

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

WINNEBAGO TRIBE OF NEBRASKA,
a federally recognized Indian Tribe,

Plaintiff,

v.

Civil Action No. 1:24-cv-78-CMH-IDD

UNITED STATES DEPARTMENT OF
THE ARMY; UNITED STATES
DEPARTMENT OF THE ARMY, OFFICE
OF ARMY CEMETERIES; CHRISTINE E.
WORMUTH, KAREN
DURHAM-AGUILERA, RENE A.
YATES, Lieutenant Colonel PRISCELLA
A. NOHLE, in their official capacities,

Defendants.

**SUPPORTING MEMORANDUM FOR MOTION OF UNITED SOUTH AND EASTERN
TRIBES SOVEREIGNTY PROTECTION FUND AND CATAWBA NATION FOR
LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFF'S RESPONSE
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is a non-profit, inter-Tribal organization advocating on behalf of 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi'kmaq Nation (ME), 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

was formed in 2014 as an affiliate of the United South and Eastern Tribes, Inc. to advocate on behalf of USET SPF's Tribal Nation members by upholding, protecting, and advancing inherent sovereign authorities and rights.

The Catawba Nation (Catawba) is a federally recognized Tribal Nation with its seat of government located in South Carolina, and Catawba is a member Tribal Nation of USET SPF.

USET SPF and Catawba have strong interests in this litigation. Tribal Nations' inherent rights necessarily include the right to bring the remains of our children home. This is even more true when those children were taken by the United States from our Tribal communities, without our consent, for the purpose of ending our cultures and ways of life to facilitate disposition of our lands and resources—too often resulting in our children's deaths. That is the stark truth of the United States' federal Indian boarding school system. The federal Indian boarding school system would today be considered a human rights violation, and failure to return the remains of our children who are interred at those schools is a continuing human rights violation.

Congress, in enacting the Native American Graves Protection and Repatriation Act (NAGPRA), recognized our right to be reunited with the remains of our people. And the U.S. Department of the Interior (Interior) has recently recognized the wrongs perpetuated by federal Indian boarding schools. USET SPF and Catawba have a deep interest in ensuring that Tribal Nations are able to utilize NAGPRA to bring our children home from those schools' graveyards. *Amici's* interests in this litigation are made even stronger by Catawba's own experience seeking to bring a child home from the cemetery at Carlisle Indian Industrial School (Carlisle).

(NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA), and Wampanoag Tribe of Gay Head (Aquinnah) (MA).

This brief is desirable and will aid the Court in the resolution of this case. *Amici* provide this brief to address issues not covered in the parties' briefs. This brief will explain how the insistence of the Defendants—which include the U.S. Department of the Army, the Office of Army Cemeteries, and several Army officials sued in their official capacities (collectively, the Army)—in applying Army Regulation 290-5 instead of NAGPRA continues the federal government's wrongful practices from the federal Indian boarding school era of treating Native children as adult militants and prisoners of war. It will show how the Army's position today directly contradicts important truth and reconciliation work the United States is undertaking with regard to federal Indian boarding schools. The brief will also share how application of NAGPRA, rather than Army Regulation 290-5, to repatriation of children from Carlisle could result in different outcomes, including for a Catawba child. It will also show how the federal government's conduct at Carlisle fails even to satisfy the procedural requirements of Army Regulation 290-5. Last, the brief will explain how the Army misreads Congress's intent when drafting NAGPRA.

Amici are grateful to the plaintiff Winnebago Tribe of Nebraska for bringing this case for the benefit of all Tribal Nations whose children remain interred at Carlisle and other federal Indian boarding schools. This brief will aid the Court in understanding how the position taken by the Army in this case has harmed and continues to harm *Amici* and all of Indian Country.

Respectfully Submitted,

June 12, 2024

/s/ Dale Pittman

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CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Virginia by using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully Submitted,

June 12, 2024

/s/ Dale W. Pittman

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