

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF
THE AIR FORCE, ET AL.,

Petitioners,

v.

PRUTEHI GUÅHAN,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**BRIEF OF COMMUNITY-BASED ORGANIZATIONS IN GUAM,
PUERTO RICO, AMERICAN SAMOA, THE U.S. VIRGIN ISLANDS,
AND THE NORTHERN MARIANA ISLANDS AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT	5
I. NEPA’s Procedural Requirements Ensure Democratic Participation And Accountability That RCRA Lacks.....	5
A. NEPA’s Text, Implementing Procedures, And Guiding Precedent Mandate Early, Robust Public Engagement And Community Participation.....	5
B. RCRA And NEPA Are Complementary Administrative Regimes That Serve Distinct Functions.....	8
II. NEPA’s Procedural Protections Are Especially Important In The Territories, Whose People Are Otherwise Excluded From the Political Process.....	14
A. People In Guam And The Territories Are Subject To An Undemocratic Framework that Denies “Consent Of The Governed”	14
B. The History Of Unilateral Federal Action Across The Territories Highlights The Need For Meaningful Community Engagement And Participation	18

1. Guam.....	18
2. Puerto Rico	21
3. American Samoa	24
4. United States Virgin Islands	25
5. Northern Mariana Islands (NMI)	27
C. Guam’s Unbalanced Political Relationship With The United States Makes NEPA Critical For Meaningful Community Oversight.....	30
III. If Uncertainty Remains, The <i>Charming Betsy</i> Canon Favors Interpreting NEPA And RCRA To Both Apply To Avoid Violating U.S. International Commitments To “Non-Self-Governing Territories” And Indigenous Communities.....	31
CONCLUSION.....	36

TABLE OF AUTHORITIES

CASES

<i>Andrus v. Sierra Club</i> , 442 U.S. 347 (1979)	4
<i>Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.</i> , 462 U.S. 87 (1983)	7
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<i>Davis v. Guam</i> , 932 F.3d 822 (9th Cir. 2019)	20
<i>Dep’t of Transp. v. Pub. Citizen</i> , 541 U.S. 752 (2004)	7
<i>F. Hoffman-La Roche Ltd. v. Empagran S.A.</i> , 542 U.S. 155 (2004)	33
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CONSTITUTIONAL PROVISIONS

U.S. Const. amend. 23, § 1	16
U.S. Const. art. II, § 2, cl. 2	17
U.S. Const. art. IV, § 3, cl. 2	14

STATUTES AND LOCAL LAWS

42 U.S.C. 4331	6
42 U.S.C. 4331(b)	2
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42 U.S.C. 4336a(c)	9
48 U.S.C. 1421a	19

48 U.S.C. 1421c.....	19
48 U.S.C. 1421k	19
48 U.S.C. 1422	19
48 U.S.C. 1574(c).....	25
48 U.S.C. 1711	19, 25
48 U.S.C. 1751	28
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The Uniformed And Overseas Citizens Absentee Voting Act, 52 U.S.C. 20301–20311	17

REGULATIONS

40 C.F.R. 124.10 <i>et seq.</i>	10
40 C.F.R. 124.31.....	10
40 C.F.R. 124.32.....	10

40 C.F.R. 124.33.....	10
40 C.F.R. 1502.14.....	11
40 C.F.R. 25.13.....	12

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INTEREST OF *AMICI CURIAE*¹

Amici are community-based organizations in Guam, Puerto Rico, American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands (“the Territories”) that are focused on environmental and cultural preservation. These islands are their homeland. They each have a strong interest in ensuring that federal agencies adhere to federal environmental laws that require public engagement and participation early in the decisionmaking process. Interpreting the National Environmental Policy Act (NEPA) and the Resource Conservation and Recovery Act (RCRA) to limit public engagement at the critical early stages of federal agency action would strip *amici* of their ability to fulfill the generational responsibility codified in NEPA.

When federal agencies are allowed to avoid such public engagement and consultation, *amici* and their members are denied the only tools they have for participation and accountability. In particular, *amici* and their communities have been disproportionately impacted by the U.S. military’s bombing and disposal activities. The people of the Territories are unable to vote for President, do not have voting representation in Congress, and have long been denied full enjoyment of their right to self-determination. While they each

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici* state that no counsel for a party authored this brief in whole or in part and no person or entity other than *amici*, its members, or counsel made a monetary contribution to its preparation or submission.

hold diverse views on their future political relationship with the United States, they all agree that federal environmental laws require robust and meaningful community engagement and participation to have their voice heard. The full list of *amici* appears in the appendix.

By centering the unique histories and experiences of the people of the Territories as stewards of their lands and waters for thousands of years, long before the United States existed, *amici* urge the Court to affirm.

INTRODUCTION AND SUMMARY OF ARGUMENT

NEPA rests on a simple premise: the decisions federal agencies make today will shape the environment to be inherited by generations yet to be born. Congress gave that premise the force of law by declaring it the policy of the United States to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.” 42 U.S.C. 4331(b)(1). *Amici* take this generational commitment seriously.

A trustee does not act alone, in secret, or without accounting to those whose interests are at stake. NEPA’s procedural architecture—its requirements for rigorous early environmental study, public notice, and meaningful community participation before any final decision is made—is the mechanism through which that accountability is realized. For most citizens, NEPA’s participatory

requirements exist alongside a full suite of democratic tools in the federal system. But for the more than 3.6 million people living in the Territories, those tools are largely unavailable. As a legacy of the *Insular Cases*, decided 125 years ago this year, the people of the Territories cannot vote for the President and Commander-in-Chief, who directs the U.S. military and federal agencies; they have no voting representation in the Senate, which confirms the Cabinet officers who oversee the agencies that govern their lives; their delegates to the House of Representatives cannot cast a vote on final legislation; and there is no democratic participation or accountability for the selection of federal judges who hear their cases. Thus, when federal agencies are allowed to ignore community concerns, the people of the Territories are left without recourse to ordinary democratic channels.

Viewed against this structural backdrop, where “consent of the governed” is largely illusory, NEPA is not merely a procedural formality. While far from perfect, for communities in the Territories, it is the primary mechanism through which they can influence environmentally consequential federal decisions before those decisions are set in stone. That is precisely what makes the timing question at the center of this case so critical. As this Court has recognized, NEPA’s procedural requirements exist to ensure that agencies take a “hard look” at potential environmental consequences and engage the public *before* it makes a decision—not after resources have been committed and “the die otherwise cast.”

