribal ecological stewardship that goes unrecognized and unfunded by the federal government

Conclusion

COVID-19 poses an existential threat to tribes throughout Indian Country and disproportionately affects elders, who serve as gatekeepers of tribes' culture, language, and traditions. As infection rates continue to rise and tribal economies suffer, the federal government's response has been negligent and inept, exacerbating existing disparities and forcing tribes to scramble to access the relief that they are legally owed.

The disproportionate impact of COVID-19 on tribal communities is the direct result of systemic and historic failures by the U.S. government to uphold trust and treaty obligations. As the federal government looks for short- and long-term solutions to enable tribes to respond, recover, and prevent future public health crises, it must begin the work of paying tribes what it owes in relief and investments to lessen the growing burden of COVID-19. And it must avoid harmful and counterproductive practices that are infringing on tribal sovereignty and worsening the pandemic. Tribes are telling the federal government exactly what they need; the onus is now on the government to listen.

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Endnotes

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