NOTES

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Understanding Federal Recognition: A Study of the Procedural Pathways and the Chinook Indian Nation

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INTRODUCTION

The federal administrative recognition process for Indian tribes was established in 1978. The process is defined as "a formal political act confirming the tribe's existence as a distinct political society and institutionalizing the government-to-government relationship between the tribe and the federal government."[1] Even with several amendments since the establishment of federal recognition, the most recent being in 2015,[2] its nature is still flawed. This flaw is represented by its inconsistent and inefficient application, and even what it represents at its core: the colonialist mindset that Native Americans must submit to political authority in order for their existence to be "confirmed."[3] Federal recognition further pushes colonial ideals that a tribe must be confirmed and legitimized by a source who likely knows very little about their lives, let alone their culture.

Nonetheless, federal recognition is an important procedural step for tribes, one that is more comparable to getting a passport than "legitimizing" existence.[4] Federal recognition allows tribes to be eligible to receive funding from the Bureau of Indian Affairs, and through the process tribes "are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty).[5] Tribes are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States."[6]

The administrative process a tribe must undergo to become federally recognized is expensive and time-consuming, often spanning decades. Today, there are 574 federally recognized tribes.[7] As of this Note's completion, thirty-four tribes' petitions for federal recognition have been denied. Of those thirty-four denied petitions, three petitioners completed this process and received federal recognition, only to see it stripped from them upon reconsideration. The Chinook Indian Nation is one of these three.[8]

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1 COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 3.02 (Nell Jessup Newton ed., 2023) [hereinafter COHEN'S HANDBOOK].

2 25 C.F.R. 83.11 (2015).

3 *See, e.g.*, Mark D. Myers, *Federal Recognition of Indian Tribes in the United States*, 12 STAN. L. & POL'Y REV. 271 (2001).

4 *See id.*

5 U.S. DEP'T OF THE INTERIOR, *Indian Affairs*, https://www.bia.gov/bia [https://perma.cc/6DRA-HFRG] (last visited Dec. 4, 2024).

6 *Id.*

7 U.S. DEP'T OF THE INTERIOR, *supra* note 5.

8 *Id. See also* CHINOOK INDIAN NATION, https://chinooknation.org (last visited Nov. 7, 2024).

The Chinook Indian Nation, a tribe located on the Columbia River in Oregon and Washington, presents one example of the flawed nature of our federal administrative recognition process, and it is the focus of this Note. The Tribe is made up of five Chinookan-speaking bands: Clatsop, Cathlamet (Kathlamet), Lower Chinook, Wahkiakum (Waukikum), and Willapa (Weelappa).[9] The Chinook tribe started seeking recognition in 1978 when the administrative recognition process was established, received recognition in 2001, and had it rescinded in 2002.[10] Even without the support of our federal government, the Tribe continues to push for recognition while emphasizing the importance of culture and tribal presence.[11]

This Note is organized into three Parts. First, I discuss the history of federal recognition and summarize the three routes to recognition from a legal perspective. This Part provides a foundational understanding of the recognition process, highlighting its evolution over time and the complexities inherent in each route: administrative, legislative, and judicial.

Second, I apply the process to the Chinook Indian Nation and discuss the Tribe's experience, history, and presence in the Pacific Northwest. Drawing from legal and historical sources, I analyze the Chinook people's journey through the recognition process, highlighting efforts to navigate hurdles and assert their rightful status as a sovereign tribal nation. This Part offers insights into the unique challenges and experiences faced by the Chinook Indian Nation within the broader context of federal recognition.

Third, I advocate for the federal recognition of the Chinook Indian Nation. Drawing upon the tribe's cultural heritage, historical contributions, and ongoing efforts to preserve their identity, I argue that recognition is not only a matter of legal status but also a fundamental right that honors Chinook sovereignty. This Part underscores the significance of federal acknowledgment for the Chinook Indian Nation and emphasizes the importance of upholding tribal sovereignty and self-determination.

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9 *See* CHINOOK INDIAN NATION, *supra* note 8.

10 *Id.*

11 *See id.*

I
THE THREE ROUTES TO FEDERAL RECOGNITION

There are three separate avenues a tribe may use to gain federal recognition: (1) the administrative federal acknowledgment process, (2) legislative approval, or (3) judicial order. Each of these will be discussed in detail throughout this Part. However, before analyzing the legal components of federal recognition, it is important to note that a tribe seeking federal recognition is not submitting that its existence requires approval from the federal government. "Non-recognized tribes . . . are properly understood merely as outside the federal-tribal relationship, and not as necessarily suspect or inauthentic. Federal recognition should be understood as simply that: recognition. The power to recognize, or not recognize, does not alter underlying facts; it changes only how we treat those facts under the law."[12] Although the result of federal recognition is incredibly powerful to many tribes, the process from a tribal perspective is not one of establishing legitimacy, but simply about documentation.

A. Administrative Acknowledgment

Under the Commerce Clause, Congress can "regulate commerce with foreign nations, among states, and with the Indian tribes."[13] In 1832, Congress gave the Bureau of Indian Affairs ("BIA") statutory authority to "oversee and carry out the Federal government's trade and treaty relations with the tribes," and, in 1849, the BIA was transferred to the newly created U.S. Department of the Interior ("DOI").[14] Therefore, the established process is best understood as executive action delegated by Congress.[15] However, 25 U.S.C. § 9 also allows the president to prescribe regulations regarding acts relating to Indian affairs, so it could also be considered within the executive branch's implied powers.

