

**In the
Supreme Court of the United States**

CHINOOK INDIAN NATION, ET AL,

Petitioners,

v.

DOUG BURGUM, SECRETARY OF THE INTERIOR, ET AL.,

Respondents.

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

**BRIEF OF AMICUS CURIAE
CONFEDERATED TRIBES OF THE SILETZ INDIANS
IN SUPPORT OF RESPONDENTS DOUG BURNHAM ET AL.**

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INTEREST OF THE AMICUS CURIAE¹

The **CONFEDERATED TRIBES OF SILETZ INDIANS** (“Siletz Tribe”) is a confederation of tribes and bands of Indians from throughout western Oregon which were the subject of ratified and unratified treaties, and which were removed at various times and under various methods to the Siletz Coast Reservation, established by Executive Order on November 9, 1855. *See* 1 KAPPLER’S INDIAN AFFAIRS; LAWS AND TREATIES 891 (U.S. GPO 1906). In its administrative Petition for Federal Acknowledgment under 25 C.F.R Part 83, Petitioner Chinook Indian Nation (“CIN”) claims affiliation with several tribes and bands already recognized as part of the Siletz Tribe. CIN alternatively seeks to be recognized as a tribe by judicial fiat. If any court could or did recognize the current form of CIN as an Indian tribe, it would have severe adverse consequences on the legal status and rights of the Siletz Tribe.

The Siletz Tribe submitted an amicus brief raising these interests and concerns in CIN’s Ninth Circuit appeal. Case No. 24-3629, Dkt. Entry No. 28, November 25, 2024 (Motion for Leave to File Amicus and Proposed Amicus Brief); Order Granting Motion for Leave to File Amicus, Dkt. Entry No. 51, June 17, 2025. The Siletz Tribe raises these same concerns

¹ Under Rule 37.6, amicus curiae affirms that no counsel for a party authored this brief in whole or in part, and that no person other than amicus curiae or its counsel contributed money intended to fund preparing or submitting this brief. Under Rule 37.2, *amicus* affirms that all parties received timely notice of the intent to file this brief.

and interests in this Opposition to CIN's present Petition for a Writ of Certiorari.



OVERVIEW

This case is straightforward. The List Act, enacted in 1994, requires the Secretary of the Interior to regularly publish a list of “all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” Pub. L. No. 103-454, § 103(8). Legislative enactment of the List Act included a number of findings reflecting the historical practice of federal recognition of tribes up to the date of enactment of the Act.

Section 103(3) of the List Act states that “[t]he Congress finds that— . . . Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations . . . ; or by a decision of a United States court.” CIN’s entire argument rests on this finding. There is no express grant of subject matter jurisdiction to federal courts to recognize groups as Indian tribes as a matter of course anywhere in the List Act. Recognition of Indian tribes is generally a political matter beyond the jurisdiction of the federal courts *See Order, Chinook Indian Nation v. Zinke*, June 20, 2018, Case No. C17-5668 RBL (W.D. Wash.), Petition for Certiorari, App.10a, 23a-26a; *aff’d*, *Chinook Indian Nation v. Burgum*, Case No. 24-3629, Memorandum Opinion, Ninth Circuit Court of Appeals, June 17,

2025, Petition for Certiorari, App.1a, 2a.. In certain limited instances under specific federal statutes, a federal court must determine whether an Indian tribe exists and is federally recognized solely for purposes of determining whether the statute at issue is applicable.

Petitioner CIN claims that this List Act finding expressly confers subject matter jurisdiction on the federal courts to judicially recognize a group as a federally recognized Indian tribe. It does not. There is no specific grant of subject matter jurisdiction in the List Act to the federal courts to judicially recognize a group as a federally recognized Indian tribe. A historical finding of fact cannot and does not override the long-standing principle that federal recognition of an Indian tribe is generally a non-justiciable political question. Petitioner's claims are meritless and there are no grounds for the Court to accept CIN's Petition.