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989).

By contrast, RCRA’s permitting process evaluates the Air Force’s *settled* decision to handle hazardous waste in a particular way and place—a *post hoc* review that cannot “internalize opposing viewpoints into the decision-making process” at the moment they might still matter. *California v. Block*, 690 F.2d 753, 771 (9th Cir. 1982) (citing, *inter alia*, *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979)). This distinction is especially stark for the Department of the Air Force, an agency whose principal mission is national security, not environmental stewardship. NEPA exists precisely to ensure that agencies like this incorporate environmental values “where they would not otherwise be taken into account.” Pet. App. 41a. For the people of Guam and the Territories—who bear the consequences of agency decisions made without their consent—that function is not incidental. It is the only meaningful opportunity for early input into decisions that will shape the health of the land and waters they are responsible for protecting for future generations.

Amici agree with respondent that the Air Force’s decision to continue open detonation (“OD”) activities at Tarague Beach constitutes “final agency action.” Resp. Br. 38–53. *Amici* focus here on question two, addressing why NEPA’s requirements apply in full to the Air Force’s decision to proceed with OD, and why the Court should be especially attentive to the democratic deficit that makes those requirements indispensable for the people of the Territories. And to

the extent ambiguity remains on this question, *amici* further submit that the separation of powers considerations underlying the *Charming Betsy* canon militate against an interpretation of NEPA and RCRA that would—in the specific context of this case—conflict with the United States’ international commitments to its Non-Self-Governing Territories and Indigenous communities.

ARGUMENT

I. NEPA’s Procedural Requirements Ensure Democratic Participation And Accountability That RCRA Lacks

NEPA and RCRA are complementary administrative regimes that fill gaps in each other’s statutory framework. Specifically, NEPA’s robust provisions regarding public engagement at critical, *early* stages of the decisionmaking process are necessary to ensure regulators like Guam EPA are able to fulfill their responsibilities under RCRA.

A. NEPA’s Text, Implementing Procedures, And Guiding Precedent Mandate Early, Robust Public Engagement And Community Participation

1. NEPA’s statutory text and implementing procedures make clear that public engagement and community participation—at key *preliminary* stages of a federal agency’s decisionmaking process—are essential to achieving its “broad national commitment to protecting and promoting environmental quality.”

Robertson, 490 U.S. at 348 (citing 42 U.S.C. 4331). Recognizing “the profound impact of man’s activity on the interrelations of all components of the natural environment,” Congress established as “the continuing policy of the Federal Government” that it would work “in cooperation with * * * concerned public and private organizations” to “create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. 4331(a).

Congress made the expansive scope of NEPA clear in commanding “the Federal Government to use all practicable means” to “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings.” 42 U.S.C. 4331(b). Congress emphasized the “diversity, and variety of individual choice” as a key element for “preserv[ing] important historic, cultural, and natural aspects of our national heritage.” *Ibid.* These admittedly ambitious, qualitative goals cannot be achieved without a deep level of public engagement and participation *at the key decisional points* in the federal decisionmaking process.

This congressional mandate for federal agencies to work with “concerned public and private organizations” and to “use all practicable means and measures” to achieve its expansive goals is reinforced throughout NEPA, including the implementing procedures applicable to the Air Force. When preparing an Environmental Impact Statement (EIS), for example, the Department of Defense’s NEPA

implementing procedures state in clear terms that agencies “[w]ill obtain comments of * * * [t]he public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested or affected by the proposed action,” at which point the agency “will address any significant comments” so that it can consider and “respon[d] to substantive issues raised” in the EIS itself. Dep’t of Def., *NEPA Implementing Procedures* pts. 2.1(b) and (e) (last updated Apr. 30, 2026) (DoD NEPA Proc.), perma.cc/NSP2-KY3V.

2. This Court has similarly recognized the importance NEPA places on public engagement and community participation. NEPA “ensures that the agency and the public are aware of the environmental consequences of proposed projects.” *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 177 (2025). NEPA serves a critical “informational role” that is designed “to give the public the assurance that the agency has indeed considered environmental concerns in its decisionmaking process, and, perhaps more significantly, [to] provide a springboard for public comment in the agency decisionmaking process itself.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (citations and internal quotation marks omitted); see *Robertson*, 490 U.S. at 349; *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983); *Weinberger v. Catholic Action of Haw./Peace Ed. Project*, 454 U.S. 139, 143 (1981).

The significance of timing when it comes to public participation is also clear, with this Court

emphasizing the importance that public concerns be “considered during the planning stage of agency actions.” *Weinberger*, 454 U.S. at 143. “[T]he broad dissemination of information mandated by NEPA,” this Court has explained, “permits the public and other government agencies to react to the effects of a proposed action at a meaningful time.” *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 371 (1989). Ultimately, “NEPA promotes its sweeping commitment * * * by focusing Government and public attention on the environmental effects of proposed agency action.” *Ibid.*

“NEPA’s instruction that all federal agencies comply” with its requirements “to the fullest extent possible,” this Court has said, “is neither accidental nor hyperbolic.” *Flint Ridge Dev. Co. v. Scenic Rivers Ass’n of Oklahoma*, 426 U.S. 776, 787 (1976) (citations and internal quotation marks omitted). Just the opposite, NEPA’s requirements for meaningful environmental study and community engagement *early* in the process are a “deliberate command” that cannot “be shunted aside in the bureaucratic shuffle.” *Ibid.* Petitioners’ approach would reduce that congressional command to a voluntary request, and at the very moment a community faces heightened risks from hazardous materials.

B. RCRA And NEPA Are Complementary Administrative Regimes That Serve Distinct Functions

Nothing in the text of NEPA or RCRA states that the procedures governing the RCRA permit

renewal process should displace the procedures that federal agencies are mandated to follow under NEPA. Yet, on petitioners' view, the fact that the challenged agency activity deals with the disposal of dangerous explosives and other toxic materials—which are nominally regulated under RCRA—means that citizens impacted by that activity are somehow entitled to *less* information and opportunity for public engagement. Petitioners have it backwards. The fact that the disposal activities here carry particularly harmful environmental consequences warrants *more* opportunity for early community involvement—something which only NEPA ensures. Far from redundant, NEPA and RCRA are complementary administrative regimes that each serve distinct functions in advancing environmental review, citizen involvement, and community accountability. Indeed, the marked gaps between the two schemes—differences critical for meaningful public participation—belies petitioners' claim that RCRA is the “functional equivalent” of NEPA, Pet. Br. 20, which, as respondent emphasizes, is not even this Court's test. Resp. Br. 22–32.

