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**House Natural Resources Subcommittee on Indian And Insular Affairs
Written Testimony of Chairwoman Cheryl Andrews-Maltais
Wampanoag Tribe of Gay Head Aquinnah
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Good Afternoon Chairwoman Hageman, Ranking Member Fernandez and Honorable Subcommittee Members,

Thank you for the opportunity to testify regarding the issue of: *Advancing Tribal Self-Determination: Examining the Bureau of Indian Affairs' 638 Contracting.*”

My name is Cheryl Andrews-Maltais and I am the Chairwoman of the Wampanoag Tribe of Gay Head Aquinnah currently serving in my fifth term and a Board Member of the United South and Eastern Tribes (“USET”). My Tribe has lived in our ancient aboriginal homelands since time immemorial and have occupied the island of Noepe (also known as Martha’s Vineyard) off the coast of Massachusetts for over 13,000 years. We are part of the Great Wampanoag Nation and are know as “The People of the First Light”. Not only are we the People of the First Light, we are the Peoples of many firsts: we are the People who had first contact with the Pilgrims in 1620 in Pawtuxet which now known as Plymouth and we are the People with whom King James I of England made the first Treaty in this hemisphere, the 1621 Treaty of Peace. This Treaty recognized and respected the sovereignty of the both our sovereign nations – The Wampanoag Nation and Britain. We are also the survivors of the first germ warfare in this hemisphere perpetrated against our People to decimate our population and steal our lands. We are the People who were put into the first concentration camp in this hemisphere during Metacom’s (also known as King Philip’s) War. And we were the first People to have our lives, lands and natural resources stolen from us through murder, trickery and enacted laws, specifically designed to eliminate us through the attempted and systematic cultural and literal genocide of our People. Like other New England Tribes, we were the first to endure Colonial laws that were written to limit or take away our inherent sovereign rights, our culture, our ceremony and spirituality and our traditional ways of life and living.

However, while we are some of the first People to experience and survive the devastation of Colonialism, despite over 400 years, four centuries of this attempted genocide and attempted acculturation and colonialism, we are still here; resistant, resilient and strong. Before contact, as the Indigenous Peoples of these lands, we maintained thriving communities and robust economies with significant intertribal trade and commerce, political alliances and sophisticated indigenous knowledge; through which we utilized, maintained, managed and preserved our natural resources for our sustenance and subsistence. Our right to

live and practice our ways of life was given to us by our Creator and as sovereign Tribal Nations, we exercised those rights as independent governments and stewards of our lands and natural resources for ourselves and our future generations to come.

I began with this brief history of my People, as an example of most of our Tribes who have faced similar if not the same fate, whether their Treaties or agreements were with another country or the United States. We all had thriving communities and robust economies, our traditional ways of life and natural resource management which has sustained us. Our lands and resources were so bountiful and attractive; that when the foreigners came, they coveted them so much, that they would do anything to possess them. This was the beginning of the Indian policies established to strip us of all that we knew and held dear, our culture, traditions, our lands and our natural resources. These policies, designed to “kill the Indian” and eradicate us from our lands were specifically designed to remove us from all that we knew and honored. Despite the promises made in the Treaties in exchange for peace, or access to our resources, these policies were actually a systematic plan to divest us of all of our lands and natural resources. These policies were designed as a way to try to force us into submission, into a way of life foreign to us, resulting in the death of hundreds of thousands of us through wars, starvation, disease and broken spirits. However we still survived, resistant, resilient and strong.

Through these centuries, we have witnessed the failures of these Indian policies, and the inability of the United States to keep its promises; promises made to us in exchange for the lives of our Ancestors, our lands and natural resources. As documented in the United States Commission on Civil Rights 2003 Report: *A Quiet Crisis* and its 2018 follow up Briefing Report: *Broken Promises*, the United States has failed to meet its trust and treaty obligations and has failed to adequately fund Tribes, and/or agencies like Indian Affairs in order to meet their obligations to the Tribes. While the Bureau of Indian Affairs has made significant strides in changing the culture within the agency to better support Tribal Nations, there still seems to be pressure from Congress to treat sovereign Tribal Nations as wards of the government, with a paternalistic perspective, disregarding that Tribal Nations have a unique political relationship with the United States, unlike any other political subdivision or non-profit organization.