1. Federal Recognition Process of 1978

In 1824, the BIA was administratively established by the Secretary of War, John C. Calhoun, in part "to enhance the quality of life [and] promote economic opportunity . . . of American Indians, Indian tribes,

12 Myers, *supra* note 3, at 285.

13 U.S. CONST. art. I, § 8, cl. 3.

14 COHEN'S HANDBOOK, *supra* note 1, § 3.02[4]. *See also* U.S. DEP'T OF THE INTERIOR, *supra* note 5.

15 *See* Myers, *supra* note 3.

and Alaska Natives."[16] Although the BIA is "almost as old as the United States itself,"[17] a comprehensive list of tribes under federal protection did not exist until 1978.[18] The publication of this list effectively created the concept of non-federally recognized tribes through exclusion from the list. Prior to 1978, tribes were recognized by the federal government in several different ways, but the existence of treaty relations and other formal political acts recognizing tribal status "obviated the need for any more refined considerations, definitions, or criteria for tribal status."[19] As these acts decreased, the uncertainty regarding the interpretation of treaty rights and the existence of tribes grew until the administrative process went into effect.[20]

As the BIA notes, its core responsibility is to protect and enhance the quality of life for the federally recognized Native American tribes.[21] Although this mission statement itself perpetuates the colonialist idea that tribes need protection and enhancement rather than reparations and recognition as a sovereign nation, obtaining federal recognition remains an important procedural step for several reasons. First, it is a prerequisite to establishing a government-to-government relationship with the United States and other tribes.[22] Second, it "imposes on the government a fiduciary trust relationship to the tribe and its members."[23] Third, it is important for tribes to receive eligibility for the programs and services created by Congress for the benefit of Indian tribes.[24] In contrast, non-federally recognized tribes have no legal relationship with the federal government, little political or legal authority, and little to no access to the federal benefits otherwise available to recognized tribes.[25] For these reasons, many non-federally recognized tribes promptly began the new recognition process established in 1978, unaware of the decades-long process many were about to undertake.

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16 U.S. DEP'T OF THE INTERIOR, *supra* note 5.

17 *Id.*

18 William W. Quinn Jr., *Federal Acknowledgement of American Indian Tribes: Authority, Judicial Interposition, and 25 C.F.R. § 83*, 17 AM. INDIAN L. REV. 37, 38 (1992).

19 COHEN'S HANDBOOK, *supra* note 1, § 3.02[5].

20 *Id. See* United States v. Washington, 520 F.2d 676 (9th Cir. 1975).

21 U.S. DEP'T OF THE INTERIOR, *supra* note 5.

22 COHEN'S HANDBOOK, *supra* note 1, § 3.02[3]; 25 C.F.R. § 83.2 (2015).

23 25 C.F.R. § 83.2 (2015).

24 *Id.*

25 *Id.*

According to the 1978 recognition process, a tribe would be federally recognized if the following criteria was met:

> [A tribe must] (a) establish that it has been identified from historical times to the present on a substantially continuous basis as "American Indian" or "aboriginal"; (b) establish that a substantial portion of the group inhabits a specific area or lives in a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area; (c) furnish a statement of facts which establishes that the group has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present; (d) furnish a copy of the group's present governing document, or in the absence of such a written document, a statement describing in full the membership criteria and the procedures through which the group currently governs its affairs and its members; (e) furnish a list of all known members based on the group's own defined membership criteria, and show that the membership consists of individuals who have established descendancy from a tribe that existed historically or from historical tribes that combined and functioned as a single autonomous entity; (f) establish that the membership of the group is composed principally of persons who are not members of any other North American Indian tribe; and (g) establish that neither the group nor its members are the subject of congressional legislation that has expressly terminated or forbidden the federal relationship.[26]

As the above requirements suggest, the process was, at minimum, painstaking and tedious. In practice, and according to the BIA itself, it was criticized as too slow, "expensive, burdensome, inefficient, intrusive, less than transparent and unpredictable."[27] These flaws often led to arbitrary results for petitioning tribes.[28] Accordingly, the federal recognition requirements, as set out in 25 C.F.R. § 83, have been amended twice to improve the process: once in 1994 and again in 2015.[29] The 2015 amendments remain in effect as of 2024.

2. Federal Recognition Today

As of 2024, a tribe petitioning the BIA for federal recognition must meet the requirements set forth in 25 C.F.R. § 83.11, each of which will be discussed briefly in this Section. Although substantive and procedural changes were made to the recognition process, it is still

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26 Quinn, *supra* note 18, at 54.

27 Federal Acknowledgement of American Indian Tribes, 80 Fed. Reg. 37861 (July 1, 2015) (codified in 25 C.F.R. § 83).

28 *See* María Montenegro, *Unsettling Evidence: An Anticolonial Archival Approach/ Reproach to Federal Recognition*, 19 ARCHIVAL SCI. 117 (2019).

29 25 C.F.R. § 83 (2015).

deeply flawed. This Section will also analyze one ongoing issue that exemplifies this flawed nature.

For a petitioner to receive federal recognition under § 83.11, the tribe must establish (1) its continuous identification as an American Indian entity since 1900; (2) that it comprises a distinct community existing since 1900; (3) that it has maintained political influence over its members since 1900; (4) the governing document and membership criteria; (5) that membership consists of valid descendants; (6) that membership is composed principally of persons who are not members of any federally recognized tribe, unless sections two and three are satisfied or the members provide written confirmation of their membership; and (7) that Congress has not expressly terminated or forbidden the Federal relationship.[30] However, a tribe previously federally recognized under 25 C.F.R. § 83.12 is not required to demonstrate continuous political authority under the third element.