1. NEPA “declares” that federal agencies “use all practicable means” to achieve its goals, 42 U.S.C. 4331(a), including “utilizing a systematic interdisciplinary approach.” 42 U.S.C. 4332(A). And it commands that agencies “shall include a request for public comment” as part of their environmental review process. 42 U.S.C. 4336a(c). The Department of Defense's new NEPA procedures require public engagement *before* decisions are made and *before*

actions are taken. See DoD NEPA Proc. pts. 1.8(b) and 2.1 (requiring DoD to “obtain the comments of [t]he public” and “address any significant comments received”). This is important because “early agenda-setting decisions affect and structure all that comes afterwards.” Cary Coglianese & Daniel E. Walters, *Agenda-Setting in the Regulatory State: Theory and Evidence*, 68 Admin. L. Rev. 93, 94 (2016).

In contrast to NEPA’s anticipatory provisions, RCRA’s public engagement regulations are reactive and occur only after an initial decision by the agency over whether and how to proceed has been made. This problem is exacerbated given that the information repository mechanism that EPA designed for high-interest facilities does not apply in Guam. Guam EPA has not adopted the RCRA expanded public participation provisions added by EPA in 1995, see 60 Fed. Reg. 63,417 (Dec. 11, 1995), which require a pre-application public meeting, notice at application submittal, and an information repository. 40 C.F.R. 124.31–124.33. Absent such adoption, the first formal public engagement point under RCRA in Guam is the draft permit comment period. See 40 C.F.R. 124.10 *et seq.* Critically, this is precisely the point that EPA’s preamble to the 1995 public participation provisions describe as “too late to enter the process” because, by that point, “the facility and the permitting agency ha[ve] already made all the major decisions.” 60 Fed. Reg. at 63,420. And even if adopted, these rules apply only to “initial” permit applications or when the facility “is proposing a significant change,” 40 C.F.R. 124.131(a), so would not apply here regardless.

2. One of the most consequential gaps is NEPA’s requirement to comprehensively analyze alternatives—what the former Council on Environmental Quality regulations called the “heart” of any environmental impact statement. 40 C.F.R. 1502.14. NEPA requires the Air Force to rigorously examine whether alternatives to OD—including alternate locations—would be more protective of Guam’s environment and community health. While the RCRA process allows for consideration of alternative technologies, the process does not evaluate whether OD at Tarague Beach is the right location in the first place. Only NEPA does that.

3. NEPA has historically required analysis of cumulative effects—the combined environmental burden on communities, together with past, present, and foreseeable future activities in the region—a concept still applied by the U.S. military today. See DoD NEPA Proc. app. A, at DoW A113-31, A114-32 and A140-20. RCRA is facility-specific and makes no provision for cumulative analysis.

4. Similarly, NEPA explicitly requires consideration of the cultural, historical, and aesthetic harms to affected communities—including the profound cultural and spiritual significance of Tarague and nearby Litekyan (Ritidian Point) for the Indigenous CHamoru/Chamorro² people, whose ancestral lands and sacred sites lie near the OD

² Both spellings are used to reflect orthographic differences in Guam and the Northern Mariana Islands.

operations. See 42 U.S.C. 4331(b)(2) and (4). Cultural practitioners and Indigenous knowledge are profoundly critical for comprehensive planning. RCRA never requires analysis of any of these values.

5. RCRA’s own coordination regulation confirms that the two statutes are designed to operate together, not as substitutes. The regulation directs that RCRA public participation activities be coordinated with “environmental assessment and analysis procedures under 40 C.F.R. part 6”—*i.e.*, NEPA review. 40 C.F.R. 25.13. RCRA does not contemplate replacing NEPA; it anticipates the two operating together.

The instant case exemplifies the functional importance of *both* administrative schemes. Petitioners lament that applying NEPA in the context of the Air Force’s RCRA permit application “would “paralyze agency decisionmaking instead of properly informing it.” Pet. Br. 4 (brackets, citation, and internal quotation marks omitted). But the record here tells a different story. Without the benefit of the robust environmental studies and public engagement required under NEPA, Guam EPA’s consideration of the Air Force permit application under RCRA has stalled. More than five years have passed since the Air Force originally submitted its application, J.A. 15, with no decision from Guam EPA to approve or deny the permit. It seems there remains too many unanswered questions—both from a community engagement and environmental science perspective—for Guam EPA to act. Letter from Guam EPA to Brigadier Gen. Jeremy T. Sloane (Oct. 15, 2021).

NEPA and RCRA are complementary, not redundant. Absent NEPA procedures and process, Guam EPA and the broader impacted community are hamstrung in their ability to understand, participate in, and influence Air Force decisionmaking regarding the treatment and disposal of dangerous explosives and other toxic materials. Federal planners also lose out on critical local knowledge.

Further, the U.S. military has demonstrated its ability to undertake full NEPA review regarding its extensive activities in Guam. See, *e.g.*, 90 Fed. Reg. 40,065 (Aug. 18, 2025) (noting NEPA review role in constructing aircraft parking apron); 86 Fed. Reg. 20,487 (Apr. 20, 2021) (infrastructure upgrades); 80 Fed. Reg. 55,838 (Sept. 17, 2015) (family housing construction); 72 Fed. Reg. 10,721 (Mar. 9, 2007) (wharf extension construction). It would defy common sense for federal law to require greater environmental review and community participation when the military builds roads or parking lots than when it explodes hazardous ordinances, potentially spreading toxic materials over Guam's sole-source aquifer.

II. NEPA's Procedural Protections Are Especially Important In The Territories, Whose People Are Otherwise Excluded From the Political Process

A. People In Guam And The Territories Are Subject To An Undemocratic Framework that Denies "Consent Of The Governed"

When the United States declared its independence 250 years ago, it expressly rejected the idea of colonial rule and recognized "the consent of the governed" as its core foundational principle. The Declaration of Independence para. 2 (U.S. 1776). Yet, for the last 125 years, the United States has ruled its overseas Territories through a colonial legal framework that denies democracy, self-governance, and self-determination to over 3.6 million people. This shift from a country founded on the rejection of colonial rule, to one that has embraced its own brand of "American colonialism," *United States v. Vaello-Madero*, 596 U.S. 159, 182 (2022) (Gorsuch, J., concurring), is grounded in the *Insular Cases* and an expansive reading of the Territory Clause.

