ORAL ARGUMENT NOT YET SCHEUDLED

No. 24-5231

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

CALIFORNIA VALLEY MIWOK TRIBE,
Diane Aranda, Joshua Fontanilla, Yolanda Fontanilla, Michael Mendibles, Bronson Mendibles, Jasmine Mendibles, Leon Mendibles, Christopher Russell, and Rosalie Russell,
Plaintiff/Appellant,

v.

DOUGLAS BURGUM, U.S. Secretary of the Interior, *et al.*,
Defendants/Appellees.

APPEAL FROM THE UNTIED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OPENING BRIEF OF THE PLAINTIFF-APPELLANT CALIFORNIA VALLEY MIWOK TRIBE, et al.,

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CERTIFICATE AS TO THE PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), Plaintiff-Appellant, California Valley Miwok Tribe ("CVMT") hereby certifies as follows:

I. Parties

A. Appellant is the California Valley Miwok Tribe, ("CVMT") acting by and through the following, Joshua Fontanilla, Yolanda Fontanilla, Maria Diane Aranda, Michael Mendibles, Bronson Mendibles, Leon Mendibles, Christorpher Russell, and Rosalie Russell. CVMT is a federally recognized Indian Tribe, with land known as the Sheep Ranch Rancheria, located in Calaveras County California.

B. Appellee is the US Department of the Interior ("DOI") acting through its Secretary Douglas Burgum; including Bryan Mericer, the Acting Assistant Secretary of Indian Affairs, Amy Dutschke, in her capacity as California Regional Director, Bureau of Indian Affairs, and Harley Long, in his official capacity as Superintendent, Central California Agency, Bureau of Indian Affairs. DOI is a federal agency subject to the FOIA.

RULE 26.1 DISCLOSURE STATEMENT

Circuit Court Rule 26.1, does not apply because Appellant/CVMT is not a corporation but a Federally Recognized sovereign Native American Tribal Nation. The Appellant/CVMT is comprised of direct line descendants of Sheep Ranch

Indians identified on the 1915 Indian Census, are not a corporation. Instead, they compose a general form Tribe, whose extended future membership is to be re-organized, per a Court a decision (Cal. Valley Miwok Tribe v Jewel, 5 F.Supp. 3d 86 (D.D.C. 2013) ("CVMT III") that resulted in a 2015 Final Agency decision of the Assistant Secretary of Indian Affairs, Kevin Washburn.

II. Ruling Under Review

Appellant CVMT appeals the August 12, 2024, final order and judgment of the United States District Court for the District of Columbia, *California Valley Miwok Tribe v. Haaland*, No. 22-01740 (JMC), United States District Judge Jia M. Cobb, presiding. The opinion is unreported and was filed on this Court's docket. It is also found on the lower court's Docket 22-0174, ECF Doc. 45 and 46.

III. Related Cases

The case on review was not previously before this court or any other appellate court. Other parties in a related case that use the same name of CVMT but consisting of different families on the 1929 Indian Census, related to Silvia Burley, attempted to stay the organization of the tribe seeking a motion for preliminary injunction. That motion was denied, on September 20, 2024, *California Valley Miwok Tribe v. Haaland*, No. 24-cv-00947-JmC (D.D.C.); Another case brought by the Burley Plaintiffs, *Burley v. Haaland*, No. 24-cv-2455-JMC (D.D.C.) was stayed on December 4, 2024, pending the D.C. Circuit's

resolution of the pending appeal in *California Valley Miwok Tribe v. Haaland*, No. 24-5231. The pending appeal challenges the validity of a 2022 BIA decision (AS-IA Newland decision); the *Burley* cases, challenge certain steps the BIA took in implementing that decision and requiring proof of heritage. Thus, the court stayed the decision because if appellants here succeed, there is a substantial possibility that the *Burley* case would be moot.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

**Authorities upon which appellants principally rely are marked with an asterisk*

Cases

Statutes

Regulations

Administrative Record Documents (R.=Record, AR=Appendix Number)

Other Authorities

GLOSSARY OF ABBREVIATIONS

APA	Administrative Procedure Act
AS-IA	Assistant Secretary Of Indian Affairs

BIA	Bureau Of Indian Affairs
CDIB	Certificate of Degree of Indian Blood
COBB DECISION	U.S. District Court of DC Decision
CVMT or Tribe	California Valley Miwok Tribe (Appellant)
CVMT I	*Cal. Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006)
CVMT II	*Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008)
CVMT III	*Cal. Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86, 95 (D.D.C. 2013) (Remand Decision)
CVMT IV	*California Valley Miwok Tribe v. Zinke*, 2017 WL 2379945 (E.D.Cal. 2017)
DOI	Department Of Interior (Appellees)
IBIA	Interior Board of Indian Appeals
IRA	Indian Reorganization Act
NEWLAND DECISION	DOI 2022 Decision of AS-IA Newland
OFA	Office of Federal Acknowledgement
PUTATIVE MEMBERS	1915 Census Descendants
WASHBURN DECISION	DOI 2015 Decision of AS-IA Washburn
R.	ADMISNTRATIVE RECORD (R.-22)
AR.	APPENDIX IN CASE BELOW (AR-34)

INTRODUCTION

The Plaintiff-Appellant, the California Valley Miwok Tribe ("CVMT" or "Tribe"), seeks reversal of the district court decision entered on August 12, 2024, 2024 (Civ. A. No. 22-01740, JMC) ("Cobb Decision"). The CVMT filed their claim against the Department of the Interior ("DOI") under the Administrative Procedure Act ("APA") for a final agency action that was "arbitrary, capricious, an abuse of the agency's discretion, or otherwise not in accordance with law." 5 U.S.C. §§ 706(2)(A) and (D); See, e.g., *Coburn v. McHugh*, 77 F. Supp.3d 24, 29 (D.D.C. 2014, aff'd No. 15-5009, 2016 3648546 (D.C. Cir. July 8, 2016)). (Civ.A.No. 22-2299, R.1).

The APA also requires federal agencies to conclude matters presented to them "[w]ith due regard to the parties or their representatives and within a reasonable time." 5 U.S.C. § 555(b). The APA provides that a court shall "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). An agency's "failure to act" constitutes "agency action." 5 U.S.C. § 551(13). Defendants/Appellees, DOI failure to proceed with the Tribe's organizational efforts, including Secretarial Elections, constitutes "agency action unlawfully withheld or unreasonably delayed."

The district court found the Assistant Secretary of Indian Affairs ("AS-IA") decision modifying a final Agency Decision of a prior AS-IA reasonable and not

an abuse of his discretion. *Cobb Decision*, 2024 WL 4345787 at *14. This Appeal is of claims filed under the APA, where questions of Law are reviewed de novo by the Court of Appeals without deference to the lower court's decision. *Gerber v. Norton*, 294 F.3d 173, 178 (D.C. Cir. 2002) (quoting *Dr. Pepper/Seven-Up Cos. v. FTC*, 991 F.2d 859 (D.C. Cir. 1993) 'We review the district court's APA ruling de novo, "as if the agency's decision had been appealed to this court directly."').

The key facts found in the administrative record ("AR") that meet the standard for a finding of arbitrary and capricious or poorly reasoned decision making was when the DOI acting though its AS-IA Bryan Newland, ("Newland Decision") modified over seven years later the AS-IA decision ("Washburn Decision") that responded to the U.S. District Court order remanding the case for organization of the federally recognized tribe known as Sheep Ranch Rancheria. *Cal. Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86, 95 (D.D.C. 2013) ("*CVMT III*"); R.-22-AR- 34-43- CVMT-003719-3726. The modification of the Washburn Decision was based on a genealogy error *alone* and did not consider the reliance interest of the CMVT, that had long been participating in the organization process of the BIA. The modification of the Washburn Decision made by then AS-IA Bryan Newland violated the Appellants here, by failing to distinguish the *process* required for the organization of a federally recognized tribal community from federal government action naming tribal members. Thus, the BIA violated the

remand and overstepped its role, by setting the future membership of the Tribe rather than establishing a *process*, leading to the development of a Tribal Constitution by the "putative members". Once the putative members determine the criteria for future membership, then the constitution would be ratified by those that qualify for future membership. In short, the Agency erred by not following a *process* respectful of the Tribes history that would allow known lineal descendants of the Tribe to create the criteria for membership. This *process* would be consistent with the remand decision, *CVMT III*, that would be able to distinguish those Miwoks with similar ancestors in Calaveras County from Miwoks that had connections to the Miwok community known as Sheep Ranch or Sheep Ranch Rancheria. The lower court *Cobb Decision*, 2024 WL 4345787 *1, lacked understanding of how Tribe's determine membership. This led to the finding that DOI had the duty to revise the Washburn Decision, to include all Miwoks on the 1929 Indian Census of Calaveras County. Including all 1929 Census Miwoks as Sheep Ranch Rancheria members, meant the BIA prevented CVMT from the historical research necessary to determine criteria for membership of the tribe's collateral descendants. A collateral descendant, in a legal context, is a relative who is not in the direct line of descent (like children or grandchildren) but is related through a sibling, aunt, uncle, niece, nephew or of a prior generation such as great grandparent. Instead, the *Cobb Decision*, 2024 WL 4345787 *1, assumed that the

CVMT Appellants, were contradictory, in prior documents that verified that there was a larger extended community. The *Cobb Decision*, 2024 WL 4345787 *1, belabored the analysis of the prior rulings, that found the governing documents of the small 5 person general council form tribal government invalid. Thus, the court assumed that the Tribe's base roll was the 1929 Census without distinction of families that married out, left the community, or joined other Tribal communities. This lack of understanding of tribal enrollment practices led to the court's affirmance of the agency action that violated the remand decision, *CVMT III*, that required a *process* to organize the Tribe composed of members with historical connections to the Miwok community located around Sheep Ranch Rancheria in Calaveras County, California. As a result, the 1929 Census that included all Calaveras County Miwoks became the base roll of the Tribe without distinct membership criteria.

JURISDICTIONAL STATEMENT

This Appeal was timely taken on October 7, 2024, within sixty days of the district court's memorandum opinion and order, entered on August 12, 2024, granting Appellees/Defendants' cross motion for summary judgement and denying Appellant/Plaintiff's motion for summary judgment and disposing of all claims in this action. This Court has jurisdiction over this timely appeal from a final judgment in the U.S. District Court for the District of Columbia under 28 U.S.C. §

1291. The district court exercised jurisdiction over the case under 28 U.S.C. § 1331 (federal question), and 28 U.S.C. §§ 1361-1362 (Jurisdiction Over Indian Tribes) and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment and Injunctive Relief). The APA provides a waiver of sovereign immunity as well as a cause of action against the Defendants/Appellees, 5 U.S.C. §§ 702, 704, and 706. The 2022 Newland Decision is a final agency action under the APA and 25 C.F.R. § 2.6.

