



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically

November 6, 2020

The Honorable Catherine E. Lhamon
Chair
U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW, Suite 1150
Washington, DC 20425

Dear Chair Lhamon,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to express our deep concern and disappointment with the recent U.S. Commission on Civil Rights (USCCR, or Commission) vote to withhold the publication of a report regarding COVID-19 impacts on Tribal Nations. Furthermore, by refusing to release any official statements or explanations regarding the suppression of these updates to its *Broken Promises* report, the Commission has failed to provide transparency in its decision-making process. We are concerned that these actions will further impede efforts to emphasize the challenges Tribal Nations are experiencing during this pandemic, and could hinder legislative efforts for further and improved COVID-19 support for Tribal Nations. The chronic underfunding and disregard of trust and treaty obligations by the federal government has only intensified the impacts this pandemic has had on Tribal Nations and Native people.

USET Sovereignty Protection Fund (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.¹ 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.

With this vote, USCCR's actions serve only to further underscore the historic and systemic failure of the federal government to acknowledge and deliver upon its trust and treaty obligations to Tribal Nations. As America engages in a reckoning with its shameful past, reconciliation and establishing a more honorable

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

path forward can only be achieved when the federal government recognizes, and course corrects its policymaking in ways that support Tribal Nation rebuilding and uphold our inherent sovereignty. The Commission's failure to publish this report denies the federal government a full and transparent understanding of the ways in which it is failing Tribal Nations during the COVID-19 crisis, and it denies Tribal Nations a critical tool, as we advocate for change.

The Systemic Failures of the Federal Government have Dishonored its Trust and Treaty Obligations

As you should well know, the federal government's historic and ongoing neglect has fostered a situation where Indian Country has been disproportionately affected by the COVID-19 virus. This was true when USET SPF Secretary, Chief Lynn Malerba, testified during the Commission's July 2020 hearing and it is true today. According to the Centers for Disease Control and Prevention (CDC), though the data remains incomplete, it was determined that for the week ending on October 24, 2020, Tribal populations were found to have a cumulative incidence of laboratory-confirmed COVID-19 rates that are 4.3 times higher than those of non-Hispanic white persons.² Additionally, the Indian Health Service (IHS) reported on November 2nd that COVID-19 cases by IHS Area had a cumulative positive rate of 7 percent, with a seven-day rolling average positivity rate of 10.6 percent.³ USET's Tribal Epidemiology Center has also found that the cumulative total of positive COVID-19 tests reported at the IHS Nashville Area are approaching 2,100. These rates are exacerbated by the chronic underfunding of the federal trust obligation, including for healthcare, education, housing, and critical infrastructure, which leaves Tribal Nations unable to appropriately respond to and mitigate this pandemic.

For decades, USET SPF has been engaged advocacy efforts to address the underfunding of trust and treaty obligations. When we testified before USCCR on July 17th, we demanded, "accountability for the persistent, chronic failure to uphold legal and moral promises to Tribal Nations." USCCR's mission calls upon it to assist in effectuating this accountability by shedding light upon the types of violations we and others in Indian Country have highlighted. As we enter the final months of 2020, this becomes even more vital, as diagnoses of the COVID-19 virus continue to spike across Indian Country and Congress has yet to seriously consider and pass another relief package.

While we appreciate the initiative the Commission took to examine the impacts of COVID-19 on Tribal Nations and the clear grasp of the issues on the part of some Commissioners, it is disgraceful that USCCR voted to withhold the publication of the report without explanation. Now is not the time to conceal critical information revealing the systematic failure of the federal government in administering funding and programs that were promised to Tribal Nations. It is regrettable that we must utilize reports like these to justify the already vast record of evidence pertaining to the federal government's failure to honor these legal obligations promised to Tribal Nations. However, these publications serve to further expose the ever-widening gap between the trust obligation owed to Tribal Nations and the execution of that obligation. As COVID-19 continues to pose an existential threat to our people, our governments, and our way of life, we urge USCCR to immediately reconsider its decision and act to publish its findings on the pandemic in Indian Country.

We remind the Commission that at a time when Americans are finally coming to realize the urgent need for our country to reconcile with its past, it should begin by atoning for its original sins against this land's first peoples. Countless lives are being lost due to historic and modern inaction. To continue to neglect this solemn duty, especially during a worldwide pandemic, will be catastrophic for Indian Country and the nation as a whole. We look forward to continuing our dialogue and working with the Commission to further support updates to the *Broken Promises* report, and will continue to seek bold, systemic changes in response to the

² See Centers for Disease Control and Prevention. "COVIDView: A Weekly Surveillance Summary of U.S. COVID-19 Activity". Updated October 30, 2020. Available at <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>.

³ See U.S. Department of Health and Human Services, Indian Health Service. "Coronavirus (COVID-19): COVID-19 Cases by IHS Areas". Accessed November 6, 2020. Available at <https://www.ihs.gov/coronavirus/>.

federal government's chronic neglect of its obligations to Indian Country. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Francis', with a long horizontal flourish extending to the right.

Kirk Francis
President

A handwritten signature in black ink, appearing to read 'K. A. Carroll', with a long horizontal flourish extending to the right.

Kitcki A. Carroll
Executive Director