The components of § 83.11, in the aggregate, result in hundreds, if not thousands, of pages of documents that the petitioner must create, uncover, and ultimately hand over to the BIA in an attempt to certify the tribe's presence to the federal government. Currently, the recognition process disproportionately burdens tribes with limited resources and capacity, creating barriers to access and disparities within Native American communities. These complexities, coupled with stringent reporting requirements, place undue strain on tribes already grappling with historical injustices and systemic inequalities.

While the 2015 amendment to the regulations introduced several new components, such as a phased review and public posting of all available petition documents,[31] the BIA seems to have put a procedural Band-Aid over a substantively injured process in hopes that those paying attention would celebrate a small victory and ignore the ongoing failure. Many continue to critique the amended process in several respects. One example of this is the response to the rule stating that petitioning tribes who were denied under the 1978 requirements cannot be reconsidered under the 2015 criterion.[32] In response to public pressure, the BIA wavered on this issue, proposing a rule that would allow for reconsideration under limited circumstances. Ultimately, the agency decided against implementing this rule, further fueling

30 *Id.* § 83.11(a)–(g).

31 *See* 25 C.F.R. § 83 (2015).

32 Federal Acknowledgement of American Indian Tribes, 80 Fed. Reg. 37861 (July 1, 2015) (codified in 25 C.F.R. § 83).

frustration and skepticism among tribal advocates and observers.[33] Its reasoning spanned one paragraph and involved three main points as to why allowing tribes to re-petition would be inappropriate:

> The final rule promotes consistency, expressly providing that evidence or methodology that was sufficient to satisfy any particular criterion in a previous positive decision on that criterion will be sufficient to satisfy the criterion for a present petitioner. The Department has petitions pending that have never been reviewed. Allowing for re-petitioning by denied petitioners would be unfair to petitioners who have not yet had a review, and would hinder the goals of increasing efficiency and timeliness by imposing the additional workload associated with re-petitions on the Department, and [the Office of Federal Acknowledgement] in particular. The Part 83 process is not currently an avenue for re-petitioning.[34]

In other words, the BIA refused to allow for re-petition because the amendment would not affect those granted recognition under the pre-2015 process and because it would be unfair to tribes waiting for their petition to be reviewed. Its final and most disappointing reason was that the BIA's workload may increase if tribes were to re-petition. The BIA's reasoning was well critiqued in *Burt Lake Band of Ottawa & Chippewa Indians v. Bernhardt*.[35]

The Burt Lake Band of Ottawa & Chippewa Indians, historically known as the Cheboiganing Band, is an Indian tribe located in the lands around Burt Lake and the surrounding areas of Northern Michigan.[36] The Burt Lake Band has been fighting for recognition since 1934 and, in this case, argued that the BIA's final version of the amended rule denying reconsideration was arbitrary and capricious and, therefore, must be held unlawful and set aside according to the Administrative Procedure Act.[37]

In ruling in favor of the Burt Lake Band, the D.C. District Court found that denying reconsideration neither supports the promotion of consistency nor is it rationally related to the promotion of fairness.[38] In its opinion, the court correctly pointed to the fact that tribes granted federal recognition before 2015 bear no rational relation to those

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33 *Id.*

34 *Id.*

35 *See* Burt Lake Band of Ottawa & Chippewa Indians v. Bernhardt, 613 F. Supp. 3d 371 (D.D.C. 2020). *See also* Chinook Indian Nation v. Bernhardt, 2020 U.S. Dist. LEXIS 4869 (Jan. 10, 2020).

36 *About*, BURT LAKE BAND, https://burtlakeband.org/about/ [https://perma.cc/VTJ9-7KN7] (last accessed Apr. 2, 2024).

37 Burt Lake Band of Ottawa & Chippewa Indians, 613 F. Supp. 3d at 376.

38 *Id.* at 384–85.

previously denied under a broken system.[39] The court emphasized the BIA's admittedly "broken" pre-2015 process and concluded that "eliminat[ing] any right to re-petition will frustrate, and not advance, the stated goal of achieving consistency" in the federal recognition process.[40] The court also found the increased workload argument unfounded and nonsensical.[41] For these reasons, in early 2020 the court ordered the re-petitioning ban to be remanded to the DOI for further consideration in accordance with its analysis.[42] In January of 2025, five years later, the DOI issued a revised rule which included "a conditional, time-limited opportunity for denied petitioners to re-petition for Federal acknowledgment"[43]:

> An unsuccessful petitioner may re-petition only if [the Assistant Secretary for Indian Affairs] determined that the petitioner has plausibly alleged one or both of the following:
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> (a) A change from part 54 of this chapter (as it existed before March 30, 1982) or part 83 (as it existed before July 31, 2015) to this part 83 would, if applied on reconsideration, change the outcome of the previous, negative final determination to positive; and/or
>
> (b) New evidence (i.e., evidence not previously submitted by the petitioner) would, if considered on reconsideration, change the outcome of the previous, negative final determination to positive.[44]

It remains to be seen how the 2025 revised rule, which went into effect on March 21, 2025, will impact previously unsuccessful petitioners. Because of the flawed and currently unknown landscape of the administrative process, the congressional route remains where many tribes seek federal recognition.[45] Congress is also where tribes may turn to after enduring the expensive, grueling, and inherently flawed process with the BIA, an entity whose stated mission is "to enhance the quality of life [and] promote economic opportunity"[46] for the very people it often harms.

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39 *Id.* at 383.

40 *Id.* at 384.

41 *Id.* at 386.

42 *Id.* at 386–87.

43 Federal Acknowledgment of American Indian Tribes, 90 Fed. Reg. 3627 (Jan. 15, 2025).

44 25 C.F.R. §83.48.