The Territory Clause, Article IV, § 3, cl. 2 of the Constitution states, "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Under that Clause, Congress has long assumed "plenary power" over the Territories, including a near-unlimited authority to govern its communities. See Sarah H. Cleveland, *Powers Inherent in Sovereignty: Indians, Aliens,*

Territories, and the Nineteenth Century Origins of Plenary Power Over Foreign Affairs, 81 Tex. L. Rev. 1, 239–50 (2002). This Court recently invoked the Clause to rule Congress had the power to deny Supplemental Security Income benefits to low-income seniors and disabled people based solely on their residence in a U.S. territory, stating “[t]he text of the Clause affords Congress broad authority to legislate with respect to the U. S. Territories.” *Vaello-Madero*, 596 U.S. at 162; but see *Veneno v. United States*, 146 S. Ct. 52, 54 (2025) (Gorsuch, J., joined by Thomas, J., dissenting from denial of certiorari) (“[R]ightly understood, [the Territories Clause does not] endow the federal government with plenary power even within the Territories themselves.”).

Following the Spanish American War in 1898, in which the United States acquired Puerto Rico and Guam as spoils of war, the Supreme Court expanded federal power over its newly acquired island Territories in the *Insular Cases*—a series of racially grounded decisions that sanctioned the full extension of U.S. sovereignty to overseas Territories without requiring the full extension of constitutional rights or self-determination. See Efrén Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901–1922)*, 65 Rev. Jur. U.P.R. 225, 236–71 (1996). As this Court has explained, the *Insular Cases* established a “doctrine of territorial incorporation, under which the Constitution applies in full in incorporated Territories surely destined for statehood but only in part in unincorporated

Territories.” *Boumediene v. Bush*, 553 U.S. 723, 757 (2008).

This Court has called the *Insular Cases* “much-criticized” and exhorted that they “should not be further extended.” *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 590 U.S. 448, 472 (2020); see also *Vaello Madero*, 596 U.S. at 180 (Gorsuch, J., concurring) (declaring that “[t]he *Insular Cases* have no foundation in the Constitution and rest instead on racial stereotypes”); *id.* at 194 n.4 (Sotomayor, J., dissenting) (observing the *Insular Cases* “were premised on beliefs both odious and wrong”); *Trump v. Barbara*, No. 25-365, slip op. 2, n.1 (June 30, 2026) (Jackson, J., concurring) (including the *Insular Cases* in a list of Supreme Court decisions that have “denied Americans” the “promise” of “equal citizenship”). Yet the Court has left these cases on the books. See, e.g., *Aurelius*, 590 U.S. at 472 (“[W]e need not consider the request by some of the parties that we overrule the much-criticized ‘*Insular Cases*’”); *Fitisemanu v. United States*, 143 S. Ct. 362 (2022) (denying certiorari in a petition asking whether the *Insular Cases* should be overruled).

The result of all this today is near-unlimited federal control over the people of the Territories without any meaningful political representation or clear path to self-determination. People in Guam and other Territories lack the right to vote for the President, even as that right has been extended to people in other non-state jurisdictions, see U.S. Const. amend. 23, § 1, and protected for U.S. citizens who permanently live outside of the United States. See The

Uniformed And Overseas Citizens Absentee Voting Act, 52 U.S.C. 20301–20311. They have no representation at all in the Senate, which has the power of “advice and consent” over Presidential nominees, including the Secretary of the Air Force. Representation in the House of Representatives is limited to non-voting “Delegates” and a “Resident Commissioner” who have no power to vote on final legislation. Rules of the House of Representatives, 119th Cong. R. III, cl. 3(a) and (b) (2025). All told, the people of the Territories have little to no democratic voice or accountability for the laws enacted by Congress or the administrative regulations and decisions made by federal agencies, yet they are subjected to them just the same.

Federal courts are also part of this undemocratic framework. Federal judges are nominated by a President for whom people in the Territories cannot vote and confirmed by a Senate in which they lack any representation. U.S. Const. art. 2, § 2, cl. 2.

In summary, the people of the Territories have no voting representation in the laws they are required to follow, no say in the President or federal officers who enforce those laws, and no influence in selecting the judges who interpret those laws and decide legal disputes like this one. All of which contradicts the foundational principle enshrined in the Declaration of Independence that governments “derive their just powers from the consent of the governed.” Declaration of Independence para. 2 (U.S. 1776).

B. The History Of Unilateral Federal Action Across The Territories Highlights The Need For Meaningful Community Engagement And Participation

Unsurprisingly, the lack of democratic accountability across all three branches of the federal government often results in unilateral federal actions that run contrary to the well-being and expressed interests of the people of the Territories. Understanding the history of political development in each Territory alongside specific examples where unilateral federal action (or inaction) has failed to adequately consider community environmental and cultural concerns highlights why this Court should ensure NEPA's robust procedural requirements apply to the Air Force's decision to continue its OD activities.

1. Guam

In 1898, the United States claimed sovereignty over Guam and Puerto Rico following the Spanish-American War. Treaty of Peace Between the United States of America and the Kingdom of Spain, Spain-U.S., Dec. 10, 1898, 30 Stat. 1754. From then until 1950, a presidentially appointed Naval Governor ruled Guam by fiat. Arnold Leibowitz, *Defining Status: A Comprehensive Analysis of United States Territorial Relations* 313 (1989) (Leibowitz). In a 1901 petition to Congress, Guam's leaders objected to the imposition of a naval governor who "exercises supreme power in the executive, legislative, and judicial branches of government, with absolutely no

limitations in his actions, the people of this island having no voice whatever.” U.S. Dep’t of the Navy, A Petition From Inhabitants of Guam Relating to a Permanent Government, H.R. Doc. No. 419, 1st Sess., at 2 (1902), <https://www.guampedia.com/1901-petition/>. Similar petitions for self-government were sent in 1917, 1929, 1933, 1936, 1947, 1949, and 1950. *Ibid.* Civilian rule did not start until 1950, but still under a presidentially appointed civilian governor rather than an elected governor. Leibowitz at 313, 325.

