NO. 24-1019

IN THE
SUPREME COURT OF THE UNITED STATES

KURT KANAM,
PETITIONER,
v.
DEB HAALAND ET AL
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

PETITION FOR WRIT OF CERTIORARI

Kurt Kanam, Self-Represented
2103 Harrison # 143
Olympia WA. 98502

NOVEMBER 20, 2024

QUESTIONS PRESENTED

This case concerns whether the Federally Recognized Indian Tribe List Act ("List Act") of 1994, still has judiciary branch tribal recognition or whether it could be removed from the "List Act" administratively without a rule or guideline. The questions presented are:

1. Whether the way to effectuate judiciary branch tribal recognition is through Writ of Mandamus or Declaratory and Injunctive Relief, because the agency admitted it does not have administrative procedures for judiciary branch tribal recognition.

2. Whether the Supreme Court accepts because the previous rulings in *Kanam v. Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023), were void for lack of jurisdiction.

PARTIES TO THE PROCEEDING

The Petitioner in this Court, who was one of the Plaintiffs in the District Court, is Kurt Kanam ('Petitioner") The Appellees in this Court who were the Defendants in District Court are Bureau of Indian Affairs ("BIA"), Deb Haaland, Bryan Newland, and Darryl LaConte. ("Appellees")

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Kurt Kanam is not a corporation and does not have any parent corporation with any publicly held corporation that owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case is related to the following proceedings in the U.S. District Court for the District of Columbia:

Kurt Kanam, and Pilchuck Nation v. Debra A. Haaland, and Bryan Newland, Civ. 21-cv-01690-RJL. That Ruling has been appealed to the U.S. Court of Appeals for the District of Columbia in case No. 24-5121. This direct appeal has been simultaneously filed with this previous Rule 60 appeal case No. 24-5003. There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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OPINIONS IN THE CASE

The opinion of the District Court has not been released.

JURISDICTION

The judgment of the District Court was entered on April 21, 2024. (App., *infra*, 1a-2a)

On May 1, 2024, an Appeal was filed with the Court of Appeals for the District of Columbia. Case No.24-5121. The judgment of the Court of Appeals was entered on September 18, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTES INVOLVED

The Federally Recognized Indian Tribe List Act of 1994 Pub. L. 103-454 Sec. 103 (Nov. 2, 1994) 108 Stat. 4791., 25 U.S.C. 479 (a), 25 U.S.C. § 5130, 25 U.S.C. § 5130, (List Act), 28 U.S.C. § 2201.

STATEMENT

Statement of the Issues.

This case concerns a statutory interpretation of the Federally Recognized Indian Tribe List Act of 1994. ("List Act") and whether the U.S. Department of Interior ("DOI") could eliminate judiciary branch tribal recognition administratively without an Act of Congress eliminating the statute.

The gravamen of this case is whether relief for judiciary branch tribal recognition is under a writ of mandamus or declaratory relief, because Congress never intended for the agency to review judicial tribal recognition determinations administratively.

Background.

In 1994, Congress passed the Federally Recognized Indian Tribe List Act of 1994. ("List Act") The List Act established three methods of federal tribal recognition. See 25 U.S.C. § 5130 notes (Congressional Findings, ¶ 3) (providing 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 denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;' or by a decision of a United States court").

The Pilchuck Nation is a tribe in the State of Washington, whose namesake is widely used in a specific geographical region of that state. The name "Pilchuck" originated from the Native American name of "red water" for a creek in the area.

The Pilchuck Nation is a tribe in the State of Washington, whose namesake is widely used in a specific geographical region of that state. The name "Pilchuck" originated from the Native American name of "red water" for a creek in the area.

The list of references to the name Pilchuck as a people extends to the town of Pilchuck, Mount Pilchuck, Pilchuck River, Pilchuck Creek, and Pilchuck State Park. Additional Pilchuck references are also made to a trail, elementary school, and high school. Kurt Kanam is Chairman of the Pilchuck.

Procedural History.

On May 27, 2014, Kurt Kanam, sent a request to DOI asking that the Pilchuck Nation be added to the list of federally recognized tribes, pursuant to the List Act language "or by a decision of a U.S. Court.

On March 30, 2021, Pilchuck Nation through counsel made the same request under the same language of the List Act.

The Petitioner's alleged they were entitled to federal tribal recognition under the language "or by a decision of a United States court" because the U.S. District Court for the Western District of Washington registered a judgment of the Karluk Tribal Court and because the United States was a party to the judgment and order. See 25 C.F.R. § 292.10, (c): "A Federal court determination in which the United States is a party or court approved settlement agreement entered into by the United States."

