NOT YET SCHEDULED FOR ORAL ARGUMENT

No. 22-5197

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

KURT KANAM, PILCHUCK NATION,
Plaintiffs/Appellants,

v.

DEB HAALAND, Secretary of the Interior;
BRYAN NEWLAND, Assistant Secretary – Indian Affairs;
DARRYL LaCOUNTE, Director, Bureau of Indian Affairs; and
BUREAU OF INDIAN AFFAIRS,
Defendants/Appellees.

Appeal from the United States District Court for the District of Columbia
No. 1:21-cv-1690 (Hon. Richard J. Leon)

FEDERAL DEFENDANTS' ANSWERING BRIEF

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and Amici

All parties, amici, and intervenors appearing before the district court and this court are listed in the Appellants' Opening Brief (Jan. 24, 2023).

B. Rulings Under Review

References to the memorandum opinion and order at issue appear in the Appellants' Opening Brief (Jan. 24, 2023). Those documents can be found in the Appellants' Appendix filed on February 1, 2023 (Doc. #1984251) at pp. 447-459.

C. Related Cases

The case on review has not previously been before this Court. Counsel is aware of one related case pending in the district court. Specifically, after the district court entered the final judgment now on appeal—dismissing Plaintiffs complaint for injunctive relief under the Administrative Procedure Act—Plaintiffs/Appellants filed a new claim for essentially the same relief, this time in the form of a petition for writ of mandamus. *See Kanam v. Haaland*, No. 22-cv-03183-RBW (D.D.C.)

/s/ *John L. Smeltzer*
JOHN L. SMELTZER

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GLOSSARY

APA	Administrative Procedure Act
App.	Plaintiffs' Appendix
Interior	U.S. Department of the Interior
Kanam	Plaintiff/Appellant Kurt Kanam
List Act	Federally Recognized Indian Tribe List Act of 1994
Part 83	25 C.F.R. Part 83

INTRODUCTION

Plaintiffs/Appellants the "Pilchuck Nation," an alleged Indian tribe, and Kurt Kanam ("Kanam"), the purported "chairman" of that tribe, brought this action to compel the Department of the Interior ("Interior") to add the tribe to the list of federally recognized Indian tribes. Neither Kanam nor anyone else acting for the tribe submitted a petition in accordance with Interior's regulations—codified at 25 C.F.R. Part 83 ("Part 83")—for determining whether an unrecognized organization is "an Indian tribe eligible for the special programs and services provided by the United States to Indians." *See* 25 C.F.R. § 83.2. Rather, Plaintiffs assert that Interior has a duty under the Federally Recognized Indian Tribe List Act of 1994 ("List Act"), Pub. L. No. 103-454, to recognize the Pilchuck Nation outside of Part 83 because the "Native American Justice Project"—an entity controlled by Kanam that purportedly was acting as the tribal court of the Native Village of Karluk, Alaska—summarily declared the Pilchuck Nation to be a "Treaty Tribe" under the Stevens Treaties.

As the district court correctly held, the List Act does not compel Interior to recognize an alleged Indian group as an Indian tribe based solely on a proffered tribal court judgment, even if the Karluk Judgment is presumed to be a bona fide judgment of a tribal court. Nor may Plaintiffs sue to compel tribal recognition

without exhausting administrative remedies under Part 83. The district court's judgment should be affirmed.

STATEMENT OF JURISDICTION

(A) The district court had subject matter jurisdiction under 28 U.S.C. § 1331, because Kanam asserted claims for relief under the Administrative Procedure Act (APA), 5 U.S.C. §§ 706(1), to compel the Bureau of Indian Affairs, the Secretary of the Interior, and others, to comply with duties allegedly owed under federal law. App. 11-17.[1]

(B) This Court has appellate jurisdiction under 28 U.S.C. § 1291 because the district court entered a final judgment of dismissal on June 28, 2022, disposing of all claims against all parties. App. 458-59 (ECF 31).

(C) Kanam's appeal is timely because he filed a notice of appeal on July 7, 2022, nine days after the entry of the district court's final judgment. *See* App. 8 (docket) (referencing ECF 32); *see also* Fed. R. App. P. 4(a)(1)(B)(ii).

STATEMENT OF THE ISSUE

Whether the List Act compels Interior to recognize the Pilchuck Nation based solely on a proffered tribal court judgment and notwithstanding Plaintiffs' failure to pursue federal recognition through Interior's Part 83 regulations.

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[1] "App." references are to the Appendix that Plaintiffs filed with their opening brief. *See* Doc. #1984251 (Feb. 1, 2023).

RELEVANT LAW AND FACTS

A. Stevens Treaties and the Pilchuck Nation

In 1854 and 1855, to facilitate non-Indian settlement of lands within the Washington Territory west of the Cascade Mountains, then Territorial Governor Isaac Stevens negotiated a series of treaties with resident Indians. *See Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 661, 666 (1979). To accomplish the negotiations, Governor Stevens "united . . . scattered Indian communities into a number of tribes and selected 'chiefs' from each tribe with whom to bargain." *United States v. State of Washington*, 520 F.2d 676, 682 (9th Cir. 1975). Stevens persuaded the Indians to relinquish nearly all their territory in exchange for monetary payments, small reservations, and the right to continue fishing at accustomed fishing grounds (on and off-reservation), *Washington*, 443 U.S. at 661-62.

There are numerous federally recognized tribes that were parties to the Stevens Treaties, including the Hoh Indian Tribe, the Lower Elwha Tribal Community, the Lummi Tribe, the Makah Indian Tribe, the Muckleshoot Indian Tribe, the Nisqually Indian Tribe, the Nooksack Indian Tribe, the Port Gamble S'Klallam Tribe, the Puyallup Tribe, the Quileute Tribe, the Quinault Indian Nation, the Sauk-Suiattle Indian Tribe, the Skokomish Indian Tribe, the Squaxin Island Tribe, the Stillaguamish Tribe, the Suquamish Indian Tribe, the Swinomish

Indian Tribal Community, the Tulalip Tribes, the Upper Skagit Indian Tribe, and the Confederated Tribes and Bands of the Yakama Nation. *See Washington*, 443 U.S. at 662 n.2.

