

No. 19-5069

UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT

UNITED STATES DEPARTMENT OF THE INTERIOR; DAVID
LONGLY BERNHARDT, in his official capacity as Secretary of the Interior;
TARA M. SWEENEY, in her official capacity as Assistant Secretary of the
Interior for Indian Affairs,
Defendant-Appellants,

v.

KOI NATION OF NORTHERN CALIFORNIA,
Plaintiff/Appellee.

Appeal from the United States District Court for the District of Columbia
No. 1:17-cv-1718-BAH (Hon. Chief Judge Beryl A. Howell)

**FEDERAL APPELLANTS' MOTION FOR LIMITED REMAND
PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 12.1**

JEFFREY BOSSERT CLARK
Assistant Attorney General
ERIC GRANT
Deputy Assistant Attorney General
MATTHEW M. MARINELLI
JAMES A. MAYSONETT
Attorneys
Environment and Natural Resources
Division
U.S. Department of Justice
Post Office Box 7415
Washington, D.C. 20044
(202) 305-0216
james.a.maysonett@usdoj.gov

The Federal Defendants-Appellants respectfully move this Court for a limited remand under Federal Rule of Appellate Procedure 12.1(b) to allow the district court to rule on the United States' pending motion to partially amend the order underlying this appeal. Plaintiff-Appellee Koi Nation of Northern California takes no position on this motion.

1. On July 3, 2019, the United States asked the district court to clarify its summary judgment order in this case under Federal Rule of Civil Procedure 60(b). As the United States explained in that motion, the district court's order states that the regulation at issue here, 25 C.F.R. § 292.10(b), "is declared to be invalid and otherwise not in accordance with law," and the United States is concerned that this language might be read to invalidate this regulation in a manner that precludes its future application to other tribes acknowledged under 25 C.F.R. Part 83. Moreover, the United States believes that it was not the district court's intent to entirely invalidate Section 292.10(b) since the Court's January 16, 2019 opinion held only that Section 292.10(b) improperly "restricts tribes administratively 'restored to Federal recognition,' to those obtaining Federally recognized status through the [25 C.F.R.] Part 83 Federal acknowledgment process." As such, the United States moved the district court to amend that paragraph of its order to read:

ORDERED that 25 C.F.R. § 292.10(b), promulgated by the Department of the Interior, improperly excludes certain Indian tribes restored to federal recognition by the Department of the Interior by administrative action outside of the process established in 25 C.F.R. Part 83 from being classified as Indian tribes "restored to Federal recognition," under 25 U.S.C. § 2719(b)(1)(B)(iii).

The Koi Nation took no position on the motion.

2. Because the United States' filing of a notice of appeal in this case divested the district court of jurisdiction to grant this motion, however, the United States asked the district court for an "indicative ruling" under Federal Rule of Civil Procedure 62.1. *See Hoai v. Vo*, 935 F.2d 308, 312 (D.C. 1991).

3. On July 15, 2019, the district court granted the United States' motion, indicating that it "would grant the defendants' Rule 60(b) motion and amend the January 16, 2019 Order to clarify the scope of the Order in the way the defendants have requested." Order at 3.

4. By granting a limited remand here to allow the district court to amend its order, this Court will promote judicial efficiency because it will render moot some or all of the issues presented in this appeal, thus narrowing the scope of the appeal or even obviating the need for an appeal completely. The Court should not terminate this appeal at this time, however, and should otherwise retain jurisdiction to proceed with the appeal after the district court rules on the motion, because the United States has not abandoned its appeal yet.

5. Counsel for the United States has conferred with counsel for the Koi Nation. The Koi Nation takes no position on the relief requested in this motion.

For these reasons, the United States respectfully requests that this Court issue a limited remand pursuant to Federal Rule of Appellate Procedure 12.1(b), while otherwise retaining jurisdiction over this appeal, to permit the

district court to grant the United States' pending motion to partially amend its order.

Respectfully submitted,

s/ James A. Maysonett

JEFFREY BOSSERT CLARK

Assistant Attorney General

ERIC GRANT

Deputy Assistant Attorney General

MATTHEW M. MARINELLI

JAMES A. MAYSONETT

Attorneys

Environment and Natural Resources

Division

U.S. Department of Justice

July 19, 2019

90-2-4-15042

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 32(A)**

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Calisto MT, a proportionally spaced font. I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 549 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

s/ James A. Maysonett

James A. Maysonett

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing/attached document(s) with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit using the Appellate Electronic Filing system on July 19, 2019.

s/ James A. Maysonett
JAMES A. MAYSONETT

Counsel for Federal Appellees