ISSUES PRESENTED

I. Whether the district court Memorandum Opinion, ECF No. 45 filed 08/12/2024), erred in applying the APA, when it DENIED Appellant's Motion for Summary Judgment; finding the 2022 Newland Decision was a "reasonable decision" under a deferential standard of review in amending the 2015 Washburn Decision when he added those listed on the 1929 Census as eligible members to reorganize the CVMT. This finding was the direct result of the court's failure to apply AS-IA Washburn's distinction between the Eligible Groups to reorganize the Tribe (putative members) from the ultimate organization of the future membership of the Tribe. Washburn found the three Eligible Groups with direct historical interaction with the Federal government were the descendants (putative members) eligible to reorganize the tribe (creating a formal government structure) and determine the ultimate criteria for membership of the Tribe. He found the use of the

1929 Census or other documents (as membership documents) was an internal tribal matter to be determined by the Eligible Groups. See AR. 34-43 at CVMT-003723. And this decision was consistent with the 2007 Notice of the Central California Agency plans to reorganize a formal governmental structure for CVMT. AR. at CVMT-002116. "The first step in the organizational process is to identify putative members of the Tribe who may be eligible …" *Id*. This notice distinguished putative members from the ultimate membership of the tribe. *Id*. It identified the same Eligible Groups as the 2015 Washburn Decision, 14 putative members who would determine the formal tribal government structure and tribal membership criteria. *Id*.; R. 34-AR-43-CVMT-003719-3726. The BIA left future membership of the Tribe to the historical descendants whose ancestors had direct interaction with the federal government.

II. Whether the district court erred in its finding that AS-IA Washburn's definition of Eligible Groups to reorganize the Tribe, depended on the genealogical finding that John Jeff, was not the son of Jeff Davis.

III. Whether the district court erred in its finding that the 2015 Washburn Decision intended a larger extended membership as the eligible members to reorganize the Tribe.

IV. Whether the district court erred when it failed to distinguish the role of the reorganizing members (putative members) from those that may qualify for membership under a tribal constitution ratified by the eligible members of the Tribe.

V. Whether the district court erred when it found the money's held in trust for the CVMT would be diverted from the Tribal membership unless the broader Miwok community participated in the reorganization of the Tribe. The reorganization process was intended to establish a governmental structure to ensure, against rogue leaders, and the distribution of trust funds until a legitimate Tribal government was established. It is error for the Court to assume the designation of eligible members (putative members) would circumvent that intention. Rather, the designation of those putative members with recognized historical federal interaction on behalf of the Tribe, would allow the Tribe to be reorganized by eligible putative members, to ensure against the corruption the Appellants here faced when Silvia Burley and others with little historical connection to Sheep Ranch circumvented the use of revenue sharing funds that lead the Federal Agency establishing a trust fund until the tribe was reorganized by eligible putative members.

STATUTORY AND REGULATORY PROVISIONS

The relevant statutory provisions and regulatory provisions are presented in the Addendum to this brief.

STATEMENT OF THE CASE

I. Factual Background

a. Membership in Miwok Communities

Calaveras County is large, with a population of over 45,000 and covering 663,000 acres with a high percentage of Native Americans and numerous Miwok communities within it and surrounding counties.[1] (Tuolumne Band of Me Wuk, Chicken Ranch, Ione Band of Miwok, Jackson Rancheria etc.) R.-22-AR- 34-4-CVMT-000321, see maps, Exhibit A. Native American Tribes are founded by historical relatives that often move or split and found different Tribal communities. For example, the Great Sioux Nation split encompassing the Eastern Dakota, Western Dakota, and Lakota, and shared a common linguistic and cultural heritage, maintaining a close relationship and shared ancestry.[2] This is the same for smaller Tribal communities. At the turn of the century in Virginia the Chickahominy Tribal community lived in an area called Chickahominy Ridge. A portion of that Tribe restructured and located into what is now called Charles City County

[1] https://en.wikipedia.org/wiki/Calaveras_County,_California#:~:text=Geography,-California%20Caverns%20%E2%80%93%20Calaveras&text=According%20to%20the%20U.S.%20Census,)%20(1.6%25)%20is%20water.

[2] Short history of Sioux in Minesota region https://www.mnhs.org/fortsnelling/learn/native-americans/dakota-people

Virginia and built an Indian church named Samaria Baptist Church. That church was 20 miles away, and difficult to get to without modern cars for transportation, so the Tribe split into the Chickahominy Indian Tribe-Eastern Division located in New Kent County, and the Chickahominy Indian Tribe in Charles City County. Members of both tribes have common ancestors, with names such as Stewart, Adkins and Bradby. But it is not the name or the collateral relatives that allow for membership in the Tribes. It is the historical connection to the tribe in the separate locations, through a base roll unique to each tribe of lineal descendants that allows enrollment in the tribes. [3]

The DOI before the lower court confused the process of the organization of the tribe and the *process* for establishing membership. DOI centered their defense of the 2022 AS-IA Newland Decision by adding all Miwoks on the 1929 Census as members of the Sheep Ranch Rancheria. However, in organizing the Tribe with the 1929 Census, DOI failed to research base rolls of other Miwok communities in Calaveras and other nearby counties. Much of the history of the Miwoks in Calaveras County is in the record. R.-22-AR- 34-AR.-1-4-62-63-64-80.(CVMT-00001,000348,005334-5355,000247). This research reveals Miwok families in

[3] https://www.commonwealth.virginia.gov/virginia-indians/state-recognized-tribes/eastern-chickahominy-tribe/#:~:text=History%20of%20the%20Eastern%20Chickahominy&text=In%201614%2C%20following%20the%20First,present%2Dday%20King%20William%20County. https://www.commonwealth.virginia.gov/virginia-indians/state-recognized-tribes/chickahominy-tribe/#:~:text=After%201718%2C%20the%20Indians%20were,established%20the%20Samaria%20Indian%20Church.

Calaveras County have similar ancestry but are nonetheless connected to separate communities.

Like the examples above, many separate tribal nations have common core ancestors that are related but are not part of the same tribal communities. That is true for Miwoks in California. R.-22-AR.-34-4. For example, Tuolumne Band of Me-Wuk, have similar ancestors, to Sheep Ranch. But that does not mean that you can be a member of Tuolumne if you have a common descendant. At Tuolumne one must show a lineal descendant to their official 1935 base roll and 1/8 Indian blood.[4] Similarly, the Cherokee in North Carolina and Oklahoma, also share ancestry, but that ancestry does not ensure membership in either or both tribes. Both Tribes examine potential members on whether the ancestor is collateral or lineal, has stayed connected to the tribe, or is too distant. [5] Those who are trained in Native American Genealogy apply the difference between lineal and collateral descendants and know the intermingled heritage of Tribal Nations and how it applies to tribal membership criteria.

CVMT historical Miwok families, were identified on the 1915 Census as Sheep Ranch Miwoks. R. 34-AR-2-3-CVMT 000235-238. AS-IA Washburn in his

[4] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://mewuk.com/wp-content/uploads/2016/09/ENR-APP-GUIDELINES-10-2016.pdf

[5] Enrollment in the Eastern Band of Cherokee Indians is governed by Cherokee Code, Chapter 49, Enrollment, and restricts enrollment to the following: A direct lineal ancestor must appear on the 1924 Baker Roll of the Eastern Band of Cherokee Indians. You must possess at least 1/16 degree of Eastern Cherokee blood. https://www.ebci.gov/enrollment/

2015 decision, identified as Eligible Groups: descendants of the 1915 early historical Census; the Miwok (Jeff Davis) who voted in 1934 on the Indian Reorganization Act ("IRA") on behalf of Sheep Ranch; and Mabel Hodge Dixie, with the Deed to Sheep Ranch issued by the Federal government.[6] R.-34-AR-43 at CVMT-003722. These were federal documents or actions that identified historical ancestors whose descendants would be putative members to reorganization the tribe. Identifying these Eligible Groups did not deny the Tribe's right to set membership criteria to include a larger community of those with connected collateral ancestry. AS-IA Washburn was careful not to overstep the Federal government's role by defining the Tribe's future membership. The BIA when attempting to organize the Sheep Ranch in 2006-2007 after the *CVMT I*, 424 F. Supp. 2d 197 and *CVMT II*, 515 F.3d 1262 cases were resolved, referred to these historical families as "putative members." R.-22-CVMT 002116. These earlier attempts to organize the tribe did not identify all members of Sheep Ranch. Instead the *process* gave notice to those that may want to participate in the organization of the Tribe. This *process* required the completion of a form, certifying Miwok blood degree.[7] *Id*.

[6]In 1916, the United States acquired a 0.92 acre parcel of land, known as 'Sheep Ranch Rancheria,' for these Indians.") (emphasis added); Jewell, 5 F. Supp. 3d at 89 (the United States acquired the rancheria for the Indians the 1915 Census identified). Also, the Government could not have acquired land in 1916 for Indians not identified until 1929. Id. CVMT- 000239-243

[7] https://www.bia.gov/sites/default/files/dup/assets/public/raca/online_forms/pdf/1076-0153_CDIB%20Form_Expires%2011.30.2024_508.pdf

b. Sheep Ranch Rancheria Extended Community

Agent Terrell that took the 1915 Census reported the Miwoks in the separate communities were interchangeable in their relations. AR.-34-2 at 2. That finding is consistent with the finding later, by the Office of Federal Acknowledgment ("OFA") at BIA, that exposed flaws in the genealogy of Miwoks claiming descendance though Jeff Davis who was identified at Sheep Ranch in 1915. R.-34-AR.-62-63-64 (CVMT-005334-5355). The Miwoks named in affidavits by the modern 1915 descendants (CVMT), were Miwok people who had strong connections to their Sheep Ranch community. Many were cousins and related as collateral relatives. R.-34-AR.-22-28, 29 (CVMT-002449-00002543,002608). For example, Mabel Hodge Dixie's father was Joe Hodge whose uncle Patterson Hodge was on the 1915 Census. R.-34-AR-62-CVMT-005287-88. Her grandmother, Tillie Jeff was married to John Jeff, whose father we now know was Indian Jeff and not Jeff Davis. R.-34-AR-62-CVMT-005292; R.-34-AR-64-CVMT-005350. Her descendants to the 1915 Census are collateral not lineal descendants. By 1943, Mabel's grandmother Tillie Jeff, lived with her a short time at Sheep Ranch, after her husband John Jeff died in1938, (born at West Point, died and was buried at Vallecito. R.-34-AR.-62-CVMT-005296. Tillie Jeff died in a car accident in 1945 just a few years after living with her granddaughter at Sheep

Ranch. Prior to 1943, Tillie lived with her husband John Jeff and their 9 children, at Angels Camp and Vallecito, in another part of Calaveras County not Sheep Ranch. R.-34-AR.-62 at CVMT-005292; AR-64 at CVMT-005350. "1928 BIA census has [Tillie] living in Vallecito with John, Manuel, Ray, Hempie, Lennie, Tessie, Walter, Susie; 1930 Census has her living with J. Jeff and children Hattie, Hempy, Lennie, Tessie, Walter. Ray and grandchildren Texas and Mabel in Altaville." AR-64 at CVMT-005352. Both areas are in the region of Angels Camp.[8] *See* Exhibit A maps. Tillie Jeff was buried in Vallecito like her husband John Jeff. AR 34-80-CVMT-000293.