One of the Stevens Treaties is the Treaty of Point Elliott, 12 Stat. 927 (1859); *see also* App. at 315-318. One of the signatories to that treaty was an Indian called "Pat-ka-nam," who signed on behalf of the "Snoqualmoo, Snohomish and other tribes." *See* App. 318; *see also* 12 Stat. 927, 930 (1859). In 1997, Interior recognized the Snoqualmie Indian Tribe, through its Part 83 regulations, 62 Fed. Reg. 45,864 (Aug. 29, 1997), based in part on its descent from the historic tribe led by Pat-ka-nam, *see* 58 Fed. Reg. 27,162, 27,163 (May 6, 1993) (referencing Chief "Pat Kanim"). The Treaty of Point Elliot does not expressly reference the "Pilchuck" tribe or any similarly named tribe or band. App. 315.

According to documents that Kanam proffered below, he (Kurt) is the adopted son of Robert Posenjak, who is a descendent of "*Pat* Kanam"—a presumed reference to the "Pat-ka-nam" who signed the Treaty of Point Elliott. App. 347-48, 356. The documents show that *Kurt* Kanam was born in 1969, that he was previously named Kurt *Weinreich*, that he was adopted by Posenjak in March 2008 as an adult, and that he thereafter changed his name to Kurt Kanam. App. 325-26. In a July 2008 affidavit, Posenjak declared: (1) that Pat Kanam was chief of a group called the "Pilchuck Tribe/Band," (2) that Posenjak received the title of

chieftain of the Pilchuck from his grandfather; and (3) that Posenjak thereafter "appoint[ed]" Kurt Kanam to be "aboriginal chieftain," granting Kanam "complete control of the Pilchuck government, and its members." App. 350.

B. Tribal Recognition and the List Act

Under federal law, Indian tribes possess aspects of sovereignty and are entitled to special programs and services. *California Valley Miwok Tribe v. Jewell*, 515 F.3d 1262, 1264-65 (D.C. Cir. 2008). To qualify for sovereign status and specified federal benefits, a tribe must be federally recognized. *Id*. at 1263; *Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 211 (D.C. Cir. 2013). Congress has given the Department of the Interior broad authority over the "management of all Indian affairs and of all matters arising out of Indian relations." 25 U.S.C. § 2; *see also* 25 U.S.C. § 9, 43 U.S.C. § 1457. This includes the "power of recognition of Indian tribes." *Muwekma*, 708 F.3d at 211 n.1 (quoting *Miami Nation of Indians of Ind., Inc. v. U.S. Department of the Interior*, 255 F.3d 342, 345 (7th Cir.2001)).

Historically, Interior made recognition decisions on an ad hoc basis. *Muwekma*, 708 F.3d at 211; *Mackinac Tribe v. Jewell*, 829 F.3d 754, 756 (D.C. Cir. 2016). In 1978, due to growing demands for recognition by tribal entities not on federal reservations or otherwise receiving federal services, Interior promulgated regulations establishing a formal acknowledgment (tribal recognition)

process. 43 Fed. Reg. 39,361 (Sept. 5, 1978); *see also* 59 Fed. Reg. 9280 (Feb. 25, 1994); 80 Fed. Reg. 37,862 (July 1, 2015) (revisions). The regulations are published at 25 C.F.R. §§ 83.1-83.46 and (as noted) are commonly referred to as "Part 83." After first adopting the regulations and in accordance with their terms, Interior began publishing an annual list of federally recognized tribes. *See* 44 Fed. Reg. 7235 (Jan. 31, 1979) (first list); *see also* 43 Fed. Reg. at 39,362 (adopting 25 C.F.R. § 54.6(b) (list requirement)). Interior explained that the acknowledgment procedures and requirements did not apply to tribes that were "already acknowledged" by and "receiving services" from Interior. 43 Fed. Reg. at 39,362 (adopting 25 C.F.R. § 54.3(b)).

In 1994, Congress enacted the List Act to codify the listing requirement. Pub. L. No. 103-454, Title I, 108 Stat. 4791 (1994). Specifically, the Act provides that the Secretary "shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. § 5131(a); *see also* 25 C.F.R. § 83.6(a). In so doing, Congress made a finding 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 . . . ; or by a decision of a United States court;

Pub. L. No. 103-454, § 103(3), 108 Stat. at 4791. Interior's most recent list of federally recognized tribes is published at 88 Fed. Reg. 2112 (Jan. 12, 2023).

C. Part 83 Regulations

Part 83 set out seven criteria that "indigenous entities" must meet to qualify for recognition. 25 C.F.R. §§ 83.3, 83.11. A petitioner must show, for the period from 1900 to the present, (a) that it has been "identified as an America Indian entity on a substantially continuous basis"; (b) that it "comprises" and "has existed" as a "distinct community"; and (c) that it has "maintained political authority over its members." *Id*. § 83.11. A petitioner must also provide: (d) a "governing document" or description of its "membership criteria and governing procedures"; (e) proof that its members "descend from a historical Indian tribe" or tribes that combined and functioned as a single autonomous entity; and (f) proof that its members are "unique" and not members of another federally recognized tribe. *Id*. Finally, Interior must verify (g) that the entity or its members are not subject to legislation that terminated the federal-tribal relationship. *Id*.

If a petitioner can show that it was "previously acknowledged" by the United States, it is subject to a somewhat relaxed set of criteria. *Id*. § 83.12. Previous acknowledgment may be evidenced by prior treaty relations with the United States, a prior "act of Congress or Executive Order," prior conduct by federal officials treating an Indian entity as having "collective rights in tribal lands

or funds," or prior actions by the United States to hold land for an Indian entity "or its collective ancestors." *Id.* § 83.12(a).

Simultaneously with the issuance of the 2015 revisions to Part 83, Interior published a guidance document acknowledging that in "limited circumstances" after the adoption of Part 83, it had added tribes to the list of federally recognized tribes through administrative processes other than Part 83 (e.g., on the view that, due to factual or administrative error, such tribes had been improperly omitted from the initial list of tribes exempt from Part 83). 80 Fed. Reg. 37,538, 37,539 (July 1, 2015). Considering the 2015 revisions, and the comprehensive review of the recognition process that led to the revisions, Interior announced that, going forward, the Part 83 process would be the "sole administrative avenue for [official] acknowledgment" of Indian tribes. *Id.*

D. Course of Proceedings

1. 2018 Complaint and Judgment of Dismissal

In 2014, Kanam sent a one-page letter to Interior, asking Interior to "please take notice" of an attached 2012 judgment from the "Karluk Tribal Court" (hereinafter, the "Karluk judgment") declaring the Pilchuck Nation to be a "Treaty Tribe" under the Stevens Treaties, and to "please include the Pilchuck Nation on the list of Federally recognized tribes" based on the Karluk Judgment. App. 227, 344. The letter and proffered Karluk Judgment did not provide any information

about the Pilchuck Nation, Kanam's relationship to that alleged entity, or the nature and jurisdiction of the Karluk Tribal Court. *Id.* Interior took no action in response to the letter.