45 COHEN'S HANDBOOK, *supra* note 1, § 3.2[5].

46 *See* U.S. DEP'T OF THE INTERIOR, *supra* note 5.

B. Legislative Acknowledgment

Although the BIA acts within its congressional and executive authority, tribes have also sought federal acknowledgment directly through Congress. This process adheres to the normal procedure 0 for passing a bill into law, which would formally acknowledge a tribe's "existence,"[47] and therefore requires a significant amount of Congressional support and political authority. Historically, "Congress has implicitly recognized the existence of most tribes through treaties, statutes, and ratified agreements,"[48] but a tribe seeking explicit federal recognition through Congress requires a bill passed into law that directly orders its recognition. The Lumbee Tribe of North Carolina and six Virginia Indian tribes sought recognition through Congress, with the latter seeing a bill passed into law in 2018 and the former hoping to see a bill passed soon. Both are analyzed below.

1. Virginia Tribes

In 2018, a bill became law granting six Virginia Indian tribes federal recognition.[49] Congressman Rob Wittman introduced the bill in February 2017.[50] The Bill passed in the House of Representatives in May of that year, was unanimously consented to by the Senate in early January 2018, and was signed into law by the president on January 29, 2018.[51] Five years later, members of these tribes spoke to what federal recognition and the resources that accompany it have felt like: "'The years after federal recognition are like drinking out of a firehose,' said Gerald 'Jerry' Stewart of the Chickahominy Indian Tribe-Eastern Division about the opportunities and obligations that come from the government-to-government relationship between a small tribal nation and the federal bureaucracy."[52]

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47 *See Infra* Introduction.

48 COHEN'S HANDBOOK, *supra* note 1, §3.02[4].

49 The six tribes are the Chickahominy Indian Tribe, the Chickahominy Indian Tribe–Eastern Division, the Upper Mattaponi Tribe, the Rappahannock Tribe, the Monacan Indian Nation, and the Nansemoond Indian Tribe. Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Pub. L. No. 115-121, 132 Stat. 40.

50 Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, 115 H.R. 984, 115th Cong.

51 Press Release, Off. of Rob Wittman, *President Signs Virginia Tribes Recognition Bill Authored by Wittman into Law* (Jan. 29, 2018), https://wittman.house.gov/news/documentsingle.aspx?DocumentID=1789 [https://perma.cc/Z6XA-NSBT].

52 Greg Werkheiser, *Tribal Nations in Virginia Mark 5 Years Since Federal Recognition*, CULTURAL HERITAGE PARTNERS (Jan. 30, 2023), https://www.culturalheritagepartners.com/tribal-nations-in-va-mark-5-years-since-federal-recognition/ [https://perma.cc/AN38-3EKX].

On its face, this timeline appears much more expedited than seeking recognition through the BIA.[53] However, this example is not representative of the time it may take lobbying with state representatives just to get a bill in front of Congress, let alone the roadblocks that may arise once it reaches the Congress floor. While the process outlined above spans just under a year, the Congressman who introduced this bill celebrated a decade of hard work.[54] Even ten years, however, is incomparable to what tribal members consider a centuries-long process.[55] In reality, the process involved one year of grappling with the tangible bill, a decade of dedication from the involved representatives, and centuries of tribal efforts—efforts that the Lumbee Tribe of North Carolina remains engaged in today.

2. Lumbee Tribe of North Carolina

The Lumbee Tribe is considered one of the largest American Indian tribes in the Eastern United States.[56] In 1885, North Carolina formally recognized the Lumbee Tribe.[57] In 1956, Congress recognized the Lumbee Tribe of North Carolina as an Indian tribe "while denying the People any federal benefits that are associated with such recognition."[58] In this sense, they afforded the Tribe a title without any substantive reasons for the centuries-long push for such a designation as a federally recognized tribe. Therefore, the Lumbee Tribe has been pushing for a bill to be passed into law that gives them the full force of what federal recognition is intended to mean.

Since 1956, the Lumbee Tribe has had several bills introduced on their behalf, but none passed into law. Of recent action, North Carolina Senators Thom Tillis and Ted Budd introduced the *Lumbee Tribe of North Carolina Recognition Act* in April 2021, which was submitted to the Committee on Indian Affairs in November of the same year and

53 *See infra* Section I.A.2.

54 Press Release, Off. of Rob Wittman, *supra* note 51.

55 *See Our Vision for the Future*, CHICKAHOMINY TRIBE, https://www.chickahominy tribe.org/tribal-history/our-vision-for-the-future [https://perma.cc/DCS3-2DQL] (last visited Dec. 28, 2024).

56 Press Release, Off. of Thom Tillis, *Tillis, Budd Introduce Legislation to Uphold Congressional Promise on Lumbee Recognition* (Feb. 17, 2023), https://www.tillis.senate .gov/2023/2/tillis-budd-introduce-legislation-to-uphold-congressional-promise-on-lumbee -recognition [https://perma.cc/S7KQ-NCVV].

