No. 25-313

In the Supreme Court of the United States

CHINOOK INDIAN NATION, ET AL., PETITIONERS

v.

DOUG BURGUM, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
AMBER BLAHA
EZEKIEL A. PETERSON
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a prefatory congressional finding in the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, § 103(3), 108 Stat. 4791, gives federal courts the authority to confer federal recognition on Indian tribes outside of any legislative or administrative process.

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OPINIONS BELOW

The memorandum opinion of the court of appeals (Pet. App. 1a-4a) is available at 2025 WL 1692754. The opinion of the district court (Pet. App. 10a-43a) is reported at 326 F. Supp. 3d 1128.

JURISDICTION

The judgment of the court of appeals was entered on June 17, 2025. The petition for a writ of certiorari was filed on September 12, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Federal recognition of an Indian tribe is the process through which a tribe enters into a "government-to-government relationship with the United States." *Yellen* v. *Confederated Tribes of Chehalis Reservation*, 594 U.S. 338, 345 (2021) (quoting *Cohen's Handbook of Federal Indian Law* § 3.02[3], at 134 (Nell Jessup New-

ton et al. eds., 2012)) (brackets omitted). Recognition is "a prerequisite to the protection, services, and benefits of the Federal Government" available to Indian tribes. 25 C.F.R. 83.2(a).

Tribes may be recognized "in a number of ways: 'from treaty, statute, executive or administrative order, or from a course of dealing with the tribe.'" *Yellen*, 594 U.S. at 345 (quoting William C. Canby, Jr., *American Indian Law in a Nutshell* 4 (4th ed. 2004)). Before the 1970s, recognition was often determined "on a case-by-case basis at the discretion of the Secretary" of the Interior. 43 Fed. Reg. 39,361, 39,361 (Sept. 5, 1978); see Pet. App. 14a. But in 1978, facing an increase in requests for federal recognition, the Department of the Interior promulgated regulations to standardize the procedures for recognizing a tribe. See 43 Fed. Reg. at 39,361. Those regulations, known as the "Part 83" regulations, establish seven criteria for federal recognition as a tribe, and they direct the Department to conduct a detailed review of political, sociological, genealogical, and anthropological evidence to determine whether a petitioning Indian group qualifies. See 25 C.F.R. 83.11.

Congress later enacted the Federally Recognized Indian Tribe List Act of 1994 (List Act), Pub. L. No. 103-454, 108 Stat. 4791. The operative provision of the List Act requires the Secretary, annually, to "publish in the Federal Register a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." *Id.* § 104, 108 Stat. 4792 (25 U.S.C. 5131). The List Act includes several congressional findings. See *id.* § 103, 108 Stat. 4791-4792 (25 U.S.C. 5130 note). As relevant here, Congress found that "Indian tribes presently may be recog-

nized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe;' or by a decision of a United States court." *Id.* § 103(3), 108 Stat. 4791. Congress further found that "a tribe which has been recognized in one of these manners may not be terminated except by an Act of Congress," and that the Secretary should maintain and publish a thorough and accurate "list of all federally recognized tribes." *Id.* § 103(4), (6)-(8), 108 Stat. 4791-4792.

2. Petitioner Chinook Indian Nation (CIN) is a "nonprofit organization based in Bay Center, WA whose members primarily reside in Washington and Oregon." Pet. App. 11a. CIN is not a federally recognized Indian tribe. *Id.* at 12a.

CIN petitioned for federal recognition under the Part 83 regulations in 1981, but because of deficiencies in its petition, the petition was not placed under active consideration until 1994. See Pet. App. 18a. In 2001, the Bureau of Indian Affairs within the Department of the Interior concluded that CIN should be acknowledged as a federally recognized tribe. *Id.* at 19a; see 66 Fed. Reg. 1690, 1691 (Jan. 9, 2001). But in 2002, the Bureau reconsidered the issue and concluded that CIN did not meet three of the criteria for federal recognition under the governing regulations. Pet. App. 20a; see 67 Fed. Reg. 46,204 (July 12, 2002). CIN did not seek judicial review of that final determination.