Through our tenacity, we have been able to demonstrate that despite the United States’ failure to meet its treaty and trust responsibilities our Tribal Nations remain, that we are the same strong resistant and resilient People, with the knowledge and capacity to care for our own People. We have been able to demonstrate that the policies of the United States have not succeeded in doing what they were intended to do. Nevertheless, during this time, we also realized that we, as sovereign Tribal Nations, can assist the United States in fulfilling its trust and treaty obligations. We recognized that by providing us with the resources we need for us to rebuild our own Communities and economies, then stepping aside while we provide the programs and services that we design to best meet the needs of our People, we can all do better.

Advancing Self-Determination Through the Indian Self-Determination and Education Assistance Act

A dynamic shift in the policies and way of thinking, came with the passage of the Indian Self-Determination and Education Assistance Act (ISDEAA) in 1975 (Public Law 93-638). I am honored to address you today regarding the critical matter of advancing self-determination through the Indian Self-Determination and Education Assistance Act (P.L. 93-638, 25 U.S.C. §§5301 et seq.). This landmark legislation has empowered Tribal Nations across the United States to assert our sovereignty and determine our own destinies.

This forward-thinking legislation was one of the first efforts to meaningfully acknowledge Tribal Nations’ sovereignty and recognize our ability to administer the programs and services, promised to us by the United

States, at a level of expertise and effectiveness which has had better outcomes than ever before. One of the fundamental aspects of the Indian Self-Determination and Education Assistance Act is the distinction it draws between “self-governance” under Title IV and “self-determination” under Title I.

Title IV of the Act allows participating Tribes to negotiate funding agreements with the Department of the Interior for Public Law 93-638 programs, granting Tribes the authority to assume control over these programs and service. This is the route my Tribe chose and which has allowed us to design our own programs and services in a manner that best serves our Tribal Members and their needs.

A key differentiator between self-determination contracts and self-governance compacts lies in the level of tribal flexibility afforded. While Tribes under Title I *contracts* must seek approval from the Department of the Interior for substantial changes, Tribes under Title IV *compacts* have greater autonomy. They can redesign or consolidate Public Law 93-638 programs and reallocate funds within selected programs without prior approval from the Department of the Interior. This is an essential aspect of Tribal self-determination. Tribes make the best decisions with regard to the effectiveness of program and service delivery to their People.

With the expansion of Self-Governance through the amendments of the ISDEAA under Title IV in 2000, Tribes have been able to unlock more opportunities for creative programing and community building by negotiating directly with Federal Agencies for the administration of the funding. As this success demonstrated the effectiveness of Tribal decision making and innovation when it came to designing and delivering programs and services, the expansion of the rights and responsibilities of the Tribal Nations proved that Tribal control, would not only assist the United States in fulfilling its trust and treaty obligations to Tribes, it benefitted both the Tribes and the United States.

My Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), became the first self-governance Tribe in the Eastern region. The Tribe's decision to pursue self-governance underscores the importance of enabling Tribes to exercise genuine self-determination over their affairs without the need for constant oversight from Federal agencies. While this has been a strong step forward, there is still the need for greater funding, self-governance expansion and flexibilities for the Tribal Nations to truly flourish.

The potential for even greater success is with the expansion of Self-Determination and Self-Governance. In my fifth term as Chairwoman, I have witnessed firsthand the transformative power of self-governance. This could not have been proven more clearly than with the accomplishments of so many Tribes during the recent COVID-19 Pandemic. This was the first time that all Tribes were provided direct Federal funding, with simple and specific guidance for the use of those funds, and Tribes demonstrated how well we can do our jobs, when given the resources and the government steps out of the way. Tribes, who were among the most vulnerable populations, did a far better job in preventing, preparing for and responding to the deadly COVID-19 pandemic than any other government instrumentality. For example, our Tribe's ability to develop and manage our own COVID-19 response programs, without waiting for permission from the Bureau of Indian Affairs has been instrumental in protecting the health and well-being of our community during these challenging times. Self-governance gave us the ability to respond quickly, mitigating the number of cases and ultimately deaths caused by COVID-19.

In addition to leading my Tribal Government for five terms as a Self-Governance Tribe, I previously served as a Senior Advisor to the Assistant Secretary-Indian Affairs, and I currently serve on various national advisory councils and committees like the BIA and IHS Tribal Self Governance Advisory Committee and the Heath and Human Services Secretary's Tribal Advisory Committee. It is with this experience in mind that I urge the expansion of self-governance to all Federal agencies, programs, and

funds. Much of the Federal funding across Indian Country is delivered through the competitive grant process (and often through the states). Not only is this an abrogation of the Federal trust responsibility to force Tribal Nations to compete for Federal dollars, but the competitive grant process often precludes many Tribal Nations from having access to those dollars at all. Grant funding fails to reflect the unique nature of the Federal trust obligation and Tribal sovereignty by treating Tribal Nations as non-profits rather than governments. Self-governance Contracting and Compacting should be an available option across the Federal system.