57 *Id.*

58 *History and Culture*, LUMBEE TRIBE, https://www.lumbeetribe.com/history-and -culture [https://perma.cc/C5YV-63YZ] (last visited Apr. 2, 2025).

never moved past that point.[59] Unfortunately, "[f]ailure to act on a bill is equivalent to killing it,"[60] so the process begins anew when no action is taken. In February of 2023, another bill was introduced, this time titled the *Lumbee Fairness Act*. As of April 2024, the only action taken on this bill is listed as "read twice and referred to the Committee on Indian Affairs" by the Senate.[61]

The push for Congress to federally recognize the Lumbee Tribe of North Carolina has "broad bipartisan consensus[,]… the unequivocal support of both President Biden and former President Trump, and pass[ed] on a bipartisan basis in the House in the last two Congresses."[62] Furthermore, the state of North Carolina recognized the Lumbee Tribe in 1885.[63] Notwithstanding these factors, they remain a federally unrecognized tribe. This exemplifies that while this route presents an alternative to the federal acknowledgment process, it arguably comes with just as much uncertainty and time. The judicial branch might possibly provide swift resolution at less cost, at least in comparison to the administrative process and congressional action, but the courts rarely choose to do so. Additionally, Congress has the power to federally recognize a tribe while placing limitations on what that recognition provides. This is something the BIA cannot do under the Federal Acknowledgment Process (i.e., granting federal recognition but prohibiting certain activities, like building a casino). Therefore, a grant of federal recognition through Congressional action still has significant roadblocks, leading some tribes to navigate judicial determination as a third avenue to seek federal recognition.

C. Judicial Determinations

While the courts often resolve issues within the administrative recognition process, they rarely, if ever, find it appropriate to assume the responsibility of awarding or denying a tribe federal recognition. Federal authority stems from the federal government's historic guardianship role over Indian tribes,[64] but courts will rarely disturb a

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59 *Hearing on S. 1364, H.R. 1975, H.R. 2088, and H.R. 4881 Before S. Comm on Indian Affairs*, 117th Cong. (2021).

60 *How a Bill Becomes a Law*, NORTON, https://norton.house.gov/how-a-bill-becomes-a-law [https://perma.cc/6LFZ-AMX4] (last visited Apr. 2, 2025).

61 *S.521 – Lumbee Fairness Act*, CONGRESS.GOV, https://www.congress.gov/bill/118th-congress/senate-bill/521/all-actions (last visited Apr. 2, 2025).

62 *Id.*

63 *See* LUMBEE TRIBE, *supra* note 58.

64 COHEN'S HANDBOOK, *supra* note 1, § 3.02[4].

determination made by another branch of government regarding the recognition itself, "due to the extensive nature and exercise of congressional power in the field . . . ."[65] Therefore, seeking recognition through judicial authority may be approached as the last resort once the two former routes are exhausted. Additionally, it is unlikely that a court will explicitly order that a tribe is federally recognized due to the above reasons. However, the Passamaquoddy Tribe of eastern Maine proves that a court's ruling may induce Congressional action.[66]

1. Passamaquoddy Tribe v. Morton

The Passamaquoddy are one of several tribes of the Wabanaki group; their ancestral home covered an area in excess of three million acres.[67] Today, the Tribe is located on two reservation communities in Maine and New Brunswick, Canada, with a Tribal population of approximately 3,600 people. In *Passamaquoddy Tribe v. Morton*, before gaining federal recognition, the tribe made the following claims against the State of Maine:

> Maine had divested the Tribe of most of its aboriginal territory in a treaty negotiated in 1794; that Maine had wrongfully diverted 6,000 of the 23,000 acres reserved to the Tribe in that treaty; and that Maine had mismanaged tribal trust funds, interfered with tribal self-government, denied tribal hunting, fishing and trapping rights, and taken away the right of members to vote, from 1924 to 1967.[68]

The court found that the Tribe existed since at least 1776, that Massachusetts and Maine have assumed considerable responsibility for the Tribe's protection and welfare starting in 1789, that Maine has enacted approximately 350 laws specifically relating to the Passamaquoddy Tribe, and that, in contrast, there have been few dealings between the federal government and the Tribe.[69] However, in 1790, Congress adopted the Indian Nonintercourse Act to "protect the lands of 'any . . . tribe of Indians.'"[70] In order to decide whether the

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65 *Id.*

66 *See generally* Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975).

67 *Passamaquoddy History*, PASSAMAQUODDY PEOPLE, https://passamaquoddypeople.com/passamaquoddy-history [https://perma.cc/4VYB-3JCR] (last visited Apr. 2, 2025).

68 *Joint Tribal Council of the Passamaquoddy Tribe*, 528 F.2d at 372.

69 *Id.* at 373–75.

70 *Id.* at 376.

Nonintercourse Act is applicable, the court first had to analyze whether the Passamaquoddy Tribe was a "tribe" under this Act.[71]

In sum, the court ruled that the Act included the Tribe, established a trust relationship between the Passamaquoddy Tribe and the federal government, and that the United States did not fully sever that relationship.[72] Nowhere in this case does the court take on the role of federally recognizing the Passamaquoddy Tribe. However, its analysis and order resulted in a negotiated settlement of the case, "culminating in passage by Congress of the Maine Indian Claims Settlement Act (PL 96-420) in 1980," which federally recognized the Passamaquoddy Tribe.[73]

2. Original Jurisdiction and Its Applicability to Federal Recognition

Congress gave courts original jurisdiction over civil actions "brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior [arising] under the Constitution, laws, or treaties of the United States."[74] While there is significant litigation between the DOI and Indian tribes, it still falls within the administrative process rather than judicial authority for a court to determine recognition. This is reflected through repeated appeals to the courts following denied recognition petitions under the administrative process.[75] After receiving the negative result, tribes may seek out the court to correct the alleged error by requesting the court to issue an order that the BIA must grant the tribe federal recognition under the § 83 process.[76] While it may be well within the court's authority to impart recognition on a previously unrecognized tribe, a decision of this magnitude and finality is unlikely to be reached in a manner that grants sufficient recognition to a tribe. Furthermore, while judicial determination holds promise as a means of resolving recognition disputes, it is not without its challenges. Court cases can be time-consuming, costly, and unpredictable, with outcomes often influenced by complex legal doctrines and precedents. Additionally, the judiciary may defer to administrative agencies on matters of tribal

71 *Id.*

72 *Id.* at 379–82.