Mabel's mother, Hattie, was married to Joe Hodge. R.-34-AR-62-CVMT-005288. Hattie was the daughter of John and Tillie Jeff. *Id*. It is documented that after Joe Hodge died in 1913 "Hattie, Tex, and Mabel resided at Angels Camp, Calaveras County, CA. *Id*. In 1930 "Mabel..age 12, resided in Angels Camp (near Altaville) with her grandparents, John and Tillie Jeff; her widowed mother Hattie Jeff Hodges, her brother Texas Hodges, age 13; and four uncles and one aunt, other children of John and Tillie Jeff (Bureau of the Census 1930d)." *Id*. at CVMT-005289. They were not located at Sheep Ranch. Mabel's father Joe Hodge was the son of John Hodge whose brother was Patterson Hodge, who was on the 1915 Census as a Sheep Ranch Miwok. *Id*. at CVMT-005288. Mabel's connection to

[8] https://www.findagrave.com/memorial/255583514/tillie-jeff

the Hodge family is likely her connection to Sheep Ranch and her residence there after she married. (Joss Town, a BIA Tribal operations officer in a report dated Jan. 5, 1966, found that Mabel Hodge Dixie had lived at Sheep Ranch 8 years or longer on and off according to her testimony. R.22-AR-34-AR-14-CVMT-000481. Mabel was living at Sheep Ranch when she died in 1971, and was buried at Sonora, Tuolumne County. Yakima and his brothers Melvin and Richard were buried with their father Romie Dixie at Angel's Camp.

Jeff Davis, and his mother Rose Davis were both on the 1915 Census. R. 34-2-CVMT-000233. Rose Davis's daughter Annie married Patterson Hodge (John Hodge's Brother), and they too were on the 1915 Census. *Id*. Thus, Mabel's grand uncle was Patterson Hodge, a collateral descendant, who was on the 1915 Census.

The relations of the Miwoks were obviously close. Yakima Dixie left his deed interest in Sheep Ranch to his cousin Velma Whitebear, whose mother was Annie Geto, a granddaughter of John Jeff and Tillie Jeff. R.-22-34-AR.-29-CVMT-002608; AR.-35-CVMT-003188. Velma, lived with Yakima at Sheep Ranch (over 8 years) and was part of that Miwok community for many years and assisted Yakima with his struggles with Silvia Burley and the organization of the Tribe until he died. R-22-AR-34-29,35, AR.-45-79-CVMT-004277, 005518 . Yakima and Velma were related as cousins because Yakima's grandmother (Hattie) and Velma's grandmother (Laural) were sisters. AR. 34-62 at CVMT-005292.

Both grandmothers were children of John and Tillie Jeff. R.22-AR-34--29; 34-35... 62-64. *Id*.

From what we know from genealogy reports and census rolls is that John Jeff, son of Indian Jeff, (who lived at West Point), married Tillie and they raised their children at Angels Camp and nearby areas (Vallecito and Altaville). AR.-22--34-62 at CVMT-005292; 64 at CVMT-005350, 005352. Indian Jeff (John's father) was shot at Murphys that is close to Angels Camp and Vallecito in Calaveras County. AR.-62 at CVMT-00529; See Exhibit A maps. Some of John and Tillie Jeff's descendants had a connection to Sheep Ranch but many of their 9 children joined other communities near Angels Camp and Tuolumne Indian Me-wuk community (located in Tuolumne County). AR.-34-62; -64 CVMT-005334-5355.

Silvia Burley's ancestors were not part of the Sheep Ranch community. AR.-34-19 at CVMT-000976. In her Deposition, she testified that she and her mother were at the Tuolumne Mi-Wuk community and received services from the Jackson Miwok community through Tuolumne. *Id*. at CVMT-001021; AR.-62 at CVMT-005298-99. Her deposition exposed the various parts of Calaveras County she and her family lived. *Id*. at CVMT-000959-966. But she did not have a connection to Sheep Ranch until 1998 when she was forum shopping for Indian benefits. *Id*. at CVMT-000978; Exhibit B, *See* map of Silvia Burley's locations. And, as found in the prior CVMT cases (*I*, *II*, and *III*), she took over as the Sheep Ranch Tribal

Administrator and eventually excluded the other Miwoks at Sheep Ranch such as Yakima and his brother Melvin from receiving federal 638 funding and California Gaming Commission trust funds. *CVMT I,* 424 F. Supp. 2d 197; *CVMT II,* 515 F.3d 1262; CVMT *III,* 5 F. Supp. 3d 86. These bad acts[9] are the reason the 1915 descendants have resisted, allowing Miwoks with no historical connection to Sheep Ranch being named members. *CVMT I,* 424 F. Supp. 2d 197; *CVMT II,* 515 F.3d 1262; CVMT *III,* 5 F. Supp. 3d 86. CVMT, has filed this claim, for the opportunity to identify the Miwoks, that were historically connected to the Sheep Ranch Community, as direct lineal or as collateral descendants. They want Miwoks identified on the 1929 Census to demonstrate through a blood degree certification form or other means that they were part of Sheep Ranch, and not a Miwok, that participated or joined another Miwok community, left the culture, married out of the culture, joined another Native American Community, or never maintained a connection to the Sheep Ranch area of Calaveras County. All are distinctions other Miwok communities have considered for membership. For example, the Tuolumne Band of Me-Wuk, use their official 1935 base roll for membership that likely contains many Miwoks on the 1929 Indian Census of Calaveras County.

[9] Including the disenrollment of Yakima Dixie, see Exhibit D.

CVMT does not deny that Miwoks in Calaveras County like Silvia Burley, who is only part Miwok, R.-34-AR-19 at CVMT-00968, were related to John Jeff, but she and her family lived in other parts of Calaveras County and received benefits through other Miwok communities. Silvia Burley and her parents, like many other Calaveras Miwoks were not part of the Sheep Ranch Community. AR.-34-19 at CVMT-000976. As Silvia Burley testified in her deposition she married into the white culture, moved out of the state for many years, and had not connected to Sheep Ranch until she was forum shopping in 1998, ultimately taking the federal funding and revenue sharing funding provided to Sheep Ranch Rancheria for herself. AR.-34-19 at CVMT-000962-966. (CVMT, II and III.)

Ironically, in a related case, Silvia Burley challenges the organization of the Tribe in federal court under the Newland Decision, contending that the use of the Certificate of Degree of Indian Blood ("CDIB") form to verify her Indian ancestry is unjust. *Cal. Valley Miwok Tribe v. Haaland*, No. CV 24-00947 (TSC) (D.D.C. Sept. 30, 2024). The CDIB form calculates Indian blood degree based on "lineal ancestors of Indian blood who were enrolled with a federally recognized Indian tribe or whose names appear on the designated base rolls of a federally recognized Indian tribe."[10] Consequently, Burley must demonstrate a connection to Sheep

[10] https://www.bia.gov/sites/default/files/dup/assets/public/raca/online_forms/pdf/1076-0153_CDIB%20Form_Expires%2011.30.2024_508.pdf

Ranch, which she cannot establish. As a result, she initiated a legal challenge against the official BIA process for reorganization of a Tribe. The district court in that case denied Burley's request for a preliminary injunction to halt BIA processes. *Cal. Valley Miwok Tribe v. Haaland*, No. CV 24-00947 (TSC) (D.D.C. Sept. 30, 2024).

In yet another case, Burley challenges the Newland Decision on the grounds that it prevents eligible individuals from submitting a tribal constitution seeking a Secretarial Election, thereby circumventing the formalities of the IRA. *Burley v. Haaland*, No. CV-02455 (TSC) (D.D.C. Dec. 4, 2024) R. 1 at ¶ 7. She argues that the BIA failed to adhere to its own rules and procedures and abused its discretion by accepting a petition from individuals who have never been members of a federally recognized tribe or this Tribe, or who lack Indian status. *Id*. at ¶ 31, 33. That case has been stayed pending resolution of this appeal and does not affect Burley's challenge to the CDIB form. *Id*.

The fact that the families with ancestry to John Jeff including Silvia Burley thought John Jeff was the son of Jeff Davis, and not Indian Jeff of West Point, is not surprising nor particularly significant. As shown, the Calaveras County Miwoks share a lot of common heritage. AR.-34-2 at CVMT-000235, 0005334,0005353. They use the term cousin loosely. AR. 34-19 at CVMT-000967-68. But the common yet misunderstood heritage of the 1915 descendants

of Sheep Ranch does not discredit, the testimony of CVMT parties who were identifying in their affidavits the Miwoks, who were part of the community known as Sheep Ranch Rancheria and not another Miwok community. AR.-34-27. (CVMT-005337). The Miwok's connection to Sheep Ranch may have been through relatives on the John and Tillie Jeff line, or through the family line of Patterson Hodge that married Annie Davis, Jeff Davis's sister. The important fact found in the Administrative record is that not all the "collateral relatives" of John Jeff lived at or were over time part of the Sheep Ranch Community. AR.-34-62 at CVMT-005292;

The 1915 descendants of CVMT were honest about a larger group of Miwoks connected to Sheep Ranch. However, they strongly objected to the use of the 1929 Census as a membership base roll because it does not identify which of the 1929 Census Miwoks were part of the Sheep Rancheria community or whose families were known to live with other Miwok communities in other parts of Calaveras County or families that did not join any Miwok community. In sum, to understand the Sheep Ranch Rancheria families requires research into where families lived, and which community if any the family or children participated in over time. DOI confused this point, by attacking the integrity of the 1915 descendants, using the mistake in genealogy against them. The appeal here by the CVMT seeks to go back to the Washburn Decision, that identified the historical

Sheep Ranch families and requires other Miwoks that *may* have descendants on the 1929 Census, to verify their connection to Sheep Ranch. Then if they can establish a connection to Sheep Ranch they can be part of the reorganization of the Tribe. But membership into the community would need to meet constitutional criteria, verifying a connection to Sheep Ranch. Appellant/CVMT as Sheep Ranch descendants of the 1915 Census, want to develop membership criteria to qualify those seeking enrollment in the future membership of the Tribe.