Many opportunities still remain to improve and expand upon the principles of self-governance and self-determination. An expansion of ISDEAA authorities to all programs across the Federal government would be the next evolutionary step in the Federal government's recognition of Tribal sovereignty and reflect its full commitment to Tribal Nation sovereignty and self-determination. The expansion of self-governance contracting and compacting will not only empower us to better serve our citizens and communities, but it will enhance our abilities to manage our lands. Expansion would empower Tribal Nations to administer Federal programs in co-management, stewardship, agriculture, deployment and maintenance of critical infrastructures, and pursue economic development on our lands. We call on Congress to enact legislation that expands our self-governance capabilities across the Federal government so that we may fully exercise our inherent sovereign rights to manage our affairs and resources.

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. As Tribal Nations, we are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. The U.S. Constitution, Treaties, Statutes, Executive Orders, and judicial decisions all recognize that the Federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our Federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services.

All Federal programs and dollars must be eligible for inclusion in ISDEAA self-governance contracts and compacts. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring that Tribal Nations have real decision-making in the management of our own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional Federal programs to appropriately serve our communities as well as have the authority to redistribute funds to administer services among different programs as necessary. To accomplish this requires a new framework and understanding that moves us further away from the current archaic, paternalistic approach of the Federal government managing Indian affairs.

Advancing Self-Determination is a must as funding is inadequate, human resources are scarce and the relationship between Tribal Nations and the Bureau of Indian Affairs ever-evolving. In the almost 50 years since the passage of the ISDEAA, Tribal Nations have demonstrated our capacity and expertise to take on more Federal responsibilities when and if they so choose. It is time to begin to re-envision the role of the Bureau from paternalistic regulator to a true partner and advocate for Tribes as we continue to serve our people.

Authorize Interagency Transfer of Federal Funds to Support Tribal Programs and Services

The Federal government has a long track record of failing to uphold its trust and treaty obligations to fully fund Tribal programs and services. USET SPF fully supports the ability of Tribal Nations to request and receive funds from any Federal agency through ISDEAA 638 self-governance contracts and compacts.

Since passage of ISDEAA, Tribal Nations have become experienced in managing complex Federal programs under these types of agreements. These agreements empower us to administer Federal funds in a manner that we deem appropriate and necessary to achieve our goals and priorities to better serve our citizens and communities. The 638 contracting and compacting method empowers our Tribal Nations to fully exercise our sovereignty and self-determination. Other methods of Federal funding, especially grant and competitive grantmaking models, treat Tribal Nations as not-for-profit entities, instead of sovereign governments, and create unnecessary barriers to services provided in fulfillment of perpetual trust and treaty obligations. Under a 638 mechanism, Tribal Nations can determine how to utilize funds received from Federal agencies to appropriately utilize such funds to better serve our citizens and communities.

Expand the 477 Program Across the Federal Government

Established in 1992 by Public Law 102-477 (P.L. 102-477), the 477 program was intended to reduce unemployment in Tribal communities by establishing employment opportunities consistent with the purposes of the Indian Self-Determination and Education Assistance Act (ISDEAA). The program also sought to increase the effectiveness of employment and training programs by streamlining administrative requirements through consolidation of budgeting, reporting, and auditing systems. Congress amended the 477 program through the, “Indian Employment, Training and Related Services Consolidation Act 2017” (P.L. 115-93), which empowered Tribal Nations and organizations to consolidate eligible employment, training, and related services from different Federal sources. The intention of this was to reduce the administrative, reporting, and accounting cost burdens on Tribal Nations and organizations.

The 477 program 2017 amendments also directed Federal agencies to sign an Interagency Memorandum of Agreement (Interagency MOA) to implement the consolidation of eligible employment and training programs across a number of Federal agencies. However, following the Interagency MOA that was signed in December 2018—without Tribal consultation—other Federal agencies sought to implement their employment and training programs using their own methods and prerogatives without Department of the Interior (DOI) leadership and direction. It was not until October 7, 2022 that the Administration announced the signing of an updated Interdepartmental MOA to implement the 477 program. The 2022 Interdepartmental MOA has sought to streamline plan approval procedures and re-affirmed the decision-making authority of the Secretary of the Interior in approving 477 Program plans. The goal of the 2022 Interdepartmental MOA is to increase Tribal Nation economic resilience through employment and training programs and services based on our Tribal community priorities and initiatives.

