

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

HEATHER MCMILLAN NAKAI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 16-cv-1500 (TSC)
	)	
SALLY JEWELL, <i>in her official capacity as</i>	)	
Secretary of the UNITED STATES	)	
DEPARTMENT OF THE INTERIOR, et al.,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' ANSWER**

Defendants Sally Jewell, Secretary of the Interior; Lawrence Roberts, Principal Deputy Assistant Secretary-Indian Affairs; Bruce Maytubby, Regional Director, Eastern Region, Bureau of Indian Affairs; and the United States Department of the Interior (“Defendants”), hereby answer the Complaint for Declaratory and Injunctive Relief of Heather McMillan Nakai (“Plaintiff”).

**FIRST DEFENSE**

1. Plaintiff has failed to state a claim for which relief may be granted as to some or all of her claims.

**INTRODUCTORY STATEMENT**

1. The allegations in Paragraph 1 of the Complaint constitute Plaintiff’s characterization of this action and/or assert conclusions of law, and are not allegations to which a response is required. To the extent any response is required, the allegations in this paragraph are denied.

### **NATURE OF THE ACTION**

2. The allegations in Paragraph 2 of the Complaint constitute Plaintiff's characterization of its action and are not allegations to which a response is required.

### **JURISDICTION AND VENUE**

3. The allegations in Paragraph 3 of the Complaint assert conclusions of law to which no response is required.

4. The allegations in Paragraph 4 of the Complaint assert conclusions of law to which no response is required.

5. The allegations in Paragraph 5 of the Complaint assert conclusions of law to which no response is required.

### **THE PARTIES**

6. The allegations of Paragraph 6 of the Complaint assert legal conclusions to which no response is required.

7. Defendants admit that Sally Jewell is Secretary of the United States Department of the Interior. Defendants further admit that Secretary Jewell acts through her designee, the Principal Deputy Assistant Secretary – Indian Affairs, and is sued in her official capacity.

8. Defendants admit that Lawrence Roberts is the Principal Deputy Assistant Secretary – Indian Affairs of the U.S. Department of the Interior. Defendants further admit that Mr. Roberts has responsibility for management of the Bureau of Indian Affairs ("BIA") and is sued in his official capacity.

9. Defendants admit that Bruce Maytubby is the Eastern Regional Director – BIA of the U.S. Department of the Interior. Federal Defendants further admit that the Eastern Regional Director has responsibility for verifying eligibility for Indian preference for individual Indians

residing within the Eastern Region, which includes the State of Maryland. Defendants are without sufficient knowledge or information to admit or deny the allegation in this paragraph regarding Plaintiff's place of residence.

10. Defendants admit that the U.S. Department of the Interior is an executive department of the United States and is headquartered at 1849 C Street NW, Washington, DC 20240.

### **FACTUAL BACKGROUND**

11. Defendants lack knowledge or information sufficient to form a belief regarding the truth or falsity of the allegation in Paragraph 11 of the Complaint, and therefore Defendants deny the allegation

12. Defendants admit that, in 1934, Congress passed the Indian Reorganization Act; the remainder of the allegations in Paragraph 12 of the Complaint consists of characterizations of the Indian Reorganization Act ("IRA"), which is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the IRA, Defendants deny the allegations. Defendants aver that, since the Complaint was filed, the provision of the IRA previously codified at 25 U.S.C. § 472 has been re-codified at 25 U.S.C. § 5116.

13. Defendants admit that, in 1935, Felix Cohen was Assistant Solicitor, U.S. Department of the Interior; the remainder of the allegations in Paragraph 13 of the Complaint consists of characterizations of a memorandum from Mr. Cohen to the Commissioner of Indian Affairs, which is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the memorandum, Defendants deny the allegations.

14. Defendants admit that Plaintiff filed via facsimile and a hard copy a BIA Form 4432, which is required by the BIA to apply for Indian preference, and accompanying

documentation with the BIA Eastern Regional Office on or about March 14, 2012; however, Defendants lack knowledge or information sufficient to form an opinion as to the truth or falsity of whether the accompanying documentation “support[ed]” the Plaintiff’s BIA Form 4432, and therefore deny that allegation.

15. Defendants admit that Chandra Joseph was a Tribal Government Specialist, and that she wrote a letter to Plaintiff on or about April 19, 2012, denying Plaintiff’s request for verification of eligibility for Indian preference; the remainder of the allegations in Paragraph 15 of the Complaint consists of excerpts from and characterizations of the letter, which is the best evidence of its contents. To the extent the excerpts or characterizations are incomplete or inconsistent with the letter, Defendants deny the allegations.

16. Defendants admit that, on or about April 19, 2012, Plaintiff filed an appeal to the Eastern Region Director; the remainder of the allegations in Paragraph 16 of the Complaint consists of characterizations of the letter of appeal, which is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the letter of appeal, Defendants deny the allegations.