3. More than 15 years later, in 2017, CIN, its Chairman, and a related nonprofit (petitioners in this Court) brought this suit in the United States District Court for the Western District of Washington. See Pet. App. 45a. As relevant here, petitioners seek "a declaration" that

CIN is a "federally recognized tribe," an injunction ordering the Department to provide CIN with "benefits accorded to federally recognized Tribes," and an order appointing a special master to oversee the process. *Id.* at 117a-118a.

The district court dismissed petitioners' claim for lack of subject-matter jurisdiction. Pet. App. 43a; see *id.* at 31a. The court first explained that it is "well-established" that "issues of tribal acknowledgment present non-justiciable political questions." *Id.* at 26a. The court then rejected petitioners' argument that Congress authorized the judicial conferral of federal recognition through its finding in the List Act that "Indian tribes presently may be recognized * * * by a decision of a United States court." § 103(3), 108 Stat. 4791; see Pet. App. 27a-29a. The court determined that the List Act's finding was "not a statement of what the law is" today, "but rather a summary of the processes by which tribes were recognized prior to the adoption of the" Department's 1978 regulations. Pet. App. 28a (citing *Shinnecock Indian Nation* v. *Kempthorne*, No. 06-cv-5013, 2008 WL 4455599 (E.D.N.Y. Sept. 30, 2008)); see *id.* at 30a. It found that any "ad hoc judicial determinations of tribal recognition were displaced" by the 1978 regulations. *Id.* at 28a; see *id.* at 30a. And it concluded that "the issue of federal acknowledgment of Indian tribes is a quintessential political question that must be left to the political branches of government and not the courts." *Id.* at 30a.

4. The court of appeals affirmed in an unpublished memorandum opinion. Pet. App. 1a-3a. The court explained that the decision whether the federal government will establish a government-to-government relationship with a tribe "has traditionally been held to be a

political one not subject to judicial review." *Id.* at 2a (citation omitted). The court rejected petitioners' contention that a prefatory finding in the List Act disrupted that traditional understanding. *Id.* at 3a. The court explained: "It is highly unlikely that Congress significantly restructured the federal recognition process by means of one clause, buried among several congressional findings, that precedes an operative provision pertaining only to accurate list keeping." *Ibid.* Instead, the court found it "more likely" that the congressional finding merely "references narrow ways in which tribes have been 'recognized' under other statutes for limited purposes." *Id.* at 3a-4a (citation omitted). The court concluded that "much more explicit language is necessary to prove that a statute allows litigants to circumvent an administrative process." *Id.* at 3a.

ARGUMENT

Petitioners contend (Pet. 14-24) that a statutory finding in the List Act delegates to the Judiciary the authority to recognize a group as an Indian tribe. The lower courts correctly rejected that argument as inconsistent with the statutory text, history, and this Court's precedent. The decision below does not create any disagreement among the courts of appeals, as no circuit court has adopted petitioners' argument. And in all events, this case presents a poor vehicle for resolving the question presented because the decision below could be affirmed on the alternative ground that petitioners' claim is time-barred, and because petitioners have alternative means for seeking federal recognition. This Court should deny the petition.

1. The court of appeals correctly held that federal courts lack the authority to confer recognition upon a putative tribe through a declaratory judgment.

a. Federal recognition is a "formal political act" that confirms a "tribe's existence as a distinct political society." *California Valley Miwok Tribe* v. *United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008) (citation omitted). The act of recognition establishes a government-to-government relationship between the United States and the tribe. See *Yellen* v. *Confederated Tribes of Chehalis Reservation*, 594 U.S. 338, 345 (2021); 25 C.F.R. 83.2. Federally recognized tribes are entitled to certain "protection, services, and benefits of the Federal Government." 25 C.F.R. 83.2(a).