The DOI has never responded to either request, despite being served with the orders of the Karluk Tribal court and U.S. District Court for the Western District of Washington multiple times.

On June 25, 2021, Kanam and Pilchuck Nation filed a complaint with the U.S. District Court for the District of Columbia. (21-cv-01690-RJL). The Complaint sought to require the Defendants Deb Haaland, Bryan Newland, Darryl LaCounte and the Bureau of Indian Affairs ("BIA et al"), to take ministerial administrative action on the 2014 and 2021, requests for publication.

On October 19, 2021, BIA et al filed a motion to dismiss. In their reply brief, BIA et al argued "The List Act contains no other provisions specifying how Interior is to carry out its authority" to effectuate the language "or a decision by a U.S. Court." (BIA et al reply in support of Motion to Dismiss page 8-9, 21-cv-01690-RJL.)

In their motion to dismiss briefing, the BIA et al essentially argued that the agency did not have an administrative process for judiciary branch recognition, then at the same time argued administrative remedies for judiciary branch recognition needed to be exhausted.

In response, the Appellants disputed whether that is an actual agency position and requested Chenery remand. The Appellants also disputed that it is not possible to effectuate the federal tribal recognition of Congress and not one from the judiciary branch, because both disjunctive tribal recognition processes arise from the same Congressional findings in the List Act legislated in 1994.

The Appellants also argued the Respondents had not shown in their administrative record or anywhere else, that Congressionally approved tribes must file an administrative action to effectuate the Congressional tribal recognition process.

The Appellant's position was that it only made sense for Congressional tribal recognition to be the same as judiciary branch tribal recognition because both authorities arise from the same Act of Congress in 1994.

The Circuit Court panel in case number 22-5197 did not settle that issue.

On November 3, 2022, Kanam and Pilchuck filed a Petition for a Writ of Mandamus or in the alternative for Declaratory and Injunctive relief.

The Petitioners requested the District Court "to require the U.S. Department of the Interior to list the Pilchuck Nation as a federally recognized tribe." Pet. At 3-4. The Appellant's' request for the Pilchuck Nation's inclusion on the List of federally recognized tribes stems from the following allegation that Plaintiff Pilchuck Nation et al is a Treaty Tribe that occupies the status of a party to one or more of the Stevens treaties and therefore holds for the benefit of its members a reserved right to harvest anadromous fish at all the usual and accustomed places outside reservation boundaries, in common with others. Pet. at 9, ¶ 14.

In support of the request, Petitioners presented evidence that "on March 22, 2012, the Karluk Tribal Court, through a Declaratory Order, declared Plaintiff Pilchuck Nation to be a Treaty Tribe." Pet. at 9, ¶ 15. The Petitioners also showed evidence the U.S. District Court for the Western District of Washington registered that judgment.

This case was then placed on a stay pending an appeal of a previous related action in *Kanam v. Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023).

On June 2, 2023, the Respondents filed a motion to dismiss, alleging Petitioners sought to relitigate claims rejected on the merits by the D.C. Circuit in 2023.

The Respondents once again claimed to have authority via an "express policy, "they developed in 2015, to demand administrative procedures for judiciary branch tribal recognition. The Respondents also once again claimed the agency did not have Administrative procedures for judiciary branch tribal recognition, because Congress did not require them.

On June 16, 2023, the Petitioners filed an opposition to the Respondents' motion to dismiss. The Petitioners opposition argued that the Respondents were estopped and barred from relitigating the Karluk Tribal Court or the U.S. District Court for the Western District of Washington Judgements. Petitioners also argued and the Courts in *Kanam v. Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023), did not have jurisdiction to address those judgements.

On June 23, 2023, Respondents filed a reply in support of their motion to dismiss and argued the case was barred by the previous APA case under the doctrine of res judicata, or claim preclusion, because a subsequent lawsuit would be barred if there has been prior litigation.

The Respondents also claimed the court somehow decided the first Writ of Mandamus and Declaratory Judgment, even though the District Court ruled the motions to amend the complaint to ask for relief under the Writ of Mandamus and Declaratory Judgement were ruled as moot.

On April 21, 2024, the United States District Court for the District of Columbia ruled it could not take jurisdiction of the case and granted the Respondents motion to dismiss.

The Petitioner timely appealed, and the Court of Appeals ruling was on September 18, 2024.

REASONS FOR GRANTING THE PETITION

A. This Court Should Grant Review To Decide Whether Judiciary Branch Tribal Recognition Exists or Not.

Congress passed the List Act in 1994 and authorized the judiciary branch to rule on issues of federal tribal recognition acknowledgement.

