No. 25-313

IN THE

Supreme Court of the United States

CHINOOK INDIAN NATION, ET AL.,

Petitioners,

v.

DOUGLAS J. BURGUM, IN HIS CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF INTERIOR, ET AL.,

Respondents.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

Section 103(3) of the List Act states that "Indian tribes presently may be recognized by [an] 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." Pub. L. No. 103-454, 108 Stat. 4791, § 103(3) (1994). The question presented is simple: Does the List Act mean what it says?

Respondents answer "no." They insist the List Act merely recounts how tribes were recognized before the Part 83 process, and that courts retain no recognition authority today. Opp. 9-10. That reading contradicts the List Act's text, history, and context—the Act was passed sixteen years *after* Part 83 was promulgated, and it speaks of "present[]" powers. Although Respondents fight that reading before this Court, Respondents' public statements acknowledge the Chinook are right. As Interior's website explains, the List Act "formally established three ways in which an Indian group may become federally recognized."

The Chinook seek certiorari to cut through the Executive Branch's double speak. Federal courts are divided on this question: Respondents do not seriously dispute that the Federal Circuit perceives *no* role for courts under the List Act, whereas the D.C. Circuit does. And there are no barriers to this Court's intervention. Contrary to Respondents' claims, the Chinook's suit is timely because it followed soon after Interior's 2015 revocation of the Tribe's access to funds previously held in trust for the Tribe's benefit. And recent amendments to Part 83 provide no reason to force the Chinook to incur further, indefinite delay. The Chinook have waited over a century to be formally recognized. They should not have to wait any longer.

ARGUMENT

A. The Split Is Real.

1. Federal courts are divided on how to interpret the List Act. *See* Pet. 10-13. According to the Federal Circuit, Part 83 is tribes' exclusive route to recognition. In *Wyandot Nation of Kansas* v. *United States*, 858 F.3d 1392 (Fed. Cir. 2017), a tribe urged the court to recognize its status under the List Act pursuant to a longstanding treaty. *Id.* at 1398. The court refused, concluding that because "[a]n explicit purpose of the List Act is to establish[] procedures and criteria for *** addition to [Interior's] list of federally recognized Indian tribes," and Part 83 specifies "what needs to be shown to gain recognition," "the List Act regulatory scheme exclusively governs federal recognition." *Id.* at 1398-99 (internal quotation marks omitted).

The D.C. Circuit disagrees. In *Stand Up for California!* v. *United States Department of the Interior*, 994 F.3d 616 (D.C. Cir. 2021), that court held that the List Act "confirm[s]" that courts can recognize tribes "through court decisions." *Id.* at 627. There, a congressionally-terminated tribe sued Interior "seeking federal recognition." *Id.* at 620. The parties reached a settlement, and the court approved the agreement through a stipulated judgment. *Id.* The United States contended that "the List Act confirms that a court-approved settlement agreement like that entered by the Federal court here is a 'decision of a United States court' that can restore an Indian tribe's federally recognized status." Record of Decision: Trust Acquisition of 35.92 +/- Acres in the City of Elk Grove, California, for the Wilton Rancheria (Jan. 19, 2017) at

74, https://perma.cc/DJ3B-9FAH. The D.C. Circuit agreed. In upholding the court-approved settlement, the D.C. Circuit explained that the List Act "comports with decades of court-approved settlements reestablishing federal recognition of Indian tribes," 994 F.3d at 627, and that Section 103(3) "confirm[s]" that courts can recognize tribes "through court decisions," *id.*

This split between the Federal and D.C. Circuits is highly consequential, as those two circuits hear the bulk of recognition-related claims: Suits against the United States for damages in connection with tribal status are routed through the Court of Federal Claims, *see, e.g.*, *Samish Indian Nation* v. *United States*, 419 F.3d 1355, 1358 (Fed. Cir. 2005), while suits for injunctive or declaratory relief against Interior will often be brought in D.C., *see, e.g.*, *Muwekma Ohlone Tribe* v. *Salazar*, 708 F.3d 209, 210 (D.C. Cir. 2013); 28 U.S.C. § 1391(b).

