NO. 24-1019

In the Supreme Court of the United States

KURT KANAM,
PETITIONER,

v.

BURGUM ET AL,
RESPONDENTS.

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

PETITION FOR REHEARING

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

CORPORATE DISCLOSURE

The Corporate Disclosure Statement in the petition remains unchanged.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

SUPREME COURT RULES

FEDERAL REGISTER

ACTS OF CONGRESS

PETITION FOR REHEARING

Pursuant to Rule 44.2 of this Court, the Petitioner Kurt Kanam, hereby respectfully petitions for rehearing of this case before a full nine-Member Supreme Court and (1) grant rehearing, (2) vacate the Court's May 27, 2025 order denying certiorari, and (3) dispose of this case by granting the petition for writ of certiorari and remanding to the District of Columbia Circuit for further consideration. In the alternative this Court should ask the Solicitor General to respond to the Petition for Writ of Certiorari.

REASONS FOR GRANTING REHEARING

This Court's Rule 44.2 authorizes a petition for rehearing based on "intervening circumstances of a substantial effect." or (2) if a petitioner raises "other substantial grounds not previously presented."

On January 23, 2025, President Trump signed an Executive Memoranda ordering the Secretary of the U.S. Department of Interior to consider a judiciary path for federal tribal recognition for the Lumbee Tribe of North Carolina. The Judiciary path for Federal recognition was established by the Federally Recognized Indian Tribe List Act of 1994. (List Act).

Kanam respectfully argues the U.S. Bureau of Indian Affairs (BIA) alleged "express policy" to remove judiciary branch federal tribal recognition has been overturned by President Trump's Executive Memoranda to the Secretary of Interior.

On February 12, 2025, the Secretary of Interior placed President Trump's Executive Memorandum in the Federal Register Volume 90, Issue 28 (February 12, 2025). The BIA "express policy" to do all Federal recognition under the administrative process in Part 83 of the List Act, was over and Kanam was entitled to a Judiciary path for Federal recognition. The official policy of the President of the United States should have been honored by this Court.

On April 9, 2025, President Trump signed another Memoranda requiring compliance with Cases *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), *West Virginia v. EPA*, 597 U.S. 697 (2022). That Presidential Memoranda should also be honored by this Court.

The Presidential Memorandums on January 23, 2025, and April 9, 2025, are "intervening circumstances of a substantial effect" and warrant this Court's rehearing and either a grant or hold of Kanam's Petition for Certiorari, pending an answer from the Solicitor General, addressing the two Presidential Memorandums signed by President Trump.

In addition, once the judiciary branch tribal recognition was officially extended to the Lumbee Tribe of North Carolina, rehearing was warranted based on "other substantial grounds not previously presented.", because the January 23, 2025, Executive Memoranda to the Secretary of Interior created a Due Process and Equal Protection obligation for this Court to extend that controlling policy to Kurt Kanam. This Court should rehear this case because Kanam was entitled to judiciary branch recognition in the List Act as laid out in President Trump's Memoranda.

I. The Court Should Take Judicial Notice of the January 23, 2025, Executive Memoranda and the Federal Register Volume 90, Issue 28, February 12, 2025, and April 9, 2025, Executive Memoranda.

A. There Never Was an "Express Policy."

This case is about whether federal judiciary branch tribal recognition still exists as a path for federal acknowledgement in the Federally Recognized Indian Tribe List Act of 1994, or whether that path could be removed administratively, or in this case, fictitiously removed with a phantom administrative process.

Even before President Trump signed a Presidential Memoranda recognizing judiciary branch tribal recognition as an option for the Lumbee Tribe of North Carolina, there was substantial doubt as to whether the Agency's "express policy" to use the administrative process in Part 83 as the only means for Federal acknowledgment even existed at all. The BIA rulemaking Director Elizabeth Appel sent an email affirming the judiciary branch recognition path was never part of any 2015 BIA guideline.