CIN's Petition contains an extensive purported summary of its history that has never been proven in any court, and which is replete with misstatements of law and fact. Just two examples will demonstrate how CIN's factual assertions are incorrect and inflict harm on the Siletz Tribe.² As a first example, CIN asserts that the United States Supreme Court and

² CIN claims on page 6 of its position that the United States has "constructively ratified" an unratified 1851 treaty between the United States and the Chinook Tribe (not the same as CIN) through appropriation and payment of funds to the historical Chinook Tribe, under contract law principles. There is no basis for this argument in law. The United States Constitution provides one exclusive method for ratification of treaties with Indian tribes (and foreign nations), ratification by the United States Senate. Art. II, § 2, cl. 2.

the Secretary of the Interior have recognized the Chinook Tribe historically. Petition for Certiorari, pp.2-3. CIN provides only selective information regarding this assertion, however. What CIN omits is that the “tribe” at issue in those events was only a Washington based Chinook Tribe, not the tribe that CIN is now claiming to be. See Order on Motion to Dismiss, Petition for Certiorari, App.11a, n. 1(which tribes and bands CIN assert it is successor to). The Chinook Tribe in those cases did not include the Oregon tribes and bands that are part of the Confederated Siletz Tribe. CIN fails to mention this critical distinction in its asserted historical summary.

The second example is CIN’s assertion that an Indian Claims Commission decision acknowledged CIN as the representative of the Chinook tribes and bands for the purpose of bringing tribal claims against the United States. Petition for Certiorari, p. 4. This is false. In *The Chinook Tribe and Band of Indians v. United States*, 6 Ind. Cl. Comm’n 208, Opinion of the Commission, April 16, 1958, the Indian Claims Commission expressly declined to find that the petitioner in that case was the successor in interest to the tribes and bands that it claimed to be:

For reasons that hereinafter will be mentioned, it is important to attempt to ascertain whether this so-called tribe, organized ostensibly for the sole purpose of presenting this claim, is the successor in interest to the claims of the Chinook, Waukiakum, Shoalwater Bay (Willipa-Chinook), Kathlamet, Clatsop and Nucqueclawemuck Indians or is entitled to bring this action for and on behalf of said

Indians. The record in this respect is far from satisfactory.

6 Ind. Cl. Comm'n at 212.

At the end of this Opinion, the Commission found that the petitioning group only had standing, under the liberal standing policies of the Commission, to bring claims on behalf of the descendants of two of the claimed tribes and bands, not on behalf of the tribes themselves:

In view of the above and the previously mentioned testimony concerning the composition of membership in petitioner organization there exists grave doubts as to the capacity of petitioner to present the claims of all of the tribes or bands petitioner contends it represents herein. Because of the necessity of liberally analyzing the pleadings and the record with respect to capacity (citation omitted), the right of petitioner to present the claims of the Chinook proper and Clatsop Tribes on behalf of the descendants of such tribes is recognized.

6 Ind. Cl. Comm'n at 228.

All of CIN's historical claims of federal recognition and who it is as a political entity are similarly suspect and should be closely scrutinized.

CIN's Petition for Certiorari not only appeals the lower court's decisions that the findings section of the List Act does not specifically vest the federal courts with jurisdiction to judicially recognize it as an Indian tribe, CIN also engages in a full-scale general attack on the legal authority of the Secretary

of Interior to administratively recognize Indian tribes. Petition for Certiorari, pp.16-23.

This argument by CIN is not properly before this Court. CIN never raised this claim at the district court either in its Complaint, Amended Complaint, Claims for Relief, or in trial. *See* Petition for Certiorari, App.115a-132a. The Ninth Circuit did not address this argument by CIN in its decision on appeal. CIN only challenged a provision in the Interior Department's Federal Acknowledgment Regulations that prohibited a group from "re-petitioning" for federal acknowledgment if it had previously been denied such administrative recognition. *See* Order on Motion to Dismiss, *supra*, Petition for Certiorari, App.18a-24a. CIN was successful in that claim. *Id.*, App.31a-39a. As far as the Siletz Tribe knows, CIN has not re-petitioned for federal acknowledgment even though the federal courts ruled it had the right to do so, and the Department of Interior subsequently amended its federal acknowledgment regulations to authorize such re-petition. As a general matter, therefore, CIN's current judicial action is premature because it has failed to exhaust its available administrative remedies.

In addition, the district court in its Order on the federal defendants' motion to dismiss expressly addressed the Department of Interior's administrative federal acknowledgment process and affirmed its validity. Order on Motion to Dismiss, Petition for Certiorari, App.13a-15a (*E.g.*, "Thus, through its broad delegation and acknowledgment regulations, the Department of Interior has assumed much of the responsibility for determining which tribes have met the requirements to be acknowledged as a tribe with a government-to-government relationship with the

United States.”, quoting *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1274 (9th Cir. 2004)). CIN did not appeal this ruling of the district court to the Ninth Circuit Court of Appeals. It has therefore waived its right to bring this claim at all, and in particular to the United States Supreme Court in its Petition for Certiorari. CIN’s claim on this specific issue must be summarily rejected.



