NO. 24-1217

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

KURT KANAM,
PETITIONER,

v.

U.S. BUREAU OF INDIAN AFFAIRS ET AL
RESPONDENTS.

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

PETITION FOR A WRIT OF CERTIORARI

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

November 20, 2024

QUESTIONS PRESENTED

This case concerns yet another agency overreach involving the Federally Recognized Indian Tribe List Act ("List Act"), and whether the statute has judiciary branch tribal recognition or whether it can be removed from the "List Act" using a fictitious administrative action and invalidated case law. The questions presented are:

1. Whether the Rule 60 motion should have been granted because the previous District Court and Court of Appeals decisions were void because the lower Court's lacked jurisdiction.
2. Whether the Rule 60 motion should have been granted because the agency acted in a legally forbidden manner and deceived the District Court and Court of Appeals regarding its administrative procedures for judiciary branch tribal recognition.

PARTIES TO THE PROCEEDING

The Petitioner in this Court, who was one of the Appellants in the Court of Appeals, is Kurt Kanam ('Petitioner") The Appellees in this Court and in the Court of Appeals 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 and 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. No. 1:22-cv-03183-RBW. That Ruling has been appealed to the U.S. Court of Appeals for the District of Columbia in case No. 24-5121. A direct appeal has been simultaneously filed with this case. 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

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 2024. The Supreme Court has extended the filing period to October 2, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).(App., *infra*, 1a-3a)

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), 25 U.S.C. § 2, 25 U.S.C.§ 9, 5 U.S.C.A. § 553(b)(A), 5 U.S.C. § 706 (1-6) and 43 U.S.C. § 1457.

STATEMENT

Statement of the Issues.

This case also concerns whether a Rule 60 Motion should have been granted, because the previous advisory rulings the District Court relied upon were void, because the Court's lacked jurisdiction to rule on the merits of this case.

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 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 the Chairman of the Pilchuck.

A. 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 Appellants 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 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 U.S. Department of Interior ("DOI") did not respond to either request, despite being served with the orders of the Karluk Tribal court on approximately November 24, 2011 and U.S. District Court for the Western District of Washington in May of 2014.

On June 22, 2022, Kanam and Pilchuck filed a lawsuit in the U.S. District Court for the District of Columbia. On September 29, 2022, the agency filed a motion to dismiss and alleged it was authorized to replace the judiciary branch tribal recognition with a "Part 83" administrative process developed in 2015. DOI relied upon 25 U.S.C. §§ 2, 25 U.S.C. §§ 9 and 43 U.S.C. § 1457. 80 Fed. Reg. at 37885, to remove judiciary branch tribal recognition.

To justify taking that power, DOI and the District of Columbia Courts have conflated the "management" language in 25 U.S.C. §§ 2 and the "supervision" language in 25 U.S.C. §§ 9, to mean DOI has the authority to effectively write legislation to remove judiciary branch tribal recognition authority from the List Act altogether. In this case, they have done so without writing that rule. However, as recently as March of 2024, the Bureau of Indian Affairs still posted on its website that judiciary branch tribal recognition is still one of the methods for tribal recognition.

It is also a fact that DOI argued to the U.S. District Court for the Western District of Washington that the 2015 guidelines only changed tribal recognition in two instances none of those instances involved judiciary branch recognition. (see *Chinook Indian Nation v. Bernhardt*, 2020 WL 363410 (W.D. Wash. 2020). In addition, the ruling in *Burt Lake Band of Ottawa & Chippewa Indians v. Bernhardt*, 613 F. Supp. 3d 371 (D.D.C. 2020), by Judge Amy Berman, also determined there had not been any changes made to the tribal recognition process.

Judge Amy Jackson Berman effectively invalidated the 2015 re-petitioning rules, which in turn invalidated the re-petitioning cases used to dismiss this case. Furthermore, other federal court cases that were still recognizing the three methods of tribal recognition authority, were never appealed. (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).