Once President Trump signed the January 23, 2025, Presidential Memoranda recognizing judiciary branch tribal recognition as a path for federal acknowledgement, the Court should have taken judicial notice of the Memorandum and effectuated it in this case, because it should have been apparent to this Court that the Agency never had an "express policy."

B. The Phony "Express Policy" was Illegal Regulation.

Even if judiciary branch federal tribal recognition was or was not removed administratively by BIA prior to President Trump's Memoranda, once President Trump's policy was published in the federal register, judiciary branch federal tribal recognition was an established path for federal acknowledgement and Kanam's Writ of Certiorari should have been granted on those grounds.

President Trump's second memoranda officially made the Agency's "express policy" an illegal regulation. President Trumps second memoranda should also have been given a controlling effect in this case, and grounds to grant Kanam's Writ of Certiorari.

By denying Kanam's Writ of Certiorari, this Court failed to give controlling effect to President Trump's policy recognizing judiciary branch federal tribal recognition and the policy to remove illegal regulation. The Petition for Rehearing should be granted on those grounds.

II. The Supreme Court Failed to Uphold its 5th Amendment Due Process and Equal Protection Clause Precedent.

Once the judiciary branch tribal recognition was officially extended to the Lumbee Tribe of North Carolina, not only should that policy have been given a controlling effect in this case, but it also created a Due Process and Equal Protection obligation to Kanam.

In addition, Kanam was not given the same Due Process and Equal Protection rights under the Constitution, as the Crow Tribe in *Nat'l Farmers Union Ins. v. Crow Tribe*, 468 U.S. 1315 (1984), when this Court required tribal remedies to be exhausted in tribal court before a federal court can obtain jurisdiction.

Kanam was also not given the same Due Process and Equal Protection from hypothetical jurisdiction as two decades worth of litigants received in *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83 (1998).

It is well settled Supreme Court precedent that a law or government policy that explicitly treats one group of people differently from another similar group violates Due Process and Equal Protection principles, as held in *Craig v. Boren*. 429 U.S. 190 (1976). In addition, the Supreme Court has long established that the Fifth Amendment's Due Process Clause imposes equal protection obligations on the federal government. This concept, called "reverse incorporation," ensures a national standard of equal protection. See *Bolling v. Sharpe*, 347 U.S. 497 (1954).

The Lumbee Tribe, the Crow Tribe and Kanam's Pilchuck Tribe were impermissibly divided into separate classes. However, the Supreme Court has long held that applicants cannot be divided into two classes. See E.g., *Shapiro v. Thompson*, 394 U.S. 618 (1969) (durational residency requirement has the effect of dividing applicants into two classes).

Accordingly, the Petition for Rehearing should be granted because this Court failed to uphold Kanam's Due Process and Equal Protection rights in the United States Constitution. These Due Process and Equal Protection obligations for Federal agencies have long been identified as precedent for this Court. See *Weinberger v. Salfi*, 422 U.S. 749 (1975).

III. The Petition for Rehearing Meets Both Criteria Under This Court's Rule 44.2.

Petitions for Rehearing of an order denying certiorari are granted: (1) if a petition can demonstrate "intervening circumstances of a substantial or controlling effect"; or (2) if a petitioner raises "other substantial grounds not previously presented."

Kanam respectfully argues his Petition for Rehearing and Writ of Certiorari should be granted on both grounds because President Trump's Memoranda recognizing judiciary branch tribal recognition and the President's Memoranda to get rid of illegal regulation, should have been "intervening circumstances of a substantial or controlling effect" on this case.

In addition, Kanam's Petition for Rehearing Writ of Certiorari should be granted because Kanam raises Due Process and Equal Protection arguments under the 5th Amendment that qualifies as "other substantial grounds not previously presented."

IV. Rehearing Should Be Granted Because Important Matters Were Not Addressed.

The important matters that could have been decided in this case which were not are: (1) whether or not was there was an "express policy" removing judiciary branch Tribal Recognition from the List Act, (2) whether there could have been "circuit precedent" removing judiciary branch tribal recognition from the List Act, or (3) whether the Presidential Memorandum's were "intervening circumstances of a substantial or controlling effect.