On July 23, 2018, Kanam filed a pro se complaint in the district court below, asking the court to compel Interior to include the Pilchuck Nation on the list of federally recognized tribes, based on the Karluk Judgment and Kanam's 2014 recognition request. App. 336-42 (complaint in *Kanam v. Zinke*, No. 1:18-cv-01760-TNM). Interior promptly moved to dismiss, citing Kanam's inability, as a pro se plaintiff, to file claims on behalf of an alleged tribal entity, and Kanam's failure to state a claim. *See Kanam v. Zinke*, D.D.C. No. 1:18-cv-01760-TNM, Motion to Dismiss, Doc. 5 (Oct. 29, 2018). The court directed Kanam to respond to Interior's motion by November 30, 2018, and "warn[ed]" him that a failure to respond could be treated by the court as a concession and could result in dismissal of the action. *See id.* Order, Doc. 8 (Nov. 1, 2018) (citing D.D.C. Local Rule 7(b)).

Instead of responding to the motion to dismiss, Kanam moved to amend his complaint to seek relief under the Freedom of Information Act ("FOIA"), *id.* Doc. 10 (Nov. 19, 2018), and to stay proceedings pending Interior's response to his FOIA request, *id.* Doc. 11 (Nov. 19, 2018). The district court denied those motions on November 28, 2018. *Id.* Doc. 13 (Nov. 28, 2018). On December 12,

2018, the district court issued an order dismissing Kanam's complaint due to Kanam's failure to respond to the motion to dismiss. *Id.* Doc. 14 (Dec. 12, 2018). Kanam moved for reconsideration. *Id.* Doc. 20 (dated Dec. 31, 2018) (entered Jan. 9, 2019). The district court denied that request. *Id.* Doc. 21 (Jan. 17, 2019).

2. Present Complaint

On March 30, 2021, an attorney purporting to represent the Pilchuck Nation sent a one-page letter to Interior, mirroring Kanam's 2014 request for tribal recognition. *See* App. 229 (2021 letter); *see also* App. 227 (2014 letter). Specifically, the 2021 letter asked Interior to "take notice" of the Karluk Judgment, and to "please include" the Pilchuck Nation on the list of federally recognized tribes based solely on that judgment. App. 229. The letter included a "cc" to Kurt Kanam, but again provided no information on the Pilchuck Nation, Kanam's relationship to that purported tribal entity, or the Karluk Tribal Court. *Id.*

Approximately two months later, on June 25, 2021, counsel filed the present suit on behalf of Kanam and the Pilchuck Nation. *See* App. 10-17.[2] The complaint alleged:

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[2] Attorney Laurence Socci signed the 2021 letter and filed the 2021 complaint. *See* App. 17, 229. Attorney Margaret Farid also appeared on behalf of the Plaintiffs below and represents Plaintiffs on appeal. *See* App. 7 (docket entry 22).

- that Kanam is the "elected Chairman of the Pilchuck Nation" and was "authorized" to bring the suit on the tribe's behalf, App. 12 (¶ 5); *see also* App. 110, 208 (verifications);
- that the Pilchuck Nation is a "treaty tribe that occupies the status of a party to one or more of the Stevens' treaties and therefore holds for the benefit of its members a reserved right to harvest anadromous fish and all usual and accustomed places outside the reservation boundaries, in common with each other," App. 12-13 (¶¶ 6, 12);
- that the Karluk Tribal Court issued a declaratory judgment in 2012 (Karluk Judgment) declaring the Pilchuck Nation to be a "Treaty Tribe" entitled to such benefits, App. 13 (¶ 13);
- that a federal district court in Washington—namely, the court with jurisdiction over a longstanding suit concerning tribal fishing rights under the Stevens Treaties, *United States v. Washington*, W.D. Wash. No. 2:70-cv-90213—is "obliged to register" the 2012 tribal court judgment under the "Uniform Foreign Judgments Act," *id.*;
- that Kanam and the Pilchuck Nation sent letters to Interior, in 2014 and 2021 respectively, requesting that Interior place the Pilchuck Nation on the list of federally recognized tribes based on the Karluk Judgment, App. 13-14 (¶¶ 14-16); and

- that Interior failed to act on Kanam's petitions. App. 14 (¶¶ 16-17).

Based on these allegations, the complaint asserted three causes of action: (1) a claim under the Administrative Procedure Act ("APA"), 5 U.S.C., §706(1), to "compel agency action unlawfully withheld or unreasonably delayed," App. 14-15 (¶¶ 21-25); (2) a claim under the APA, 5 U.S.C. § 706(2), to set aside agency action deemed "arbitrary and capricious" or "not in accordance with law," App. 15-16 (¶¶ 26-31); and (3) a claim for alleged violations of the Fifth Amendment's due process clause, App. 16 (¶¶ 32-33). As to all three claims, the complaint sought an order requiring Interior, within 30 days of the date of such order, to act on the petitions to recognize the Pilchuck Nation. App. 17 (¶ 34).

Interior again moved to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. App. 24-50. Interior observed that Kanam's claims were barred by res judicata and the 2018 judgment in *Kanam v. Zinke*, which Kanam never appealed. App. 35-40. Interior also explained that the complaint failed to identify any statute or regulation requiring Interior to recognize the Pilchuck Nation outside the Part 83 process, that Plaintiffs had failed to exhaust administrative remedies under Part 83, and that Plaintiffs had failed to identify any final agency action subject to review under APA §§ 704 and 706(2). *See* App. 40-50.