73 *Passamaquoddy History*, *supra* note 67.

74 28 U.S.C. § 1362.

75 *See, e.g.*, Crystal Owens, *Wash. Tribe's Recognition Bids Waste Court's Time, Feds Say*, LAW 360 (Nov. 22, 2023), https://www.law360.com/nativeamerican/articles/1768999/wash-tribe-s-recognition-bids-waste-court-s-time-feds-say [https://perma.cc/BBM4-MNHR].

76 *See id.*

recognition, citing principles of agency deference and expertise. For this reason, a tribe seeking recognition is better served under the administrative process, or by working toward the passage of a bill. Overall, the court's main role in the federal recognition process is to settle disputes between the BIA, DOI, and Indian tribes regarding the administrative recognition process.

The three routes to recognition above are analyzed from a primarily legal lens. However, federal recognition from a tribal perspective runs deeper than the laws by which it is governed. The Chinook Indian Nation presents an example of these negative effects, and its members are all too familiar with challenges that arise under the separate avenues of federal recognition.

II
CHINOOK INDIAN NATION

If federal recognition feels like drinking out of a firehose,[77] the Chinook Indian Nation has a garden hose, kinked at several points, leaving little to drink from.

A. A Note on Chinook Tribal History

The Chinook Indian Nation is indigenous to the Pacific Northwest region of the United States, with deep connections to the Columbia River basin and its surrounding areas.[78] The Chinook people have inhabited the region for thousands of years.[79] They developed sophisticated social structures, including trade networks and ceremonial practices, facilitating interaction with neighboring tribes.[80] Contact with European explorers and settlers in the late 18th and early 19th centuries brought significant changes to Chinook society.[81]

"The people who lived on the river were hunters, fishers, artists, and traders," part of an established network along the Pacific Coast.[82] The once extremely dense population of Chinookan people along the Columbia River used marine and riverine sources, heavily relied on

77 Werkheiser, *supra* note 52.

78 CHINOOK INDIAN NATION, *supra* note 8.

79 *Id.*

80 *A Lower Columbia Chinook Historical Timeline*, PUBLIC HISTORY PDX, https://publichistorypdx.org/projects/chinook/lower-columbia-chinook-historical-timeline/ [https://perma.cc/SQ9D-95LL] (last visited Jan. 26, 2025).

81 *Id.*

82 JON D. DAEHNKE, CHINOOK RESILIENCE 26 (2017).

canoes for transportation and trade, and used large cedar plank houses as a place of residence.[83] The trade network along the Pacific Coast allowed the Chinook people to negotiate with skills not many possessed at the time. Lewis and Clark noted this, stating that the Chinook way of negotiation was "avaricious" and "unfair," likely because they were unprepared to meet with the generational negotiation skills inherent to Chinookan culture.[84] The Chinook people were present and powerful:

> There is no doubt that the Lower Band and other Chinook bands, and the Clatsop tribe, existed at the time the early explorers arrived at the mouth of the Columbia River. Nor should there be any question about the significant role that Chinook bands and the Clatsop tribe had in greeting the Lewis and Clark expedition when it arrived at the mouth of the Columbia in November 1805 and wintered there. These contacts with European and early American explorers and settlers also brought devastating diseases and other disruption to the Native American tribes . . . in 1851 and 1855, the Chinook were recognized by the United States in treaty negotiations.[85]

When the settlers arrived over two centuries ago, what Chinookan people initially saw as a business opportunity quickly turned into "disease, invasive settlement, and colonial policies."[86] As stated above, Chinookan people suffered horrible losses and came close to extinction, primarily due to colonial entanglements.[87] What once was estimated as a population of 15,000 had decreased to a population of 1,932 by 1841.[88] However, they did not go extinct. Although the composition changed, the population increased by 1850, and Chinook people were involved in several treaty negotiations.[89] However, they did not enter into any ratified[90] treaty agreements because it would have required them to leave traditional homelands and move to a reservation. Moving was a nonnegotiable for several reasons—the strongest reason

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83 *Id.* at 37.

84 *Id.* at 43.

85 RECONSIDERATION ON REFERRAL BY THE SECRETARY AND SUMMARY UNDER THE CRITERIA AND EVIDENCE FOR THE RECONSIDERED FINAL DETERMINATION AGAINST FEDERAL ACKNOWLEDGMENT OF THE CHINOOK INDIAN TRIBE/CHINOOK NATION 2 (2001).

86 DAEHNKE, *supra* note 82, at 27.

87 *Id.*

88 *Id.* at 46.

89 *Id.* at 47.

90 *Id.* at 49–50 (The Chinook peoples reached an agreement under the Tansy Point treaties of 1851, but it was blocked by Congress because "they objected to the fact that the Tansy Point treaties allowed Native Americans to stay on reserved lands within their traditional homelands . . . [and] opponents of the treaties rejected the tribes' demands that payments for relinquished land be paid over a ten year period.").

being that they did not want to leave the land where our ancestors are buried.[91] Negotiation experience and strong ties to traditional homelands meant that the Chinook people stood firm, did not enter into any ratified treaties, and did not cede any land.

While the refusal to enter into any agreement requiring removal from Chinookan homelands is admirable and understandable, it carried the consequence of remaining federally unrecognized in the eyes of the government. Today, Chinook headquarters are located in Bay Center, Washington.[92] There are roughly three thousand registered members. The once heavily used plank houses are now places for culture, gathering, and remembrance.[93] Canoes are made and used for the same purposes.[94] Chinookan people remain present along the Columbia River today, as we have been since time immemorial, and as we will continue to be moving forward, but the Chinook Indian Nation remains federally unrecognized.

