

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

Mdewakanton Band of Sioux in Minnesota v. Debra Haaland

No. No. 20-5173, United States Court of Appeals for the District of Columbia Circuit (May 18, 2021)

SUMMARY

Tribal recognition; exhaustion of administrative remedies; Federally Recognized Indian Tribe List Act (25 U.S.C. §§ 5130 et seq.); mandamus. The D.C. Circuit affirmed dismissal of a mandamus action seeking to compel the Secretary of the Interior to add the Mdewakanton Band of Sioux to the list of federally recognized tribes, holding that the tribe must first exhaust the administrative petition process under 25 C.F.R. Part 83. Even claims of recognition based on nineteenth-century congressional enactments, treaties, or statutes require exhaustion before judicial review, as the List Act commits recognition decisions to the Secretary's expertise. The court rejected futility arguments, noting that the tribe was not listed and thus Part 83 applied, and that the Secretary had not predetermined the merits.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Tatel; Millett; Pillard
JURISDICTION	Federal
DECIDED	May 18, 2021
DOCKET	No. 20-5173
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from district court's dismissal under Rule 12(b)(6) for failure to exhaust administrative remedies.
STANDARD OF REVIEW	De novo for the legal question of exhaustion; mandamus standard requiring a 'clear and indisputable' right.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Mdewakanton Band of Sioux in Minnesota v. Debra A. Haaland, Secretary of the Interior, and Tara Katuk Mac Lean Sweeny, Assistant Secretary-Indian Affairs

TOPICS

indian affairs

federal recognition of tribes

exhaustion of remedies

administrative law

appellate procedure

PRACTICE AREAS

Administrative Law

Indian Law

Federal Jurisdiction

QUESTIONS PRESENTED

1. Whether the appellants were required to exhaust the Part 83 administrative process before seeking judicial review to compel the Secretary to add the Mdewakanton Band to the list of federally recognized tribes.
2. Whether the futility or inadequacy exceptions to the exhaustion requirement apply.

HOLDINGS

1. Yes, principles of prudential exhaustion require any tribe claiming to be federally recognized to file a Part 83 petition before obtaining judicial review, regardless of the form of pre-List Act evidence (e.g., treaties, statutes, or agency action).
2. No, the futility exception does not apply because Part 83 applies to appellants (they are not listed) and there is no claim that Interior predetermined the merits of their recognition claim.

KEY QUOTATIONS

“Whatever evidence a tribe may have that the federal government recognized it before passage of the List Act, Part 83 exhaustion is procedurally required before the courts will evaluate the claim.”

“Appellants’ claim presents complex historical questions of tribal continuity akin to those in James, Mackinac Tribe, and Muwekma, and the same prudential exhaustion rationales apply.”

FACTUAL BACKGROUND

Under the Federally Recognized Indian Tribe List Act of 1994, the Secretary of the Interior annually publishes a list of recognized Indian tribes. The Department also has an administrative process under 25 C.F.R. Part 83 for tribes to petition for recognition. Two individual appellants claiming to represent the Mdewakanton Band of Sioux in Minnesota sought a writ of mandamus to compel the Secretary to add the Band to the list, arguing that the Band was already recognized via nineteenth-century statutes and treaties and thus did not need to file a Part 83 petition.

PROCEDURAL HISTORY

The district court dismissed the case under Rule 12(b)(6) for failure to exhaust administrative remedies, citing *Mdewakanton Band of Sioux in Minnesota v. Bernhardt*, 464 F. Supp. 3d 316 (D.D.C. 2020). The plaintiffs sought a writ of mandamus to require the Secretary to add the band to the list of federally recognized tribes.

DISPOSITION

affirmed

CASES CITED

- James v. United States Department of Health & Human Services, 824 F.2d 1133 (D.C. Cir. 1987)
- Mackinac Tribe v. Jewell, 829 F.3d 754 (D.C. Cir. 2016)
- Muwekma Ohlone Tribe v. Salazar, 708 F.3d 209 (D.C. Cir. 2013)
- McCarthy v. Madigan, 503 U.S. 140 (1992)
- Woodford v. Ngo, 548 U.S. 81 (2006)
- Koch v. White, 744 F.3d 162 (D.C. Cir. 2014)
- Mdewakanton Band of Sioux in Minnesota v. Bernhardt, 464 F. Supp. 3d 316 (D.D.C. 2020)

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