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Akiachak Native Community v. United States Department of Interior

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Akiachak Native Community v. United States Department of Interior,
827 F.3d 100 (D.C. Cir. 2016)

Lillian M. Alvernaz

Alaska Native Tribes have long been classified differently than the federally recognized Indian tribes in the rest of the country. The *Akiachak* decision contributes to the shifting treatment of Alaska Native Tribes and clarifies their relationship with the federal government.¹ The ability to put land into trust is essential to the protection of generations to come and the exercise of sovereign authority.² By enabling Alaska Native tribes the ability to petition to put tribally owned fee land in trust, the DOI promotes and encourages tribal self-governance and empowerment.³

I. INTRODUCTION

After merely a decade of litigation, the Court determined *Akiachak Native Community v. United States Department of Interior* to be moot because of the significant changes the Department of the Interior (“DOI”) had made to regulations stipulating when the federal government can take land into trust.⁴ In an attempt to persuade the DOI to consider taking land into trust, the Akiachak Native Community, Chalkyitsik Village, and Tuluksak Native Community (together “Akiachak”) emphasized the importance of trust status to Alaska Native Tribes: “trust status would ‘ensure the protection’ of these lands ‘for future generations of tribal members,’” and give Alaska Native Tribes the ability to “‘assert undisputed jurisdiction over these lands.’”⁵

Traditionally, the DOI barred itself from putting fee land into trust in Alaska.⁶ The 1980 version of the purpose and scope of land acquisitions under the DOI, 25 C.F.R. §151.1 (“Alaska Exception”), restricted the DOI’s land-into-trust abilities to all but one tribe in Alaska.⁷ In an effort to change this restriction, Akiachak filed suit against the DOI, asserting that the Alaska Exception violated the Indian Reorganization Act’s (“IRA”) nondiscrimination provision, the Constitution, and Administrative Procedure Act.⁸ In addition to Akiachak’s complaint, they also sought an injunction requiring the DOI to waive the Alaska Exception

1. Akiachak Native Cmty., v. United States Dep’t of Interior, 827 F.3d 100 (D.C. Cir. 2016).

2. *Id.* at 102.

3. *Id.*

4. *Id.* at 105.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* at 103.

and consider its applications of land to trust.⁹ The State of Alaska intervened to retain the Alaska Exception.¹⁰

The District Court for the District for Columbia found for Akiachak and found the DOI's interpretation of the Alaska Exception to be erroneous.¹¹ Following the district court's finding, the DOI amended their regulations and voluntarily dropped the appeal.¹² The State of Alaska appealed in an effort to preclude the DOI from putting tribal land in trust within the exterior boundaries of the state.¹³ The United States Court of Appeals for the District of Columbia Circuit held the controversy between Akiachak and the DOI moot, and dismissed Alaska's appeal for lack of jurisdiction.¹⁴

II. FACTUAL AND PROCEDURAL BACKGROUND

The relationship between Indian people and the federal government is unique. Within this relationship is the distinct association Alaska Native Tribes maintain with the federal government.¹⁵ The IRA of 1934 authorized the Secretary of Interior to obtain trust lands and establish new reservations for federally recognized tribes.¹⁶ The IRA considered Alaska Natives to be Indians within the meaning of the IRA, but it excluded Alaska from the Secretary of Interior's ability to take land into trust.¹⁷ However, the ability to take land into trust was extended when Alaska was still a territory, through an amendment to the IRA, the Act of May 1, 1936.¹⁸ Additionally, the Secretary of Interior was authorized to establish reservations on land previously designated for Indian use.¹⁹ This amendment additionally established seven reservations and the federal government obtained certain properties in trust.²⁰

Further, Congress added an antidiscrimination provision almost sixty years later.²¹ In this additional amendment, Act of May 31, 1994, the DOI was prohibited from "classifying, enhancing, or diminishing the privileges and immunities available to a federally recognized Indian tribe

9. *Id.*

10. *Id.*

11. *Id.* at 102.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*; see Act of May 1, 1936, 25 U.S.C. § 473a transferred to 25 U.S.C.A. § 5119 (2016).

19. *Id.*; see Act of May 1, 1936, 25 U.S.C. § 473a transferred to 25 U.S.C.A. § 5119 (2016).

20. *Id.*; see Act of May 1, 1936, 25 U.S.C. § 473a transferred to 25 U.S.C.A. § 5119 (2016).