In 1950, Congress enacted an Organic Act that “declared” Guam “to be an unincorporated territory,” with any locally enacted law “subject to modification or repeal by the Congress of the United States,” and giving the President the power “to designate parts of Guam as naval or military reservations” without limitation, all of which remain the law today. 48 U.S.C. 1421a, 1421c, 1421k. President Truman immediately claimed more than 42,000 acres of land for military purposes—nearly a third of Guam’s total land area—adding to what the U.S. military had already taken following Japan’s brutal occupation of Guam during World War II, and all without proper compensation. Exec. Order No. 10178, 15 Fed. Reg. 7,313 (Nov. 1, 1950). Guam did not elect its own Governor until 1971, and did not have even a non-voting delegate to Congress until 1973. 48 U.S.C. 1422, 1711. Today, only Congress can amend the Guam Organic Act. 48 U.S.C. 1423i. And Guam’s efforts to pursue self-determination have been repeatedly ignored by Congress and limited by federal courts. See, *e.g.*, Guam Commonwealth Act, H.R. 100,

105th Cong. (1997); see also, *e.g.*, *Davis v. Guam*, 932 F.3d 822 (9th Cir. 2019).

Over a quarter of Guam’s limited land area today remains controlled by the military, with the scope and scale of military activities expanding dramatically over the last two decades. Andrew Tilghman, Cong. Rsch. Serv., R47643, *Guam: Defense Infrastructure and Readiness* (2026). Throughout this time, NEPA has provided an important—if often imperfect—platform for community engagement and accountability. In 2010, community opposition expressed during the NEPA process led the military to reconsider plans to locate a firing range complex at Pagat, a sacred site of significant environmental and cultural value. See U.S. Dep’t of the Navy, *Final Environmental Impact Statement, Guam and CNMI Military Relocation* (2010). Community opposition continued after the military shifted the proposed firing range complex to Ritidian/Litekyan, another critical site for ecological and cultural preservation. See 80 Fed. Reg. 55,838 (Sept. 17, 2015). However, despite a resolution from the Guam Legislature opposing the project, Guam Res. No. 228-34 (2017), the military nonetheless proceeded, bulldozing 900 football fields of pristine limestone forest that is habitat to 15 endangered species and preventing access to traditional fishing, medicinal plants, and latte burial sites. *Protest planned on first day of live fire testing above Ritidian*, Pacific Daily News (Sept. 23, 2023), https://www.guampdn.com/news/protest-planned-on-first-day-of-live-fire-testing-aboveritidian/article_9b9c385e-59ab-11ee-8168-83ce8ba81832.html.

Concerns over military activities are grounded in a legacy of environmental harms and contamination from federal activities that continue to threaten Guam lives, land, and water. The island's prominent role in national defense has had a steep ecological and human cost, leaving a footprint of hazardous waste and toxic pollutants like PFAS, PCBs, Agent Orange, radiation fallout, asbestos, and more across the island that have contributed to increased cancer rates, neurological disorders, and other health problems. Mar-Vic Cagurangan, *What's killing Guamanians? The island is tainted with 25 types of toxic chemicals*, Pacific Island Times (Feb. 16, 2026), <https://www.pacificislandtimes.com/post/what-s-killing-guamanians-the-island-is-tainted-with-25-types-of-toxic-chemicals>. A host of military facilities in Guam, including Andersen Air Force Base, have been declared Superfund sites by U.S. EPA, *ibid.*, with this Court ruling unanimously in 2021 that the Government of Guam could seek recovery for damages from “toxic military waste” deposited at a Navy dump. *Guam v. United States*, 593 U.S. 310, 313, 320 (2021).

2. Puerto Rico

From 1898–1900, Puerto Rico was ruled by a presidentially appointed military governor. Leibowitz at 140–41, 154. Presidentially appointed civilian governors took over from 1900–1953. *Id.* at 162–64. Operating through a congressionally mandated process, Puerto Rico adopted its own Constitution in 1952, with its first elected governor taking office in 1953. *Ibid.* However, the U.S. Department of Justice has consistently stated its view that the Puerto Rico

Constitution is “subject to unilateral alteration or revocation by subsequent Acts of Congress,” U.S. Dep’t of Just. Letter to Sen. Frank Murkowski and Jeff Bingaman, at 5–7 (Jan. 18, 2001), with a 2011 White House Report noting “a future Congress could choose to alter that relationship unilaterally.” Report by the President’s Task Force on Puerto Rico’s Status, at 26 (2011). This Court observed in 2016 that if you “trace” the “ultimate source of Puerto Rico’s” sovereignty “all the way back, we arrive at the doorstep of the U.S. Capitol.” *Puerto Rico v. Sanchez Valle*, 579 U.S. 59, 78 (2016). That same year, Congress established a presidentially appointed fiscal oversight board with extraordinarily broad powers to nullify locally enacted laws and government contracts. 48 U.S.C. 2100 *et seq.*

Unilateral federal military action has also negatively affected Puerto Rico, due to historical disregard for public participation and environmental impacts. For decades, the U.S. military conducted live-fire training activities in the island municipalities of Vieques and Culebra in Puerto Rico. U.S. Gov’t Accountability Off., GAO-21-268, *Defense Cleanup: Efforts at Former Military Sites on Vieques and Culebra, Puerto Rico, Are Expected to Continue Through 2032*, at 1 (2021). The Navy then consolidated its military operations in Vieques, occupying two-thirds of the island. Ronald O’Rourke, Cong. Rsch. Serv., RS20458, *Vieques, Puerto Rico Naval Training Range: Background and Issues for Congress* 1 (2004).

