NO.

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 CIRCUIT

APPENDIX

November 20, 2024

TABLE OF APPENDICES

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KURT KANAM, et al., Appellant, v. DEB HAALAND, et al., Respondents.	Civil Action No. 22-3183

ORDER

On November 3, 2022, the plaintiffs—the Pilchuck Nation and its chairman, Kurt Kanam—filed a petition for a writ of mandamus, seeking "to require the U.S. Department of the Interior [("Interior")] to list Pilchuck Nation as a federally recognized [American Indian] tribe." Petition for a Writ of Mandamus ("Pls.' Pet.") at 2, ECF No. 3. The plaintiffs claim that "[o]n March 22, 2012, the Karluk Tribal

Court, through a Declaratory Order, declared [the p]laintiff Pilchuck Nation to be a Treaty Tribe." Id. at 9. Accordingly, the plaintiffs allege that "the [defendants] are [ ] statutorily obligated to include the Pilchuck Nation on the list because Pilchuck Nation[] is a federally recognized Indian tribe 'by a decision of a U.S. Court[.]'" Id. at 5. Moreover, the plaintiffs claim that "since Interior alleged its rules lack an administrative procedure to list federally-recognized tribes which have been recognized federally by a U.S. Court, any current administrative process is inapplicable under 25 C.F.R. Part 83, and . . . writ relief is appropriate." Id. at 4–5. The defendants—Deb Haaland, in her official capacity as Secretary of Interior, and Bryan Newland, in his official capacity as Assistant Secretary of Indian Affairs—filed their motion to dismiss on June 2, 2023. See Defendants'

Motion to Dismiss ("Defs.' Mot.") at 1, ECF No. 10. The plaintiffs filed a nearly identical lawsuit in this District on June 25, 2021. See Kanam v. Haaland, No. 21-cv-1690 (RJL), 2022 WL 2315552 (D.D.C. June 28, 2022), aff'd, No. 22-5197, 2023 WL 3063526 (D.C. Cir. Apr. 25, 2023). In that suit, the plaintiffs similarly asked the court "to compel the Secretary of the Interior to extend federal recognition to the Pilchuck Nation despite their failure to comply with the regulations governing the recognition process." Id. at *1. On June 28, 2022, the court granted the defendants' motion to dismiss because the plaintiffs' failed to exhaust administrative remedies under Part 83. See id. at *1, *3–4. Furthermore, the court explained that the plaintiffs may not rely on the Karluk Tribal Court judgment to circumvent Part 83 and that, even if the Karluk Tribal Court were a duly

authorized court of a federally recognized tribe, tribal courts lack the authority to issue a recognition decision binding on the United States. Id. at *4–5. 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). First, the Circuit stated that "[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)). Second, the Circuit addressed the plaintiffs' argument "that the Karluk Tribal Court judgment compel[led] Interior to recognize the Pilchuck Nation." Id. The Circuit rejected this argument because the "tribal court judgment [was not] a decision of a 'United States court,'"—viz., a decision of "the federal courts"—as required by the Federally Recognized

Tribe List Act of 1994. by the Federally Recognized Tribe List Act of 1994. Id. Finally, the Circuit rejected the plaintiffs' argument that the District Court for the Western District of Washington "registered the tribal court judgment as a foreign judgment that now binds Interior and has preclusive effect in this circuit." Id. Instead, the Circuit noted that "[t]he clerk file stamped the [tribal court] judgment and docketed it as a miscellaneous matter." Id. Accordingly, the Circuit held that "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. While the aforementioned appeal was pending, the plaintiffs filed their petition for a writ of mandamus in this case. "The remedy of mandamus is a drastic one, to be invoked only in

extraordinary circumstances." Power v. Barnhart, 292 F.3d 781, 784 (D.C. Cir. 2002); see also Illinois v. Ferriero, 60 F.4th 704, 714 (D.C. Cir. 2023) ("Few legal standards are more exacting than the requirements for invoking mandamus jurisdiction under § 1361. Mandamus is a 'drastic' remedy, only available in 'extraordinary situations,' and thus 'is hardly ever granted[.]'" (alteration in original) (quoting In re Cheney, 406 F.3d 723, 729 (D.C. Cir. 2005))). "To show entitlement to mandamus [against the government], plaintiffs must demonstrate (1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists." American Hospital Association v. Burwell, 812 F.3d 183, 189 (D.C. Cir. 2016). "These three threshold requirements are jurisdictional unless all are met, a court must dismiss the case for lack of jurisdiction." Id. "To meet the 'clear and indisputable' requirement, the plaintiff must show that the challenged action is 'plainly and palpably wrong as [a] matter of law.'"

Ferriero, 60 F.4th at 714 (alteration in original) (quoting United States ex rel. Chicago Great W. R.R. Co. v. I.C.C., 294 U.S. 50, 61 (1935)). "Accordingly, [courts] will deny mandamus even if a petitioner's argument, though 'pack[ing] substantial force,' is not clearly mandated by statutory authority or case law." Id. (second alteration in original) (quoting In re Al Baluchi, 952 F.3d 363, 369 (D.C. Cir. 2020)).