The 477 program serves as a positive model for reducing reporting burdens on Tribal Nations and organizations, as it eliminates underlying reporting requirements for Federal programs integrated into each 477 plan and replaces them with a single annual report. For these reasons, I strongly recommend that Congress and the Subcommittee on Indian and Insular Affairs advance legislation to expand the 477 Program across the entirety of the Federal government. Enacting a law that will reduce reporting burdens and streamline administrative requirements for Tribal Nations will support our efforts in Nation rebuilding and ensure our economic resilience through Tribal-centric goals and initiatives in employment and training services.

The Directives of EO 14112 Must be Made into Law

On December 11, 2023, President Biden Issued Executive Order 14112, “Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination” (EO 14112). This Executive Order was issued to our inherent sovereignty and self-determination to advance economic growth, pursue Nation rebuilding, and directly address the economic, social, and public health priorities of our citizens. The current service model of Federal

funding allocation, administration, and oversight remains a paternalistic, pre-self-determination era mechanism that stifles the proper management and use of Federal resources in Indian affairs. In order to usher in a new era of Tribal self-determination, Federal laws and regulations must be rescinded or revised to truly advance our sovereign efforts to pursue economic development and Nation rebuilding for the improved economic, social, and public health of our communities. We remind Congress and the Subcommittee, however, that no level of economic success attained by Tribal Nations diminishes or eliminates the United States' moral and legal trust and treaty obligations to fully fund Tribal programs and services. While ISDEAA 638 contracting and compacting was an initial, positive step forward in advancing our sovereignty and self-determination, the Federal government must remove statutory and regulatory barriers for us to appropriately manage Federal programs and funds for the benefit of our communities and citizens.

Oversight is Needed to Accurately Verify Tribal Funding Levels Without Penalizing Tribes

Congress should exercise its oversight authority in determining how much actual funding actually reaches Indian Country. The Office of Management and Budget (OMB) asserts that over \$20 billion in Federal dollars is appropriated to Indian Country annually. From the perspective of the Tribes and Tribal advocates, including those who serve on budget formulation committees for Federal agencies, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. OMB should be required to provide a full accounting of Federal funding which is actually distributed to Indian Country. To date, OMB has not responded to this request. However, this information is absolutely essential to the measurement of the Federal government's own success in meeting its obligations and the work of Tribal Nations.

In reading through the Office of the Inspector General Report: *The Bureau of Indian Affairs Can Improve the Closeout Process of Public Law 93-638 Agreements*, I believe it is incumbent upon the Bureau to ensure that all appropriated funds are utilized effectively and efficiently to fulfill their intended purpose: enabling Tribes to provide essential government services for their Tribal Members and the close-out process is a critical component of verifying those funds. And while the Bureau concedes to many of the Report's observation and has agreed to corrective measures, the Report's tone still resonates with a paternalistic view of the relationship between the Bureau and the Tribal Nations. Let me be clear – the United States' trust and treaty obligations have no end date nor are Tribal Nations equal to other "grant recipients." This funding is a critical part of the United States fulfilling its ongoing trust and treaty obligations. We have paid it forward with the lives of our Ancestors, our land and our natural resources; and this debt to us, to Indian Country, is ongoing and does not go away.

While there is merit to ensuring that any unexpended funding should be accounted for and redistributed, this should not be at the expense of a Tribe who has been sent funding they are entitled to only to be ordered to spend those funds in accordance with an arbitrary timeline imposed upon them by the Federal government. Self-Determination is self-explanatory – Tribes get to decide how and when to spend their funding. The single annual audit should be sufficient to ensure that expenditures are consistent with its intended authorization. In the same manner that aid to foreign countries does not require this type of reporting and oversight nor should burdensome reporting and oversight be imposed upon Tribal Nation for repayment of a debt owed to us.

As we consider the future of Tribal Self-Determination, we must remain steadfast in our commitment to upholding the principles enshrined in the Indian Self-Determination and Education Assistance Act. By

fostering collaboration, accountability, and mutual respect between Tribal Nations and the Federal government, we can continue to advance the cause of indigenous sovereignty and self-governance.

In conclusion, both Title I and Title IV ISDEEA agreements are critical towards ensuring that Tribal Nations have the tools and resources necessary to chart their own course toward prosperity and self-sufficiency.

Thank you for your attention to this critical issue. I stand ready to assist in any way possible as we work together to strengthen Tribal Sovereignty and Self-Determination.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cheryl Andrews-Maltas". The signature is written in black ink and is positioned above the printed name.

Cheryl Andrews-Maltas

Chairwoman, Wampanoag Tribe of Gay Head Aquinnah