This case is still an opportunity for this Court to settle an important agency process, and the judicial process tethered to it. The Presidential Memorandums either established judiciary branch tribal recognition or they didn't. Now the agency can have it both ways and offer it to one tribe but not another. However, having it both ways is unconstitutional and violates Due Process and Equal Protection Clause. That makes this an issue that must be addressed by this Court, even more so given the recent "Chevron Doctrine" mandate in *Loper Bright*. The Supreme Court has long held petitions for rehearing were proper when there were important matters that were not addressed but should have been. See *Burns v. Wilson*, 346 U.S. 844 (1953).

CONCLUSION

Pursuant to Rule 44.2, the Petition for Rehearing and Writ of Certiorari should be granted, and the case should be remanded to the DC Circuit. Or in the alternative, the Court should request a response from the Solicitor General to hear his views on the two Presidential Memoranda's effect on judiciary branch tribal recognition policy at BIA.

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

June 16, 2025

Rule 44.2 Certification

I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

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

June 16, 2025

APPENDIX

APPENDIX

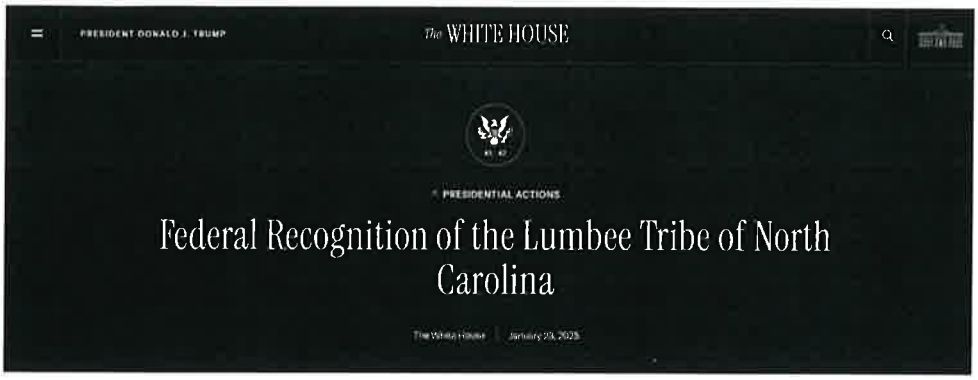
TABLE OF APPENDICES

Appendix A

Appendix B

Appendix C

Appendix A



MEMORANDUM FOR THE SECRETARY OF THE INTERIOR

SUBJECT: Federal Recognition of the Lumbee Tribe of North Carolina

Section 1. Purpose and Policy. The Lumbee Tribe of North Carolina, known as the People of the Dark Water, have a long and storied history. The tribe's members were descendants of several tribal nations from the Algonquian, Iroquoian, and Siouan language families, including the Hatteras, the Tuscarora, and the Cheraw. The waters of the Lumbee River and lands that surround it have protected and provided for the Lumbee people for centuries despite war, disease, and many other perils.

In 1885, the State of North Carolina recognized the Lumbee people as an Indian tribe. 1885 N.C. Sess. Laws 92. In 1956, President Dwight D. Eisenhower signed the Lumbee Act (Public Law 84-570, 70 Stat. 254), which recognized the Lumbee as the Lumbee Indians of North Carolina but denied Lumbee Indians Federal benefits associated with such recognition. Today, according to the State of North Carolina, the Lumbee Tribe consists of more than 55,000 members, making it the largest tribe east of the Mississippi River and the ninth-largest tribe in the Nation.

In 2024, the United States House of Representatives passed, by a vote of 311-96, the Lumbee Fairness Act (H.R. 1101), which would grant the Lumbee Tribe full Federal recognition, but this legislation was not considered by the United States Senate before the end of the 118th Congress. Similar legislation has passed the House of Representatives several times.

Considering the Lumbee Tribe's historical and modern significance, it is the policy of the United States to support the full Federal recognition, including the authority to receive full Federal benefits, of the Lumbee Tribe of North Carolina.