The cases the District Court relied on involved tribes "re-petitioning" because they were recognized tribes at one time. (See *Mackinac Tribe v. Jewell,* 829 F.3d 754. 757 (D.C. Cir. 2016) and *Muwekma Ohlone Tribe v. Salazar,* 708 F.3d 209.218-19 (D.C. Cir. 2013), and *James v. U.S. Department of Health & Human Services,* 824 F.2d 1132 (D.C.Cir.1987),

However, those cases were never applicable case law precedent for the judiciary branch tribal recognition issues that were raised in this case. Even if they were applicable, they were invalidated altogether without valid re-petitioning rules. (See *Burt Lake Band of Ottawa & Chippewa Indians v. Bernhardt*, 613 F. Supp. 3d 371 (D.D.C. 2020).

In this case, the Petitioner had consistently argued the DOI policy to remove judiciary branch tribal recognition was ultra vires, because the language "or by a decision of a U.S. Court" remained in the List Act, and because 25 U.S.C. §§ 2, 25 U.S.C. §§ 9 and 43 U.S.C. § 1457, do not contain any repealing language for the List Act.

In addition, the Appellants had also consistently argued the District Court erred taking hypothetical jurisdiction to determine the merits of the Karluk Tribal Court orders. The Petitioner has also consistently argued the Pilchuck Tribe was entitled to the same informal administrative relief as the Stillaguamish tribe in *Stillaguamish v. Kleppe*, No 75-1718 (Sept. 24, 1976).

The District Court Judge dismissed the entire complaint for failure to state a claim, even though a "Part 83" application was not filed to the agency, and despite the fact that the agency admitted that there were no administrative procedures to follow for judiciary branch tribal recognition.

Meanwhile other federal judges ruled judiciary branch tribal recognition still existed in the List Act.

The District Court decision was upheld by the Court of Appeals, despite receiving judicial notice of an email from former DOI rulemaking director Elizabeth Appel, that disclosed the 2015 DOI guidelines only addressed administrative procedures not judiciary branch recognition.

On October 16, 2023, Kanam and Pilchuck Nation filed a Rule 60 Motion to Judge Leon and used previous District Court rulings and the email from Elizabeth Appel as a basis for reversing the previous ruling. Kanam and Pilchuck Nation also alleged the re-petitioning cases used to dismiss his case were invalidated.

Appellant's Rule 60 motion also alleged jurisdiction issues were not settled. The Appellants presented all the jurisdictional arguments which were made to both Courts, and alleged new evidence proved without a doubt that there was no jurisdiction for the courts, without agency regulations which were now proven to never have been promulgated by rule or by guidance.

On November 20, 2023, Appellees filed a response in opposition. In that response Appellees never specifically addressed the jurisdiction arguments presented by the Appellants.

On November 27, 2023, Appellants filed a reply brief, and added jurisdictional claims pursuant to Rule 60 (b)(4). On December 4, 2023, the District Court made its ruling, but in the minute order, jurisdiction was not addressed.

On January 9, 2024, Appellants filed a timely appeal to the U.S. Court of Appeals for the District of Columbia, case No. 24-5121.

On February 20, 2024, the Appellants filed a motion for summary reversal, alleging reversal was proper because the jurisdiction issues that were raised at the trial court were waived under Rule 7 (b).

The Appellants also argued the agency misrepresented its "policy guidance" and that without (1) judiciary branch tribal recognition rule or guideline, (2) a "Part 83" application, or (3) a remand to the agency for final decision, the District Court did not have jurisdiction under 5 U.S.C. §§701-706 of the APA or have constitutional authority under Article III. The Appellants also put in an appendix in support of its motion showing precisely where jurisdiction was raised but never addressed.