Compounding the problem, the circuits with the largest proportions of Indian reservations—the Ninth and Tenth Circuits—are confused. Below, the Ninth Circuit sided with the Federal Circuit, explaining that "[f]ederal recognition is channeled through [Interior's] Part 83 process," and "[it] is highly unlikely that Congress significantly restructured the federal recognition process" through the List Act. Pet. App. 3a. However, the Ninth Circuit has previously suggested otherwise, stating that recognition could occur "through any one of [Section 103(3)'s] three means," *Frank's Landing Indian Cmty.* v. *National Indian Gaming Comm'n*, 918 F.3d 610, 614 (9th Cir. 2019), and that a tribe's federally-recognized status is "a question of

law" that can be decided "by the judge," *United States* v. *Zepeda*, 792 F.3d 1103, 1114 (9th Cir. 2015). The Tenth Circuit has voiced similarly conflicting views. *Compare, e.g.*, *United Tribe of Shawnee Indians* v. *United States*, 253 F.3d 543, 551 (10th Cir. 2001) (judicial recognition would "frustrate Congress' intent that recognized status be determined through the administrative process"), *with Cherokee Nation of Okla.* v. *Norton*, 389 F.3d 1074, 1087 (10th Cir. 2004) (looking to court decisions to determine recognition status under List Act).

2. Respondents attempt to explain away the split, arguing (at 14) that "the D.C. Circuit's decision in *Stand Up*" is distinguishable because it involved a "court-approved settlement" and "the court did not suggest that the List Act created a cause of action to seek federal recognition." But if, as Respondents suggest (at 7-8), Part 83 is the exclusive process for recognition, *but see* Opp. 16 (acknowledging Congress's continued role in recognition), the D.C. Circuit would have lacked authority to order recognition at all—whether through judicial enforcement of a settlement or through an order adjudicating adversarial briefing. *See* 28 U.S.C. § 2201 (allowing courts to declare parties' rights in cases involving actual controversies); *see also* Pet. App. 46a-47a, 133a (Chinook complaint seeking declaratory judgment).

Respondents also suggest (at 14) that the D.C. Circuit has "since rejected" *Stand Up*'s interpretation of the List Act. But the unpublished order Respondents cite is fully consistent with *Stand Up*. In *Kanam* v. *Haaland*, No. 22-5197, 2023 WL 3063526 (D.C. Cir. Apr. 25, 2023) (per curiam), the D.C. Circuit

concluded that Section 103(3) neither extends to *tribal* court decisions, nor imposes a mandatory recognition duty on Interior. *Id.* at *1. This case—like *Stand Up*—arises from an Article III court, not a tribal court. And this suit—like *Stand Up*—involves an Article III court's recognition power, independent of Interior's recognition duty. *Kanam* neither conflicts with *Stand Up* nor undermines the Chinook's characterization of the split.

Respondents are wrong to trivialize (at 13-14) the Tenth Circuit's decision in *Cherokee Nation* as well. Far from merely discussing the List Act in the opinion's "background discussion," Opp. 14, the court squarely held that Interior's actions "violated [Section] 103(3)" because they contradicted recognition decisions of courts. 389 F.3d at 1087.

B. This Is A Good Vehicle.

This case is a good vehicle to resolve that division of authority. Respondents do not identify any factual or procedural barriers to review.

1. Instead, Respondents suggest (at 15) that review is unwarranted because Respondents believe they have a statute-of-limitations defense to the Chinook's claim. Respondents are wrong.

For one thing, this argument was neither passed upon nor endorsed by the courts below. Pet. App. 2a-4a, 25a. *See, e.g.*, *E.M.D. Sales, Inc.* v. *Carrera*, 604 U.S. 45, 54 (2025) (noting Court's "usual practice" of remanding arguments not resolved by decision below after deciding the question presented).

For another, Respondents miscalculate the date on which the limitations period began to run.

Respondents claim the six-year limitations period began to run either in 1995 (when the Chinook were left off Interior's original list of recognized tribes) or, "[a]t the latest," in 2002 (when Interior denied the Tribe's Part 83 petition). Opp. 15. That argument ignores the specific injury that precipitated this suit.

As the Chinook explained in their complaint, in 2015, the Bureau of Indian Affairs ("BIA") "[a]bruptly" revoked the Tribe's access to nearly $500,000—previously held in trust for the Tribe for almost 50 years—because the Chinook were "not recognized" and would need to "[re]pursue recognition."[1] *See* Pet. App. 112a-113a. The Chinook filed this lawsuit two years later—falling well within the six-year statute-of-limitations window. *See Corner Post, Inc.* v. *Federal Reserve Sys.*, 603 U.S. 799, 825 (2024).

2. Respondents' invocation of recent changes to Part 83 fares no better. Respondents claim (at 15-16) that because Part 83 now permits tribes to "request authorization" from Interior to re-petition for recognition, the Chinook have a potential alternative avenue for relief. But no law requires tribes to wait to see how the repetitioning process plays out.[2]

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[1] Because this case was decided on a motion to dismiss, the facts alleged herein come from the Chinook's complaint and must be taken as true. *See, e.g.*, *Christopher* v. *Harbury*, 536 U.S. 403, 406 (2002).