3. *Motions to Amend and Evidentiary Proffer*

Plaintiffs responded with a "blizzard of procedural motions," *see* App. 450, including motions for leave to amend the complaint to add claims for a writ of mandamus under 28 U.S.C. § 1361, and for relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. *See* App. 5, 7 (docket sheet) (Doc. Nos. 10, 23); App. 132-33, 186, 193-94 (proposed amendments). In connection with these motions, Plaintiffs proffered numerous exhibits, including copies of:

- Kanam's 2014 letter, which asked the Assistant Secretary–Indian Affairs to "take notice" of the Karluk Judgment, and to include the Pilchuck Nation on the list of federally recognized tribes solely on the basis of that judgment, App. 227, 344;
- a 2021 letter from counsel representing the Pilchuck Nation (with a "cc" to Kanam), which reiterated Kanam's 2014 letter request to the Assistant Secretary–Indian Affairs, App. 229;
- the Karluk Judgment, i.e., the March 19, 2012 judgment that declared the Pilchuck Nation to be a "Treaty Tribe" with benefits under the Stevens Treaties (App. 347-48);
- Kanam's 2011 complaint filed in the Karluk Tribal Court against "all active parties" to the suit in *United States v. Washington*, W.D. Wash.

No. 2:70-cv-90213, which led to the Karluk Judgment, App. 290-301; and

- a one-page "praecipe," bearing a file stamp of April 26, 2012 from the United States District Court for the Western District of Washington, asking that court to "register" the Karluk Judgment "as miscilanious files" (sic.), App. 286.

The "praecipe" asked the federal district court to send a "receipt" to the Karluk Tribal Court at a post office box in Toledo, Washington. *Id.* The Karluk Judgment lists the same post office box as the Karluk Tribal Court's address. App. 347-48. Plaintiffs also proffered a "Tribal Court Contract Agreement," which indicates that, approximately two weeks before the Karluk Judgment, the Native Village of Karluk, a federally recognized tribe located on Kodiak Island in Alaska, authorized the "Native American Justice Project" of Olympia, Washington to serve as the Karluk Tribal Court. App. 365; *see also* 88 Fed. Reg. at 2115 (listing Native Village of Karluk). Kanam signed that contract as "Director" of the Native American Justice Project, *id.*, and had himself appointed as "Tribal Court Administrator," App. 366; *see also Koniag, Inc. v. Kanam*, 615 Fed. Appx. 403 (9th Cir. 2015) (describing Kanam as "Tribal Attorney for the Native Village of Karluk").

4. *District Court Judgment*

The district court granted Interior's motion to dismiss on June 28, 2022. App. 447-59. Without addressing the res judicata impact of the 2018 judgment, the court held that Plaintiffs lack a cause of action due to their failure to exhaust administrative remedies under Part 83. App. 452-57. The court determined that Plaintiffs may not rely on the Karluk Judgment to circumvent Part 83—even if the Karluk Tribal Court was a duly authorized court of a federally-recognized tribe—because no tribal court has jurisdiction to issue a recognition decision binding on the United States. *See* App. 448 n.1, 454-55. The court also denied Plaintiffs' motions to amend, holding that the proposed amended complaints would not cure the deficiencies in Kanam's original complaint and would be futile. App. 456. And the district court denied other pending motions as moot. App. 457-58.

SUMMARY OF ARGUMENT

Plaintiffs' complaint is founded on the claim that Interior has a mandatory duty under the List Act to include the Pilchuck Nation on the list of federally recognized tribes, solely because the Pilchuck Nation was summarily declared to be a "treaty tribe" under the Stevens Treaties by an alleged "United States court." That claim rests on two contentions: (1) that Plaintiffs were entitled under the List Act, as an alternative to seeking recognition under Part 83, to adjudicate their right to federal recognition in the "United States court" of their choice, and (2) that the

"Native American Justice Project," an entity controlled by Kanam and allegedly operated under contract as a tribal court for the Native Village of Karluk, Alaska, constituted a "United States court" for List Act purposes. Both contentions are incorrect; the latter is a manifest non-starter.

In their brief, Plaintiffs focus entirely on the first contention, arguing that Interior "usurped" the judicial path to recognition by requiring Plaintiffs to proceed under Part 83 and that the district court erred in affirming that alleged usurpation. But this Court need not address Plaintiffs' arguments about the so-called judicial path to recognition. Even if the List Act somehow provides such a path to tribal recognition outside of Part 83—a proposition for which Plaintiffs provide no legal support and which Interior does not concede—the Karluk Judgment plainly is not a "decision by a United States court" under the List Act. The district court's judgment should be affirmed.

STANDARD OF REVIEW

This Court reviews *de novo* the dismissal of a complaint for failure to state a claim, accepting the plaintiff's factual allegations as true and drawing all reasonable inferences in the plaintiff's favor." *Xereas v. Heiss*, 987 F.3d 1124, 1130 (D.C. Cir. 2021). This Court also reviews *de novo* the application of res judicata. *Ashbourne v. Hansberry*, 894 F.3d 298, 302 (D.C. Cir. 2018).

ARGUMENT

I. Assuming, arguendo, that the Pilchuck Nation exists as an Indian entity, that entity's claims are not barred by res judicata.[3]

A. Kanam's claims are barred.

As just explained (pp. 9-10, *supra*), in 2018, Kanam filed a pro se complaint, seeking an order to compel Interior to include the Pilchuck Nation on the list of federally recognized tribes based solely on the Karluk Judgment, *see* App. 336-42 (2018 complaint), the very same relief that Kanam and the Pilchuck Nation now seek in the present case, *see* App. 10-17 (2021 complaint). The district court ordered the 2018 complaint "dismissed" and directed the case to be "closed," citing local rule 7(b) and Kanam's failure to respond to Interior's motion to dismiss. *See* *Kanam v. Zinke*, No. 1:18-cv-01760-TNM, Doc. 14 (Dec. 12, 2018); *see also id.* Doc. 21 (Jan. 17, 2019) (denying reconsideration).

Under the Federal Rules of Civil Procedure, "any dismissal"—excluding a dismissal "for lack of jurisdiction, improper venue, or failure to join a party under

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[3] Shortly after filing his notice of appeal, Kanam moved for summary reversal. *See* Doc. #1960500 (Aug. 23, 2023). In response, Interior moved for summary affirmance. *See* Doc. #1964411 (Sept. 16, 2022). In denying both motions, this Court directed the parties to "address whether the present suit is barred by the doctrine of claim preclusion." *See* Order, Doc. #1978946 (Dec. 23, 2022). Plaintiffs' opening brief purports to address claim preclusion but does so without acknowledging the 2018 judgment in Kanam's pro se suit or the impact of that judgment. *See* Opening Brief at 30-39.