More than 300,000 munitions were fired in Vieques between the 1940s and 2003. NFESC, *Former Atlantic Fleet Weapons Training Area - Vieques*, U.S. Dep't of the Navy (NFESC), <https://www.navfac.navy.mil/Divisions/Environmental/Products-and-Services/Environmental-Restoration/Atlantic/Vieques/Site-Descriptions/> (last visited July 24, 2026). It was not until a broad civil disobedience campaign that the U.S. military ended its bombing in Vieques. Libr. of Cong., 1999: Vieques Island Protests, <https://guides.loc.gov/latinx-civil-rights/vieques-island-protests> (last visited July 24, 2026). The people of Vieques and Culebra continue to bear the health and environmental impacts of decades of bombing. Both islands have the highest cancer mortality rates in Puerto Rico, and large areas remain off-limits due to unexploded ordinance and contamination. See Camille Padilla Dalmau, *Amid Lack of Services, This Organization Is Supporting Cancer Patients in Vieques*, USC Ctr. for Health Journalism (May 8, 2024), <https://centerforhealthjournalism.org/our-work/reporting/amid-lack-services-organization-supporting-cancer-patients-vieques>; see also NFESC. The recent surge of military activity in Puerto Rico has raised concerns about a return to destructive practices that disregard community concerns. Damaris Suárez & José M. Encarnación Martínez, *The Roar of Military Aircraft Echoes Once Again Over Vieques, Stirring Painful Memories*, Centro de Periodismo Investigativo (Nov. 1, 2025), <https://periodismoinvestigativo.com/2025/11/us-military-presence-returns-to-vieques/>. All of this is the consequence of federal military decisions made

without informed, participatory environmental and community review.

3. American Samoa

American Samoa became a U.S. Territory following the 1899 Tripartite Convention between the United States, Germany, and the United Kingdom, and the 1900 and 1904 Deeds of Cession between the United States and the traditional leaders of Tutuila, Aunu'u and Manua. Leibowitz at 414–15. From 1900–1951, American Samoa was ruled by a presidentially appointed naval governor, with presidentially appointed civilian governors until American Samoa was allowed to elect its own governor in 1978. *Id.* at 417, 452. It did not have a non-voting Delegate to Congress until 1981. *Id.* at 454. American Samoa's constitution was approved by the Department of the Interior in 1960, *id.* at 420, with Congress recently returning to the Secretary of Interior the power to unilaterally amend or annul the constitution. Pub. L. No. 118-232, 138 Stat. 2834 (2025). Justices on the High Court of American Samoa are appointed by the Secretary of Interior and removable for cause. Am. Samoa Code Ann. § 3.1001 (1962). Interior has claimed broad powers to unilaterally override any local law, executive action, or even judicial decision. Leibowitz at 419–21.

Most recently, Interior has exercised its broad powers to unilaterally open the waters off American Samoa to deep sea mining leases over the unanimous objection of American Samoa's elected representatives and a local moratorium on deep sea mining. Bureau of

Ocean Energy Mgmt, Commercial Leasing for Minerals Offshore American Samoa Environmental Assessment 1–3 (July 2026). Despite tens of thousands of comments opposing deep sea mining in American Samoa, Interior responded by doubling the size of the proposed area, speeding up the review process, and reducing notice requirements to the local government. Jackie Dragon, *American Samoa said ‘no’ to deep sea mining, Washington heard ‘faster,’* Mongabay (Apr. 1, 2026), <https://news.mongabay.com/2026/04/american-samoa-said-no-to-deep-sea-mining-washington-heard-faster-commentary/#cite-article>. Federal law does not require any local review or approval of deep-sea mining outside of American Samoa’s 3-mile economic zone.

4. United States Virgin Islands

The United States purchased the U.S. Virgin Islands from Denmark in 1917 for \$25 million. Leibowitz at 245. A presidentially appointed naval governor ruled the islands until 1931, with presidentially appointed civilian governors until the U.S. Virgin Islands was allowed to elect its own governor in 1970. *Id.* at 253, 272. Its first non-voting Delegate took office in 1973. 48 U.S.C. 1711. It has no constitution, and is currently undertaking its sixth constitutional convention after Congress rejected the constitution approved by the fifth constitutional convention. USVI Constitutional Convention Clearinghouse, <https://usvi.concon.info/> (last visited July 24, 2026). Any law passed by the Virgin Islands remains “subject to the power of Congress to annul any such Act of the legislature.” 48 U.S.C. 1574(c).

Nearly two-thirds of St. John is controlled by the National Park Service. Marise James, *A Call for Equity: Land, Legacy and Learning on St. John*, St. John Tradewinds (Sept. 16, 2023), <https://stjohntradewinds.com/opinion-a-call-for-equity-land-legacy-and-learning-on-st-john/>. Recently, the U.S. military has also expanded its presence in the Virgin Islands without any mechanism for local community participation or engagement. Ernice Gilbert, Troops Already on St. Croix See Wider Regional Buildup as Hegseth Declares Caribbean Deployment Is “Not Training”, Virgin Islands Consortium (Sept. 10, 2025).

The inability to influence or hold federal regulators democratically accountable has contributed to environmental and community harms in the U.S. Virgin Islands. Most striking is the damage caused by an oil refinery in St. Croix as a result of inconsistent or absent regulation and oversight by federal regulators. From 1978 to 2008, the refinery released 42 million gallons of petroleum into the island’s aquifer—four times the Exxon Valdez spill. Eunice Bedminster, *Hovensa Cleanup Comes to 42 Million Gallons So Far*, VI Source (Mar. 9, 2008), <https://visourcearchives.com/content/2008/03/11/hovensa-cleanup-comes-42-million-gallons-so-far/>. In 2011, EPA finally issued a penalty of \$5.375 million, requiring more than \$700 million in pollution controls to protect public health and resolve Clean Air Act violations. U.S. EPA, *HOVENSA LLC, Clean Air Act Settlement* (Jan. 26, 2011), <https://www.epa.gov/enforcement/hovensa-llc-clean-air-act-settlement>.

Despite this record, EPA issued a permit in 2020—seven years after the refinery’s closure—allowing the facility to potentially emit air pollutants consistent with its historically heaviest production levels. EPA withdrew the permit in 2021, but the withdrawal did not require the facility to cease operations. U.S. EPA, *EPA Withdraws Plantwide Applicability Limit Permit for Limetree Bay Refinery in U.S. Virgin Islands* (Mar. 25, 2021), <https://www.epa.gov/newsreleases/epa-withdraws-plantwide-applicability-limit-permit-limetree-bay-refinery-us-virgin>. Only after pollution events sprayed nearby communities with petroleum mist, causing widespread environmental contamination and severe health impacts to community members, including three deaths, did EPA order a pause in operations. Ctr. for the Advancement of Pub. Action at Bennington Coll., *Environmental Justice Begins in St. Croix*, <https://www.bennington.edu/center-advancement-of-public-action/environment-and-public-action/environmental-justice-begins-st> (last visited July 24, 2026). Ultimately, inconsistent and inadequate environmental oversight by EPA—despite community pressure—has facilitated one of the greatest environmental calamities in the Caribbean.