[2] Although some courts have required tribes to pursue the Part 83 process before seeking relief in court, they have done so under prudential exhaustion principles. *See, e.g.*, *James* v. *United States Dep't of Health & Hum. Servs.*, 824 F.2d 1132, 1137-39 (D.C. Cir. 1987). Whether exhaustion applies is a case-by-case determination. *See id.*

And the new repetitioning process is anything but quick. The Chinook would have to apply for authorization to re-petition, wait for a decision (which the regulations concede could take years), and if successful, repetition for recognition—a process that experience proves could take decades. *See* 25 C.F.R. §§ 83.47-61.

The Chinook have waited long enough. For 175 years, the Tribe has engaged in a government-to-government relationship with the United States and been treated as a recognized tribe—for better or worse. They've negotiated treaties, had land held in trust for their benefit, received payment for ancestral lands in amounts specified by treaty, and received federal resources statutorily reserved to recognized tribes, including healthcare for Chinook members at BIA facilities, economic development support, fishing contracts, and Individual Indian Money accounts. Pet. App. 54a-67a, 79a-92a; Pet. 5-6. They've also had their land seized and their children forcibly sent to BIA boarding schools. Pet. App. 55a, 85a-86a.

Indeed, the Chinook waited *20* years for Interior to decide its Part 83 petition—only to have Interior grant recognition, and revoke that decision 18 months later after a change of Presidential administration. *Id.* at 71a-73a. The Chinook then watched similarly situated tribes be recognized based on the *same* evidence the Chinook had proffered. *Id.* at 95a-100a. Worse still, the Chinook were later deprived of access to funds they'd been receiving long before Interior's Part 83 decision—all while being told by Interior to continue pursuing recognition at a time when repetitioning was banned. *Id.* at 113a-114a.

In the List Act, Congress explained that Part 83 is not the only road to recognition. The Chinook are done waiting.

C. The Chinook Are Correct.

The List Act's history, text, and context support the Chinook's position: The List Act formally establishes three pathways to tribal recognition, confirming what the law is and has always been.

1. Before the List Act, all three branches played a role in recognition. *See* F. Cohen, Handbook of Federal Indian Law § 4.02[4] (2024). By the early 1990s, the majority of recognition decisions occurred through Interior's Part 83 process. But the process was riddled with issues. As members of Congress explained, the system had become overly "political," "lengthy, cumbersome, and extremely expensive." Kirsten Matoy Carlson, *Congress, Tribal Recognition, and Legislative-Administrative Multiplicity*, 91 Ind. L. J. 955, 997-998, n.186 (2016) (internal quotation marks and citations omitted). Congress was also concerned with "[Interior's] growing and disturbing trend" of derecognizing tribes, "without the authority to do so." *See Stand Up for California!* v. *United States Dep't of the Interior*, 204 F. Supp. 3d 212, 301 (D.D.C. 2016) (internal quotation marks omitted).

The List Act was Congress's response. In a public law titled "Withdrawal of Acknowledgement or Recognition," the Act established the boundaries of each branch's role.

Section 103 reaffirmed that all three branches maintain authority to *recognize* tribes while Congress alone has the power to *terminate* recognition. *See* 108

Stat. 4791, § 103(3) (identifying three ways "Indian tribes presently may be recognized"); *id.* § 103(4) (declaring "a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress").

In the following section, the Act also required the Secretary of Interior to publish a list of federally recognized tribes annually, thereby ensuring a centralized and up-to-date record of federal recognition decisions. *Id.* § 104. In the two other titles of the Act passed on the same day, Congress then exercised its recognition authority to reaffirm or restore the status of specific recognized tribes. *Id.* §§ 201-303.

2. Respondents claim that Section 103(3) describes "the historical practice of ad hoc judicial determinations" predating the Part 83 process. Opp. 9 (internal quotation marks omitted); *see also* Siletz Br. 7-8. But that view is contradicted by the statute's text, which speaks to each branch's "*present*[]" recognition power, and was enacted sixteen years *after* Interior developed Part 83. 108 Stat. 4791, § 103(3) (emphasis added). That view is also contradicted by Interior's public statements. Even today, Interior's website explains that the List Act "*formally established* three ways in which an Indian group may become federally recognized." U.S. Dep't of the Interior, Indian Affairs, *Frequently Asked Questions*, https://perma.cc/GR2J-37JS (emphasis added) (choose "How is federal recognition status conferred?").