Rule 19"—"operates as an adjudication on the merits," unless "the dismissal order states otherwise." *See* Fed. R. Civ. P. 41(b). The dismissal of Kanam's pro se complaint was not for want of jurisdiction, for improper venue, or for failure to join an indispensable party; nor did the district court specify that the judgment was "without prejudice." *See Kanam v. Zinke*, No. 1:18-cv-01760-TNM, Doc. 14 (Dec. 12, 2018). Accordingly, although it was a default judgment—based on Kanam's failure to respond to the court's directives and not on the merits of Kanam's claim—it was "on the merits" for res judicata purposes. Fed. R. Civ. P. 41(b). And it precludes Kanam's present claim. *See Morris v. Jones*, 329 U.S. 545, 551 (1947) (default judgments have preclusive effect); *accord Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1329 (Fed. Cir. 2008).[4]

[4] Rule 7(b) does not mandate dismissal for failure to respond to a dispositive motion, *see* D.D.C. Local Rule 7(b), and district courts must exercise their discretion under Local Rule 7(b) consistent with the Federal Rules of Civil Procedure and due process. *See Winston & Strawn, LLP v. McLean*, 843 F.3d 503, 506-509 (D.C. Cir. 2016) (reversing grant of summary judgment under Local Rule 7(b) as inconsistent with Fed. R. Civ. P. 56)); *Fox v. Strickland*, 837 F.2d 407, 508-09 (D.C. Cir. 1988) (reversing dismissal order under Rule 7(b) where pro se defendant was not afforded "fair notice"). Moreover, "the harsh sanction of dismissal for failure to prosecute is ordinarily limited to cases involving egregious conduct by particularly dilatory plaintiffs." *Peterson v. Archstone Communities* LLC, 637 F.3d 416, 418 (D.C. Cir. 2011) (cleaned up). Kanam could have raised such issues on direct appeal. His failure to do so precludes him from raising those issues now. *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 297 (2013) ("even an erroneous judgment is entitled to res judicata effect").

B. The Pilchuck Nation's claim is not barred.

The Pilchuck Nation, however, was not named as a party to the 2018 complaint. *See* App. 336-42. Because the Pilchuck Nation acknowledges Kanam to be its "chairman," *see* App. 12 (¶ 5) (complaint), the tribe arguably could be bound to the default judgment in *Kanam v. Zinke*, No. 1:18-cv-01760-TNM, as a party in privity. *See generally Taylor v. Sturgell*, 553 U.S. 880, 894-95 (2008). But Kanam did not file his pro se complaint specifically as a tribal agent or representative. His complaint alleged only that he was a tribal "member." App. 337 (¶ 2). Moreover, as a pro se litigant and non-attorney, Kanam could not represent the tribe in court; he could only represent his own interests. *Georgiades v. Martin-Trigona*, 729 F.2d 831, 834 (D.C. Cir. 1984) (citing *Herrera-Venegas v. Sanchez-Rivera*, 681 F.2d 41, 42 (1st Cir.1982)).

The same or similar defect was also present in Kanam's 2014 letter request to Interior. In the letter, Kanam did not claim to be the "chairman" of the Pilchuck Nation or even a tribal member, and he did not express any authority to represent the Pilchuck Nation. App. 227. Thus, at the time of Kaman's pro se suit to compel federal recognition of the Pilchuck Nation, Interior had not received any official request from anyone asserting authority to represent the tribe. Interior could have properly disregarded Kanam's 2014 letter on that basis alone. It was only after Kanam's pro se suit was dismissed that Interior received a request for recognition

(in 2021) by an attorney purporting to "represent the Pilchuck Nation." App. 229. Accordingly, the present suit—filed after the 2021 letter—arguably arose on materially different facts.

To be clear, Interior does not concede that there is a group of persons of American Indian descent or otherwise (apart from Kanam) who identify as the Pilchuck Nation. But when resolving a motion to dismiss, the court must draw all reasonable inferences in the plaintiffs' favor. *Xereas*, 987 F.3d at 1130. For the reasons stated, if there is a tribal group that exists apart from Kanam—a point Interior did not dispute in its motion to dismiss—the present claims of that group are not precluded by the default judgment entered against Kanam personally.

II. Plaintiffs failed to state a cause of action to compel listing of the Pilchuck Nation.

Nonetheless, the complaint filed on behalf of the Pilchuck Nation (whether by Kanam or by some separate group), clearly fails to state a claim for relief. Plaintiffs seek to compel Interior—either under APA § 706(1) or via a petition for writ of mandamus, 28 U.S.C. § 1361—to include the Pilchuck Nation on the list of federally recognized tribes, solely in consideration of the Karluk Judgment. *See* App. 17, 206-207. To establish this claim, Plaintiffs must identify a statute, regulation, or other source of positive law that imposes the alleged obligation on Interior as a "ministerial or nondiscretionary duty." *Western Organization of Resource Councils v. Zinke*, 892 F.3d 1234, 1241 (D.C. Cir. 2018) (quoting *Norton*

v. Southern Utah Wilderness Alliance, 542 U.S. 55, 63-64 (2004)); *see also In re Cheney,* 406 F.3d 723, 725-26, 729-30 (D.C. Cir. 2005) (en banc). Here, Plaintiffs contend (Brief at 42-50) that the List Act imposes such a ministerial duty. But Plaintiffs' reliance on the List Act is plainly misplaced.

A. The List Act does not compel Interior to defer to tribal court judgments.

Plaintiffs rely on the Congressional "finding" in the List Act, 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 . . . ; or by a *decision of a United States court*.

See Pub. L. No. 103-454, § 103(3), 108 Stat. at 4791 (emphasis added); *see also* Brief at 43-44 (quoting finding).[5] Kanam contends (Brief at 25-30, 43-50) that the Karluk Judgment—which summarily identifies the Pilchuck Nation as a "treaty tribe" under the Stevens Treaties (App. 147-48)—is a "decision of a United States Court," and, therefore, that the Pilchuck Nation is entitled to recognition on this alleged alternative basis, without need for a petition under Part 83. This argument is manifestly without merit.