On February 22, 2024, the Appellees filed a motion for summary affirmance, and argued the mandate could not be attacked collaterally. The Appellees also argued the *Burt Lake* case was irrelevant, even though that court ruled there had been no changes to the methods for tribal acknowledgement process. The Appellees also argued the email from Elizabeth Appel was irrelevant and already ruled upon in a motion to take judicial notice, despite never having filed a brief in opposition of it.

On March 1, 2024, Appellees filed a response to the Appellants motion for summary reversal. The Appellees argued Kanam could not collaterally attack jurisdiction after the mandate.

The Appellees also argued that even if the District Court lacked jurisdiction, it permissibly dismissed the action for failure to exhaust administrative remedies. Essentially, the DOI argued the Appellants failed to exhaust administrative remedies the agency claimed it did not have.

Later, while on appeal, an email from former DOI rulemaking director Elizabeth Appel, confirmed DOI never made the guidelines to remove judiciary branch tribal recognition as they had claimed.

In their motion for summary affirmance, the Appellees relied upon *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982), *Bell v. Eastman Kodak Co.*, 214 F.3d 798, 801 (7th Cir. 2000), *Lee Memorial Hospital v. Becerra*, 10 F.4th 859, 863 (D.C. Cir. 2021). The Appellees argued the mandate prevented the Rule 60 motion.

On March 8, 2024, Appellants filed a response brief to the Appellees motion for summary affirmance. The Appellants argued the cases relied upon by the Appellees were not applicable because those cases dealt with situations where relief was available all along but was never sought. In their briefing, the Appellees' admitted jurisdiction was sought and alleged was ruled upon but did not cite or quote the record to show that jurisdiction was explicitly addressed separately from the merits of the action.

On March 8, Appellants filed a reply brief to the Appellees motion for summary reversal. The Appellants quoted *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368 (1981) Quoting *Abney v. United States*,431 U. S. 651, 431 U. S. 658 (1977). The Appellants argued "The order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.

The Appellant's also argued Courts are designed to act, not by any means, but specifically, by issuing judgments that conclusively settle legal disputes between parties." See also William Baude, The Judgment Power, 96 GEO. L.J. 1807, 1815 (2008).

On March 11, 2024, the Appellees filed a reply to the response to the Appellees motion for summary affirmance. The reply was a skeletal and bare bones character attack that did not address most of the issues that were raised.

On April 18, 2024, the Court of Appeals panel ruled the Appellants arguments asserting the District Court, and Court of Appeals lacked jurisdiction, were barred. The Court did not address whether the jurisdictional issues raised in the Rule 60 motion was conceded under local rule 7 (b), whether jurisdiction was raised continuously but never addressed, or explain how invalidated case law could still be controlling in this case. The Panel never cited where jurisdiction was ever settled separate from the merits of this case.

REASONS FOR GRANTING THE PETITION

The questions presented in this case are of extreme importance because they address critical interpretations of the federal tribal recognition legislation. The questions presented in this case give this Court a chance to improve upon its "major question doctrine" and enforce its recent rulings in *Loper Bright Enterprises v. Raimondo* and *Relentless, Inc. v. Department of Commerce.*

The Supreme Court must accept review and reverse the rulings in this case as void, because agency overreach and administrative fiat are a practice this Court has clearly set precedent to prevent. This time the fiat was obtained without the agency even promulgating an actual rule. The agency's fiat machinery was so effective the agency didn't even need a rule or valid case law to execute its overreach.

The Supreme Court should review and declare the lower Court's rulings void because the agency usurped the legislative authority of Congress to permit judiciary branch tribal recognition and did not authorize an administrative review of judiciary determinations.

The Supreme Court should also accept review, because the U.S. Court of Appeals in the District of Columbia has created its own judicial fiat using a "Circuit Court" precedent for judiciary branch tribal recognition using invalidated case law.

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. Furthermore, three separate District Court Judges still believe judiciary branch federal tribal recognition still exists. (See *Koi Nation of N. Cal. v. U.S. Dep't of the Interior,* 361F.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).