It is now undisputed fact that three separate District Court Judges still believe there is judiciary branch federal tribal recognition in the List Act. (See *Koi Nation of N. Cal. v. U.S. Dep't of the Interior*, 361 F.Supp.3d 14 (D.D.C 2019), *Mdewakanton Band of Sioux in Minnesota v. Bernhardt*, 464 F. Supp. 3d 316 (D.D.C. 2020), and *Cnty. of Amador v. U.S. Dep't of the Interior* 872 F.3d 1012 (9th Cir. 2017).

Now, without notice and comment to create enforceable rules, and despite those three previous rulings acknowledging judiciary branch federal tribal recognition in the List Act, that Act of Congress has been undone by a combined and administrative and judiciary fiat.

In *Kanam v. Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023), DOI admitted the agency does not have any rules for judiciary branch tribal recognition and has not provided any evidence it gave any notice and comment for judiciary branch tribal recognition for enforceable substantive or interpretive rules.

The agency was thus foreclosed from arguing it promulgated a "legislative rule," which is issued by an agency pursuant to statutory authority and does have the force and effect of law. See PDR Network, LLC v. Carlton & Harris Chiropractic, Inc., 139 S. Ct. 2051, 204 L. Ed. 2d 433 (2019).

Therefore, without notice and comment for judiciary branch tribal recognition, any administrative rule for judiciary branch recognition, does not have the force and effect of law and should not have been accorded any weight in the adjudicatory process. See *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 135 S. Ct. 1199, 191 L. Ed. 2d 186, 83 U.S.L.W. 4160 (2015). The ruling giving weight to a phantom guideline conflict with the Supreme Court precedent set above.

Furthermore, its agency rulemaking director Elizabeth Appel admitted judiciary branch tribal recognition guidelines never took place in the 2015 guideline process she presided over. That 2015 DOI guideline is the alleged administrative process from which the alleged DOI "express policy" arose. After the Appel email was entered into evidence, *Kanam v. Haaland*, No. 22-5197, 2023 WL 3063526, should have been overturned by the Court of Appeals and an RPC 3.3 (a) (3) notice should have been written to the presiding Judge Richard J. Leon at the District Court and every Court of Appeals Judge in the appeal. The entire case has been a miscarriage of justice, and the Supreme Court should accept review.

B. The Decision Conflicts With This Court's Precedents.

The District Court ruling first denies jurisdiction of this case because of a previous ruling, then takes hypothetical jurisdiction, to address the Karluk Tribal Court, and U.S. Western District of Washington order.

The Court ruled: "Finally, to the extent the plaintiffs continue to insist that the Western District of Washington registered the tribal court judgment as a foreign judgment, that argument is equally unavailing. As the Circuit stated, "[t]he clerk file-stamped the [tribal court] judgment and docketed it as a miscellaneous matter." Id. Consequently, "the Western District of Washington did not adjudicate the status of the Pilchuck Nation or act on the tribal court judgment in any way." Id.H

However, the Supreme Court has long held that "federal courts may not, via doctrine of hypothetical jurisdiction, decide cause of action before resolving whether court has Article III jurisdiction," "doing so would carry courts beyond bounds of authorized judicial action and thus offend fundamental principles of separation of powers, and would produce nothing more than hypothetical judgment, which would come to same thing as advisory opinion, disapproved by Supreme Court from the beginning." See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998).

In this case, because a "Part 83" application was never filed with the agency to create Article III jurisdiction, the District Court did not have jurisdiction in Kanam *v. Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023)

In *Kanam v. Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023), the Petitioners explained they were notifying the agency that the U.S. District Court for the Western District of Washington had registered a judgment by the Karluk Tribal Court. After the agency admitted it did not have APA procedures for judiciary branch tribal recognition, the District Court should have denied the DOI motion to dismiss and allowed the complaint to be amended to seek relief under writ of mandamus or declaratory and injunctive relief.

Instead, the lower Courts took hypothetical jurisdiction of a tribal court decision, to hypothetically invalidate a tribal court order, without first appealing to the tribal court first. The lower Courts ruling conflicts with the Supreme Court's ruling in *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 105 S. Ct. 2447, 85 L. Ed. 2d 818 (1985).

The Supreme court has long held tribal appellate procedures must be exhausted prior to a federal court taking jurisdiction. That did not happen in this case, and this Court should take review to and enforce its precedent on hypothetical jurisdiction.

In addition, DOI was barred by FRAP 3 (1) and FRAP 4 (B) from addressing the Karluk order. DOI had until February 27, 2012, to appeal the Karluk order, but failed to do so. Any jurisdiction for a federal court over the Karluk order was lost by approximately February 28, 2012. Accordingly, the District Court never had jurisdiction over the Karluk order in *Kanam v. Haaland* and any federal court orders after February 28, 2012, from that case are void.

