

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

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*

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NOVEMBER 20, 2024

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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 24-5003

September Term, 2023

FILED ON: APRIL 18, 2024

**KURT KANAM., IN HIS CAPACITY AS CHAIRMAN OF
THE PILCHUCK NATION AND PILCHUCK NATION,**

APPELLANTS

v.

**DEBRA A. HAALAND, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE INTERIOR, ET AL.,**

APPELLEES

**Appeal from the United States District Court for the
District of Columbia (No. 1:21-cv-01690)**

BEFORE: RAO, WALKER, and Garcia Circuit Judges

ORDER

Upon consideration of the motion for summary reversal and vacatur, the opposition thereto, and the reply; and the motion for summary affirmance, the corrected opposition thereto, and the reply, 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*). Insofar as appellants argue that the district court abused its discretion by not granting relief pursuant to Federal Rule of Civil Procedure 60(b)(4) based on their arguments that the district court lacked jurisdiction, they are barred from raising those jurisdictional arguments to collaterally attack the district court's dismissal order. See *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982); *Pettaway v. Teachers Ins. & Annuity*, No. 16-7137, unpublished order (D.C. Cir. Apr. 4, 2017)

Further, the district court did not abuse its discretion by denying appellants' motion for relief under Federal Rule of Civil Procedure 60(b)(5), (b)(6), and (d)(3). See *Smalls v. United States*, 471 F.3d 186, 191 (D.C. Cir. 2006) (denial of Rule 60(b) motions are reviewed for abuse of discretion); *El Bey v. United States*, 697 F. App'x 13, 14 (D.C. Cir. 2017) (denial of a Rule 60(d)(3) motion is reviewed for abuse of discretion). Appellants failed to demonstrate that applying the district court's dismissal order prospectively was "no longer equitable," see *Horne v. Flores*, 557 U.S. 433, 447

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-5003

September Term, 2023

(2009); Fed. R. Civ. P. 60(b)(5); that “extraordinary circumstances” warranted vacatur of that order, see *United States v. Philip Morris USA Inc.*, 840 F.3d 844, 852 (D.C. Cir. 2016); Fed. R. Civ. P. 60(b)(6); or that appellees committed “fraud on the court,” see *Baltia Air Lines, Inc. v. Transaction Management, Inc.*, 98 F.3d 640, 642 (D.C. Cir. 1996); Fed. R. Civ. P. 60(d)(3). 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

APPENDIX B

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:21-cv-01690-RJL

KANAM et al v. HAALAND et al
Assigned to: Judge Richard J. Leon
December 23, 2023

MINUTE ORDER. Upon consideration of plaintiffs' 39 Motion for Relief from Judgment Pursuant to Rule 60, 41 Defendants' Opposition to Plaintiffs' Motion for Relief from Judgment Pursuant to Rule 60, 42 Reply in Support of the Motion of Pilchuck Nation Kurt Kanam for Relief from Orders and Judgment, and the entire record herein, it is hereby ORDERED that plaintiffs' motion is DENIED. Plaintiffs purport to invoke four "new facts," Pls.' Mot. 2 [Dkt. #39-1], to justify their request for the "extraordinary" and "disfavored" relief provided by Federal Rule of Civil Procedure 60(b)(5), (b)(6), and (d)(3). *Kramer v. Gates*, 481 F.3d 788, 792 (D.C. Cir. 2007); *S.E.C. v. Bilzerian*, 815 F. Supp. 2d 324, 328 (2011); *O'Hara v. LaHood*, 756 F. Supp. 2d 75, 81 (D.D.C. 2010). Yet none of those facts qualify as "changed circumstances" for purposes of Rule 60(b), *Horne v. Flores*, 557 U.S. 433, 447 (2009), nor do they demonstrate fraud on the Court as required by Rule 60(d). To the contrary, each of the facts and legal theories identified by plaintiffs in their current motion was already raised before this Court and/or the D.C. Circuit in plaintiffs' appeal, or could have been raised in those proceedings. That alone dooms plaintiffs' request, since "Rule 60(b) is not a vehicle

for presenting theories or arguments that could have been raised previously." *Stephenson v. Chao*, 2020 WL 122984, at *2 (D.D.C. Jan. 10, 2020). At any rate, even if plaintiffs' "new facts" were indeed new, the Court is not persuaded that any of those facts require the Court to revisit its dismissal of plaintiffs' action based on their failure to exhaust administrative remedies--a ruling conclusively affirmed by the D.C. Circuit earlier this year. Accordingly, because plaintiffs cannot show changed circumstances under Rule 60(b) or fraud under Rule 60(d), their request for relief from judgment must be denied.

SO ORDERED. Signed by Judge Richard J. Leon on 12/4/2023. (lcrjl3) (Entered: 12/04/2023)

APPENDIX C

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 22-5197

September Term, 2022

FILED ON: DECEMBER 23, 2022

**KURT KANAM., IN HIS CAPACITY AS CHAIRMAN OF
THE PILCHUCK NATION AND PILCHUCK NATION,**

APPELLANTS

v.

**DEBRA A. HAALAND; IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE INTERIOR, ET AL.,**

APPELLEES

**Appeal from the United States District Court for the
District of Columbia (No. 1:21-cv-01690)**

BEFORE: MILLET, PILLARD, and PAN
Circuit Judges

ORDER

Upon consideration of the motion for summary reversal, the response thereto, and the reply; and the motion for summary affirmance, the response thereto, and the reply, it is

ORDERED that the motions be denied. The merits of the parties' positions are not so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

Because the court has determined that summary disposition is not in order, the Clerk is instructed to calendar this case for presentation to a merits panel. While not otherwise limited, the parties are directed to address in their briefs whether the present suit is barred by the doctrine of claim preclusion.