21. *Id.*

relative to the privileges and immunities available to other federally recognized tribes.”²²

However, claims of aboriginal rights by Alaska Natives remained unresolved.²³ Aboriginal rights are “possessory rights of Indian tribes to their aboriginal lands...extinguishable only by the United States.”²⁴ Potential aboriginal rights claims hindered the new state of Alaska from obtaining land from the US government under the Alaska Statehood Act.²⁵ The Alaska Native Claims Settlement Act (“ANCSA”) of 1971 was passed and “designed to settle all land claims by Alaska Natives” by extinguishing aboriginal rights claims.²⁶ ANCSA annulled all but one existing reservation: the Metlakatla Indians who had no aboriginal rights claims because they immigrated from Canada.²⁷ As a result, Alaska Natives were compensated forty-four million acres of land and \$962.5 million, dispersed amongst Alaska Native shareholder owned corporations.²⁸

After ANCSA was enacted, Congress cancelled various amendments to the IRA regarding land use for Alaska Natives, including the Act of May 1, 1936.²⁹ Notably, the IRA Alaska trust stipulation was never repealed by Congress.³⁰ The 1978 “Fredericks Opinion” to a tribe’s application of land into trust outlined the DOI’s authority under ANCSA.³¹ The Fredericks Opinion established that “Congress intended permanently to remove from trust status all Native land in Alaska except allotments and the Annette Island Reserve.”³² The DOI codified the Fredericks Opinion in 25 C.F.R. §151.1 (1980), preventing the acquisition of trust land in the State of Alaska.³³ This “Alaska Exception” was the core of Akiachak’s complaint.³⁴

Akiachak sought declaratory relief, specifically seeking an order determining that the Alaska Exception “violated the IRA’s antidiscrimination provision, the Constitution, and the Administrative Procedure Act.”³⁵ Additionally, Akiachak requested an injunction

22. 25 U.S.C. § 5123(g) (1934).

23. *Akiachak*, 827 F.3d at 102.

24. *Id.* at 103 (quoting *Oneida Indian Nation of New York v. Oneida Cnty.*, 94 S. Ct. 772, 668 (1974)).

25. *Id.* at 103.

26. *Id.* (quoting *Alaska v. Native Vill. of Venetie Tribal Gov’t.*, 118 S. Ct. 948 (1998)).

27. *Id.* (citing *Venetie*, 522 U.S. at 523-524).

28. *Id.* (quoting *Venetie*, 522 U.S. at 524 (citing 43 U.S.C.A. §§ 1695, 1607, 1613)).

29. *Id.*

30. *Id.*; see Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, § 704(a), 90 Stat. 2743, 2792.

31. *Id.*

32. *Id.*; see Memorandum from Thomas W. Fredericks, Associate Solicitor, Indian Affairs, to Forrest Gerard, Assistant Secretary, Indian Affairs 3 (Sept. 15, 1978).

33. *Id.*

34. *Id.*

35. *Id.*

requiring the DOI “to implement the acquisition of land into trust procedures without regard to the bar against Alaska tribes [and] to accept and consider Plaintiff’s request to have lands in Alaska taken into trust.”³⁶

The State of Alaska intervened in the district court to defend the validity of the Alaska Exception.³⁷ Alaska filed an answer containing numerous affirmative defenses and a prayer for relief, but no crossclaim against the DOI or counterclaim against Akiachak, nor any other crossclaim or counterclaim.³⁸ The district court granted summary judgment in favor of Akiachak and held the Alaska Exception to be in violation of the IRA.³⁹

The district court ordered the parties to brief the appropriate remedy.⁴⁰ Akiachak dropped its injunctive relief claim and asked the court to remand to the Secretary for “curative rulemaking.”⁴¹ The district court severed and vacated the Alaska Exception in 25 C.F.R. § 151.1.⁴² Subsequently, the district court granted Alaska’s motion to enjoin the DOI from converting land into trust pending appeal.⁴³

The DOI initially appealed the district court’s holding, but later issued and sought comment on a potential rule eliminating the Alaska Exception.⁴⁴ The DOI ultimately dropped its appeal and filed a motion to dismiss Alaska’s appeal for lack of standing.⁴⁵ Alaska filed a motion to stop the DOI rulemaking.⁴⁶ The district court denied Alaska’s motion and the DOI finalized its rule to remove the Alaska Exception.⁴⁷

After it issued the final rule to remove the Alaska Exception, the DOI filed a separate motion to dismiss Alaska’s appeal as moot, and asserted that its administrative action to remove the Alaska Exception overtook the district court’s judgment.⁴⁸ Akiachak joined the DOI on both motions.⁴⁹ Alaska opposed both motions and argued that ANCSA prevents the federal government from acquiring new trust land.⁵⁰ The Court of Appeals for the District of Columbia dismissed Alaska’s appeal for lack of jurisdiction.⁵¹

36. *Id.*

37. *Id.*

38. *Id.* at 104.

39. *Id.*

40. *Id.*

41. *Id.* (quoting *Akiachak Native Cmty. v. Jewell (Akichak II)*, 995 F. Supp. 2d 1, 6 (D.D.C. 2013)).