This Court has long held that the decision whether to establish that type of government-to-government relationship with a particular putative tribe is the province of the political branches, not the judiciary. Over 150 years ago in *United States* v. *Holliday*, 70 U.S. 407 (1866), this Court explained that when it comes to the federal recognition of tribes, "it is the rule of this [C]ourt to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs." *Id.* at 419. The Court added: "If by them those Indians are recognized as a tribe, this [C]ourt must do the same." *Ibid.* In *United States* v. *Sandoval*, 231 U.S. 28 (1913), this Court reaffirmed that principle, explaining that "questions whether, to what extent, and for what time [Indian communities] shall be recognized and dealt with as dependent tribes * * * are to be determined by Congress, and not by the courts." *Id.* at 46. That is not to say that the political branches are free to "bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe." *Id.* at 46. But absent such arbitrariness, the Court has explained, judicial "deference to the political departments in determin-

ing whether Indians are recognized as a tribe" reflects "familiar attributes of political questions." *Baker* v. *Carr*, 369 U.S. 186, 215 (1962).

Courts of appeals, likewise, have consistently held that the federal recognition of a tribe is a nonjusticiable political question. As one court noted, "courts ha[ve] no judicially discoverable or manageable criteria by which to accord federal recognition." *Wyandot Nation of Kansas* v. *United States*, 858 F.3d 1392, 1402 (Fed. Cir. 2017) (citation omitted); see *id.* at 1401-1402 (noting the "long history making clear that tribal recognition is a political question committed to the political branches"); *United States* v. *Zepeda*, 792 F.3d 1103, 1114 (9th Cir. 2015) (en banc) ("[F]ederal recognition of a tribe[is] a political decision made solely by the federal government."), cert. denied, 578 U.S. 945 (2016); *Miami Nation of Indians of Indiana, Inc.* v. *United States Dep't of the Interior*, 255 F.3d 342, 347 (7th Cir. 2001) (en banc) ("[T]he action of the federal government in recognizing or failing to recognize a tribe has traditionally been held to be a political one not subject to judicial review.") (citation omitted), cert. denied, 543 U.S. 1129 (2002).

Consistent with that line of precedent, the courts below correctly held that the district court lacked authority to confer recognition upon CIN through a declaratory judgment. See Pet. App. 4a; *id.* at 23a. Instead, as the court of appeals explained, "[f]ederal recognition is channeled through the Department of [the] Interior's Part 83 process." *Id.* at 3a. When CIN pursued that process decades ago, the Department concluded that CIN did not satisfy the criteria for recognition as a tribe. See 67 Fed. Reg. 46,204 (July 12, 2002). CIN did not seek judicial review of that decision. Petitioners

thus cannot now bring a freestanding claim for recognition through a declaratory judgment.

b. Petitioners contend (Pet. 14-16) that the List Act empowers federal courts to confer federal recognition on a tribe directly, through a declaratory judgment. That contention lacks merit.

The List Act includes only one "operative provision." Pet. App. 2a. That provision requires the Secretary of the Interior to "publish in the Federal Register a list of all Indian tribes *which the Secretary recognizes* to be eligible for the special programs and services provided" to Indian tribes. 25 U.S.C. 5131(a) (emphasis added). As the court of appeals correctly observed, that provision requires only the "publication of a list of tribes that have already been recognized," and it "leaves the antecedent issue of recognition to the Secretary." Pet. App. 2a. Petitioners therefore do not rely on the operative text of the List Act itself.