The District Court ruling conflicts with previous Supreme Court precedent that has long forbidden the taking of an appeal within the prescribed time is "mandatory and jurisdictional." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 61, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982) (per curiam) (internal quotation marks omitted).

Furthermore, prior to the creation of the circuit courts of appeals, this Court regarded statutory limitations on the timing of appeals as limitations on its own jurisdiction. See *Scarborough v. Pargoud,* 108 U.S. 567, 568, 2 S.Ct. 877, 27 L.Ed. 824 (1883).

Accordingly, the Supreme Court should take review to uphold its numerous precedents regarding jurisdiction and to preserve the legislative power of Congress by preventing yet another usurping of Congressional authority via agency fiat.

C. The Decisions Below Were Incorrect.

The District Court impermissibly took hypothetical jurisdiction, made the same violations of FRAP 3 (1) and FRAP 4 (B), and used the same inapplicable case law arguments to support a dismissal that the Court of Appeals relied upon in *Kanam v. Haaland*. *See Bowles v. Russell*, 551 U.S. 205, 127 S. Ct. 2360, 168 L. Ed. 2d 96 (2007).

The District Court ruling stated: "On April 25, 2023, the District of Columbia Circuit affirmed the district court's decision. *Kanam v. Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023)."[t]his [Circuit] has long held that tribes seeking recognition 'must pursue the Part 83 process[,]'" and "the [plaintiffs] failed to do so, which doom[ed] the[ir] lawsuit." Id. (quoting *Mackinac Tribe v. Jewell*, 829 F.3d 754, 757 (D.C. Cir. 2016).

However, *Mackinac Tribe v. Jewell* was an irrelevant re-petitioning case invalidated by Judge Amy Berman Jackson in *Burt Lake Band of Ottawa & Chippewa Indians v. Bernhardt*, 613 F. Supp. 3d 371 (D.D.C. 2020).

Essentially, in the writ of mandamus case, the District Court made the same errors the Courts made in *Kanam v. Haaland* and upheld an agency fiat, this time with evidence the 2015 guideline alleged as authority was never developed. The Supreme Court should accept review of this case to reverse those clear and repugnant errors.

D. The Questions Being Presented Are of Exceptional Importance And Warrant Review In This Case.

Any Act of Congress and the language put forth in its text should be followed by all federal agencies. Otherwise, the United States would be an administrative state without the checks and balances our system of government requires.

Americans have been fortunate that the Supreme Court has consistently and recently defended our checks and balances system of government, by developing a "*Major Questions Doctrine*," aimed at preventing any administrative branch usurping of legislative branch authority.

This case presents a perfect vehicle for this Court to "constrain the administrative state" and further eliminate the practice of administrative and judicial fiat in the face of Congressional legislative authority, and due process laid out by the List Act.

This Court's "Major Question Doctrine," has required fair warning to regulated parties. In *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 158 n. 17 (2012) (internal quotation marks omitted), this Court stated that "agencies should provide regulated parties 'fair warning of the conduct [a regulation] prohibits or requires'" and threaten "unfair surprise."

The Supreme Court should take review because this case represents the epitome of "unfair surprise" and is a visual aid to why the "*Major Questions Doctrine*," was necessary in the first place.

As a regulated party, Kanam and Pilchuck Nation were not given fair warning. They weren't even given a fair fiat. The agency never made a rule, or a guideline and the "Circuit Court" precedent that was applied was invalidated even before it was applied in *Kanam v. Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023).

This Court has consistently shown that it will not stand for administrative fiats which do not give fair warning to regulated parties. It is of great public importance to intercept and reverse this fabricated fiat that was applied in *Kanam v. Haaland*.

The Supreme Court must accept review of this case to bolster its commitment to constraints on the administrative state and uphold its "*Major Questions Doctrine*," and recent adjustments to the "*Chevron Doctrine.*"

The Supreme Court has spoken again and again on agency overreach and administrative fiat. The decisions in this case conflict with *West Virginia v. Envtl. Prot. Agency*, 142 S. Ct. 2587, 213 L. Ed. 2d 896 (2022), *Loper Bright Enterprises v. Raimondo*, *consolidated* with *Relentless, Inc. et al. v. Department of Commerce, et al*, 603 U.S. ___ (2024).

Furthermore, at least three District Courts say judiciary branch tribal recognition still exists, so the administrative powers DOI alleges it has is obviously not clearly laid out by the statute or in the lower Federal Courts.

The Supreme Court should take review of this case to underscore the importance of the "*Major Questions Doctrine*," the recent "*Chevron Doctrine*" adjustments prevent this agency overreach.

Wherefore, based on the aforementioned arguments, this Court's review is unquestionably warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, this 20th day of November 2024.

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