II. Procedural History

It is an understatement to say there is a long history in the case of a dispute, between two primary groups, Yakima Dixie, and his brother Melvin, that were raise by their mother Mabel, at the Sheep Ranch Rancheria in Calaveras County, California, ("Dixie Group"), and Silvia Burley, whose mixed Indian heritage is linked to other areas and Miwok communities. As mentioned above, her ties to Sheep Ranch began in 1998 when she approached Yakima Dixie about helping her get Federal benefits for herself and her children.[11] R.-22-AR-34-19 at CVMT-000978. This dispute that led to the remand of the case to the DOI, is outlined well in prior cases in the U.S. District Court of D.C, and this Circuit and will be paraphrased here. See *CVMT I*, 424 F. Supp. 2d 197; *CVMT II*, 515 F.3d 1262;

[11] In 1966 BIA when determining whether to terminate Sheep Rancheria discovered Mabel Hodge Dixie,was the granddaughter of Peter and Anna Hodge on the 1915 census, of the Sheepranch Indians. Mabel was the only Indian entitle to receive the assets of the Ranchera. She died in 1971, she had four sons, that by 1998 only two sons were alive Yakima and Melvin.

CVMT *III*, 5 F. Supp. 3d 86.

Sometime in the 1990s, Silvia Burley contacted the BIA about her heritage and how to receive benefits. The BIA determined Silvia Burley had been a member of the Jackson Rancheria. The BIA did little genealogical research on her family but thought she might be remotely related to Jeff Davis who was on the 1915 Census identifying Miwoks connected to the Sheep Ranch community. AR. 34-18-CVMT-000693. The dispute between these two groups resulted in three AS-IA final decisions, (2010/2011 Echo-Hawk Decision, 2015 Washburn Decision, and 2022 Newland Decision)[12]. In 1998, Silvia Burley approached Yakima Dixie and achieved her goal of becoming a member of the Sheep Ranch tribe to receive federal benefits. R.-22-AR.-34-19 at CVMT-001018. The record shows she then began representing herself to the BIA, (Letter dated August 5, 1998) that she and her children where members, and Yakima Dixie was the spokesperson/Chairman of Sheep Ranch but never included Yakima's brother Melvin as a member. *CVMT III*, 5 F. Supp. 3d at 89-90. Nor did she or Yakima describe what criteria, if any Yakima used to determine whether Burley and her children were eligible for Tribal membership. The BIA met with Yakima Dixie

[12] Brian Newland, the AS-IA, involved in the current lawsuit, was a lawyer in the Office of the AS-IA, and assisted with the Echo-Hawk 2010-11 decision, that was rejected by the US District Court. It appears he is attempting in his 2022 decision to resurrect the Echo Hawk decision with his modifications to the 2015 Washburn decision that allows Burley to be in eligible the groups to organize the tribe even though the District Court found numerous allegations of fraud in the record. AS-IA Newland should have recused himself from making the 2022 decision.

and Silvia Burley in 1998, to discuss organizing the Tribe. At that time Yakima explained, his only intent with the Burley family was to help them receive family benefits. The BIA determined that "Yakima and his brother were the only remaining heirs that possessed rights to initially organize the Tribe but seem to accept Burley's membership. *Id*. The next significant event was Burley wrote to the BIA in 1999, stating that Yakima had resigned as Chairperson of the Sheep Ranch Tribe. Yakima claimed Burley forged his signature and he had not resigned. *Id*. at 91; The dispute continues, over drafts of a constitution and debates over who were the members, that ultimately completely excluded Yakima and his brother. AR.-34-43. Finally, in a letter dated February 11, 2005, the BIA concluded it "does not recognize any tribal government for the Tribe…that the Tribe is not organized." *Id*. at 93-94; R.-22-AR-34-21.

What followed was an investigation into Silvia Burley's spending, that lead to the BIA suspending the Tribe's P.L. 638 Contract and the California Gambling and Control Commission notified the tribe it was withholding distributions from the California Revenue Sharing Trust fund. *Id*. at 94; R.-22-AR-34-65. In *CVMT I*, Judge Robinson, dismissed Burley's claims in 2005-6 for declaratory relief against the federal government for interference with the tribe's internal affairs, by refusing to recognize the tribal government, he quoted, H.L. Menchen "When someone says

it's not about money it is about the money."[13] 424 F. Supp. 2d at 200-03. Judge Robinson upheld the BIA's decision refusing to recognize the tribes as an organized tribe on the ground that the Tribe (Silvia Burley's) has failed to take the necessary steps to protect the interest of its potential members.[14] *Id*; AR 34-75. In other words, Judge Robinson, saw, Burley's claims against the Federal government not about interference with the Tribe's rights to self-governance, it was about her and her family alone, having access to Federal program monies, and California Revenue sharing funds. Silvia Burley appealed the Robinson Decision, and this Court, the D.C. Circuit, affirmed his decision. *CVMT II*, 515 F.3d 1262. The Circuit Court noted in that opinion "[a]s Congress had made clear, tribal organization under the [IRA] must reflect majority value" and Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary." *Id*. at 1267-8.

Meanwhile, BIA continued the path to organize the Tribe, and published a notice Nov 6, 2006, R. 22-CVMT 001867, to initiate the reorganization process by

[13] https://en.wikipedia.org/wiki/H._L._Mencken

[14] As a backdrop, Silvia Burley was underemployed, when she came to Yakima Dixie to receive family benefits as a tribal member. Then after declaring herself Chairman of the Tribe, she began receiving Revenue Sharing Funds, was living in a large home miles from Sheep Ranch. At the same time, Yakima, lived in an old trailer on less than an acre of property at Sheep Ranch and neither he nor his brother were receiving any revenue sharing funds. *See*, Exh. C. This triggered placement of the funds in trust until the tribe was organized. Those funds are still in trust today, because of the fraud perpetuated by Burley when she declared her family the only members of the Tribe. CVMT III *Id*. at 94 "The August 2011 Decision (Echo Hawk) does not explain why the BIA was not required ..to ensure that Burley was not taking advantage of Yakima when she sought membership for her family...Burley first contacted Yakima, he was in jail and suffering from several serious illnesses and other disabilities."*CVMT III.Id*. at 99.

inviting members of the tribe and potential members to participate in a meeting. Silvia Burley appealed the Decision to the Regional Director of the BIA and he affirmed the decision noting, the meeting was to identify the "putative group" of individuals who would have a right to participate in the organization of the Tribe. R.22-CVMT 002116; AR. 34-43-CVMT-0003718 (Washburn Decision). The April 2007 Decision, identified the same Eligible Groups to organize the tribe, as were identified in the 2015 Washburn Decision. R.-22- CVMT 002116. The Interior Board of Indian Appeals ("IBIA") affirmed this decision, but because it also contained an enrollment issue not under the IBIA jurisdiction the decision was in part referred to the AS-IA. This resulted in the 2010/2011 Echo-Hawk Decision, that the AS-IA acknowledged was a "mark[ed] 180 degree change in course from the positions defended by the BIA in administrative and judicial appeals" *CVMT III*, at 98; AR. 34-32-CVMT_0002729. The 2010/2011 Echo Hawk Decision declared only Yakima Dixie and Silvia Burley's family as members of the Tribe. It failed to protect Yakima's brother Melvin.[15] Thus, the U.S. District Court in DC found the Echo Hawk decision unreasonable primarily for failing to "first determine whether a duly constituted government actually

[15] The Court in CVMT III, noted that in March of 2010, before the 2010 decision, the AS-IA staff was lobbied by a prominent D.C. lobbyist, on behalf of Burley, urging them to accept Burley's General Council form of government legitimate. Yakima objected that he had not been given an equal opportunity to meet with the AS-IA offices. Thereafter, the AS-IA 2010 decision, determined that Burley's arguments were correct finding "no need for the BIA to continue its previous efforts to organize the Tribe's government, because it is organized as a General Council."[Burley's Government was accepted]AR002049 CVMT III at 98.

exists." *Id*. at 100. The Court noted that in the "Federal Defendant's current view of this case, once a Tribe announces a government, the BIA is prohibited from ever questioning the legitimacy of the government no matter how many allegations of fraud are raised. Such a conclusion is not consistent with the "distinctive obligation of trust" the federal government must employ with dealing with Indian tribes." *Id*. (quoting *Seminole Nation v. United States*, 316 U.S. 286 (1942)). The Court remanded the case back to the AS-IA for reconsideration. The Court's Remand Decision is dated Dec. 13, 2013. Larry Echo Hawk's term as AS-IA ended on April 27, 2012. Kevin Washburn's term as AS-IA began Oct. 9, 2012, and he therefore inherited the responsibility of responding to the Court's remand which resulted in his 2015 Decision (AR. 34-43).

CVMT (1915 Census descendants), argue that AS-IA Newland when he modified the 2010/2011 Echo Hawk Decision (that he worked on as a lawyer in Echo Hawk's office), reverted in part to Echo Hawk's Decision, that despite the fraud perpetuated by Silvia Burley against Yakima and his brother determined when it was discovered that John Jeff was not the son of Jeff Davis, that Silvia Burley and her children deserved to be in the eligible group to organize the tribe. To achieve that result he expanded the eligible group to the 1929 Census where Burley's family connection to John Jeff appears. AR. 34-5-CVMT-000378. Prior to the Newland Decision, Silvia Burley challenged the Washburn Decision.