REASONS FOR DENYING THE PETITION

I. The List Act Was Not Intended to do Anything Other than Provide for Publication of an Annual List of Federally Recognized Tribes by the Department of the Interior

CIN cannot take Congress’ historical finding and turn it into a grant of authority. “It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *West Virginia v. EPA*, 597 U.S. 697, 721 (2022), quoting *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989). “Where a statute at issue is one that confers authority upon an administrative agency, that inquiry must be shaped, at least in some measure, by . . . whether Congress in fact meant to confer the power the agency has asserted.” *Id.*, citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 139 (2000).

CIN asserts that Congress, in the findings section of a ministerial recordkeeping statute, conferred authority on the federal courts to judicially recognize

groups as federally recognized Indian tribes. There is no indication of such authority being conferred anywhere in the List Act or its legislative history, and CIN's only argument is that the authority to judicially recognize tribes must reside somewhere and the List Act is the only viable candidate. CIN's assertion is wrong.

The only substantive action that the List Act provides for is publication by the Department of the Interior of an annual list of the Indian tribes that are recognized by the United States. *See, e.g.*, 89 Federal Register 99899, Dec. 11, 2024 (most recent Federal Register list of federally recognized tribes).

As the Siletz Tribe explained in its Ninth Circuit amicus brief, the List Act evolved out of initial informal efforts in the late 1960s to compile a list of the tribes and bands that the Department of the Interior had dealings with. *See Samish Indian Nation v. United States*, 419 F.3d 1355, 1357, 1359, 1369 n.15 (Fed. Cir. 2005). Before that, tribes were recognized on an ad hoc basis. The first lists of tribes were prepared for internal Department of Interior use and were not intended to be official lists of federally recognized tribes although the Department used them as such. *Id.* The Department began formally publishing lists of the tribes it had dealings with beginning in 1979, although not pursuant to any specific statutory authority.

Compilation of an official list of federally recognized tribes became a more important issue in the 1970s as Congress enacted statutes providing benefits and services to Indian tribes and Indians, and made eligibility for those services contingent on federal recognition. *See, e.g.*, Indian Self Determination and

Education Assistance Act of 1975, codified at 25 U.S.C. § 5301 et seq.; § 5304(e) (federal contracting for tribal services limited to tribes “which [are] recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians”). Publication of the list of recognized tribes was initially episodic, and in the 1994 Recognized Tribes List Act Congress specifically mandated publication of the official Department of Interior list of federally recognized tribes on an annual basis.

This is all Congress mandated in the List Act. It did not authorize federal courts to exercise jurisdiction over federal recognition claims by groups claiming to be Indian tribes. Federal courts have repeatedly ruled that “[f]ederal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Federal courts are presumed to lack subject matter jurisdiction until it can be positively proven, *Turner v. President, Dirs., & Co. of Bank of N. Am.*, 4 U.S. (4 Dall.) 8, 11 (1799), “and the burden of establishing that jurisdiction rests upon the party asserting jurisdiction.” *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 182-183 (1936). CIN cannot meet this burden because there is no indication of any kind that Congress intended to grant such broad and significant jurisdiction in the findings of the List Act.

II. Section 103(3) of the List Act, Which Sets Out the Historical Alternatives By Which Groups Have Been Federally-Recognized, Including By the Federal Courts, Is Only an Acknowledgment By Congress That in Certain Limited Instances, Under Specific Statutes, the Federal Courts Have Had to Determine the Existence of an Indian Tribe in Its Inquiry Into Whether a Specific Federal Statute Is Applicable or Not

CIN argues that finding (3) of Section 103 of the List Act is an affirmative grant of subject matter jurisdiction to the federal courts to determine whether a group is entitled to recognition as a federally recognized Indian tribe because the language of that subsection, “Indian tribes presently may be recognized by . . . a decision of a United States court,” is capable of no other interpretation. CIN is wrong.