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[5] Kanam mistakenly contends (Brief at 1, n.1) that this finding was "codified" at "25 U.S.C. § 479(a)." Parts of the List Act were codified at 25 U.S.C. §§ 479a to 479a-1 (now 25 U.S.C. §§ 5130-5131). But the codified sections did not include the subject finding, which appears as a note to § 5130. The List Act and code provisions are reproduced in their entirety in the addendum to this brief.

As a threshold matter, Congress's "finding" that "Indian tribes may be recognized . . . by a decision of a United States court," Pub. L. No. 103-454, § 103(3), 108 Stat. at 4791, is not a statutory duty imposed on Interior. The only duty specified in the List Act is Interior's duty to publish annually "a list of all Indian tribes *which the Secretary recognizes to be eligible* for the special programs and services provided by the United States to Indians." 25 U.S.C. § 5131(a) (emphasis added). Kanam does not contend that Interior failed to publish a list of Indian tribes that the *Secretary* recognizes to be eligible federal services and benefits. *See*, *e.g.*, 88 Fed. Reg. 2112 (current list).

Moreover, although the List Act "finding" indicates that Tribes may be recognized "by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations,. . . ; *or by a decision of a United States court*," Pub. L. No. 103-454, § 103(3), 108 Stat. at 4791 (emphasis added), the use of the disjunctive "or" does not mean that Congress envisioned a judicial recognition process independent from Part 83. As just noted, the List Act's mandate—that Interior publish and maintain a list of tribes recognized by the *Secretary*, 25 U.S.C. § 5131(a)—is consistent with longstanding federal statutes (25 U.S.C. §§ 2 and 9), by which Congress entrusted tribal recognition decisions to the Secretary of the Interior and subordinate officials. *See Muwekma*, 708 F.3d at 211 n.1. Because Congress has so entrusted Interior, this Court has repeatedly held

that non-recognized entities may not sue to compel official recognition without exhausting their remedies under Part 83. *See Mackinac*, 829 F.3d at 757; *James*, 824 F.2d at 1137-38; *see also Mdewakanton Band of Sioux in Minnesota v. Haaland,* 848 Fed. Appx. 439, 440-41 (D.C. Cir. 2021) (unpublished). In this context, the only occasion for a "decision by a United States court" on tribal recognition is upon review of a final agency determination under Part 83.

In any event, even if Interior conceivably might have a "ministerial duty" under the List Act to include, on the list of federally recognized tribes, a tribe that has been judicially recognized in some other circumstance (a matter this Court need not address), that duty is inapplicable here. For at least three reasons, the List Act's reference to a "decision of a United States court," Pub. L. No. 103-454, § 103(3), 108 Stat. at 4791, cannot plausibly be construed as applying to the Karluk Judgment.

First, the term "United States court" plainly references a *federal* court. *Cf.* 28 U.S.C. § 451 (defining "court of the United States" to mean specified courts established by Congress). Kanam's "Native American Justice Project"—even if it was operating as a bona fide tribal court of the Native Village of Karluk (a matter not self-evident from Plaintiffs' proffer)—was in no sense a federal court.

Second, federal law generally confines tribal court jurisdiction to matters involving tribal members, tribal land, or other tribal interests. *See Strate v. A-1*

Contractors, 520 U.S. 438, 445-453 (1997). Whether the Pilchuck Nation, an alleged "Stevens Treaty tribe," is entitled to a government-to-government relationship with the United States is a question wholly unrelated to the interests and judicial authority of the Native Village of Karluk, Alaska. *Id.*

Third, to require Interior to accept the judgment of the Karluk Tribal Court (on the assumption that it somehow possessed subject matter jurisdiction) would be tantamount to compelling the United States to submit to the jurisdiction of that tribunal. That result would be contrary to the longstanding rule that "[j]urisdiction over any suit against the Government requires a clear statement from [Congress] waiving sovereign immunity." *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003). Congress's "findings" in the List Act plainly do not waive federal sovereign immunity; nor have Plaintiffs identified any other relevant waiver with respect to the tribal court proceeding.

Thus, contrary to Plaintiffs' arguments (Brief at 26, 53-57), the United States plainly had no obligation to "answer[]" the tribal court summons,[6] or to

[6] Plaintiffs proffered evidence that Kanam sent a complaint (App. 296-300), a tribal court summons (App. 294-95), and the tribal court's "show cause order" (App. 293), to "[a]ll active parties of U.S. v. Washington" "Cause No. 2:70-cv-09213," via United States mail. App. 291; *see also* App. 304-310 (apparent service list). But Plaintiffs proffered no evidence of service under the requirements of federal law, *see* Fed. R. Civ. P. 4(i), or that service was received. Regardless, for reasons stated, even if service was made, the United States had no obligation to respond to a summons from a court that lacked jurisdiction over the United States.

"exhaust remedies" in the Karluk Tribal Court. Kanam's effort to adjudicate the Pilchuck Nation's right to *federal* recognition in the *tribal* forum of his choice (which he also happened to control) was nothing more than a stunt. Even if the Native Village of Karluk properly authorized Kanam's "Native American Justice Project" to operate as a tribal court for matters within that tribe's jurisdiction,[7] Congress plainly has not authorized any tribe or tribal court to adjudicate questions of tribal recognition for the United States, i.e., in a manner binding on federal officials for purposes of administering federal programs.

B. The District Court for the Western District of Washington did not adjudicate the status of the Pilchuck Nation.

Kanam attempted to give the Karluk Judgment the imprimatur of a United States court judgment by submitting it to the United States District Court for the Western District of Washington, *see* App. 144-46, 222-24, purportedly for "registration" under "the Uniform Foreign Judgement Act," App. 148, 225; *see also* Opening Brief at 6-7. As Plaintiffs observe (Brief at 6-7), the "Praecipe" that Kanam submitted to the federal district court evidently was filed-stamped by the clerk and filed as a miscellaneous matter (No. MC12-5019). *See* App. 145, 222.

[7] Plaintiffs proffer no evidence that the Native Village of Karluk authorized Kanam's Native American Justice Project to exercise jurisdiction over any claim for federal recognition, or any other claim against federal officials. The proffered tribal-court contract agreement appears to be of more limited scope. See App. 365.