However, the Washburn Decision was upheld by the federal court in the Eastern District of California and the Ninth Circuit Court of Appeals. *See California Valley Miwok Tribe v. Zinke*, 2017 WL 2379945 (E.D.Cal. 2017), *aff'd*, 745 Fed. App'x 46 (9th Cir. 2018) ("CVMT IV").

Finally, the BIA conducted a Secretarial Election in April 2019 following the Washburn Decision to organize the tribe. While the BIA purported to permit only those in the "Eligible Groups" to participate in the election, "[m]ost of the people who petitioned for, and took part in, the Secretarial Election [were] descendants of John Jeff." AR- 34-65 at CVMT-005356. Plaintiffs/Appellants in this case CMVT then sued to halt or invalidate the Secretarial Election, arguing that Jeff Davis had no living descendants, that John Jeff was not his son (as others claimed), and that John Jeff's descendants were therefore within no Eligible Group. *Id*. While the BIA permitted the Secretarial Election to proceed, the OFA later determined that John Jeff was not Jeff Davis's son, and the BIA's Regional Director invalidated the Secretarial Election in May 2019. AR.-34-65 at CVMT-005356-57. Thus, the Tribe was again, left without federally recognized leadership and remained unorganized.

Throughout most of 2020 and 2021, Appellants, CVMT and their representatives called, wrote, and petitioned the BIA, urging that it proceed with the Secretarial Election, consistent with the findings of the Washburn Decision. *Id.*

On December 1, 2021, the BIA issued a notice stating that it would proceed with organizing the Tribe. AR- 34-72 at CVMT-005544-45. The notice stated the BIA "plans to assist the California Valley Miwok Tribe, aka Sheep Ranch Rancheria (Tribe) with organization of a formal government structure by individuals who are eligible to participate in such a process, consistent with the December 30, 2015 decision by the AS-IA [i.e., Washburn Decision]." *Id*. at CVMT-005544. The notice further advised that all eligible individuals must submit a "[CDIB] form along with supporting documentation" to the BIA. *Id*.

The BIA's December 1, 2021, notice confirmed that, "[f]or the purposes of determining eligibility, the OFA has determined that John/Johnny Jeff is not the son of Jeff Davis." AR. 34-72 at CVMT-005545. Plaintiffs submitted the required documentation by the BIA's deadline. *Id*. Finally, it appeared that the Tribe was going to obtain its long-sought goal of organization. However, on March 28, 2022, Harley Long, BIA Superintendent in the Central California Agency, wrote to Plaintiffs' counsel stating that the Interior Department AS-IA had placed the Secretarial Election on "pause," pending a review of "additional historical and genealogical facts." AR- 34-75 at CVMT-005557. Through counsel, CVMT submitted a letter to Newland's office on April 4, 2022, asking for information regarding the supposed justification for the "pause" and the alleged "additional historical and genealogical facts." AR.-34-76 at CVMT-005561-63. CVMT's

counsel also submitted a request for a meeting with Newland through Newland's meeting request portal. AR. 34-77 at CVMT-005575-78. Newland ignored both requests, and CVMT was denied the opportunity to present their view on the genealogy and the effect on the process. *Id*.

On May 31, 2022, Newland sent a memorandum to Amy Dutschke, the BIA Regional Director, Pacific Region. AR.-34-78 at CVMT-005579-84. The Newland Memo stated it was "*narrowly* revising the number of eligible voters" for the CVMT. *Id*. at CVMT-005583 (emphasis added). Specifically, Newland asserts that, in drafting the 2015 Decision, Washburn "proceeded under the factually inaccurate assumption that John Jeff was the son of Jeff Davis . . . . Both the record and his decision indicate his understanding that [John Jeff's descendants] would be included in the organizational process." *Id.* at CVMT-005582. "[T]o effectuate Mr. Washburn's [supposed] intent" that John Jeff's descendants be part of the Eligible Groups, Newland revised the Washburn Decision–not to include John Jeff's descendants, but instead to include descendants of the 1929 Census, as members of the Eligible Groups. *Id.* at CVMT-005583. Unfortunately, the 1929 Census includes many individuals with no relationship to John Jeff and his descendants and Miwoks with no connection to Sheep Ranch.

On June 2, 2022, CVMT's counsel wrote to Newland, and requested that he set aside his Decision. R.-28 ¶ 13, Ex. I. Newland did not respond. *Id.* ¶ 13. Given

the gravity of the harm that would ensue in the event that a tribal election is held which includes non-tribal members, CVMT's counsel wrote to counsel for DOI on September 2, 2022, requesting confirmation that the BIA will not conduct a Secretarial Election, or take any other action to effectuate the Newland Memo, before this Court can decide the Decision's legality. *Id.* ¶ 15, Ex. I. DOI's counsel did not respond. *Id.* ¶ 15.

On September 30, 2022, the BIA published a notice on its website stating that "[t]he [BIA], Central California Agency (Bureau) plans to assist the California Valley Miwok Tribe, aka Sheep Ranch Rancheria (Tribe) with organization of a formal government structure by individuals who are eligible to participate in such a process." *Id.* ¶ 16, Ex. K. It indicated that the BIA intended to conduct an "initial virtual meeting [to] provide information concerning the organization process and procedures that will be used to determine eligibility to participate in organization of the Tribe" on November 28, 2022. *Id.* At that meeting, the BIA announced its plans to move forward with a Secretarial Election "by individuals who are eligible to participate in such a process, consistent with the December 30, 2015 decision by the AS-IA [Washburn Decision], as revised May 31, 2022, by the AS-IA [Newland Decision]." *Id.* ¶ 17. This, the BIA stated, would include descendants of those in the 1929 Census. *Id.* The BIA further stated that those wishing to participate in the process – i.e., vote – would need to submit Certificates of Degree of Indian Blood

forms establishing their eligibility to participate in the Election by January 12, 2023. *Id.*

The 1929 Census did not identify tribal affiliation rather the roll consisted of a mixture of Miwoks, many that have no ties to the Sheep Ranch Miwoks. AR. 34-5-CVMT-000374. Thus, the 2022 Newland Decision violates the Remand Decision, *CVMT III*, because his decision lacks evidence that those on the 1929 Census such as Silvia Burley or her family line had a historical connection to the Sheep Ranch Miwoks. As mentioned above, her contact with Sheep Ranch only began in 1998 when she sought membership for federal benefits. AR. 34-19 at CVMT-000978. Her membership was not based on any membership criteria. *Id*. at 90, 99. Burley is an *example* of other Miwoks in Calaveras County that were not connected over any period of time to the Sheep Ranch Rancheria Miwok community, despite a descendancy to John Jeff on the 1929 Census. (Burley has challenged the use of CDIB forms to establish eligibility to participate in organization of the Tribe. (see supra). *California Valley Miwok Tribe v. Haaland*, No. CV 24-00947 (TSC) (D.D.C. Sept. 30, 2024).

In earlier challenges by Silvia Burley, the BIA held the position that the tribe was not organized, and it was their trust obligation and duty to identify the Eligible Groups or putative members, that would determine the future membership of the tribe. The BIA knew of a larger group of Miwoks connected to Sheep Ranch did

exist, that could be part of the Tribe's future membership. R. 22-CVMT 002116. Consistent with the Remand Decision, Washburn found Silvia Burley's family was not in the Eligible Groups unless she could prove otherwise. AR. 34-43 at CVMT-003723. He did not include, all Miwoks identified on the 1929 Census. Washburn understood from the *CVMT III* Remand Decision, the Dixie Group and Silvia Burley dispute, and Burley's attempts to exclude Yakima and his brother from membership to avoid sharing revenue funds. He said "[i]f the Burley Family cannot demonstrate that they are part of the Eligible Groups, I leave to the Tribe, as a matter of self -governance and self-determination to clarify the membership status of the Burley Family." AR. 34-43 at CVMT-003723. Washburn's conclusion aligns with the district court's remand that found the 2010/2011 Echo Hawk Decision recognizing Burley's general council form of government unreasonable, violating the "distinctive obligation of trust" the Federal government has with respect to Indian Tribes." *CVMT II*, 515 F.3d at 1267. Therefore, Washburn's decision to exclude the Burley family from the Eligible Groups was not dependent on whether Jeff Davis was John Jeff's father. His determination of Eligible Groups was to comply with the *CVMT III* Remand Decision that required the government to be formed with Miwoks connected to Sheep Ranch. The heritage of John Jeff made no difference to his findings. Washburn was not excluding collateral relatives as potential future members of Sheep Ranch

Rancheria. Instead, he was leaving it to the Tribe to determine which collateral relatives would meet the membership criteria of the tribe. AR. 34-43 at CVMT-003724. Criteria, that would be established by the putative members from the Eligible Groups. Just having collateral relations with other Calaveras County Miwoks does not justify membership unless there is proof of connection to Sheep Ranch Miwoks.

CVMT, over the history of the case, have consistently stood for the right of those with historical descendancy to determine which potential members of the Tribe would participate in the organization. They have acknowledged the existence of collateral relatives that had been part of the Rancheria community. AR. 34-37-CVMT-003232. They have not disputed that the heritage of the Miwoks in Calaveras County is intermingled. Nor was their understanding of the genealogy perfectly correct. Still the families in the Eligible Groups, knew which families connected to their Sheep Ranch community of Miwoks. R.- 28; R.22-AR.-34-27. (CVMT-002537)

SUMMARY OF ARGUMENT

CVMT (1915 Census descendants), seeks reversal of the 2024 district court *Cobb Decision* for two primary reasons. First, the lower court did not follow the *CVMT III* Remand Decision that found the 2010/2011 Echo Hawk Decision unreasonable and allowed for the reorganization of the larger Miwok community at

Sheep Ranch. R. 1; R. 28. CMVT claims the 2022 AS-IA Newland Decision failed to protect the tribe's political integrity when it allowed a 1929 Indian Census of all Calaveras Miwoks to establish the Tribe's membership criteria before a tribal government was established by putative members from the Eligible Groups identified in the 2015 Washburn Decision. The Eligible Groups should determine the criteria for membership of collateral descendants, by reviewing other documents, records or census, that prove the potential members connection to the unorganized but existent Sheep Ranch community. The 2010/2011 Echo Hawk Decision was found "not consistent with the 'distinctive obligation of trust' the federal government must employ when dealing with Indian Tribes." *CVMT III*, at 99. For the same reason, the 2024 *Cobb Decision* should be reversed. In short, Newland rushed to determine the tribe's membership from a broad list of Calaveras Miwoks. This list of Miwoks on the 1929 Census allowed Silvia Burley or those without known historical connection to Sheep Ranch to be members of the Tribe without proof of a Sheep Ranch connection.