Per Curiam

APPENDIX D

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 22-5197

September Term, 2022

FILED ON: APRIL 25, 2023

**KURT KANAM., IN HIS CAPACITY AS CHAIRMAN OF
THE PILCHUCK NATION AND PILCHUCK NATION,
APPELLANTS**

v.

**DEBRA A. HAALAND, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE INTERIOR, ET AL.,
APPELLEES**

Appeal from the United States District Court for the
District of Columbia (No. 1:21-cv-01690)

**BEFORE: HENDERSON, KATSAS and WALKER, *Circuit
Judges.***

JUDGMENT

This appeal was considered on the record from the district court and on the briefs of the parties. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* Fed. R. App. P. 36; D.C. Cir. R 36(d). For the reasons stated below, it is:

ORDERED that the district court's judgment be **AFFIRMED**.

Kurt Kanam claims to lead a group called the Pilchuck Nation. Kanam controls an organization called the Native American Justice Project. In 2012, the Native Village of Karluk, Alaska purported to appoint this organization as its court. The putative Karluk Tribal Court then issued a two-page judgment declaring the Pilchuck Nation to have been a party to the Treaty of Point Elliott, an 1859 agreement between the United States and various Indian tribes.

In 2014, Kanam sent the Department of the Interior a one-page letter asking the Department to recognize the Pilchuck Nation as an Indian tribe based on the tribal court judgment. Interior ignored the letter. In 2021, the Pilchuck Nation sent a materially identical request, which Interior also ignored. Kanam and the Pilchuck Nation then sued to compel Interior to recognize the Nation. The district court dismissed the action based on the plaintiffs' failure to exhaust administrative remedies.

We affirm the regulations set forth a process for putative Indian tribes to seek federal recognition. See 25 C.F.R. pt. 83. This Court has long held that tribes seeking recognition "must pursue the Part 83 process." *Mackinac Tribe. Jewell*, 829 F.3d 754, 757 (D.C. Cir. 2016); see *Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 218-19 (D.C. Cir. 2013); *James v. HHS*, 824 F.2d 1132, 1136-31 (D.C. Cir. 1981). It is undisputed that the Pilchuck Nation failed to do so, which dooms this lawsuit.

Plaintiffs respond that the Karluk Tribal Court judgment compels Interior to recognize the Pilchuck Nation. Plaintiffs rely on a finding in the Federally Recognized Indian Tribe List Act of 1994 that "Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in" part 83; "or by a decision of a United States court." Pub. L. No. 103454, § 103(3), 108 Stat. 4791, 4791. Plaintiffs contend that the tribal court judgment is a decision of a "United States court" but that term plainly references the federal courts. *Cf.* 28 U.S.C. § 451 (defining "court of the United States" to mean specified courts established by Congress). Moreover, plaintiffs do not explain how a congressional finding in the List Act -describing how tribes previously were recognized- could impose any mandatory duty on Interior.

Plaintiffs further note that Kanam sent the tribal court judgment to the clerk of the District Court for the Western District of Washington. The clerk file-stamped the judgment and docketed it as a miscellaneous matter. Plaintiffs appear to argue that this action registered the tribal court judgment as a foreign judgment that now binds Interior and has preclusive effect in this circuit. This argument is also meritless because the Western District of Washington did not adjudicate the status of the Pilchuck Nation or act on the tribal court judgment in any way.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The clerk is directed to withhold issuance of the mandate 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. R. 41(a)(I).

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

/s/ Daniel J. Ready

Deputy Clerk

APPENDIX E

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 22-5197

September Term, 2022

FILED ON: June 21, 2023

KURT KANAM., IN HIS CAPACITY AS CHAIRMAN OF
THE PILCHUCK. NATION AND PILCHUCK. NATION,

APPELLANTS

v.

DEBRA A. HAALAND, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE INTERIOR, E'T AL.,

APPELLEES

BEFORE: HENDERSON, KATSAS and WALKER, *Circuit
Judges.*

ORDER

Upon consideration of appellants' corrected motion for judicial notice, it is

ORDERED that the motion be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

/s/

Daniel J. Ready

Deputy Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5197

September Term, 2022

FILED ON: June 23, 2023

KURT KANAM., IN HIS CAPACITY AS CHAIRMAN OF
THE PILCHUCK. NATION AND PILCHUCK. NATION,

APPELLANTS

v.

DEBRA A. HAALAND, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE INTERIOR, ET AL.,

APPELLEES

BEFORE: HENDERSON, KATSAS and WALKER, *Circuit
Judges.*

ORDER

Upon consideration of appellants' motion to publish filed on May 23, 2023, and appellants' amended petition for panel rehearing filed on June 5, 2023, it is;

ORDERED that the motion be denied. It is

FURTHER ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

/s/

Daniel J. Ready

Deputy Clerk

APPENDIX G

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 22-5197

September Term, 2022

FILED ON: June 23, 2023

KURT KANAM., IN HIS CAPACITY AS CHAIRMAN OF
THE PILCHUCK. NATION AND PILCHUCK. NATION,

APPELLANTS

v.

DEBRA A. HAALAND, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE INTERIOR, E'T AL.,

APPELLEES

BEFORE: Srinivasan, Chief Judge; Henderson, Millett,
Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and
Garcia,

Circuit Judges

ORDER

Upon consideration of appellants' petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

/s/

Daniel J. Ready

Deputy Clerk