Sec. 2. Directive for Recognition Plan. (a) Within 90 days of the date of this memorandum, the Secretary of the Interior shall review all applicable authorities regarding the recognition or acknowledgement of Indian tribes and, in consultation with the leadership of the Lumbee Tribe of North Carolina, shall submit to the President a plan to assist the Lumbee Tribe in obtaining full Federal recognition through legislation or other available mechanisms, including the right to receive full Federal benefits.

(b) The plan shall include consideration and analysis of each potential legal pathway to effectuate full Federal recognition of the Lumbee Tribe, including through an act of the Congress, judicial action, or the Procedures for Federal Acknowledgement of Indian Tribes set forth in 25 C.F.R. Part 83.

(c) The Secretary of the Interior is authorized and directed to publish this memorandum in the *Federal Register*.

Appendix B

This document is scheduled to be published in the Federal Register on 02/12/2025 and available online at https://federalregister.gov/d/2025-02510, and on https://govinfo.gov

4337-15

DEPARTMENT OF THE INTERIOR Bureau of Indian Affairs [256A2100DD AAKP300000 A0A501010.000000]

Presidential Memorandum; Lumbee Tribe of North Carolina
AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Presidential Memorandum titled "Federal Recognition of the Lumbee Tribe of North Carolina."

DATES: The Presidential memorandum was issued on January 23, 2025.

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, (202) 738-6065.

SUPPLEMENTARY INFORMATION: On January 23, 2025, the President of the United States issued a Presidential memorandum (PM) to the Secretary of the Interior (Secretary) titled "Federal Recognition of the Lumbee Tribe of North Carolina," which directs the Secretary to review "all applicable authorities regarding the recognition or acknowledgement of Indian tribes" and, in consultation with the leadership of the Lumbee Tribe of North Carolina, "submit to the President a plan to assist the Lumbee Tribe in obtaining full Federal recognition through legislation or other available mechanisms, including the right to receive full Federal benefits" within 90 days of the date of the PM. The PM further authorizes and directs the Secretary to publish the PM in the Federal Register.

Bryan Mercier,

Director, Bureau of Indian Affairs, Exercising the delegated authority of the Assistant Secretary—Indian Affairs.

Federal Recognition of the Lumbee Tribe of North Carolina January 23, 2025, Memorandum for the Secretary of the Interior Subject: Federal Recognition of the Lumbee Tribe of North Carolina Section 1. Purpose and Policy. The Lumbee Tribe of North Carolina, known as the People of the Dark Water, have a long and storied history. The tribe's members were descendants of several tribal nations from the Algonquian, Iroquoian, and Siouan language families, including the Hatteras, the Tuscarora, and the Cheraw. The waters of the Lumbee River and lands that surround it have protected and provided for the Lumbee people for centuries despite war, disease, and many other perils.

In 1885, the State of North Carolina recognized the Lumbee people as an Indian tribe. 1885 N.C. Sess. Laws 92. In 1956, President Dwight D. Eisenhower signed the Lumbee Act (Pub. L. 84-570, 70 Stat. 254), which recognized the Lumbee as the Lumbee Indians of North Carolina but denied the Lumbee Indians the Federal benefits associated with such recognition. Today, according to the State of North Carolina, the Lumbee Tribe consists of more than 55,000 members, making it the largest tribe east of the Mississippi River and the ninth-largest tribe in the Nation.

Federal Register / Vol. 90, No. 28 / Wednesday, February 12, 2025. 9436

In 2024, the United States House of Representatives passed, by a vote of 311-96, the Lumbee Fairness Act (H.R. 1101), which would grant to the Lumbee Tribe full Federal recognition, but this legislation was not considered by the United States Senate before the end of the 118th Congress. Similar legislation has passed the House of Representatives several times.

Considering the Lumbee Tribe's historical and modern significance, it is the policy of the United States to support the full Federal recognition, including the authority to receive full Federal benefits, of the Lumbee Tribe of North Carolina.