Thus, the modification by AS-IA Newland, was arbitrary and capricious agency action, for failing to follow the law and does not deserve deference and should be reversed. Under the APA, a reviewing court must set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or undertaken "without observance of procedure required by law." 5

U.S.C. § 706(2)(A), (D). An agency's action is arbitrary and capricious if it "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Desa Grp., Inc. v. U.S. SBA*, 190 F. Supp. 3d 61, 68 (D.D.C. 2016). This standard requires the agency to "examine the relevant [evidence]" and "articulate a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43 (internal quotation marks omitted). Agency action is also considered arbitrary and capricious if the Agency fails to comply with its relevant regulations. See *Nat'l Env't Dev. Assoc.'s Clean Air Project v. E.P.A.*, 752 F.3d 999, 1009 (D.C. Cir. 2014). And courts "will set aside agency actions that are adopted 'without observance of procedure required by law.'" *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 781 (9th Cir. 2006); *Pharm. Rsch. & Manufacturers of Am. v. Fed. Trade Comm'n*, 44 F. Supp. 3d 95, 113 (D.D.C. 2014) (reviewing court may hold unlawful and set aside agency action undertaken "without observance of procedure required by law" (quoting 5 U.S.C. § 706 (2) (D))).

Furthermore, Newland's decision does not deserve deference, as implied in the *Cobb Decision*. 2024 WL 4345787 at * 2. *Loper Bright Enterprises v.*

Raimondo, 144 S.Ct. 2244 (2024) struck down the *Chevron* doctrine that allowed deference to agency interpretation of law. *Chevron* "was a judicial invention that required judges to disregard their statutory duties. And the only way to ensure that the law will not merely change erratically but will develop in a principled and intelligible fashion is for us to leave Chevron behind." *Chevron USA v. National Resources Defense Council* 467 U.S. 837 (1984). The APA's judicial review provision states that courts "shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." *Loper*, 144 S.Ct at 2252-3.

Second, the 2022 Newland Decision was made over 7 years after the 2015 Washburn Decision, violating the traditional 6-year statutes of limitation period for facial challenges to final agency action under the APA. 28 U.S.C. § 2408. This delay interfered with the ongoing efforts of the BIA to organize the Tribe and had a dramatic impact on the Eligible Groups of Miwok Indians, forcing them to once again go back to court to prevent rogue leaders from organizing the Tribe. The 2015 Washburn Decision by any review standard was law by 2022. If Washburn objected to the Remand Decision, he had the right to appeal the decision. He did not file an appeal, instead he complied with the remand, by identifying the historic Eligible Groups connected to the Sheep Ranch Miwok Community, to be the "putative members" to organize the Tribe and determine criteria for future

membership. Silvia Burley and many on the 1929 Census, have yet to prove their ties to the Sheep Ranch Rancheria Miwoks of Calaveras County. It is not disputed that there are some families, or collateral relatives that can establish a connection to Sheep Ranch. The 1929 Indian Census of Calaveras County Miwoks alone does not prove that connection. AR. 34-62; AR. 34-64.

AS-IA Newland was time barred from appealing the Remand Decision to a higher federal court. And to prevent the erratic changes to law, as the U.S. Supreme Court decided in *Loper* when striking down *Chevron*, Newland should not be allowed to circumvent the Remand Decision by making modifications to the 2015 Washburn Decision on a deference standard. The remand court directed the BIA to first determine if a constituted tribe existed and then protect the Tribe from rogue leaders and members that would violate the Agency's trust obligations to the organization of the Tribe. *CVMT* III, at 90, 99. Newland's modifications opened the door to those Miwoks of mixed blood and heritage without proven blood ties or historical connections to be members of the Tribe, violating the remand.

In addition, the 2022 Newland Decision is precluded from modifying the ruling in *CVMT III*. The 2015 Washburn Decision established a comprehensive process for organizing the Tribe, involving the entire Tribal community connected to Sheep Ranch Rancheria Miwok families. The Federal government's disregard of this binding decision is a direct violation of issue preclusion principles.

STANDING

Standing is "an essential and unchanging part of the case-or-controversy requirement of Article III," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992), and therefore is "a necessary 'predicate to any exercise of [Article III courts'] jurisdiction.'" *Dominguez v. UAL Corp.*, 666 F.3d 1359, 1361 (D.C. Cir. 2012) (quoting *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663 (D.C. Cir. 1996) (en banc)). To establish standing, a plaintiff must demonstrate: (1) an injury-in-fact, (2) causation, and (3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. at 560.

First, Appellants have suffered a concrete and particularized injury resulting from the BIA's "arbitrary and capricious" decision to depart seven years later from the Washburn Decision and the original set-aside of the Sheep Ranch Rancheria without any legal or factual basis, in violation of the APA. 5 U.S.C. § 706(2)(A); R. 1 at ¶ 13. Additionally, the BIA's "failure to act" by unreasonably delaying for over 7 years, the Tribe's organizational efforts through the development of future membership criteria and ultimate Secretarial Election constitutes unlawful inaction and violates the APA's prohibition on "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 551(13); 5 U.S.C. § 706(1); R. 1 at ¶ 84. Further, the delay in implementing a Secretarial Election means there has been an

unacceptable hiatus in tribal government. *See Goodface v. Grassrope*, 708 F.2d 335, 338-39 (8th Cir. 1983).

Second, the BIA's reversal of the 2015 Washburn Decision directly and proximately caused Appellants' injury because AS-IA Newland mistakenly concludes by speculation that AS-IA Washburn's intent to include John Jeff's descendants in the Eligible Groups ("putative members") requires all 1929 Miwok Indian Census descendants to form a new Eligible Group. R. 1 at ¶ 71. Further, the Agency's failure to assist the CVMT with researching the historical connection to Sheep Ranch Rancheria of the individuals who submitted genealogies and documentation in response to the BIA's December 1, 2021, public notice has deprived Appellant/CVMT of their rightful opportunity to develop the Tribe's governing documents to set future membership of the historic tribe. R. 1 at ¶ 85.

Third, the injury is redressable by a favorable decision. Without judicial intervention, Appellants/CVMT will continue to suffer harm, by the loss of their right as Sheep Ranch historical descendants to organize an initial government and then develop constitutional criteria for future membership of the Tribe. R. 1 at ¶ ¶ 86-87. Accordingly, Appellants meet the standing requirements necessary for this Court to exercise jurisdiction.

STANDARD OF REVIEW

Questions of Law are reviewed *de novo* by the Court of Appeals without

deference to the lower court's decision. *Gerber v. Norton*, 294 F.3d 173, 178 (D.C. Cir. 2002) (quoting *Dr. Pepper/Seven-Up Cos. v. FTC*, 991 F.2d 859, 862, 865 (D.C. Cir. 1993). 'We review the district court's APA ruling *de novo*, "as if the agency's decision had been appealed to this court directly."').

ARGUMENT

I. The Court-Cobb 2024 erred by misinterpreting Previous Federal Decisions

Common reasons for modification of a final agency action might include newly discovered evidence, a change in relevant law, or a material error in the initial decision. The *Cobb Decision* on appeal tried to fit the 2022 Newland modification into these categories but failed because it misinterpreted the findings in previous Federal Court decisions.

The district court's decision turned on the finding that if there is a factual inaccuracy after an agency decision was made, then the agency may have a "distinctive obligation to revisit the prior decision". R.- 45 at 24. The district court found "[r]emoving John Jeff from the Tribal family tree injected a glaring inconsistency into the Washburn decision." R.- 45 at 24. And the district court concluded it would be hard to accept that 'Washburn would be unphased by the fact that at least one of the three eligibility criteria he defined in order to include "the whole tribal Community,"…would cover exactly zero people..…he

reasonably concluded that disqualifying so many potential members "based on newly corrected genealogical information was contrary to the plain intent of the Washburn Decision."' AR. 34-43 at CVMT- 003724; AR. 34-62 at CVMT-005326; AR. 34-78 at CVMT- 005583. This conclusion highlights the *Cobb Decision's* failure to examine the prior federal court decisions, especially the *CVMT III* Remand Decision.

It is understood why the awareness of the John Jeff genealogy seemed to the district court as a reason to support the broad-brush modification of the Washburn Decision by AS-IA Newland. CVMT agrees as Agent Terrell wrote in 1915 the Miwok communities had interchangeable ancestry. AR. 34-2-CVMT-000235. Nonetheless, the BIA has an obligation and responsibility to ensure the organization of the tribe is true to its Sheep Ranch Miwok heritage. Miwoks connected to other communities in other parts of Calaveras County should not be superficially named as modern members of the community because of collateral relations. It is established history, that many Tribes, like the Cherokee in Oklahoma and North Carolina, the Sioux in the Great Plains, or like the smaller Virginia Tribes have interchangeable ancestry. See supra. Just having a common collateral ancestor is not enough for membership in a Tribal Nation. Tribes not the Federal government determine tribal membership. *Santa Clara Pueblo v. Martinez,*436 U.S. 49, 55 (1978). That was the finding of the court in *CVMT III*.

The DOI is precluded from changes that have been addressed by the court between the same parties.

AS-IA Washburn, in 2015, revised the Federal Recognition of Tribes regulations, and was well aware of the rights of tribes to define their membership, and the intermingled ancestry of most Native American Communities. See infra fn 31. Appellants in *CVMT III*, prevailed on the issue, that determined a *process* for the organization of the Tribe, that did not allow the Federal government to decide the membership of the tribe nor name every Miwok in Calaveras County in 1929 as a member. This *process* would allow the CVMT as the putative members to establish membership criteria that would include the broader community of Sheep Ranch. AR. 34- 27-CVMT-002537. This broader community CVMT parties named in affidavits. *Id*.