Review should be accepted because the Supreme Court has held interpretive rules, which are not subject to the Administrative Procedure Act's (APA) notice-and-comment requirement, do not have the force and effect of law and are not accorded weight in the adjudicatory process. See 5 U.S.C.A. § 553(b)(A). See also *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 135 S. Ct. 1199, 191 L. Ed. 2d 186 (2015).

Now, without notice and comment, an act of Congress and three previous rulings by three District Court judges have been undone in violation of the Administrative Procedures Act and Supreme Court precedent.

This Court should declare the lower Court's rulings void.

DOI has admitted it does not have any administrative rules for judiciary branch tribal recognition at the trial court. DOI never provided evidence that it gave proper notice and comment for judiciary branch tribal recognition to promulgate enforceable substantive or interpretive agency rules. The agency was thus foreclosed from arguing it promulgated a "legislative rule." See *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 139 S. Ct. 2051, 204 L. Ed. 2d 433 (2019).

Furthermore, the DOI agency rulemaking director wrote in an email that the development of judiciary branch tribal recognition guidelines never took place in 2015 in the first place. That can only mean DOI misrepresented its 2015 DOI guidelines to the Courts as enforceable guidance. 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 at the District Court Richard J. Leon and every Court of Appeals Judge in the appeal.

Therefore, without notice and comment for judiciary branch tribal recognition, any rule for judiciary branch recognition, never had the force and effect of law and should not have been accorded any weight in any adjudicatory process. Accordingly, the rulings below did not uphold Supreme Court precedent and should be declared void.

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

The Supreme Court has spoken many times on the issue of agency overreach and usurping Congressional authority. 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).

When the Appellants initially served DOI the Karluk and U.S. District Court orders, the Appellants were not seeking re-petitioning and did not file a "Part 83" application. Without a "Part 83" application, the only way for any Court to rule on the merits of a "Part 83" application was by taking hypothetical jurisdiction.

However, the Supreme Court has consistently held that "Federal Courts may not, via doctrine of hypothetical jurisdiction, decide cause of action before resolving whether court has Article III jurisdiction," because, "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).

The Supreme Court must take review of the Court decisions below, because every ruling in this case was made by taking hypothetical jurisdiction as if a "Part 83" application was filed, when in fact one was not.

In *Kanam v. Haaland*, No. 22-5197 (D.C. Cir. Apr. 25, 2023), the lower Courts habitually refused to admit they were taking hypothetical jurisdiction, after the issue was raised from the Petitioner's first brief at the District Court all the way to the Court of Appeals. The lower Courts also 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).

As shown above, the Court of Appeals ruling failed to uphold this Court's hypothetical jurisdiction precedent set in *Steel Co. v. Citizens for a Better Env't*, and *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians.*

The District Court also lacked jurisdiction over the Karluk Tribal Court order under FRAP 3 (1) and FRAP 4 (B), which required appeals of rulings to be brought within 60 days of November 24, 2011, after the orders were mailed out. See *Bowles v. Russell*, 551 U.S. 205, 127 S. Ct. 2360, 168 L. Ed. 2d 96 (2007).

DOI had until January 24, 2012, to appeal the Karluk order. Any jurisdiction for a federal court over the Karluk order was lost by approximately January 25, 2012. Accordingly, the District Courts never had jurisdiction under FRAP 3 (1) and FRAP 4 (B), and any federal court orders after January 25, 2012, for this case are void.

The decisions to take jurisdiction over the Karluk order contravened Supreme Court precedent, which has long held that 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, even 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).

As shown above, this Court should take review in order to uphold Supreme Court precedent, and the intent of FRAP 3 (1) and FRAP 4 (B).

C. The Decisions Below Were Incorrect.

The Supreme Court should accept review because the Court of Appeals for the District of Columbia used the same inapplicable and invalidated case law arguments to support summary affirmance that the Respondents relied upon at the trial Court.