42. *Id.*

43. *Id.* (citing *Akiachak Native Cmty. v. Jewell (Akichak III)*, 995 F. Supp. 2d 7, 18-19 (D.D.C. 2014)).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 102.

II. ANALYSIS

A. *The Alaska Exception violated the IRA*

The district court opined that the Act of May 1, 1936 “expressly granted the Secretary authority to take land into trust in Alaska.”⁵² In its determination, the district court agreed with Akiachak and the DOI that such authority survived ANCSA.⁵³ Alaska’s argument that ANCSA repealed the Secretary’s authority to take land into trust outside of the Metlakatla reservation was considered, but the district court ultimately based its decision on the “weight of the textual and structural evidence, and the strength of the presumption against implicit repeals.”⁵⁴ The district court held the Alaska Exception in violation of the IRA’s antidiscrimination provision because it prevented the Secretary from considering trust petitions from non-Metlakatlan Alaska Natives.⁵⁵ While the court of appeals agreed with the findings of the district court, it vacated the district court’s decision as moot.⁵⁶

B. *Alaska failed to file a separate, independent claim*

Each of Akiachak’s causes of action in its complaint challenged the soundness of the Alaska Exception.⁵⁷ Since the DOI invalidated the Alaska Exception through its revised regulation, the district court lacked authority “to affect Akiachak’s rights relative to it, thus making this case classically moot for lack of a live controversy.”⁵⁸ Jurisdiction to decide a case or controversy is controlled by the affirmative claims for relief sought in the complaint, counterclaims, or crossclaims.⁵⁹

Here, Alaska failed to assert a counterclaim or crossclaim when it intervened in the district court as a defendant.⁶⁰ The court of appeals reasoned, “affirmative defenses made ‘in response to a pleading’ are not themselves claim for relief.”⁶¹ Further, “a request for relief that amounts to no more than denial of the plaintiff’s demand” is an answer, “not a separate claim for affirmative relief that expands the court’s jurisdiction.”⁶²

52. *Id.* at 104 (citing *Akiachak Native Cmty. v. Salazar* (Akiachak I), 935 F. Supp. 2d 195, 203 (D.D.C. 2013)).

53. *Id.* (citing *Akiachak I*, 935 F. Supp. at 203-204).

54. *Id.* (quoting *Akiachak I*, 935 F. Supp. at 208).

55. *Id.* (citing *Akiachak I*, 935 F. Supp. at 210-211).

56. *Id.* at 115.

57. *Id.* at 105.

58. *Id.* at 106.

59. *Id.* (“[T]he scope of a federal court’s jurisdiction to resolve a case or controversy is defined by the affirmative claims to relief sought in the complaint or...any counterclaims or crossclaims.” *Id.* “[A] case will remain justiciable only so long as at least one of those issues remains live.” *Id.* at 107).

60. *Id.* at 107.

61. *Id.*; see Fed. R. Civ. P. 8(c).

62. *Id.*

C. The elimination of the Alaska Exception by the DOI mooted this case

The district court severed and vacated the Alaska Exception provision in 25 C.F.R. § 151.1 after it ordered the parties to brief the appropriate remedy.⁶³ While the DOI agreed with the district court's severance and vacation of the Alaska Exception, it asserted that this holding was not the reason the DOI decided to eradicate the Alaska Exception.⁶⁴ Instead, it was the DOI's action that mooted this case.⁶⁵ The district court's ruling was then overtaken by the DOI's decision to remove the Alaska Exception.⁶⁶

After consideration of the history of Alaska Native trust ownership in Alaska, the DOI established a new rule.⁶⁷ The DOI determined that the formulation of a new rule to give Alaska Native Tribes the ability to take land into trust could encourage and promote economic development, support Alaska Native Tribes in protecting and providing for their members, and "give additional tools to Alaska Native communities to address serious issues," tribe by tribe.⁶⁸ Upon eliminating the Alaska Exception, the DOI concluded that there was "no legal impediment to taking land into trust in Alaska," and there are several reasons to afford Alaska Native Tribes this ability.⁶⁹ The court of appeals sided with the DOI's determination in holding the claim as moot.⁷⁰

IV. CONCLUSION

The court of appeals decision in *Akiachak* is relevant to the development of the status of Alaska Native Tribes within the greater context of federal Indian policy. Affording Alaska Native Tribes the ability to apply for land into trust furthers Alaska Native interest in equal treatment among all federally recognized tribes. Finally, *Akiachak* expands tribal sovereignty and self-governance through regulation and protection by Alaska Natives for Alaska Natives on tribally owned land.

63. *Id.*
64. *Id.* at 113 (citing *Akiachak III*, 995 F. Supp. 2d at 76, 891).
65. *Id.*
66. *Id.*
67. *Id.* at 112.
68. *Id.*
69. *Id.* at 113.
70. *Id.*