DOI confused the lower court by making the CVMT claim about reducing the number of members to only 10 living descendants of the 1915 Census. That has not been the intent nor testimony of the 1915 descendants. In affidavits, they named many Miwoks connected to Sheep Ranch, that should be part of the reorganized Tribe.R.22- AR. 34-22-28,29. Their claim is simple; following the *CVMT III* Remand Decision it is their role as historical decedents ("putative members") to decide the criteria for membership to participate in the reorganization of the Tribe not the role of the Federal government. As the Eligible

Group of Sheep Ranch descendants they should not have their rights diluted by Miwoks that cannot verify a connection to the Sheep Ranch Community of Miwoks. The heritage of Miwoks descended from John Jeff is not enough to establish that connection. Nor is being listed as a Miwok on the Calaveras Census of 1929. This claim is about proof of a connection to the Sheep Ranch Rancheria, and that includes some collateral relatives. The district court erred in focusing on the number of individuals that fought in prior cases to declare a general council form of government and constitution. That case was litigated and that court required that a *process* be developed to determine the membership that was included the Sheep Ranch Community. The court also confirmed that the Tribe (Sheep Ranch community) not the Federal government would determine membership. *CVMT III*.

The controversy over membership heard by each Federal Court in this dispute over whether Sheep Ranch existed as a duly constituted Tribe focused on the fact Silvia Burley and her children were not the only members. Silvia Burley as she testified in her deposition, struggled to show a connection to the Tribe until 1998. AR. 34-19 at CVMT-000978. The court found her membership into the Tribe was not based on any membership criteria. She, soon after joining, declared herself the Tribe and excluded Yakima Dixie and his brother, from membership and their share of federal program funds and state revenue sharing funds. She took

the tribe's assets for herself. In this long history over attempts to organize the Tribe, all parties including the BIA Regional Offices, the descendants of the 1915 Census, and AS-IA Washburn knew and discussed the potential of a larger group of future members than the few who attempted to organize the tribe under Burley. R.-22-AR. 34-43. The Remand Decision concluded that the general council form of government (Burley's Tribe) that the 2010/2011 Echo Hawk Decision found legitimate, was not a duly constituted tribe, and was inconsistent with the Federal governments' "distinctive obligation of trust" to Indian Tribes. Accordingly, the 2010/2011 Echo Hawk Decision was remanded for reconsideration. *CVMT III*. All the federal court decisions reviewing this dispute looked at the fraud, Silvia Burley's decisions to disenroll Yakima, and determined that the Tribal government did not exist and needed to be organized. The Remand Decision was directing the Agency to take the initial steps to ensure a Tribe was constituted with integrity. Washburn fulfilled that obligation to the Tribe by determining who were the eligible "putative" members with the historical heritage to Sheep Ranch to organize a Tribal government. R.-1-AR. 34-43 at CVMT- 003723. He was not determining the criteria for future membership. To do so would have violated the *CVMT III* Remand Decision. Nor was he reviewing the extended genealogy of those putative groups or their collateral relatives that were part of the extended Sheep Ranch community.

In 2015 AS-IA Washburn, of Native Heritage (Chickasaw) and an Indian Law Scholar, was no doubt aware how tribes develop membership criteria and base rolls. He knew that Census documents may be used but are not the sole source that Tribes rely on to develop membership criteria. And he was aware of the legal precedent that leaves membership criteria to the internal affairs of Tribes, not the Federal government. As the Remand Decision acknowledged, "every Indian tribe is capable of managing its own affairs and governing itself." *CVMT II,* 515 F.3d at 1263 (quoting *Cherokee Nation*, 30 U.S. at 16). This means that although tribes do not possess the "full attributes of sovereignty, they remain a separate people, with the power of regulating their internal and social relations. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (citations omitted)." *CVMT III, Id*. at 97.

Washburn, the current Dean of the University of Iowa College of Law, would have understood the *Marinez* decision, that found Tribes have the sovereign right to determine their own membership. He was also a contributing author of Felix Cohen's Handbook of Federal Indian Law. In Section 3.03[3] of the Handbook: "**Tribal Power to Determine Tribal Membership-** Courts have consistently recognized that one of an Indian tribe's most basic powers is the authority to determine questions of its own membership… A tribe has power to grant, deny, revoke, and qualify membership. Membership requirements may be established by usage, by written law, by treaty with the United States, or even by

intertribal agreement."(footnotes omitted, referencing *Martinez*, *Id*. at 72 n. 32 "A tribe's right to define its own membership for tribal purposes has long been recognize as central to it existence." Therefore, the *Cobb Decision* misconstrued the 2015 Washburn Decision, to mean he would not accept a limited number as the putative members to organize the Tribal government. He distinguished his references to a larger potential community: "Whether the descendants of the Miwoks identified in the 1929 Census should be included in the organization of the CVMT is an internal tribal decision that shall be made by the individuals who make up the Eligible Groups…I leave to the Tribe as a matter of self-governance and self-determination to clarify the membership status of the Burley Family. AR. 34-43 at CVMT- 003723. Washburn was unwilling to use a broad mix blood census as the document to identify the Sheep Ranch membership or as the Eligible Group to organize the Tribe. He and the regional BIA office would have known of the 1935 base roll of the Tuolumne Band of Me-Wuks. Many of the Calaveras County Miwoks where on that roll. But, it was not within his authority to compare families and distinguish collateral from lineal descents. That was a determination to be researched, (perhaps with the assistance of the BIA) by the putative members of Sheep Ranch in developing criteria for the future membership of the Tribe to determine those qualified to vote in a Secretarial Election. And, while he might not have known the correct genealogy of John

Jeff, he did know that Michael Mendibles a known lineal descent of 1915 Census, had identified a community of 30 to 100, connected to Sheep Ranch. AR. 34-27 (Mendibles Affidavit submitted in *CVMT II* and referred in *CVMT III*); See also R.-37-2 (Declaration of Michael Mendibles in Support of Motion for Preliminary Injunction).

The constituted Tribe may find some Miwoks on the 1929 Census to have the heritage or connection to Sheep Ranch, but Washburn was leaving that to the Tribe as a matter of self-governance and self -determination to clarify. AR. 34-43 at CVMT- 003723. As the AS-IA, he had the authority to grant Federal recognition to Tribes, and knew recognition of Tribes is a complex process. Evidence establishing a historic tribal community is a key requirement, as well as the existence of the community each decade after 1900. If available, early censuses establish that connection to the historic tribe. Greater weight is given to rolls prior to WWI and WWII. Rolls or Census data after those wars, when families were relocated in military service are considered modern. Kevin Washburn was relying on an earlier Census of 1915 as a more reliable roll to establish the historic tribe. See, BIA guidebook on Federal Acknowledgment of Tribes. https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/admindocs/OfficialGuidelines.pdf

The *Cobb Decision* lacked a full understanding of how tribes develop

membership criteria. As argued Kevin Washburn (Chickasaw) had the Native heritage and the Indian Law background to know tribal membership practices. He also knew it does not take a large group to review family records, county residency, affiliation with Indian community churches, or other documentation to establish historic membership criteria of a Tribe. The BIA can assist with that research during the organization process. The use of the 1929 Census circumvents the *process* of the eligible putative members from verifying that history. R. 37-2. See supra. It is not the right of the Federal government to determine the potential membership. The *Cobb Decision* finding the Newland modifications reasonable simply confused Washburn's references to a larger group of potential members; to be the "group" he considered as the future membership of the Tribe.

The genealogy of John Jeff or any person named on the 1915 Census was not fundamental to naming the Eligible Groups. Washburn properly identified the groups; each was an individual listed on the 1915 Census that were identified as Sheep Ranch Miwoks. The families that are Plaintiffs here (all descendants of the 1915 Census), have the heritage and the knowledge to discern the history of the community and to create membership criteria that correctly follows that history.

II. Modifying a Final Action Seven Years later is Arbitrary and Capricious Agency Action and Unfair to Plaintiffs/Appellants

The *Cobb Decision*, found, while the agency is charged with articulating "a rational connection between the facts found and the choice made, *State Farm*, 463 U.S. 29, 43 (1983), an agency explanation of 'less than ideal' does not call for invalidating the decision as a whole if 'the agency's path may reasonably be discerned." *Ala. Dep't of Env't Conservation v. EPA,* 540 U.S. 461, 497 (2004). AR. 45 at 9. In *Delaware Dep't of Nat. Res. & En't Control v. E.P.A.*, 785 F.3d 1, 11 (D.C. Cir. 2015), as amended (July 21, 2015), the court held that '[w]e will reverse when agency action is "based on speculation," Jones, 716 F.3d at 214, or when the agency did not "engage the arguments raised before it,"' *NorAm Gas Transmission Co. v. FERC,* 148 F.3d 1158, 1165 (D.C.Cir.1998) (quoting *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C.Cir.1992)). Newland Decision's **assumed** that descendants of John Jeff comprise a portion of that greater Tribal community at Sheep Ranch. An assumption is akin to speculation in that it's not a fact that agency action should be based upon. AS-IA Newland's assumption about the intention of AS-IA Washburn, harmed the reliance interest of the Appellants CVMT, and was compounded by the seven year delay. The APA provides that a court shall "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). An agency's "failure to act" constitutes "agency action." 5 U.S.C. § 551(13). Defendants/Appellees, DOI failure to proceed with the Tribe's

organizational efforts, including Secretarial Elections, constitutes "agency action unlawfully withheld or unreasonably delayed."

The purpose of the statute of limitations periods is to ensure fairness in legal proceedings by promoting timely resolution of disputes and preserving the integrity of the legal process. By limiting the time in which legal actions can be taken, statutes of limitations help provide certainty and finality in legal matters. Once the statute of limitations expires, the legal dispute is effectively closed, which allows individuals and businesses to move on without fear of old claims resurfacing. A key principle in administrative law is that once an agency action is final, it generally cannot be modified unless certain conditions are met. Finality means the agency has completed its decision-making process, and there are no further actions or changes anticipated within the agency.

Some DOI bureaus allow for appeals or requests for reconsideration following a final decision, but these are generally brought under specific requests for reconsideration through an administrative appeal process. Here, AS-IA Washburn declared his 2015 Decision final and the process to organize Sheep Ranch began under the Eligible Groups he listed. The key group was the 1915 Census. Also listed was Jeff Davis (who appeared on the 1915 Census and was the one vote for the IRA in 1934) and Mabel Dixie, who resided at Sheep Ranch. Seven years later, AS-IA Newland used the genealogy error alone of John Jeff to

modify the Washburn Decision. This action amounts to an unreasonable delay and arbitrary and capricious action under the APA. 5 U.S.C. § 706(1).

Parties challenging the final agency decision are restricted to a 6-year statute of limitations period under the APA. This is to ensure finality to the decision and fairness to parties that might be affected by changes or modifications. DOI, in their Response to CVMT's Motion for Summary Reversal, argue the APA applies only to those challenging the decision and not to the Agency. However, it follows under the same principle of fairness, and needs to balance competing interests, it is fundamental to resolve legal disputes in a reasonable timeframe. Otherwise, parties such as CVMT impacted by a delayed modification are severely disadvantaged and harmed.