The reliance on *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam), was misplaced because that ruling clearly applies only to cases where litigants had an opportunity to make jurisdiction arguments but chose not to do so prior to a previous Courts ruling. That is not what happened in this case. In this case, all the litigants made jurisdictional arguments which were never addressed.

In *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 102 S. Ct. 2099, 72 L. Ed. 2d 492 (1982), the Supreme Court held that "submitting to the jurisdiction of the court for the limited purpose of challenging jurisdiction, defendant agrees to abide by that court's determination on the issue of jurisdiction and that decision will be res judicata on that issue in any further proceeding." However, it is a fact that the Courts in this case never decided the issue of jurisdiction for the case law above to apply. Second, the Court in that case was trying to establish the facts relevant to the exercise of personal jurisdiction.

The lower Courts in this case did not try to establish facts relevant to the exercise of personal jurisdiction, they remained silent on every jurisdictional challenge made in the case, even the one made by the Respondents.

The reliance on *Pettaway v. Tchrs. Ins. & Annuity Ass'n of Am.*, No. 16-7137, 2017 WL 2373078 (D.C. Cir. Apr. 4, 2017), should also be rejected by this Court, because it is irrelevant to the facts in this case. That case was an unpublished ruling that is irrelevant because the DC Circuit held a challenge to subject matter jurisdiction may not form the basis of a collateral attack on an adverse judgment where there was a prior opportunity to litigate the issue.

As argued above, in this case, all the litigants made jurisdictional arguments from the beginning and throughout litigation. Furthermore, the *Pettaway* ruling related to Fed. Rule 60(b)(3) not Fed. Rule 60(b)(4), Fed. Rule 60(b)(5), Fed. Rule 60(b)(6) and Fed. Rule 60(d)(3). In addition, that Court ruled a Fed. Rule 60 (b)(3) motion alleging fraud must be filed no more than one year after the judgment was entered.

In their Rule 60 Motion, the Petitioner's raised issues of fraud in Fed. Rule 60(b)(4), Fed. Rule 60(b)(6) and Fed. Rule 60(d)(3). By claiming relief under those rules, the Petitioner's made *Pettaway* irrelevant.

The Supreme Court case, *Horne v. Flores*, 557 U.S. 433, 129 S. Ct. 2579, 174 L. Ed. 2d 406 (2009), held that a litigant could not challenge the legal conclusions on which a prior judgment or order rests, but held the rule provides a means by which a party can ask a court to modify or vacate a judgment or order if a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest. Fed.Rules Civ.Proc.Rule 60(b)(5).

The ruling in *Horne v. Flores*, 557 U.S. 433, 129 S. Ct. 2579, 174 L. Ed. 2d 406(2009), is actually a ruling in favor of the Petitioners not the Respondents.

In that case, the Supreme Court held that, "the party seeking relief from judgment or order on grounds that applying judgment or order prospectively is no longer equitable bears the burden of establishing that changed circumstances warrant relief, but once a party carries this burden, a court abuses its discretion when it refuses to modify an injunction or consent decree in light of such changes. Fed.Rules Civ.Proc.Rule 60(b)(5).

Here, the factual conditions that changed were confirmed by Elizabeth Appel of DOI, when she wrote in her email that DOI did not make judiciary branch policy guidance in 2015, as the agency falsely claimed to the Courts.

The Appellants met the burden of showing changed circumstances. The changed circumstances were that DOI did not even have administrative policy guidance to apply to judiciary branch tribal recognition.

The Appellant's argued that DOI was required to provide prime facie evidence in opposition in order to prevail. The Appellees failed to do so, and the Court of Appeals did not modify the previous Court rulings.

In addition, the Court of Appeals failed to settle whether the "Law of the case does not apply to points not decided on a previous appeal, even though they then could have been." *See Hartford Life Ins. Co.*v. Blincoe, 255 U.S. 129, 136, 41 S.Ct. 276, 278, 65 L.Ed. 549,552 (1921); *In re Sanford Fork & Tool Co.*, 160 U.S. 247 (1895). Jurisdiction could have been decided but it wasn't.