But there is no merit to Plaintiffs' assertion (Brief at 26) that this one-time "registration" provided the United States (or any other party) a "full and fair opportunity" to challenge the Karluk Judgment in federal district court. In contrast to the tribal court complaint and summons, which Kanam allegedly served on the United States and other parties to *United States v. Washington*, App. 291, Plaintiffs proffer no evidence that Kanam served the "Praecipe" on other parties, or that the "registration" resulted in any federal court proceedings. *See* App. 145, 222. The civil docket sheet for the case shows nothing other than the fact of Plaintiffs' filing. *See* Civil Docket for Case # 3:12-mc-05019 (W.D. Wash) (attached in the addendum to this brief).[8]

Contrary to Plaintiffs' argument (Brief at 6-7, 26, 29), there is no *federal* "Uniform Foreign Judgments Act," much less a federal statute providing for the registration of tribal court judgments. While many states and the District of Columbia have adopted the "Uniform Enforcement of Foreign Judgments Act," that statute is limited to the enforcement of federal court judgments and judgments entitled to full faith and credit under the United States Constitution. *See Baker by Thomas v. General Motors*, 522 U.S. 222, 235 & n.8 (1998); *see also* Uniform

[8] The docket sheet is a public record subject to judicial notice on a motion to dismiss. *See Citizens for Responsibility and Ethics in Washington v. Trump*, 924 F.3d 602, 607 (D.C. Cir. 2019).

Enforcement of Foreign Judgments Act, § 1 (1964). The Full Faith and Credit Clause is limited to *state* court judgments. U.S. Const. Art. IV, § 1. There is no federal statute or constitutional provision requiring federal (or state) courts to give full faith and credit to *tribal* court judgments. *Wilson v. Marchington*, 127 F.3d 805, 809 (9th Cir. 1997). And even if there were such a statute, it would not authorize the enforcement of a judgment by a tribal court (or any other court) that lacked subject matter jurisdiction. *See McDonald v. McDonald v. American Red Cross,* 505 F.Supp.2d 143, 146 (D.D.C. 2007) (citing *Masri v. Adamar of New Jersey*, Inc., 595 A.2d 398, 400 (D.C. 1991)).

Whether federal courts possess any discretion to enforce tribal court judgments is an open question. The Eleventh Circuit has held that federal courts have no such jurisdiction. *Miccosukee Tribe of Indians v. Kraus-Anderson Const. Co.*, 607 F.3d 1268, 1272-77 (11th Cir. 2010). The Ninth Circuit has stated that federal courts may enforce tribal court judgments as a matter of comity. *Marchington*, 127 F.3d at 810-13. But that court made it clear that tribal court judgments may not be enforced in comity if the issuing tribal court lacked jurisdiction or failed to provide due process. *Id.*; *see also Bird v. Glacier Electric Coop.*, *Inc.*, 235 F.3d 1136, 1141 (9th Cir. 2001). For all these reasons, the district court's mere "registration" of the Karluk Judgment upon Kanam's request cannot transform that ultra vires declaration into a binding judgment.

C. Plaintiffs' arguments regarding the supposed "judiciary" path to recognition are not before the Court.

Instead of confronting the obvious flaw in their legal theory—that the Karluk Judgment is not a "decision of a United States court" for purposes of the List Act, Pub. L. No. 103-454, § 103(3), 108 Stat. at 4791—Plaintiffs make a series of convoluted arguments (Brief at 15-40) "centered around jurisdiction, agency remand, and a statutory interpretation of the List Act," *id*. at 19. To recapitulate, this Court has repeatedly held that no tribal group may sue Interior to be included on the list of federally recognized tribes without first applying for recognition under Part 83 and thus providing Interior the historical evidence and other information needed for determining whether the group qualifies for recognition. *See Mackinac*, 829 F.3d at 757; *James*, 824 F.2d at 1137-38; *Mdewakanton Band*, 848 Fed. Appx. at 440-41. Plaintiffs contend that the List Act provides an exception for tribes "recognized . . . by a decision of a United States Court." Pub. L. No. 103-454, § 103(3), 108 Stat. at 4791. But as explained above, there is no occasion for a judicial decision on tribal recognition except upon review of a decision by Interior under Part 83.

Because Interior takes the position, consistent with this Court's precedents, that requests for tribal recognition must proceed under Part 83, Plaintiffs contend (Brief at 16, 34, 37, 39, 41, 44-45) that Interior has "removed," by regulatory policy, the List Act's alleged alternative "judiciary" path to federal recognition.

Plaintiffs attribute this alleged "usurp[ation]" of judicial authority, *id*. at 36, 37, 44, to the 2015 policy statement (80 Fed. Reg. 37,538) that Interior issued when revising Part 83, *id*. at 1-2, 9, 14, 26, 32. And Plaintiffs accuse Interior of relying on the 2015 policy statement as a "post hoc" rationale in this case. *Id.* at 1-2, 19-24. Plaintiffs thus argue that the district court erred in considering Interior's alleged post hoc rationale (*id.* at 19-24) and in crediting it (*id.* at 32-50).

These arguments suffer at least three critical flaws. *First*, as already explained, Plaintiffs do not rely on the judgment of a "United States court." Instead, they rely on an alleged tribal court judgment. *See* pp. 21-25, *supra*. Even if Kanam's "Native American Justice Project" was acting as a bona fide tribal court of the Native Village of Karluk under tribal law, it plainly was not a "United States court" for purposes of the List Act, Pub. L. No. 103-454, § 103(3), 108 Stat. at 4791.

Second, the 2015 policy statement has no bearing on the issue of an alleged independent judicial path to recognition. As explained (p. 8, *supra*), the 2015 policy statement addressed Interior's practice, following the promulgation of Part 83, to *administratively* recognize some tribes outside of Part 83. *See* 80 Fed. Reg. at 37,539. Interior's policy statement was limited to announcing that it would no longer consider such requests. *See* 80 Fed. Reg. at 37,538-39.

Third, Interior's reliance on the plain language of the List Act is not an improper "post hoc" argument. Because Interior took no action on the 2014 and 2021 letter requests, there is no contemporaneous record of the reason Interior declined to act. But Interior has no legal duty under the List Act or otherwise to respond in writing to every request it receives, no matter how cursory or lacking in substance.[9] The List Act plainly provided no basis for Plaintiffs' request. In making that point in response to Plaintiffs' suit, Interior did not adopt a new post-complaint rationale for a challenged final agency action. Interior simply explained that Plaintiffs' suit to compel agency action has no basis in law.