B. The Chinookan Story of Federal Recognition

1. Administrative Process

Tuesday, January 3, 2001, was the second most important day in the Chinook tribe's history with the federal recognition process. On this day, the Chinook finally read that "[p]ursuant to 25 C.F.R. 83.10(m), notice is hereby given that the Assistant Secretary acknowledges that the Chinook Indian Tribe/Chinook Nation . . . exists as an Indian tribe within the meaning of federal law."[95]

Unfortunately, this achievement was negated one year later. The Quinault Indian Nation, a tribe with which the Chinook Nation has a generational and tumultuous relationship, appealed the decision to the Board of Indian Appeals.[96] The Quinault Nation is a federally recognized tribe located on the southwestern corner of the Olympic Peninsula.[97] They "consist[] of descendants of the Quinault, Queets,

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91 *Id.* at 50.

92 *See* CHINOOK INDIAN NATION, *supra* note 8.

93 *Id.*

94 *Id.*

95 Final Determination to Acknowledge the Chinook Indian Tribe/Chinook Nation, 66 Fed. Reg. 1690 (Jan. 9, 2001).

96 Fed. Acknowledgment of the Chinook Indian Tribe/Chinook Nation, 36 IBIA 245 (2001).

97 *About Us*, QUINAULT INDIAN NATION, https://www.quinaultindiannation.com/171/About-Us [https://perma.cc/BJ55-FFPS] (last visited Apr. 2, 2025).

Quileute, Hoh, Chehalis, *Chinook*, and Cowlitz people."[98] It is undisputed that Quinault people recognize the existence of Chinook people. Currently, Chinook people can even be dually enrolled with the Chinook and Quinault Nations. In submitting their appeal, the Quinault Nation argued that "even though Chinookan families existed before 1951, they did not constitute a tribe with a united community and political authority."[99] On a general level, however, inter-tribal conflict arose due to an intertwined bloodline coupled with land claims so close to one another.[100] For example, in 2011, after Chinook recognition was rescinded, the Quinault president stated that "[i]f the Chinook will permanently waive any rights to hunting, fishing, gathering and other treaty rights . . . [a]nd if (they) will also waive any claims that the Chinook share government authority over the reservation, then the Quinault will withdraw objection to (federal) acknowledgment." As waiving such important rights and claims was nonnegotiable for the Chinook people, the Quinault Nation's appeal was not withdrawn.

Upon receipt of the appeal, The Board of Indian Appeals ruled that nine of the issues raised by the Quinault tribe were outside its jurisdiction and ordered them to be referred back to the Secretary of the Interior.[101] On July 5, 2002, the Assistant Secretary for Indian Affairs reversed this decision on reconsideration, formally stripping the Chinook Indian Nation of federal recognition. The harm this decision brought down on the Chinook tribe is ongoing, multilayered, and summarized as follows:

> The lack of federal recognition results in devastation to the Chinook Indian Nation: Without federal recognition, the approximately 3,000 members of the Chinook Indian Nation enjoy no benefits or legal protections as American Indians—no support for housing, child welfare, health care, mental health and addiction treatment, college scholarship funds and even coastal tsunami infrastructure upgrades. Lack of federal recognition has deprived the Chinook of tribal pandemic assistance, COVID-19 tests and vaccines offered under the

98 *Id.* (emphasis added).

99 Anna V. Smith, *Members of Chinook Indian Nation Liken Lack of Federal Recognition to Slow-Motion 'Genocide*,*'* OREGONLIVE (Feb. 22, 2023, 10:27 AM), https://www.oregonlive.com/pacific-northwest-news/2021/04/members-of-chinook-indian-nation-liken-lack-of-federal-recognition-to-slow-motion-genocide.html [https://perma.cc/46SS-XSX9].

100 To ensure I maintain the privacy of Chinook people and do not gloss over a multilayered issue, it is important to note that the relationship between the Quinault and Chinook Nations is a result of generations of colonialism, the fight for resources, and a multitude of factors that go beyond the scope of this Note.

101 Fed. Acknowledgment of the Chinook Indian Tribe, *supra* note 96, at 252.

> CARES (Coronavirus Aid, Relief and Economic Security) Act of 2020. . . . Chinook Tribal Chairman Tony Johnson called that nothing less than genocide.[102]

The DOI stripped federal recognition from the Chinook Nation based on the determination that the tribe has not "established a substantially continuous tribal existence from the treaty times to the present."[103] In granting federal recognition in 2001, the relevant reconsidered portions of the decision relied heavily on the

> 1911 Act of Congress authorizing the Secretary to provide allotments on the Quinault Reservation to 'members' of certain vaguely-referenced tribes. Ancestors of [the Chinook tribe] were among the Quinault Reservation allottees, indicating that both Congress and the Interior Department regarded the Chinook as a 'tribe' having 'members' as of 1911.[104]

In denying the significance given to these claims and several other criticisms throughout the 160-page document, one component should raise a red flag, even twenty years later.

The reconsidered determination emphasized that, under the amended 1994 requirements that applied in the Chinook petition, the "fundamental substantive standards" remained unchanged from the 1978 process.[105] The Assistant Secretary is referring to and emphasizing that the Chinook Indian Nation's petition for recognition fell victim to the fundamental substantive standards of an admittedly broken system.[106] As previously discussed, the most recent amendment currently does not allow for a denied tribe to re-petition under the new criteria. Even if the proposed rule submitted does contain an exception to the re-petitioning ban, when it would become effective remains unclear, as well as whether the exception would apply to the Chinook

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102 Scott Hewitt, *Denied, Dispersed, Disadvantaged: Chinook Tribe Pursues Centuries-Old Fight for Federal Recognition*, COLUMBIAN (Nov. 24, 2022, 6:05 AM), https://www.columbian.com/news/2022/nov/24/denied-dispersed-disadvantaged-chinook-tribe-pursues-centuries-old-fight-for-federal-recognition/ [https://perma.cc/D7KT-VYCR].