The Court of Appeals also failed to settle the Petitioners argument that jurisdiction had to be decided separate from the merits of the action.

The Court of Appeals did not comply with the Supreme Court precedent in *Abney v. United States*, 431 U. S. 651, 431 U. S. 658 (1977). That ruling stated that "the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action. To date, no Court has ever determined the jurisdiction issues separately or otherwise.

The Court of Appeals also ignored the Petitioners arguments that the precedent in *Lee Mem'l Hosp. v. Becerra*, No. 20-5085 (D.C. Cir. Aug. 20, 2021), quoting *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), required at least an arguable basis for the Courts to have jurisdiction. Without a "Part 83" application to the agency, a DOI administrative rule for judiciary branch recognition, or a final reviewable agency action, there were no elements to this case which established an arguable basis for the Courts to have jurisdiction under an administrative review statute.

Finaly, the Petitioners legal arguments whether the Respondents waived objection to the email from Elizabeth Appel, by not responding to the judicial notice filing before the Court of Appeals were never addressed. Furthermore, the case law in support of that argument, *Wannall v. Honeywell, Inc.*, 775 F.3d 425, 428 (D.C. Cir. 2014), was also never addressed by the Respondents or the Court of Appeals.

D. The Questions Presented Are Exceptionally Important And Warrant Review In This Case.

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

The Supreme Court has consistently defended the checks and balances system of American government, by developing a "*major questions doctrine*," aimed at preventing any overreach and administrative branch usurping of legislative branch authority. However, that process can only happen once an agency makes a rule. What will the Supreme Court do now that the DOI has shown it can avoid the will of Congress and the Supreme Court's *"major questions doctrine,"* and *"Chevron Doctrine"* adjustments by misrepresenting rules and guidelines?

In this case, the legislative branch's judiciary branch tribal recognition language clearly was not followed by DOI. This case presents another righteous 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 Supreme Court doctrine.

The Supreme Court has also 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."

As a regulated party in this case, Kanam and Pilchuck Nation were not given fair warning. They weren't even given fair fiat. The agency never made a rule, and the "Circuit Court" precedent that was applied was invalidated even before it was applied to Kanam and Pilchuck Nation.

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

The Supreme Court should take review because this Court has consistently shown that it will not stand for administrative overreaches which do not give fair warning to regulated parties.

This Court must continue its commitment to constraints on the administrative state and uphold its "*major questions doctrine.*"

In this case it was proven that three U.S. District Courts say judiciary branch tribal recognition still exists in the List Act. In addition, it was proven that two federal judges have ruled there were no changes to the methods of acknowledgment.

The Supreme Court should not allow DOI to get away with failing to provide an agency record. In addition, none of the lower courts should be allowed to get away with conducting an APA review without one. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971). The Supreme Court has routinely sent APA cases back to the trial court in summary reversal and should take review for that reason alone.

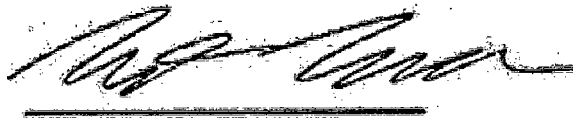
Furthermore, DOI should not have been allowed to avoid giving notice under RPC 3.3 (a) (3), that its post hoc rationalizations regarding the DOI 2015 guidelines for judiciary branch recognition were not accurate. Furthermore, the District Court should not have been allowed to get away with its own post hoc rationalization absent an agency record or to use irrelevant and invalidated "Circuit Court" precedent to dismiss this case.

This case is a perfect vehicle for the Supreme Court to enforce and underscore the Supreme Court's "*major questions doctrine*" and its new "*Chevron Doctrine*" adjustments.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, this 20th day of November 2024.



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