D. The district court properly dismissed Plaintiffs' motions.

Contrary to Plaintiffs' arguments (Brief at 13, 19, 58) the district court also committed no error or abuse of discretion in dismissing as "moot" three motions that were pending at the time of the court's decision on Interior's motion to dismiss: (1) Plaintiffs' motion for an expedited hearing (App. 239-42); (2) Plaintiffs' motion to file a memorandum of law in support of their complaint (App. 246-47); and (3) Plaintiffs' motion to compel Interior to compile the administrative record (App. 432-442). *See* App. 458-59.

[9] Under Part 83, Interior must take specified actions in response to a "documented petition" for recognition by a tribal group, including to make a final determination on a specified schedule. *See generally* 25 C.F.R. §§ 83.22-26, 83.32-42. But here Plaintiffs refused to submit a part 83 petition.

In seeking an expedited hearing, Plaintiffs did not proffer evidence pertinent to Interior's motion to dismiss; they only sought expedited consideration of their complaint (App. 239-242), a request that plainly became moot upon the court's final judgment of dismissal.

Similarly, Plaintiffs' motion to file a supplemental memorandum of law was not trained on Interior's motion to dismiss. *See* App. 246-47. Nor do Plaintiffs contend that the district court's denial of their motion for supplemental briefing—after granting Interior's motion to dismiss—prevented them from asserting on appeal points of law pertinent to the judgment of dismissal (App. 250-281). The court's denial of Plaintiffs' motion is thus irrelevant to their appeal.

Finally, under the district court's local rules, when filing a dispositive motion in a suit for judicial review of agency action, an agency ordinarily must submit an index of the administrative record and must thereafter provide the court with copies of record materials cited in its motion. *See* D.D.C. Rule 7(n)(1). But this requirement may be waived by the court, *id*., and the court's application of its own rules is reviewable only for an abuse of discretion. *See Texas v. United States*, 798 F.3d 1108, 1113 (D.C. Cir. 2015). Here, Plaintiffs themselves provided the district court with the letter requests and Karluk Judgment that allegedly gave rise to Interior's mandatory duty to recognize the Pilchuck Nation. *See* App. 227,

229, 344, 347-48.[10] Plaintiffs do not argue that the district court was missing any documents pertinent to judicial review of Interior's alleged duty.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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March 16, 2023
DJ # 90-2-4-16428

[10] With their several motions, Plaintiffs also proffered documents beyond those submitted to Interior. *See generally* App. 145-165, 218-238, 283-370.

ADDENDUM

Pub. L. No. 103-454, 108 Stat. 4791 (Nov. 2, 1994) 1a

25 U.S.C. § 5130 .... 3a

25 U.S.C. § 5131 .... 3a

Civil Docket for Case # 3:12-mc-05019 (W.D. Wash) 4a

UNITED STATES PUBLIC LAWS

103rd Congress - Second Session
Convening January 25, 1994

Pub. L. No. 103-454, Title I (HR 4180)
November 2, 1994

[108 Stat. 4791]

FEDERALLY RECOGNIZED INDIAN TRIBE LIST ACT OF 1994

An Act to provide for the annual publication of a list of federally recognized Indian tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—WITHDRAWAL OF ACKNOWLEDGEMENT OR RECOGNITION

<< 25 USCA § 479a NOTE >>

SEC. 101. SHORT TITLE.

This title may be cited as the "Federally Recognized Indian Tribe List Act of 1994".

<< 25 USCA § 479a >>

SEC. 102. DEFINITIONS.

For the purposes of this title:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

(3) The term "list" means the list of recognized tribes published by the Secretary pursuant to section 104 of this title.

<< 25 USCA § 479a NOTE >>

SEC. 103. FINDINGS.

The Congress finds that—

(1) the Constitution, as interpreted by Federal case law, invests Congress with plenary authority over Indian Affairs;

(2) ancillary to that authority, the United States has a trust responsibility to recognized Indian tribes, maintains a government-to-government relationship with those tribes, and recognizes the sovereignty of those tribes;

(3) 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;

(4) a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress;

(5) Congress has expressly repudiated the policy of terminating recognized Indian tribes, and has actively sought to restore recognition to tribes that previously have been terminated;

(6) the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes;

(7) the list published by the Secretary should be accurate, regularly updated, and regularly published, since it is used by the various departments and agencies of the United States to determine the eligibility of certain groups to receive services from the United States; and

(8) the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

<< 25 USCA § 479a–1 >>

SEC. 104. PUBLICATION OF LIST OF RECOGNIZED TRIBES.

(a) PUBLICATION OF THE LIST.—The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(b) FREQUENCY OF PUBLICATION.—The list shall be published within 60 days of enactment of this Act, and annually on or before every January 30 thereafter.

25 U.S.C. § 5130. Definitions

For the purposes of this title:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

(3) The term "list" means the list of recognized tribes published by the Secretary pursuant to section 5131 of this title.

25 U.S.C. § 5131. Publication of list of recognized tribes

(a) Publication of list

The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(b) Frequency of publication

The list shall be published within 60 days of November 2, 1994, and annually on or before every January 30 thereafter.

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CLOSED

U.S. District Court
United States District Court for the Western District of Washington (Tacoma)
CIVIL DOCKET FOR CASE #: 3:12-mc-05019

Kanam et al v All active parties of US vs Washington
Assigned to: Honorable No Judge
Case in other court: Karluk Tribal Court, 11-00019-11-00001

Date Filed 04/16/2012
Date Terminated: 04/16/2012

Plaintiff

Kurt Kanam represented by **Kurt Kanam**
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PRO SE

Plaintiff

Pilchuck Nation represented by **Pilchuck Nation**
PRO SE

V.

Defendant

All active parties of US vs Washington
Cause No. 2:70-cv-09213RSM

Date Filed	#	Docket Text
04/16/2012	1	REGISTRATION of Foreign Judgment from Karluk Tribal Court into the the WD WA which reads in part, No motion listed in Fed R App P 4(a)4(A) is pending before this court and that no appeal has been filed or, if one was filed, that it is no longer pending, filed by Kurt Kanam, Pilchuck Nation (Receipt #T 9714)(CMG) (Entered 04/24/2012)

PACER Service Center			
Transaction Receipt			
03/07/2023 05:54:13			
PACER Login	[redacted]	Client Code	
Description:	Docket Report	Search Criteria:	3:12-mc-05019
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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f) this document contains **7,534** words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ *John L. Smeltzer*
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