5. Northern Mariana Islands (NMI)

Following World War II, which devastated the islands with lasting impacts to this day, the NMI was governed by U.S. officials as part of the Trust Territory of the Pacific. Leibowitz at 527. In the 1970s, NMI leaders negotiated a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America

(“Covenant”) that became federal law in 1976. *Id.* at 520, 530–36; Pub. L. No. 94-241, 90 Stat. 263 (1976). The NMI established its own Constitution in 1976 and its first elected governor took office in 1978. Leibowitz at 536. But it did not have a non-voting Delegate to Congress until 2009. 48 U.S.C. 1751. Today, the United States claims that, “[a]lthough described as a commonwealth, the relationship [of the Northern Mariana Islands to the United States] is territorial in nature with final sovereignty invested in the United States and plenary legislative authority vested in the United States Congress.” Brief for the United States at 3, *Salas v. United States*, 116 F.4th 830 (9th Cir. 2024) (No. 22-16936), Dkt. No. 17 (quoting S. Rep. No. 94-596, at 2 (1976)).

This year the NMI and the United States celebrate the 50th anniversary of the negotiated Covenant, which established a unique relationship “based upon the principles of government by the consent of the governed, individual freedom and democracy,” and the people of the NMI’s “inalienable right of self-determination.” Covenant Preamble. However, the reality has often fallen short for the NMI’s Chamorro and Refaluwasch (Carolinian) people.

For example, the federal government is currently exploring deep-sea mining leases near the Marianas despite widespread local opposition. For Chamorro and Refaluwasch communities, the ocean is not simply a resource or an area designated for federal use. It is part of an interconnected cultural landscape involving reefs, fisheries, seamounts, currents, winds,

marine life, traditional navigation, Indigenous ecological knowledge, and relationships that have been maintained across countless generations. In May, NMI Governor David Apatang joined with Guam Governor Lou Leon Guerrero to call on Congress to take immediate action to establish a moratorium on deep-sea mining in the Mariana region, citing “a profound lack of meaningful engagement with affected communities.” Mark Rabago, *Apatang, Leon Guerrero push for deep-sea mining moratorium*, BOEM reforms, Marianas Press (May 6, 2026), <https://marianaspress.com/news/article/apatang-leon-guerrero-push-for-deep-sea-mining-moratorium-boem-reforms>. This came after Interior doubled the size of the proposed lease area following over 65,000 comments, overwhelmingly in opposition. Memorandum from Douglas P. Boren, Regional Dir., Pac. Regional Off. of the Bureau of Ocean Energy Mgmt., to Acting Dir. 2 (Mar. 13, 2026). Disputes over deep-sea resources are longstanding, with the United States using the judicial system to invalidate local laws asserting NMI’s claim to submerged lands and adjacent mineral resources, and to instead recognize the federal government’s “paramount rights to the submerged lands.” *Northern Mariana Islands v. United States*, 399 F.3d 1057, 1066 (9th Cir. 2005).

The U.S. military also has an outsized presence in the NMI, controlling two-thirds of Tinian and conducting bombing exercises in Farallon de Medinilla for over fifty years. See U.S. Dep’t of the Navy, *Mariana Islands Training and Testing Draft Supplemental Environmental Impact Statement* 3–70

(Mar. 2026), <https://www.nepa.navy.mil/mitteis/>. Recent military activities have faced strong local opposition due to their potential health, environmental, and cultural impacts. See *id.* at 3–81. In these instances, NEPA is one of few formal mechanisms through which NMI residents can influence the federal decisionmaking process. While not perfect, NEPA review has at times led the military to adapt or even cancel plans in response to public comment, including, for example, ending plans to bomb Pagan Island and reducing proposed activities in Tinian. Mar-Vic Cagurangan, *DOD ditches bombing range project for Pagan, scales down footprint on Tinian*, Pacific Island Times (Apr. 4, 2022), <https://www.pacificislandtimes.com/post/dod-ditches-bombing-range-project-for-pagan-scales-down-footprint-on-tinian>.

C. Guam’s Unbalanced Political Relationship With The United States Makes NEPA Critical For Meaningful Community Oversight

The unbalanced political relationship between the United States and the people of the Territories limits their ability to influence federal decisionmaking through traditional political channels. This leaves judicial review of NEPA’s procedural protections and its requirements for meaningful environmental review, public engagement, and community participation all the more important. Residents of the Territories bear the full consequences of federal decisions that threaten their lands, waters, and communities, yet are denied the political rights

fundamental for democratic consent on those decisions. As demonstrated, the harms from unilateral federal actions are real. If this Court removes the guardrails provided under NEPA to ensure federal decisionmaking is informed by the best science and community concerns, the people of the Territories will have even less power and agency over the decisions that impact them and future generations.

The undemocratic status faced by people in the Territories is unique. NEPA’s mandate is especially important in Guam—and across the Territories—where residents lack the fundamental political rights to participate in the federal democratic process.

III. If Uncertainty Remains, The *Charming Betsy* Canon Favors Interpreting NEPA And RCRA To Both Apply To Avoid Violating U.S. International Commitments To “Non-Self-Governing Territories” And Indigenous Communities

As discussed above, the text, history, and purpose of NEPA and RCRA are clear that the Air Force’s decision to continue its OD activities must follow NEPA’s procedural requirements, not simply the requirements set forth under RCRA. But to the extent any ambiguity remains on this question, this Court’s statutory interpretive principles favor respondent’s reading. It is a longstanding “maxim of statutory construction” that “an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.” *Weinberger*

v. *Rossi*, 456 U.S. 25, 32 (1982) (quoting *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 118 (1804)). Here, interpreting NEPA and RCRA to allow petitioners to proceed with their decision to conduct open detonation of hazardous materials without undertaking the kind of serious environmental study, public engagement, and community participation required under NEPA would violate the international commitments and obligations the United States has to its Non-Self-Governing Territories (“NSGTs”) and Indigenous people. Thus, with respect to the interactions between the United States and NSGTs like Guam, the *Charming Betsy* canon supports interpreting NEPA and RCRA as complementary regulatory regimes to avoid conflict with U.S. international obligations.