Also, as demonstrated in this case, AS-IA Newland was seven years removed from AS-IA Washburn's decision-making and he therefore lacked the ability to ascertain with certainty the facts and circumstances surrounding the 2015 Washburn Decision. Thus, Newland's conclusions regarding the evidence Washburn used for his 2015 Decision are questionable due to the many years that have passed. For these reasons, AS-IA Newland's Decision to modify a long-standing final agency action is arbitrary and capricious decision-making because of its obvious impact to parties, that descended from Sheep Ranch families identified on the early 1915 Census.

The DOI has regulations and internal procedures that restrict when an agency can modify a final agency action.[16] Modifications are typically allowed under certain conditions, however, these actions are often time-limited and require adherence to specific procedural rules. If an agency wishes to modify a decision, it must follow the relevant rules for reconsideration, appeal, or legal grounds for modification within the prescribed timelines. As noted in the CVMT Motion for Summary Reversal, (page 10-11) "AS-IA Newland was time barred from appealing the Remand Decision to a higher federal court. And to prevent the erratic changes to law, as the U.S. Supreme Court decided in *Loper* when striking down *Chevron,* Newland should not be allowed to circumvent the Remand Decision by modifications to the 2015 Washburn Decision. To comply with the remand the BIA was to first determine if a constituted tribe existed and then protect the Tribe from rogue leaders and members that would violate the Agency's trust obligations to the organization of the Tribe. *CVMT III*, at 90, 99. Newland's modifications opening the door to those on the 1929 Census without proven blood ties or historical connections to the Tribe, violates the Remand" and is arbitrary and capricious decision making.

III. The Government Is Precluded from Recognizing AS-IA Newland's Decision

[16] https://www.ecfr.gov/current/title-25/chapter-I/subchapter-A/part-2

a. AS-IA Washburn Necessarily and Finally Decided the Eligible Groups to Organize the Tribe

The doctrine of issue preclusion bars relitigation of issues of law or fact previously decided by a court where (1) the same issue was contested and submitted for judicial determination, (2) the issue was actually and necessarily decided, and (3) preclusion would not result in "basic unfairness" to the party bound by the prior judgment. *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *Yamaha Corp. of America v. United States*, 961 F.2d 245, 254 (D.C. Cir. 1992). This doctrine applies equally to judicial and administrative decisions. *Deerfield v. F.C.C.*, 992 F.2d 420, 424-428 (2d Cir. 1993); *Spawr Optical Research, Inc. v. Baldrige*, 649 F. Supp. 1366, 1369 (D.D.C. 1986).

b. The 2022 Newland Decision Addresses the Same Issue Previously Raised by AS-IA Washburn

The 2022 Newland Decision impermissibly revisits the identical issue resolved by AS-IA Washburn. In 2018, AS-IA Washburn determined that the 1929 Census descendants was an internal tribal matter, with the Eligible Groups responsible for deciding enrollment. AR. 34-43 at CVMT-003723. AS-IA Newland's reversal in 2022, which expands eligibility to additional 1929 descendants, contravenes the binding nature of the Washburn Decision. The Government's "switch in the verbal formula" cannot circumvent the preclusive

effect of the Court's and Agency's prior decisions. *Starker v. United States*, 602 F.2d 1341, 1345 (9th Cir. 1979).

c. The Agency Actually and Necessarily Determined the Issues Addressed in the 2022 Decision

The preclusive effect of a judgment extends to all issues "actually and necessarily determined" in the prior litigation, including both matters explicitly addressed by the prior court and matters that the court "must necessarily, albeit implicitly," have decided in order to reach its judgment. *Yamaha*, 961 F.2d at 254, 256. Furthermore, "once an issue is raised and determined, it is the entire issue that is precluded, not just the particular arguments raised in support of it in the first case." *Id*. at 254 (internal quotations and citations omitted) (emphasis in original).

AS-IA Washburn conclusively determined that other Miwoks listed on the 1929 Census were not putative members but could be part of organization if they could verify a connection to Sheep Ranch for enrollment. The Newland Decision's contrary determination improperly seeks to relitigate settled issues, disregarding the *CVMT III* Remand Decision and the Agency's prior determination.

d. Giving Preclusive Effect to The Agency's Decision Would Not Work a Basic Unfairness

Issue preclusion applies unless it results in "basic unfairness" to the party bound by the prior judgment. *Yamaha,* 961 F.2d at 254. Here, preclusion would promote fairness because the 2015 Washburn Decision considered the interests of

the 1929 Census descendants, allowing the Eligible Groups to evaluate enrollment eligibility. Applying issue preclusion safeguards Plaintiffs from manifest injustice, respects judicial authority, and enforces the Agency's administrative decision consistent with the *CVMT III* Remand Decision in favor of majoritarian rule.

CONCLUSION

The Remand Decision was not requiring the AS-IA to create the future membership of Sheep Ranch. The Court in *CVMT III* reviewed the record and concluded this Tribe had been hijacked by a family with little connection to the historic tribe, and then took the money meant for those at Sheep Ranch for themselves. Yakima Dixie, who was raised and resided on Sheep Ranch was disenrolled. AS-IA Washburn was aware of this history of fraud that was thoroughly outlined in the Remand Decision. His intent was to comply with the Remand and restore the Tribes integrity by designating a historic eligible group to prevent the Tribe's take over by rogue leaders and members.

The Plaintiffs here, are not inconsistent by advocating they know there is a larger potential community. R.-1- AR. 34- 27; AR. 37-2. What they are standing for is who should look at the history of the Rancheria and the relations to Miwok families and determine an appropriate list of families to create the future membership of the Tribe. Tribal membership criteria are not limited to state or

federal census rolls. In many states, Native American Census rolls do not exist. The Tribe and only the tribe has the inherent sovereign right to create membership criteria that honors their heritage. *Martinez*, 436 U.S. 49 (1978).

In conclusion, the Plaintiffs/Appellants support the Washburn Decision that identifies the families connected to the historic tribe known as Sheep Ranch. The Newland Decision did not consider the hardship the Dixie family and other families with heritage to Sheep Ranch endured, when monies intended for the Rancheria, were diverted to a family that did not have the heritage or historic connection to the Tribe. A group of 10 people is not inconsistent with the intent of Washburn to ensure a historic Federal tribal government could be organized of families connected to the Rancheria that could determine the future membership of the Tribe. He was designating the 1915 Census because it represented the historic tribe not to the entire future membership of the community. Many Tribal Councils have no more than 10 members. The issue misunderstood by the *Cobb Decision* was it does not take many people to establish future member criteria, it takes the right people with the historic connection to the tribe. The 1915 Census Washburn identified represents the right people. Those few putative members can constitute a tribal government structure that can then develop the criteria for future members of the Tribe. It is not the role of the Federal government to determine the future membership of the Tribe. Thus, DOI is precluded from reversing the Remand

Decision.

AS-IA Washburn's decision should not be modified based on AS-IA Newlands speculation that all Miwok families on the 1929 Indian Census of Calaveras County have a right to be eligible members. As the *CVMT III* Remand Decision clearly found, the first step is ensuring a duly constituted government exists. That Tribal government cannot exist if based on rogue leaders or members.

Dated: April 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 15, 2025, I caused a copy of the foregoing Motion to be filed electronically and that this document is available for viewing and downloading from the ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

I hereby certify that on this 15th day of November 2025, that:

1. This document complies with the word limit of FRAP 27(d)(2) because, excluding the parts of the document exempted by FRAP 32(f), this document contains 12,993 words.

2. This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6), because this document was prepared in a proportionally spaced typeface using Microsoft Word in a 14-point New Times Roman font.

Dated: April 15, 2025

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ADDENDUM

STATUTES AND REGULATIONS

STATUTES

Statutes

The Indian Reorganization Act ("IRA") 1934

Indian Reorganization Act, (June 18, 1934), measure enacted by the U.S. Congress, aimed at decreasing federal control of American Indian affairs and increasing Indian self-government and responsibility.
This Act, referred to in text, is act June 18, 1934, ch. 576, 48 Stat. 984 , popularly known as the Indian Reorganization Act, which is classified generally to this chapter.

Administrative Procedure ACT 5 U.S.C. § 706

The Administrative Procedure Act (APA) is a federal act that governs the procedures of administrative law . The APA is codified in 5 U.S.C. §§ 551–559 . The core pieces of the act establish how federal administrative agencies make rules and how they adjudicate administrative litigation. 5 U.S.C. § 551(5)–(7) clarifies that rulemaking is the "agency process for formulating, amending, or repealing a rule," and adjudication is the final disposition of an agency matter other than rulemaking. That is, rulemaking goes beyond resolution of specific controversies between parties and includes management and administrative functions. Rulemaking and adjudication can be formal or informal, which in turn determines which APA procedural requirements apply. The APA applies to the different types of administrative actions as follows:

- Formal Rulemaking . 5 U.S.C. §§ 553 , 556 , and 557 govern formal rulemaking.
- Informal Rulemaking . 5 U.S.C. § 553 governs informal rulemaking.
- Formal Adjudication . 5 U.S.C. §§ 554 , 556 , and 557 govern formal adjudication.

- Informal Adjudication . The APA does not establish procedural requirements for informal administrative adjudication, but the Due Process Clause of the constitution, the specific agency's regulations, or other statutes may create procedural protections.

Regulations

Finality of Agency Decisions 25 C.F.R. § 2.6

§ 2.6 Finality of decisions.
(a) No decision, which at the time of its rendition is subject to appeal to a superior authority in the Department, shall be considered final so as to constitute Departmental action subject to judicial review under 5 U.S.C. 704, unless when an appeal is filed, the official to whom the appeal is made determines that public safety, protection of trust resources, or other public exigency requires that the decision be made effective immediately.
(b) Decisions made by officials of the Bureau of Indian Affairs shall be effective when the time for filing a notice of appeal has expired and no notice of appeal has been filed.
(c) Decisions made by the Assistant Secretary - Indian Affairs shall be final for the Department and effective immediately unless the Assistant Secretary - Indian Affairs provides otherwise in the decision.
[54 FR 6480, Feb. 10, 1989; 54 FR 7666, Feb. 22, 1989]

Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs. 75 Fed. Reg. 60810

This notice publishes the current list of 564 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on August 11, 2009 (74 FR 40218).

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