17. Defendants admit that, on or about June 4, 2012, when he was Eastern Regional Director, Franklin Keel denied Plaintiff’s appeal; the remainder of the allegations in Paragraph 17 of the Complaint consists of excerpts from and characterizations of the denial of appeal letter, which is the best evidence of its contents. To the extent the excerpts and characterizations are incomplete or inconsistent with the denial of appeal letter, Defendants deny the allegations.

18. Defendants admit the first sentence of Paragraph 18 of the Complaint. The allegations in the second and third sentences of Paragraph 18 consist of characterizations of Plaintiff’s appeal to the Interior Board of Indian Appeals (“IBIA”), which is the best evidence of

its contents. To the extent the characterizations are incomplete or inconsistent with the IBIA appeal, Defendants deny the allegations.

19. Defendants admit the allegations in Paragraph 19 of the Complaint.

20. Defendants admit that, on or about August 16, 2012, Plaintiff filed an objection to the administrative record before the IBIA; the remainder of the allegations in Paragraph 20 of the Complaint consists of characterizations of the administrative record before the IBIA and Plaintiff's objections thereto, which are the best evidence of their contents. To the extent the characterizations are incomplete or inconsistent with the administrative record or Plaintiff's objections thereto, Defendants deny the allegations.

21. Defendants admit the allegations in Paragraph 21 of the Complaint.

**COUNT I**  
**(Declaratory and Injunctive Relief – Denial of Indian Preference in Violation of the Indian Reorganization Act)**

22. Defendants incorporate by reference each of their responses to Paragraphs 1 through 21 of the Complaint as if fully set forth herein.

23. Paragraph 23 of the Complaint consists of legal conclusions and argument that require no response. To the extent a response is required, Defendants deny the allegations. Defendants aver that, since the Complaint was filed, the provision of the IRA previously codified at 25 U.S.C. § 479 has been re-codified at 25 U.S.C. § 5129.

24. Paragraph 24 of the Complaint consists of legal conclusions and argument that require no response, and also of excerpts from and characterizations of the IRA, which is the best evidence of its contents. To the extent a response is required, or to the extent these excerpts and characterizations are incomplete or inconsistent with the IRA, Defendants deny the allegations.

Defendants aver that, since the Complaint was filed, the provision of the IRA previously codified at 25 U.S.C. § 479 has been re-codified at 25 U.S.C. § 5129.

25. Paragraph 25 of the Complaint consists of characterizations of the Assistant Solicitor's memorandum, which is the best evidence of its contents. To the extent the characterizations are incomplete or inconsistent with the memorandum, Federal Defendants deny the allegations.

26. The first sentence of Paragraph 26 of the Complaint consists of legal conclusions and argument that require no response, and also consists of characterizations of the administrative record, which is the best evidence of its contents; to the extent the characterizations are incomplete or inconsistent with the administrative record, Defendants deny the allegations. The second sentence of Paragraph 26 consists of legal conclusions and argument that require no response. To the extent any response is required, the allegations are denied. Defendants aver that, since the Complaint was filed, the provision of the IRA previously codified at 25 U.S.C. § 479 has been re-codified at 25 U.S.C. § 5129.

27. Defendants deny the allegations in this paragraph.

28. Paragraph 28 of the Complaint consists of excerpts from and characterizations of *Maynor v. Morton*, 510 F.2d 1254 (D.C. Cir. 1975), which is the best evidence of its contents. To the extent the excerpts and characterizations are incomplete or inconsistent with the Circuit Court's opinion, Defendants deny the allegations.

29. The first sentence of Paragraph 29 of the Complaint consists of legal conclusions and argument that require no response; to the extent a response is required, Defendants deny the allegations. The second and third sentences of Paragraph 29 of the Complaint consist of

characterizations of Plaintiff's claims, which require no response; to the extent a response is required, Defendants deny the allegations.

30. Paragraph 30 of the Complaint consists of legal conclusions and argument that require no response. To the extent a response is required, Defendants deny the allegations.

**RESPONSE TO REQUESTED RELIEF**

Paragraphs 31 through 34 constitute Plaintiff's prayer for relief to which no response is required. To the extent a response is deemed required, Defendants deny that Plaintiff is entitled to the relief for which Plaintiff prays, or to any other relief as to Defendants. Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendants assert a general denial as to those allegations contained in the Complaint that are not specifically admitted herein.

WHEREFORE, having fully answered, Defendants respectfully request that the Complaint be dismissed with prejudice, and that this Court award Defendants such other and further relief as the Court may deem just and proper.

Respectfully submitted,  
CHANNING D. PHILLIPS, D.C. Bar #415793  
United States Attorney

DANIEL F. VAN HORN  
D.C. BAR # 924092  
Civil Chief

By: \_\_\_\_\_/s/  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25<sup>th</sup> day of October, 2016, the foregoing has been served on Plaintiff by first-class mail, postage pre-paid, and addressed as follows:

Heather McMillan Nakai  
404 King Farm Blvd. #02  
Rockville, MD 20850

/s/ Jeremy S. Simon  
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