103 Reconsidered Final Determination Against Federal Acknowledgment of the Chinook Indian Tribe 2 (July 5, 2002), https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/057_chinoo_WA/057_rfd.pdf [https://perma.cc/79AZ-RQW6] (last accessed Feb. 11, 2025).

104 Final Determination to Acknowledge the Chinook Indian Tribe/Chinook Nation, 66 Fed. Reg. 1690 (Dep't of Interior Jan. 9, 2001).

105 Reconsidered Final Determination Against Federal Acknowledgment of the Chinook Indian Tribe, *supra* note 103, at 8.

106 *See* Montenegro, *supra* note 28.

Indian Nation. Therefore, most Chinook resources are allocated to the legislative avenue toward federal recognition.

2. Legislative Process

The six Virginia tribes who received federal recognition did so with the help of political representatives in the area.[107] Significant support must exist, and at least one representative must introduce the bill to restore Chinook federal recognition. "Congress has the authority to reestablish the tribal-federal relationship with terminated tribes. The authority of Congress extends to all Indian communities in the United States, including terminated and non-federally recognized tribes . . . . The relevant question is whether and to what extent Congress [chooses] to exercise its authority concerning a particular tribe."[108]

Currently, the Chinook Indian Nation recognizes the process that the Lumbee Tribe has gone through, having attempted the congressional route three times since 2008. Brian Baird, a Washington state House Representative from 1999 until 2011,[109] described the attempts and path forward as follows:

> "When you're advocating for one tribe, in one little corner of one state, . . . you're that one guy, unless you can build some national momentum."
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> . . . .
>
> "Unless members of our congressional delegation are an active part and a champion of righting this wrong, then they are to some degree culpable for perpetuating the wrong," Baird told me over Zoom from his home in Edmonds, Washington. "We need them to say in this time of social justice—'them' being the whole Washington state delegation—to say that for moral reasons, for legal reasons, for historical reasons, it's time to reinstate Chinook recognition."[110]

The above quote encapsulates the struggle of seeking federal recognition through congressional action. The federal acknowledgment process, even with its significant flaws, does carry with it some semblance of a procedure and hope for improvement. The judiciary must abide by the rules of civil procedure and can induce action or even rule on federal recognition themselves. Both avenues are rooted in the

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107 *See* Press Release, Off. of Rob Wittman, *supra* note 51.

108 COHEN'S HANDBOOK, *supra* note 1, § 3.02[8](c).

109 *Representative Brian Baird*, CONGRESS.GOV, https://www.congress.gov/member/brian-baird/B001229 (last visited Apr. 2, 2025).

110 Anna Smith, *The 'Slow-Motion Genocide' of the Chinook Indian Nation*, HIGH COUNTRY NEWS (Apr. 1, 2021), https://www.hcn.org/issues/53-4/indigenous-affairs-the-slow-motion-genocide-of-the-chinook-indian-nation/ [https://perma.cc/FW27-Y7M6].

law. Congressional action, however, is rooted in policy, attention, and politics, as described above.

In 2024, the Chinook Restoration Act exists and, if passed into law, would provide the Tribe with federal recognition. For now, however, the Act remains behind closed doors, waiting in the wings until the Chinook Nation gains the much-needed and much-deserved support to propel that Act into law.

CONCLUSION

The federal recognition process for Native American tribes in the United States is multifaceted and filled with challenges and complexities. In this Note, I analyzed the intricacies of this process, drawing from the experiences of tribes like the Chinook Indian Nation. I discussed the history of federal recognition, summarized the three routes to recognition from a legal perspective, aimed to shed light on the flaws inherent in the system, and explored avenues for improvement with hope for a more equitable recognition process.

Nearly 30,000 people have signed a petition supporting the recognition of the Chinook Indian Nation.[111] Chinook members are fighting for deserved recognition and will continue to do so until it is received. The struggles of the Chinook Indian Nation serve as a poignant example of the challenges inherent in the federal recognition process. Despite their longstanding presence and contributions to the Pacific Northwest region, Chinook people have faced an uphill battle in securing federal acknowledgment. The Chinook Indian Nation emphasizes the importance of tribal sovereignty and self-determination.

The federal recognition process is severely flawed, but it is also relatively new. While the government-to-government relationship and the practice of federally recognized tribes have existed for much longer,[112] the administrative avenue under 25 C.F.R. § 83 is less than fifty years old. It is the first with an established set of standards and criteria. Through concerted efforts, there is hope that the shortcomings of the current system can be remedied alongside a push for meaningful reforms. Congressional intervention provides another avenue for

111 *Stand with #ChinookJustice – Restore Federal Recognition*, CHINOOKNATION.ORG, https://actionnetwork.org/petitions/stand-with-chinookjustice-restore-federal-recognition?source=direct_link& [https://perma.cc/DHA4-SUQ2] (last visited Dec. 4, 2024).

112 *See* COHEN'S HANDBOOK, *supra* note 1, § 3.

change, with lawmakers wielding the power to recognize tribes when the BIA fails to do so. Additionally, judicial oversight serves as a crucial mechanism for holding the BIA accountable and ensuring fair treatment in the recognition process. By leveraging these avenues for change, there is hope for an improved recognition process that honors the sovereignty and rights of Indian tribes.