Instead, petitioners rely on Congress's prefatory finding that "Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations * * * ;[ ] *or by a decision of a United States court*." List Act § 103(3), 108 Stat. 4791 (emphasis added); see Pet. 14-16. That language, however, does not create a substantive right or cause of action to seek a declaration of federal recognition from a court. As this Court has repeatedly recognized, a general statement of congressional findings is typically "too thin a reed" to create substantive rights. *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 19 (1981); see *National Org. for Women, Inc.* v. *Scheidler*, 510 U.S. 249, 260 (1994) ("We also think that the quoted statement of congressional findings is a rather thin reed upon which to base a re-

quirement of economic motive neither expressed nor, we think, fairly implied in the operative sections of the Act."). Nothing in the List Act justifies a contrary conclusion. On the contrary, the List Act's sole operative provision reinforces the central role of the Executive Branch in the process of federal recognition. See Pet. App. 2a.

Instead, the List Act's congressional findings are best read as describing the "historical practice" of ad hoc "judicial determinations of tribal status resulting from particular litigation." Pet. App. 29a (quoting *Shinnecock Indian Nation* v. *Kempthorne*, No. 06-cv-5013 2008 WL 4455599, at *17 (E.D.N.Y. Sept. 30, 2008)). For example, before the promulgation of the Part 83 regulations, federal courts occasionally addressed the tribal status of certain groups in the course of resolving other statutory claims. See, *e.g.*, *Joint Tribal Council of Passamaquoddy Tribe* v. *Morton*, 528 F.2d 370, 377 (1st Cir. 1975) (holding that the reference to "any . . . tribe of Indians" in the Indian Nonintercourse Act includes the Passamaquoddy Tribe, notwithstanding a lack of formal federal recognition). In its finding concerning decisions of the federal courts, Congress was merely describing those types of pre-1978 ad hoc judicial decisions, not authorizing federal courts to confer recognition on tribes outside of the political branches.

Today, a "decision of a United States court" can still lead to federal recognition—but only indirectly. If the Department denies a putative tribe's petition for recognition, the petitioner may seek judicial review of that determination under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* See *Agua Caliente Tribe of Cupeño Indians of Pala Reservation* v. *Sweeney*, 932 F.3d 1207,

1215 (9th Cir. 2019). If the reviewing court were to find the agency's denial decision to be arbitrary and capricious, it is possible that the agency might determine on remand that the tribe was in fact entitled to federal acknowledgment. But that is not what happened here. Petitioner does not challenge any decision denying it federal recognition, and the time to challenge the Department's 2002 decision has expired. See 28 U.S.C. 2401(a); p. 15, *infra*. The List Act's findings do not compel a contrary result.

c. Petitioners further contend (Pet. 16-23) that adopting their interpretation of the List Act's findings would avoid a nondelegation problem. They assert that the statute's findings are "the only principled source" of the Department's authority to recognize tribes, because no other statutory provision offers "intelligible principles" to guide the agency's recognition decisions. Pet. 16-18 (capitalization omitted). From that premise, petitioners infer (Pet. 18-23) that the List Act's findings must themselves be an operative delegation of the recognition power—not only to the Department, but also to the federal courts. Petitioners' argument lacks merit.

The Department's authority to recognize federal tribes does not stem from the third finding in the List Act. On the contrary, federal recognition of a tribe was "traditionally an executive function," and some courts have determined that it "never *requires* legislative action" at all. *Miami Nation*, 255 F.3d at 346. That approach reflects that the Executive's authority in this area was "originally grounded" in the President's "exclusive power to govern relations with foreign governments." *Western Shoshone Bus. Council* v. *Babbitt*,

1 F.3d 1052, 1057 (10th Cir. 1993); see U.S. Const. Art. II, §§ 2-3.

Moreover, the operative provision of the List Act—not its findings—confirms the Secretary's authority to recognize tribes because it instructs the Secretary of the Interior to publish a list of all Indian tribes "*which the Secretary recognizes* to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. 5131(a) (emphasis added). Other statutory provisions also reflect Congress's understanding of the Executive Branch's authority in this area. For example, Congress has provided that the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, shall "have the management of all Indian affairs and of all matters arising out of Indian relations." 25 U.S.C. 2. And Congress has authorized the President to "prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs." 25 U.S.C. 9.