The finding at Section 103(3) of the List Act is just a statement of existing case law at the time the Act was enacted. Historically, some federal courts have had to determine tribal status for purposes of application of a specific federal statute. *See Montoya v. United States*, 180 U.S. 261, 266 (1901) (court must determine whether a group is a tribe for purposes of eligibility for damage claims under the 1891 Indian Depredations Act); *United States v. Candelaria*, 271 U.S. 432 (1926) (whether Indian Pueblos are Indian tribes for purposes of the 1834 Indian Non-Intercourse Act); *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 589 (1st Cir. 1979) (whether a group is a tribe for purposes of application of the Indian Non-Intercourse Act); *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 993 (9th Cir. 2020); *Scotts Valley Band of Pomo*

Indians v. United States, 921 F.2d 924 (9th Cir. 1990); *Smith v. United States*, 515 F. Supp. 56 (N.D. Cal. 1978); *Amador County v. S.M.R. Jewell*, 170 F. Supp. 3d 135 (D.D.C. 2016) (Tillie Hardwick cases: California Rancheria Act required specific federal actions before California Rancherias were terminated; federal actions never completed; court restores federal recognition for failure of federal government to comply with Rancheria Termination Act).

CIN does not assert that it is entitled to recognition under any of these specific statutes. It relies only on the findings section of the List Act. In setting out finding 103(3) of the List Act, Congress was merely acknowledging existing federal case law. The findings of the List Act are not an affirmative grant of subject matter for federal courts to determine whether a group is entitled to recognition as an Indian tribe.

CIN attempts to argue that other findings in the List Act are also affirmative grants of subject matter jurisdiction to the federal courts. *See* Petition for Certiorari, p. 22 (Finding § 103(4) , that recognized tribes may only be terminated by an Act of Congress, “require[s] specific action in specific circumstances). CIN’s argument is wrong. Section 103(4) states that “a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress.” This statement merely reflects the state of long-standing federal case law. *See Menominee Tribe of Indians v. United States*, 391 U.S. 404, 413 (1968); *Kimball v. Callahan*, 590 F.2d 768 (9th Cir. 1979) *Grand Traverse Band of Ottawa & Chippewa Indians v. U.S. Atty., Western Div. of Mich.*, 369 F.3d 960 (6th Cir. 2004); *Koi Nation of Northern Calif. v. U.S. Dept. of Interior*, 361 F. Supp. 3d 14 (D.D.C.

2019). Section 103(4) is not an affirmative directive to the federal courts to take any action. CIN's misstatements about other subsections of the Findings Section of the List Act support the conclusion that CIN's arguments regarding § 103(3) of the Act lack all merit.

III. There is No Conflict Among the Circuits regarding Interpretation of the Findings Section of the List Act

CIN alleges that there is a conflict between the Federal Circuits regarding interpretation of the List Act. Petition for Certiorari, pp.8-13. There is no conflict at all between the Circuits regarding interpretation or application of Section 103(3) of the List Act. No court anywhere has ruled that it applies as a substantive grant of subject matter jurisdiction to the federal courts to determine whether a group is entitled to recognition as an Indian tribe. Most federal court decisions involving recognition as an issue do not mention the List Act at all because the List Act has no application to the cases before them.

Cherokee Nation v. Norton, 389 F.3d 1074, 1087 (10th Cir. 2004) is not to the contrary. In that case numerous federal courts had ruled that the Delaware Tribe was not a separate tribe from the Cherokee Nation pursuant to an 1867 Treaty between the two tribes under which Delaware agreed to merge with Cherokee. The Department of Interior recognized the Delawares as a separate tribe in the 1990s, despite all the federal judicial decisions to the contrary, without an Act of Congress, and outside the administrative procedures established under the APA to gain federal acknowledgment. *Id.* at 1081. The Tenth Circuit decision in this case merely found that

the Interior Department's recognition of the Delaware Tribe outside the three existing methods of establishing recognition set out in Finding 103(3) of the List Act was a violation of that Act. *Id.* at 1078. The Tenth Circuit did not address or decide that this section affirmatively granted federal courts authority to determination federal recognition of a group as a tribe.

There is no conflict between the Federal Circuits interpreting Section 103(3) of the List Act, and no basis for Supreme Court jurisdiction based upon this meritless claim.



CONCLUSION

The Court should deny CIN's Petition for Certiorari attempting to appeal the Ninth Circuit decision adverse to CIN's interests and should affirm the decision of the Ninth Circuit in this case.

Respectfully submitted,

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