Sec. 2. Directive for Recognition Plan. (a) Within 90 days of the date of this memorandum, the Secretary of the Interior shall review all applicable authorities regarding the recognition or acknowledgement of Indian tribes and, in consultation with the leadership of the Lumbee Tribe of North Carolina, shall submit to the President a plan to assist the Lumbee Tribe in obtaining full Federal recognition through legislation or other available mechanisms, including the right to receive full Federal benefits.

(b) The plan shall include consideration and analysis of each potential legal pathway to effectuate the full Federal recognition of the Lumbee Tribe, including through an act of Congress, judicial action, or the Procedures for Federal Acknowledgement of Indian Tribes set forth in 25 CFR part 83.

(c) The Secretary of the Interior is authorized and directed to publish this memorandum in the Federal Register .

[FR Doc. 2025-02510 Filed 2-11-25; 8:45 am] BILLING CODE 4337-15-P

Appendix C

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: DIRECTING THE REPEAL OF UNLAWFUL REGULATIONS

Promoting economic growth and American innovation are top priorities of this Administration. Unlawful, unnecessary, and onerous regulations impede these objectives and impose massive costs on American consumers and American businesses. In recent years, the Supreme Court has issued a series of decisions that recognize appropriate constitutional boundaries on the power of unelected bureaucrats and that restore checks on unlawful agency actions. Yet, despite these critical course corrections, unlawful regulations — often promulgated in reliance on now-superseded Supreme Court decisions — remain on the books.

Consistent with these priorities and with my commitment to restore fidelity to the Constitution, on February 19, 2025, I issued Executive Order 14219 (Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative). It directed the heads of all executive departments and agencies to identify certain categories of unlawful and potentially unlawful regulations within 60 days and begin plans to repeal them. This review-and-repeal effort shall prioritize, in particular, evaluating each existing regulation's lawfulness under the following United States Supreme Court decisions:

1. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024);
2. *West Virginia v. EPA*, 597 U.S. 697 (2022);
3. *SEC v. Jarkesy*, 603 U.S. 109 (2024);
4. *Michigan v. EPA*, 576 U.S. 743 (2015);
5. *Sackett v. EPA*, 598 U.S. 651 (2023);
6. *Ohio v. EPA*, 603 U.S. 279 (2024);
7. *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021);
8. *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023);
9. *Carson v. Makin*, 596 U.S. 767 (2022); and
10. *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020).

In effectuating repeals of facially unlawful regulations, agency heads shall finalize rules without notice and comment, where doing so is consistent with the "good cause" exception in the Administrative Procedure Act. That exception allows agencies to dispense with notice-and-comment rulemaking when that process would be "impracticable, unnecessary, or contrary to the public interest." Retaining and enforcing facially unlawful regulations is clearly contrary to the public interest. Furthermore, notice-and-comment proceedings are "unnecessary" where repeal is required as a matter of law to ensure consistency with a ruling of the United States Supreme Court. Agencies thus have ample cause and the legal authority to immediately repeal unlawful regulations.

DONALD J. TRUMP

Donald J. Trump (2nd Term), Memorandum on Directing the Repeal of Unlawful Regulations Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/377019

Accordingly, I hereby direct:

1. Following the 60-day review period ordered in Executive Order 14219 to identify unlawful and potentially unlawful regulations, agencies shall immediately take steps to effectuate the repeal of any regulation, or the portion of any regulation, that clearly exceeds the agency's statutory authority or is otherwise unlawful. Agencies should give priority to the regulations in conflict with the United States Supreme Court decisions listed earlier in this memorandum. The repeal of each unlawful regulation shall be accompanied by a brief statement of the reasons that the "good cause" exception applies.
2. Within 30 days of the conclusion of the review period directed in Executive Order 14219 to identify unlawful and potentially unlawful regulations, agencies shall submit to the Office of Information and Regulatory Affairs a one-page summary of each regulation that was initially identified as falling within one of the categories specified in section 2(a) of that Executive Order, but which has not been targeted for repeal, explaining the basis for the decision not to repeal that regulation.