Those congressional grants of authority do not violate the nondelegation doctrine. To begin, "Congress may assign the President broad authority regarding the conduct of foreign affairs or other matters where he enjoys his own inherent Article II powers." *Gundy* v. *United States*, 588 U.S. 128, 170-171 (2019) (Gorsuch, J., dissenting)); see *Loving* v. *United States*, 517 U.S. 748, 772 (1996) ("[T]he same limitations on delegation do not apply 'where the entity exercising the delegated authority itself possesses independent authority over the subject matter.'") (citation omitted); *FCC* v. *Consumers' Research*, 606 U.S. 656, 706 (2025) (Kavanaugh, J., concurring). As noted above, the Executive's powers to recognize a tribe are grounded in such inherent author-

ity. And in all events, Congress's delegations to the Department of the Interior in this area provide the requisite "intelligible principle" to guide the agency's determinations. *Consumers' Research*, 606 U.S. at 673 (quoting *J.W. Hampton, Jr., & Co.* v. *United States*, 276 U.S. 394, 409 (1928)). The List Act's operative provision, for example, makes clear that federal recognition will lead to "eligib[ility] for the special programs and services provided by the United States to Indians because of their status as Indians." 25 U.S.C. 5131(a). That provision ensures that the Secretary will confer recognition only on those groups that should receive the programs and services offered to Indians based on that status. Likewise, the List Act's definitional provision defines an "'Indian tribe'" as a community "that the Secretary of the Interior acknowledges to exist as an Indian tribe," clarifying that a recognized tribe must be one that already exists and has some historical pedigree. 25 U.S.C. 5130(2).

There is accordingly no need to adopt petitioners' strained interpretation of the List Act's finding in order to avoid a nondelegation problem.

2. Petitioners fail to identify any conflict among the courts of appeals warranting this Court's intervention.

Tellingly, petitioners do not contend that any federal court has permitted a freestanding claim for judicial recognition like the one petitioners seek to bring here. On the contrary, petitioners acknowledge (Pet. 10) that the other federal courts to consider similar claims have reached the same conclusion as the decision below. For example, in *Shinnecock Indian Nation*, the court concluded that the List Act's third finding does not grant federal courts the authority to review a tribe's federal status for federal recognition purposes prior to Inte-

rior's final determination. 2008 WL 4455599, at *17. And in *Burt Lake Band of Ottawa & Chippewa Indians* v. *Zinke*, 304 F. Supp. 3d 70 (D.D.C. 2018), the court reached the same conclusion. See *id.* at 81 ("The Court does not have free-standing authority to by-pass the entire federal recognition process and order the agency to add plaintiff to the List.").

Petitioners contend (Pet. 10) that the Ninth, Tenth, and D.C. Circuits "have quoted the List Act to say that the judiciary has the power to recognize tribes." All of those cases, however, merely recite the language of the List Act finding as background in addressing other questions presented. None of those decisions permitted a claim like petitioners', and the decision below does not conflict with any of them.

For example, *Frank's Landing Indian Community* v. *National Indian Gaming Commission*, 918 F.3d 610 (9th Cir. 2019), concerned whether the Frank's Landing Indian Community, which lacked federal recognition, was eligible for gaming under the Indian Gaming Regulatory Act. *Id.* at 612. The Ninth Circuit in that case recited the List Act's findings in the background section of its opinion, but it did not hold that those findings created a cause of action for a putative tribe to seek recognition in federal court. *Id.* at 614. Indeed, when the Ninth Circuit was presented with the question of the effect of the List Act finding in this case, it rejected petitioner's argument. Pet. App. 3a-4a. Moreover, even if those two decisions were inconsistent, this Court does not grant review to resolve intracircuit conflicts. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

Petitioner also invokes (Pet. 11) the Tenth Circuit's decision in *Cherokee Nation of Oklahoma* v. *Norton*,

389 F.3d 1074, 1076 (2004), cert. denied, 546 U.S. 812 (2005). That court's mention of the List Act's findings was likewise part of a background discussion and not part of the holding of that case. See *id.* at 1076. The plaintiffs in that suit sought APA review of the Department's decision to recognize a tribe, see pp. 9-10, *supra*, not a freestanding claim for a declaratory judgment granting federal recognition. *Cherokee Nation*, 389 F.3d at 1077-1078.