“[The] *Charming Betsy* [canon] may be described as protecting the Constitution’s allocation of foreign policymaking authority to the political branches.” Amy C. Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 173 (2010). Put another way, “*Charming Betsy* can be rephrased as [a] clear statement rule[]” that, “absent a clear statement, a court will not interpret a statute to abrogate customary international law.” *Id.* at 167. For this reason, among others, “[t]extualists embrace * * * *Charming Betsy*.” *Id.* at 122 (citing *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 176 (2004) (Scalia, J., joined by Thomas, J., concurring in the judgment); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 814–21 (1993) (Scalia, J., dissenting)); see also *Lac du Flambeau Band of Lake Superior*

Chippewa Indians v. Coughlin, 599 U.S. 382, 404 (2023) (Gorsuch, J., dissenting). Indeed, after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), “the *Charming Betsy* canon elevates the importance of reading statutes in a manner that is in accordance with relevant international law as courts determine the best reading of a statute.” Michael Jacobson & Stephen Finan, *The Charming Betsy Canon: Time to Ride the Tide of Loper Bright*, Harv. Int’l L.J. Blog (Mar. 28, 2025). As relevant here, the United States’ longstanding commitment to NSGTs is codified throughout international agreements.

1. Following World War II, the United States led the world in developing an international legal order centered on the idea of self-determination, reflecting the country’s own founding principle of the “consent of the governed.” Article 73 of the United Nations Charter, which the United States signed and ratified in 1945, recognizes that “the interests of the inhabitants of [NSGTs] are paramount,” establishing for administering powers like the United States “a sacred trust” and “obligation” “to take due account of the political aspirations of the peoples [of NSGTs],” and “to develop self-government” and “free political institutions,” all “with due respect for the culture of the peoples concerned.” U.N. Charter art. 73. Guam has been on the United Nations list of Non-Self-Governing Territories since 1946, almost 80 years. G.A. Res. 66(I), U.N. GAOR, 1st Sess. (Dec. 14, 1946).

2. The International Covenant on Civil and Political Rights (ICCPR), ratified by the United States in 1992, expressly provides that “[a]ll peoples have the

right of self-determination,” and that “[e]very citizen shall have the right and the opportunity * * * [t]o take part in the conduct of public affairs, directly or through freely chosen representatives.” International Covenant on Civil and Political Rights arts. 1(1) and 25, Dec. 16, 1966, S. Exec. Doc. No. E, 95-2 (1978), 999 U.N.T.S. 171. In 2011, the United States recognized that it “remains firmly committed to the principle of self-determination” set forth in the ICCPR, which “remains at the core of American political life.” Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, ¶ 5, U.N. Doc. CCPR/C/USA/4 (Dec. 30, 2011). Today, the right to self-determination is widely accepted as a rule of customary international law. U.N. Charter art. 1, ¶ 2.

3. In 2011, the United States signed on to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). See U.S. Dep’t of State, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples* (Dec. 16, 2010), <https://2009-2017.state.gov/s/srgia/154553.htm>. UNDRIP provides that “Indigenous peoples have the right to self-determination,” including the “right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.” United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, arts. 3 and 5, U.N. Doc. A/RES/61/295 (Sept. 13, 2007). Importantly, UNDRIP requires that “States shall consult and cooperate in good faith with

the indigenous peoples concerned * * * in order to obtain their free and informed consent prior to the approval of any project affecting their lands or Territories and other resources.” *Id.* art. 32(2). In 2014, following the World Conference on Indigenous Peoples, the United States joined a United Nations resolution committing “to tak[e], in consultation and cooperation with Indigenous Peoples, appropriate measures at the national level, including legislative, policy and administrative measures, to achieve the ends of [UNDRIP],” a commitment the United States reaffirmed in 2025. See U.S. Dep’t of the Interior, *Advancing the United Nations Declaration on the Rights of Indigenous Peoples* (Jan. 14, 2025), <https://www.doi.gov/blog/advancing-united-nations-declaration-rights-indigenous-peoples>.

Interpreting NEPA and RCRA in a manner that reduces the ability of the people of Guam—especially its Indigenous CHamoru/Chamorro people—to influence decisionmaking with respect to the Air Force’s decision to continue its OD operations would conflict with U.S. commitments and obligations under the United Nations Charter, the ICCPR, and UNDRIP. Eliminating the public engagement and community participation procedures required by NEPA would limit the ability of the federal government to ensure “the interests” of the people of Guam “are paramount” or “to take due account of the political aspirations of the peoples,” as set forth in the United Nations Charter. It would also prevent the people of Guam from being able to “take part in the conduct of public affairs” relevant to their lives, as

required under the ICCPR. Waiting until *after* the Air Force has already made its decision to include Guam's views fundamentally contradicts the "free, prior, and informed consent" framework set forth by UNDRIP and the broader principle of self-determination.

Ultimately, the United States has an international obligation to promote self-determination in Guam and to protect the Indigenous rights of the CHamoru/Chamorro people. To achieve this, decisions made by the United States in Guam—particularly those that have the potential to cause significant environmental impact—must include the people of Guam's input and consent *at all levels* of decisionmaking. Because Guam remains an "unincorporated" Territory whose people lack any of the traditional democratic tools for political accountability, the combination of NEPA's early community participation *plus* RCRA's requirement for consent by a local regulator is essential. Failing to account for the people of Guam's input and consent—or outright acting against it—would conflict with the United States' commitments under international law.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX A

TABLE OF CONTENTS

APPENDIX A: LIST OF *AMICI*..... 1a

APPENDIX A: LIST OF *AMICI*

Marianas

Micronesia Climate Change Alliance (MCCA)

Tåno, Tåsi, Yan Todu

Birthworkers of Color Collective

Guåhan Sustainable Culture

Friends of the Marianas Trench

Refaluwasch Journal of Knowledge and Culture

URAALI Refaluwasch Association

Puerto Rico

Amigxs del Mar

El Puente Puerto Rico

FURIA Inc.

Mujeres de Isla

Resiliency Law Center

U.S. Virgin Islands

St. Croix Environmental Association

St. JanCo: The St. John Heritage Collective

Virgin Islands Institute for Social Impact, Opulence,
and Noetics, Inc. (VIISION)

American Samoa

Finafinau

Pacific Global Citizens Inc.

Puipui Measina A Amerika Samoa