If Respondents were correct that findings provisions are necessarily inoperative, the List Act's statutory scheme would cease to make sense. To determine whether a particular provision is operative, a court

must read Congress's words "in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989); *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 18-19 (1981) (similar). And, here, the List Act's title speaks exclusively to termination authority—which Congress addressed in the findings section. *Id.* § 103(4). Rather than interpret the statute's title to have *no* relation to its operation—or read invisible limitations into the text—this Court can and should give Congress's language its full effect.

3. Unable to avoid the List Act's text, Respondents insist that recognition is a nonjusticiable political question. Opp. 6-8; Siletz Br. 3. That's wrong. The political question doctrine bars review when there is either "a textually demonstrable constitutional commitment of the issue to a coordinate political department" or "a lack of judicially discoverable and manageable standards for resolving it." *See Zivotofsky* v. *Clinton*, 566 U.S. 189, 195 (2012) (quotation marks omitted). Neither trigger is met here.

This case does not ask courts to answer questions constitutionally assigned elsewhere. Even if the political branches are primarily responsible for determining "*whether* to establish *** [a] government-to-government relationship with a particular putative tribe," Opp. 6 (emphasis added), that in no way precludes courts from determining that such a government-to-government relationship exists. Quite the opposite. As noted above, courts—in addition to the legislative and executive branches—have long played a role in federal recognition. *See supra*, p. 8. That history "belies the notion that tribal recognition

is committed solely to the political branches." *Mdewakanton Band of Sioux* v. *Bernhardt*, 464 F. Supp. 3d 316, 320 n.2 (D.D.C. 2020).

Nor would ruling for the Chinook require courts to make inherently policy-laden determinations. To determine whether a band of Indians is a tribe, courts assess ethnographical and historical data under defined common-law factors. *See, e.g.*, *Gristede's Foods, Inc.* v. *Unkechuage Nation*, 660 F. Supp. 2d 442, 467 (E.D.N.Y. 2009). And to determine whether such a tribe has "entered into a government-to-government relationship with the United States," courts generally look for a "treaty, statute, executive or administrative order" evincing a sovereign relationship or some other evidence of the government's "course of dealing with the tribe as a political entity." *Yellen* v. *Confederated Tribes of Chehalis Reservation*, 594 U.S. 338, 345 (2021) (quotation marks omitted). The Chinook's claim to recognition is rooted in 175 years of such evidence. *See* Pet. App. 53a-71a. Resolving their claim will thus require only a careful examination of the historical records presented—an inquiry entirely within courts' domain. *Zivotofsky*, 566 U.S. at 201.[3]

In insisting the political question doctrine applies, Respondents' overread (at 6) this Court's cases. *United States* v. *Holliday* stands for the unremarkable

[3] Respondents' non-delegation arguments underscore the point. Respondents concede the List Act authorizes recognition of tribes that "already exist[]" and have "some historical pedigree." Opp. 12. Respondents further contend that the List Act provides the "intelligible principle[s]" necessary to guide recognition determinations. *Id.* Respondents provide no reason why such delegation does not also extend to courts.

proposition that courts should not second-guess a political branch's recognition of a tribe. *See* 70 U.S. 407, 419 (1865); *see also Baker* v. *Carr*, 369 U.S. 186, 215 (1962) (similar). *United States* v. *Sandoval*, meanwhile, did not concern a request for recognition; it speaks instead—under the "archaic prejudices" of *United* v. *Kagama*, 118 U.S. 375 (1886), *Veneno* v. *United States*, 607 U.S. __, slip op. at 1 (2025) (Gorsuch, J., dissenting from denial of certiorari)—to Congress's "controlling" decision to treat certain Native communities as "dependent tribes requiring the guardianship and protection of the United States." *See* 231 U.S. 28, 45-47 (1913). Contrary to Respondents' assertion, then, this Court has never held that the political question doctrine bars recognition by courts.

Nor would such a position be reconcilable with Respondents' past actions. Respondents have spent "decades" invoking federal courts' jurisdiction to obtain stipulated judgments recognizing tribes. *Stand Up for California!*, 994 F.3d at 627. Respondents do not explain how such court-approved settlements can confer recognition if recognition is a political question outside courts' authority. This Court should reject Respondents' belated bait-and-switch.

CONCLUSION

This Court should grant the petition, hold that the List Act confers recognition authority on courts, and remand for further proceedings.

Respectfully submitted,

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