Petitioners are also mistaken in relying (Pet. 11-12) on the D.C. Circuit's decision in *Stand Up for California!* v. *United States Department of the Interior*, 994 F.3d 616 (2021), cert. denied, 142 S. Ct. 771 (2022). That case concerned a challenge to the Department's acquisition of land in trust for a California tribe whose federally recognized status had been terminated under the California Rancheria Act but restored pursuant to a court-ordered settlement. *Id.* at 619-620. The D.C. Circuit held that the court-approved settlement invalidated the effects of the Rancheria Act, and explained that the List Act's finding acknowledging the possibility of judicial recognition "comports with decades of court-approved settlements reestablishing federal recognition of Indian tribes." *Id.* at 627. But the court did not suggest that the List Act created a cause of action to seek federal recognition from a court. And the D.C. Circuit has since rejected an argument by a putative tribe that the List Act's finding imposes a duty on the Department to recognize a tribe based on a tribal court order, explaining that the List Act's finding merely "describe[s] how tribes previously were recognized." *Kanam* v. *Haaland*, No. 22-5197, 2023 WL 3063526, at *1 (Apr. 25, 2023) (per curiam).

3. Even if the question presented otherwise warranted this Court's review, this case would be a poor vehicle in which to address it for at least two reasons.

First, a decision in petitioners' favor would not be outcome-determinative because the decision below could be affirmed on the alternative ground that petitioners' claim is time-barred. See *Dandridge* v. *Williams*, 397 U.S. 471, 475 n.6 (1970) (prevailing party may rely on any ground to support the judgment, even if not considered below). As respondents explained below, see Gov't C.A. Br. 34-37, claims against the United States are barred "unless the complaint is filed within six years after the right of action first accrues." 28 U.S.C. 2401(a). A claim accrues "when the plaintiff has a complete and present cause of action." *Corner Post, Inc.* v. *Board of Governors*, 603 U.S. 799, 810 (2024) (citation omitted). Here, assuming that petitioners had a justiciable claim for federal recognition, their cause of action would have been complete by 1995, when Interior left CIN off the list of federally acknowledged tribes required by the List Act's operative provision. See 60 Fed. Reg. 9250 (Feb. 16, 1995). At the latest, petitioners' claim was available in 2002, when Interior denied CIN's petition for federal acknowledgment. But petitioner did not file this suit until 15 years later, in 2017. Any claim against the United States for recognition is therefore time-barred.

Second, this Court's review is not warranted because CIN has other avenues to seek federal recognition as an Indian tribe. Effective March 2025, the Department amended the Part 83 regulations to permit an "unsuccessful petitioner" to re-petition for federal acknowledgment under specified conditions. 90 Fed. Reg. 3627, 3643 (Jan. 15, 2025) (25 C.F.R. Pt. 83, Subpt. D); 90 Fed.

Reg. 9515 (Feb. 13, 2025) (delaying effective date). Under the revised regulations, a petitioner that was "denied Federal acknowledgment prior to February 14, 2025," has until February 14, 2030, to "request authorization to re-petition." 25 C.F.R. 83.49.

Thus, if it meets the applicable criteria, CIN can seek to re-petition, and may seek judicial review of a denial of a new petition. See pp. 9-10, *supra*. CIN can also seek legislative recognition by Congress. In light of those alternative avenues for relief, this Court's review is particularly unwarranted at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
ADAM R.F. GUSTAFSON
Principal Deputy Assistant Attorney General
AMBER BLAHA
EZEKIEL A. PETERSON
Attorneys

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