Here, the plaintiffs have not satisfied the "stringent" "clear and indisputable right to relief" standard. Id. More specifically, to the extent the plaintiffs wish to compel Interior to list the Pilchuck Nation as a federally recognized American Indian tribe, they have "not identified any legal basis that would confer upon [themselves such] a right[.]" Row 1 Inc. v. Becerra, 92 F.4th 1138, 1149 (D.C. Cir. 2024). Indeed, as the District of Columbia Circuit already noted in the plaintiffs' previous action, the 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." Kanam, 2023 WL 3063526, at *1 (quoting Mackinac Tribe, 829 F.3d at 757).

Furthermore, the plaintiffs' argument that "the [defendants] are [ ] statutorily obligated to include the Pilchuck Nation on the list because Pilchuck Nation[] is a federally recognized Indian tribe 'by a decision of a U.S. Court,'" Pls.' Pet. at 5, has already been rejected by the District of Columbia Circuit. The Circuit rejected this argument because the "tribal court judgment [was not] a decision of a 'United States court,'"—viz., a decision of "the federal courts"—as required by the Federally Recognized Tribe List Act of 1994. Kanam, 2023 WL 3063526, at *1. 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.

For the foregoing reasons, the plaintiffs have not demonstrated that their request is "clearly mandated by statutory authority or case law." Ferriero, 60 F.4th at 714. Indeed, the case law suggests exactly the opposite. Therefore, the Court concludes that the plaintiffs have "failed to demonstrate 'a clear and indisputable right' to the relief [they] request[,]" and thus, must dismiss the case for lack of mandamus jurisdiction—viz., lack of subject matter jurisdiction. Row 1 Inc., 92 F.4th at 1149; see also Burwell, 812 F.3d at 189 ("The[] three threshold requirements are jurisdictional; unless all are met, a court must dismiss the case for lack of jurisdiction." (emphasis added)).

Accordingly, it is hereby

ORDERED that the Defendants' Motion to Dismiss, ECF No. 10, is **GRANTED.** It is further

ORDERED that the Plaintiff's Motion for CM/ECF User name and Password, ECF No. 17, is **DENIED AS MOOT.** It is further

ORDERED that the motion hearing currently scheduled for March 28, 2024, is VACATED. It is further

ORDERED that this case is **DISMISSED FOR WANT OF JURISDICTION**. It is further

ORDERED that this case is **CLOSED.**

SO ORDERED this 21st day of March 2024.

REGGIE B. WALTON
United States District Judge

APPENDIX B

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5121 September Term, 2024

1:22-cv-03183-RBW

Filed On: September 18, 2024

Kurt Kanam and Pilchuck Nation,

Appellants

v.

Debra A. Haaland, in her official capacity as Secretary of the Interior, or his successor, U.S. Department of the Interior and Bryan Newland, in his official capacity as Assistant Secretary-Indian Affairs, or her successor, U.S. Department of the Interior,

Appellees

BEFORE: Millett, Pillard, and Pan, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply; the motion for summary reversal and vacatur, the opposition thereto, and the supplement; and the motion to extend time to file initial submissions, it is

ORDERED that the motion for summary reversal and vacatur be denied and the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The district court correctly dismissed appellants' petition for writ of mandamus for lack of jurisdiction. See Illinois v. Ferriero, 60 F.4th 704, 714-15 (D.C. Cir. 2023). To invoke the district court's jurisdiction, a mandamus petitioner in district court must "demonstrate (1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists." Am. Hosp. Ass'n v. Burwell, 812 F.3d 183, 189 (D.C. Cir. 2016). The district court correctly determined that appellants failed to demonstrate a "clear and indisputable right to relief" because they could not show that their arguments were "clearly mandated by statutory authority or case law." Ferriero, 60 F.4th at 714 (citation omitted). As this court concluded previously, "tribes seeking recognition must pursue the Part 83 process," which appellants admit they

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5121 September Term, 2024

have not done. See Kanam v. Haaland, No. 22-5197, 2023 WL 3063526, at *1 (D.C. Cir. Apr. 25, 2023) (internal quotation marks and citations omitted). Appellants again assert that the Pilchuck Nation has been recognized "by a decision of a United States court" within the meaning of a congressional finding in the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, § 103(3), 108 Stat. 4791, 4791. However, they have not demonstrated that a tribal court judgment constitutes a "decision of a United States court," have not explained "how a congressional finding in the List Act – describing how tribes previously were recognized – could impose any mandatory duty on" appellees, and have not shown that the District Court for the Western District of Washington "adjudicate[d] the status of the Pilchuck Nation or act[ed] on the tribal court judgment in any way." Kanam, 2023 WL 3063526, at *1. It is

FURTHER ORDERED that the motion to extend time to file initial submissions be dismissed as moot. Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam