

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

THE DUWAMISH TRIBE; and CECILE
HANSEN, in her capacity as the Chairwoman
of the Duwamish Tribal Council of the
Duwamish Tribe,

Plaintiffs,

v.

DEB HAALAND, in her official capacity as
U.S. Secretary of the Interior; BRYAN
NEWLAND, in his official capacity as
Assistant Secretary for Indian Affairs; U.S.
DEPARTMENT OF THE INTERIOR;
BUREAU OF INDIAN AFFAIRS; OFFICE
OF FEDERAL ACKNOWLEDGEMENT; and
UNITED STATES OF AMERICA,

Defendants.

No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

For at least 12,000 years, the Duwamish people have been living here. They are buried under the streets and the sidewalks and houses of Seattle. Their DNA rises from the roots of the trees, and when the wind blows through the leaves, those are the sounds of our ancestors.

– Ken Workman, Duwamish Tribe Councilmember and descendant of Chief Seattle

I. INTRODUCTION

1. For more than a century and a half, the Duwamish Tribe, also known as “The People of the Inside” or dxʷdəwʔabš, has fought to realize the promises made to it by the United States in the Treaty of Point Elliott. Chief Si’ahl, known as Chief Sealth or Seattle (and for whom the City of Seattle is named), signed the Treaty on behalf of his mother’s tribe, the Duwamish Tribe, and his father’s tribe, the Suquamish Tribe, in 1855. Congress ratified that Treaty in 1859, and by doing so, recognized the Duwamish Tribe as a sovereign that has a government-to-government relationship with the United States. Since 1859 and to this day, Congress has repeatedly recognized the Duwamish Tribe’s sovereignty and rights under the Treaty. Critically, Congress has never acted to terminate the Duwamish Tribe’s sovereignty or its treaty rights. Yet for over 40 years, the U.S. Department of Interior has refused to acknowledge the Duwamish Tribe as a federally recognized Indian tribe with the rights and privileges of other recognized tribes. The Department of Interior apparently contends that the Duwamish Tribe that signed the Treaty of Point Elliott has somehow ceased to exist. That contention not only conflicts with the historical record, it also conflicts with determinations made by other federal authorities, which the Department of Interior cannot simply ignore. Congress and courts with express jurisdiction have repeatedly recognized the continued existence of the Duwamish Tribe. The Department of Interior lacks authority to reach a contrary determination. Only Congress has the constitutional authority to abrogate the Duwamish Tribe’s sovereignty and treaty rights—and has never done so. Therefore, the Court must hold the United States to its word and declare that the Duwamish Tribe persists.

2. This is an action brought by the Duwamish Tribe to secure its tribal sovereignty that predates the founding of the United States. The Duwamish Tribe brings this action under the

Administrative Procedure Act and the Fifth Amendment of the U.S. Constitution, seeking judicial review of the Department's Final Decision on Judicial Remand Against Acknowledgement of the Duwamish Tribal Organization, which was upheld by the Interior Board of Indian Appeals and the Secretary of the Interior on July 17, 2019, constituting a final agency action ("Final Decision"). By refusing to acknowledge the Duwamish Tribe and place the Tribe on its list of federally recognized tribes, the Final Decision unlawfully terminates the prior federal recognition of the Duwamish Tribe.

3. In issuing the Final Decision, Defendants have:

i. Unlawfully withheld agency recognition of the Tribe in violation of the U.S. Constitution, Acts of Congress, and other laws;

ii. Rendered a Final Decision that is contrary to the Tribe's inherent sovereignty and constitutional rights, powers, and privileges;

iii. Rendered a Final Decision that is in excess of the Department's statutory jurisdiction, authority, or limitations;

iv. Rendered a Final Decision without observing the Tribe's rights under the Fifth Amendment of the U.S. Constitution as required by law;

v. Rendered a Final Decision that is arbitrary, capricious, an abuse of the Department's discretion, and not in accordance with law; and

vi. Rendered a Final Decision that is not supported by substantial evidence.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1362.

9. Defendant Bryan Newland is the present Assistant Secretary – Indian Affairs (“AS-IA”), and in his official capacity, is authorized to exercise the authority of the Secretary with respect to Indian Affairs.

10. Defendant U.S. Department of the Interior (“Department”), acting through the BIA, the Office of Federal Acknowledgment, and the Interior Board of Indian Appeals (“IBIA”), is the administrative agency that receives, processes, and decides applications from Indian groups for recognition of tribal status in accordance with Part 83 of Title 25 of the Code of Federal Regulations (“Part 83”), 25 C.F.R. pt. 83, and the U.S. Constitution, statutes, regulations, treaties, and other laws.

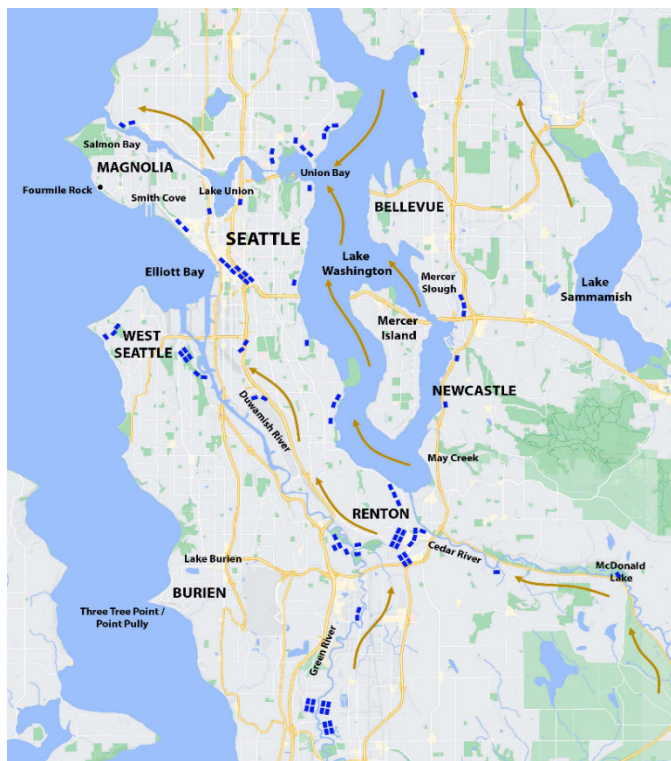
11. Defendant the United States of America includes all government agencies and officers, including the above-named Defendants, charged with the administration of Indian Affairs and responsibility for protection of property and rights of the Tribe, including under the terms of the Treaty.

IV. STATEMENT OF FACTS

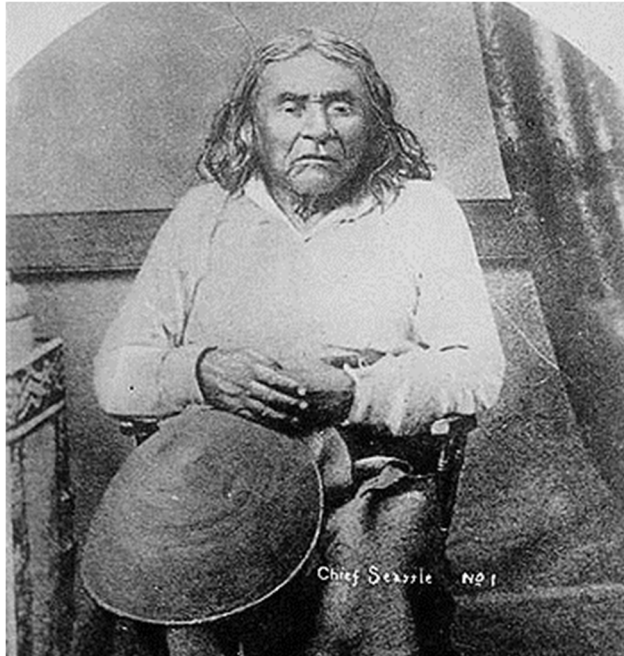
After the Duwamish Tribe signed the Treaty of Point Elliott in 1855, the United States broke many of the promises made to the Tribe, and the Tribe was ultimately forced from its historic villages.

12. Before settlers began inhabiting the Puget Sound region, the Duwamish Tribe’s ancestral homeland was the territory of present-day Seattle, Burien, Tukwila, Renton, and Redmond, and members were heavily concentrated along the Black, Cedar, and Duwamish Rivers. *See Duwamish Tribe v. United States* (dkt. # 109), 5 Ind. Cl. Comm. 117, 130–31 (1957). A current map of the Seattle area showing the modification of the Duwamish watershed, the approximate locations of historic Duwamish villages and longhouses (in blue), as identified in a map compiled by David Buerge, author of *Chief Seattle and the Town that Took his Name*, (based on evidence

submitted to the Court of Claims and other anthropological reports) and a map compiled by the Port of Seattle, is shown below and attached as **Exhibit 1**:



13. On January 22, 1855, the Duwamish Tribe was the lead signatory of the Treaty of Point Elliott, 12 Stat. 927. Isaac Stevens, Governor of the Territory of Washington and Superintendent of Indian Affairs for the Territory, signed the Treaty on behalf of the United States. Chief Seattle, whose mother was Duwamish and father was Suquamish, signed the Treaty on behalf of both Tribes. Chief Seattle was the first signatory (after Governor Stevens), signing: “Seattle, Chief of the Dwamish and Suquamish tribes, his x mark.” A photo of Chief Seattle is shown below (collection of the Duwamish Tribe):



14. Under the Treaty of Point Elliott, the United States promised the Duwamish Tribe, in exchange for ceding the Tribe's territory that encompasses present-day Seattle, Burien, Tukwila, Renton, and Redmond to the United States, that the United States would pay just compensation, create a reservation, guarantee the Tribe's aboriginal fishing and hunting rights, and secure other rights for the Tribe.

15. After the Treaty was signed, the Department recommended for several years that the Duwamish Tribe be allotted a separate reservation "on or near the lake fork of the D'Wamish river," in present-day Renton on or near the Black River. In the late 1860s, however, the City's founders and many other non-Indian settlers petitioned against the creation of the Duwamish reservation on the Black River, calling the reservation "unnecessary" and "injurious" to the settlers. In light of this opposition, the United States never created a designated reservation for the Duwamish Tribe on the Black River or elsewhere, as promised at the time of the signing of the Treaty of Point Elliott.

1 16. Without a reservation of their own, Duwamish members were forcibly removed
2 from the Seattle area.

3 17. Duwamish women in particular were the victims of serious crimes committed by
4 settlers during this time period, including murders and kidnappings, which largely went
5 unpunished by local authorities.

6 18. In 1865, the City passed Ordinance No. 5, banning all Indians from living in the
7 City and remaining in the City after dark.

8 19. In 1873, the City passed Ordinance No. 42, prohibiting “dissolute Indian women”
9 from being present in the city after dark.

10 20. Between 1855 and 1904, non-Indian settlers burned down 94 traditional longhouses
11 and other belongings owned by Duwamish members. The photo below shows one of those
12 longhouses and camps on the Duwamish River in present-day West Seattle, before it was burned
13 to the ground, as shown below (collection of the Duwamish Tribe):



22 21. In 1916, as authorized by Congress, the U.S. Army Corps of Engineers created the
23 Lake Washington Ship Canal, which cut a channel from the Ballard Locks through Lake Union
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1 and Portage Bay to the higher elevation Lake Washington. As a result of the new ship canal, Lake
2 Washington was lowered by nine feet; the Black River dried up, leaving the last remaining historic
3 Duwamish village on the Black River without a source of food or a mode of transportation; and
4 the Cedar River salmon run was wiped out. A photo of the Black River drying out in November
5 1916 is shown below (Collection of the Renton History Museum, #1994.068.3883):



13 Side-by-side maps of the region, before and after the Lake Washington Ship Canal was
14 completed in 1916, show the dramatic landscape changes. The Historic Map depicts the historic
15 Duwamish River watershed, the Black River, and Duwamish longhouses; the Present-day Map
16 depicts the post-1916 watershed, showing the modification of wetlands and waterways, and the
17 disappearance of the Black River and longhouses, shown below and attached as **Exhibit 2**:

Historic Map**Present-day Map**

22. Around this time, in the early 1900s, a federal agent described the uniquely unjust circumstances of the Indigenous peoples of the Pacific Northwest, including the Duwamish, famously writing: “No Indian has given more to the white man—no Indian has received less.” This is particularly true of Duwamish Chief Seattle, who welcomed the settlers, showed them how to survive in an unfamiliar land, provided guides and transportation by canoe, and other tangible assistance—which is why the settlers named their new settlement in Chief Seattle’s honor—yet the historic Chief’s Duwamish Tribe continues to receive nothing but unfulfilled promises from the U.S. government.

23. Notwithstanding the discriminatory laws, settler abuse, and feats of civil engineering that forced the Duwamish from their ancestral homelands, the Tribe’s members have largely remained in King, Pierce, and Kitsap counties, from the signing of the Treaty through modern times. After the Treaty signing, Duwamish made homes at logging camps and makeshift

Duwamish homesteads. In many cases, with no reservation of their own, and due to the federal government's policy to relocate Indigenous peoples to existing reservations, the Duwamish moved to those reservations, including the Port Madison (home of the Suquamish Tribe), Lummi, Muckleshoot, Swinomish, and Tulalip Reservations, among others.

24. Other Duwamish members, however, defied local ordinances, refused to move to reservations, and remained in present-day Seattle. For example, Chief Seattle's daughter, Princess Angeline, refused to leave her home in Seattle and stayed in her waterfront cabin on Western Avenue between Pike and Pine Streets. She washed laundry for the settlers and sold native handicrafts to survive. At one point, she was photographed walking Seattle's downtown streets, shown below (collection of the Duwamish Tribe):



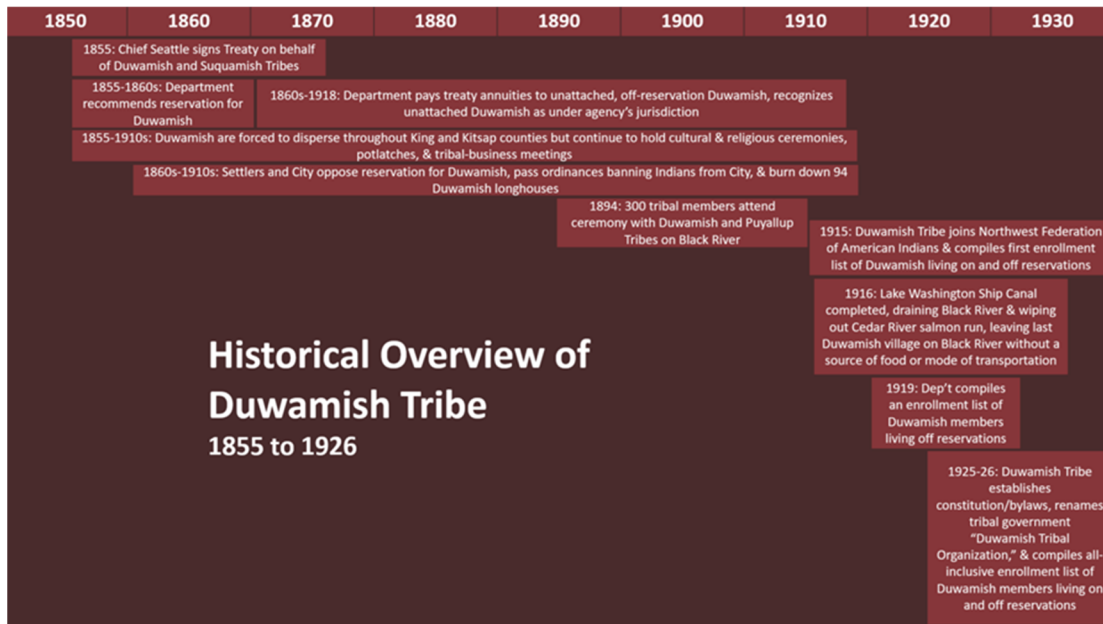
25. Other Duwamish women married non-Indian settlers in the 19th and 20th centuries, which was consistent with the historical Duwamish practice of affiliation through marriage. Similar practices of intermarriage between Coast Salish tribes in the Puget Sound region were also common. These Duwamish women, and their kin, nevertheless continued to be part of the Duwamish Tribe and continued to carry on the Tribe's customs and traditions, as well as the

1 political efforts to secure the Tribe's rights guaranteed by the Treaty of Point Elliott and the U.S.
2 Constitution.

3 26. Some of the Duwamish people who moved to reservations beginning in the late
4 1800s ultimately enrolled in other tribes. Regardless of whether the Duwamish people who moved
5 to other tribes' reservations maintained dual enrollments or exclusive membership in the
6 Duwamish Tribe, many of the ancestors of today's membership maintained their social, cultural,
7 and communal ties with other Duwamish members living both on and off reservations.

8 27. In 1894, for example, some 300 tribal members attended a cultural ceremony held
9 between the Duwamish and Puyallup Tribes at the Black River village. At the time, a band of
10 Duwamish remained at a village near the Black and Cedar Rivers under the leadership of Chief
11 Seattle's successor, Chief William. Some Duwamish members continued to live in the region as a
12 community and practice their distinctive religious and cultural rituals until the Black River was
13 drained in 1916 and thereafter.

14 28. The Duwamish Tribe continued to organize cultural, political, and social events for
15 its members during this time period. Local newspapers recorded many of these events, reporting
16 on the Tribe, Chief Seattle, or Princess Angeline from 1868 to 1893; a commemoration of the
17 Treaty of Point Elliott in 1897; Duwamish Tribe involvement in potlatches, sing-gambles, and
18 treaty signing celebrations in 1906, 1907, 1913, 1916, and 1917 (the latter of which potentially
19 involved 300 to 400 members); and the Duwamish Tribe's enrollment list compilation efforts in
20 1914–15. A timeline of the relevant historic events from this time period, 1855 to 1926, is shown
21 below and attached as **Exhibit 3**:



The Duwamish Tribe established an official Constitution and instituted other formalities in the early 1900s to secure its tribal sovereignty and its treaty rights.

29. In the early 1900s, initially led by Chief William's successors, Duwamish Chief Charles Satiacum and Chief (or Sub-Chief) William Rogers, the Duwamish Tribe aimed to secure its rights under the Treaty of Point Elliott. In 1915, the Tribe created an official enrollment list after years of members' forced dispersal from their historic villages along the Black, Cedar, and Duwamish Rivers. The Duwamish Tribe also increased its efforts to secure a designated reservation for the Tribe. A Seattle newspaper reported on the efforts of Chief Satiacum, Sub-Chief Rogers, and Duwamish member John Seattle (the great-grandson of Chief Seattle), in 1916.

30. In 1916, federal agent Charles Roblin was tasked by the Department to compile official enrollment rolls for the tribes of Western Washington to process land allotment claims by individual Duwamish members. Roblin finished compiling these rolls in 1919, listing several Duwamish members who were not enrolled in other tribes and were living off reservations.

31. At the time, the Department's official policy excluded Indian women who married

1 non-Indians, and their mixed-race children, from tribal enrollment rolls. The Department
2 concluded that such Indian women, and their children, in no respects could be “deemed members
3 of the tribe to which the mother belonged prior to her marriage,” even though the Duwamish Tribe
4 had no such rule. This Department policy excluded a significant portion of Indian women,
5 including Duwamish women, from being able to claim land allotments that Congress had
6 designated for Indians. Although the U.S. Supreme Court ultimately deemed the Department’s
7 discriminatory policy to be unconstitutional in *Nice v. United States*, 241 U.S. 591 (1916), many
8 federal agents, including Roblin, continued to hold biased views of Indian women and their
9 children.

10 32. Both the 1915 and 1919 tribal enrollment rolls were incomplete, as many
11 Duwamish women who had married non-Indian settlers, and their kin, were excluded from these
12 rolls. These Duwamish women were excluded at least in part due to the Department’s official
13 policy to exclude Indian women and their mixed-race children from tribal enrollment and due to
14 federal agents’ biases against these women.

15 33. Throughout this time, Duwamish Chief Satiacum and his successor and
16 grandnephew, Peter James, represented the Tribe in a multi-tribal council known as the Northwest
17 Federation of American Indians (“NFAI”) and before Congress. Meetings with the NFAI and
18 testimony by Duwamish leaders before Congress gave rise to legislation under which Indian
19 nations, tribes, and bands were eligible for and received benefits from the federal government. The
20 Tribe’s and the NFAI’s efforts resulted in the passage of the Act of Feb. 12, 1925, ch. 214, 43 Stat.
21 886 (“Act of 1925”), which authorized “the tribes and bands of Indians . . . with whom were made
22 . . . the treat[y] of . . . Point Elliott, dated January 22, 1855,” including the Duwamish Tribe, to
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1 bring treaty claims against the United States in the Court of Claims.

2 34. In 1925, the Duwamish Tribe, led by Peter James and others (many of whom
3 descended from Duwamish women who had married non-Indians), was one of the first tribes in
4 the region to recognize the need to adopt more formal and democratic governance standards, both
5 to guarantee the Duwamish Tribe's political autonomy (if not its very survival) and the treaty rights
6 promised to the Tribe by the United States. The Duwamish Tribe therefore renamed its government
7 the Duwamish Tribal Organization of the Duwamish American Indians and adopted an official
8 Constitution and Bylaws, providing that tribal membership was open to descendants of the
9 Duwamish Tribe without specifying a blood quantum standard. The Tribe's purpose was to
10 (1) "promote and co-operate with efforts and more perfect union and education development of its
11 members," (2) "establish[] and cultivat[e] . . . a closer acquaintance and comradeship among its
12 members," (3) "promote morality, a good citizenship, of the younger generation, and to obtain all
13 the rights thereof for its members," (4) "promote the study and to preserve the history and the
14 traditions of the Duwamish tribe," and (5) "promote the general welfare of the Duwamish tribe,
15 and advance[] . . . its members," and (6) "to investigate the legal problems of the Duwamish tribe,
16 and to oppose any movement which may be detrimental to its tribe."

17 35. The following year, in 1926, the Tribe compiled an official, all-inclusive enrollment
18 list expressly recognizing the membership of the Duwamish women and their kin who had been
19 excluded from the 1915 and 1919 tribal enrollment rolls. According to the Department, about 91
20 percent of today's membership has a direct ancestor included on this 1926 list. Final Decision on
21 Remand ("FDR") at 89 (July 24, 2015).

22 36. Since 1925, leadership of the Duwamish Tribe has advanced the rights of its
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1 members and other Native Americans by lobbying Congress to pass statutes, encouraging other
 2 tribes to establish constitutions and formalize their governments, pursuing claims against the
 3 United States before the Court of Claims and Indian Claims Commission on behalf of itself and
 4 other tribes, participating in multi-tribal organizations, and carrying out other political acts to
 5 preserve tribal sovereignty and the rights promised under the Treaty of Point Elliott, among other
 6 treaties with Indian tribes.

7 **Since Congress ratified the Treaty of Point Elliott in 1859, Congress, the courts, and the**
 8 **Executive Branch have recognized the Duwamish Tribe and its treaty rights through**
 9 **modern times.**

10 37. In 1859, Congress ratified the Treaty of Point Elliott, which marks the first time
 11 that Congress officially recognized the Duwamish Tribe and its rights under the Treaty.

12 38. Nearly every year from 1860 to 1924, Congress passed an Act appropriating funds
 13 for fulfilling the treaty promises made to the “Dwamish” or “D’Wamish and other allied Tribes in
 14 Washington.” These Acts funded annuities and other benefits that were paid or disbursed to
 15 Duwamish members living both on and off reservations, as the Department claimed jurisdiction
 16 over Duwamish members, whether “attached or unattached to reservations,” through at least 1918.
 17 A true and correct copy of the last of these appropriations statutes, the Act of Dec. 6, 1924, ch. 5,
 18 43 Stat. 704, 708, denominating the “Dwamish and other allied tribes in Washington,” is attached
 19 as **Exhibit 4**.

20 39. Congress then passed the Act of 1925, due in part to the Tribe’s lobbying efforts,
 21 authorizing the Duwamish Tribe and other “Indian tribes, or any of them, residing in the State of
 22 Washington to submit to the Court of Claims growing out of treaties.”
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40. In 1934, the Court of Claims ruled that the Duwamish Tribe had standing under the Act of 1925, as an Indian tribe and a signatory to the Treaty of Point Elliott, to bring claims for communal property (56 longhouses) and for the government's failure to pay the Tribe certain annuities in violation of the Treaty. *Duwamish v. United States*, 79 Ct. Cl. 530, 533, 538, 580 (1934). At the time, the federal government did not dispute that the Duwamish Tribe was a signatory to the Treaty (unlike the Department's official position today); but it nevertheless argued that the court lacked jurisdiction to rule on the Tribe's claims under the Act of 1925 on the ground that individual tribal members brought "individual" claims for lost longhouses, etc.—as opposed to "tribal" claims brought by the Tribe itself. The court, however, outright rejected the government's position that the Duwamish Tribe's claims were "individual," which would have precluded the court's jurisdiction. *Id.* at 575. The court concluded that the government's position was "untenable" because, based on the treaty itself, "the nature of the transaction, the object to be accomplished, and the payment to be made," the Tribe's claims for abandoned property were "tribal." *Id.* at 575–76 (emphasis added); *see id.* at 538 ("The treaties were concluded with the tribes as Indian entities and not with individuals."). A true and correct copy of *Duwamish v. United States*, 79 Ct. Cl. 530 (1934) is attached as **Exhibit 5**.

41. In 1938, Congress passed the Act of June 24, 1938, ch. 648, 52 Stat. 1037 ("Act of 1938"), authorizing the Secretary "to withdraw from the United States Treasury and to deposit in banks . . . the common or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States." *Id.* (emphasis added). Until at least the late 1960s, the Department deposited funds held in trust by the United States with the Duwamish Tribal Council pursuant to the Act of 1938.

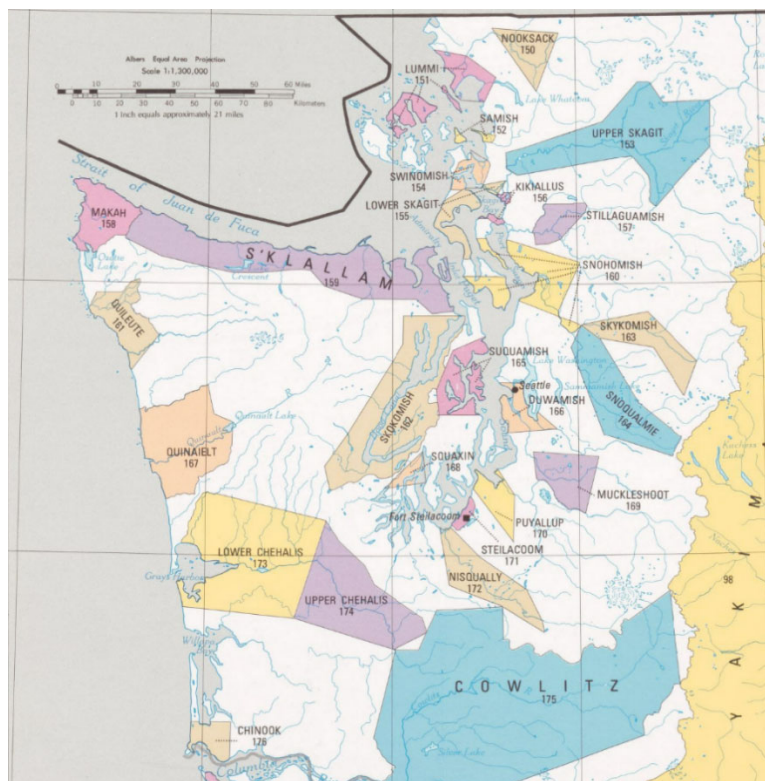
42. In 1946, Congress passed the Act of Aug. 13, 1946, ch. 959, 60 Stat. 1049, creating the Indian Claims Commission to hear claims of any “Indian tribe, band, or other identifiable group of American Indians,” including the Duwamish Tribe, against the United States.

43. In 1953, the House of Representatives issued a congressional report identifying the “Duwamish Tribal Council” as one of several “Indian tribal governing bodies.” H.R. Rep. No. 82-2503, at 1366 tbl.K (1953). The Duwamish Tribal Council was apparently listed because a Department official identified the Duwamish Tribe as one of 36 “Tribes, Bands or Groups” that was under his jurisdiction. PF HTR at 68.¹ In addition, the Department’s earlier records had repeatedly referred to the Duwamish Tribe as a “tribe” under its jurisdiction or otherwise acknowledged the Duwamish Tribe’s leaders as the exclusive representatives of the Tribe from treaty times through 1918 (PF HTR at 40–41), in 1921 (*id.* at 55–56), in 1925 (*id.* at 56–67), in 1933 (*id.* at 57), in 1939 (*id.* at 58), in 1940 (*id.* at 59; PF ATR at 107), and in 1950 (PF HTR at 59). Today, the Duwamish Tribe is the only Indian tribe listed in that report that is not currently on the Department’s list of federally recognized tribes. A true and correct copy of Table K of H.R. Rep. No. 82-2503 is attached as **Exhibit 6**.

44. In 1957, the Indian Claims Commission expressly concluded that the Duwamish Tribe is “an identifiable tribe of American Indians within the meaning of the Indian Claims Commission Act” and is the “successor in interest to . . . the entity that was a party to the Treaty of January 22, 1855.” *Duwamish Tribe*, 5 Ind. Cl. Comm. at 130–31. The Commission further found that the Duwamish Tribe “aboriginally used and occupied lands on the southern end of Lake Washington, the Black Cedar and Duwamish Rivers, and Elliott Bay” and “held original Indian

¹ PF HTR, PF ATR, and PF GTR refer to the Proposed Finding Historical Technical Report, Anthropological Technical Report, and Genealogical Technical Report dated June 18, 1996, respectively.

1 title as of the date of the Treaty.” *Id.* The Commission awarded a \$62,000 judgment in favor of the
 2 Duwamish Tribe for the value of Indian title lands that were taken from the Tribe without just
 3 compensation and in violation of the Treaty. A true and correct copy of *Duwamish Tribe v. United*
 4 *States* (dkt. # 109), 5 Ind. Cl. Comm. 117 (1957) is attached as **Exhibit 7**. A true and correct copy
 5 of a map compiled by the Library of Congress in 1978, showing the territory for which the
 6 Duwamish Tribe and its members were awarded a \$62,000 judgment, along with the territories for
 7 which its neighboring tribes were awarded monetary judgments, is shown below and is attached
 8 as **Exhibit 8**.²



45. Through at least the late 1950s, the Department issued Indian identification cards,
 known as “blue cards,” to Duwamish members because of their affiliation with the Duwamish

² See *Indian Land Areas Judicially Established*, LIBRARY OF CONGRESS (1978),
<https://www.loc.gov/resource/g3701e.ct008649/?r=0.006,0.486,0.37,0.235,0> (last accessed Apr. 7, 2022).

1 Tribe. At the time, blue cards were required for tribal members to receive certain federal and state
 2 benefits, including healthcare and educational benefits, as well as state-issued hunting and fishing
 3 licenses. The Department expressly recognized that the Duwamish Tribe was the “successor in
 4 interest to the Duwamish Tribe as constituted in 1855.” PF HTR at 70.

5 46. In 1964, the Indian Claims Commission determined that the Duwamish Tribe and
 6 11 other signatory tribes to the Treaty of Point Elliott were entitled to the payment of certain sums
 7 as consideration for the cession of aboriginal tribal lands and other treaty claims, awarding the
 8 Duwamish Tribe \$23,863.17. *See Upper Skagit Tribe of Indians, et al. v. United States*, 13 Ind. Cl.
 9 Comm. 583 (1964).

10 47. In 1966, Congress passed the Act of Oct. 14, 1966, Pub. L. No. 89-660, 80 Stat.
 11 910 (“Act of 1966”), “[a]n Act to provide for the disposition of funds appropriated to pay a
 12 judgment in favor of the Duwamish Tribe of Indians in the Indian Claims Commission docket No.
 13 109, and for other purposes.” A true and correct copy of the Act of 1966 is attached as **Exhibit 9**.

14 48. In 1974, after Judge Boldt recognized the treaty rights of 14 treaty tribes in *United*
 15 *States v. Washington* (“*Washington I*”), 520 F.2d 676 (9th Cir. 1975), the Department
 16 commissioned a task force led by Peter Three Stars, a Tribal Operations Specialist, to investigate
 17 the tribal status of nine other groups of Indians in Washington that were party to the same treaties
 18 (“Three Stars Determination”). In addition to Three Stars, the task force consisted of Michael
 19 Smith, a Tribal Operations Specialist in BIA’s Central Office, and John Weddel, a Tribal
 20 Operations Officer in the BIA’s Portland Area Office and historian. The Three Stars
 21 Determination, based on the task force’s “extensive research,” concluded that the Duwamish Tribe
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1 and three other tribes (Snohomish, Snoqualmie, and Jamestown Clallam Tribes³) were entitled to
 2 official recognition by the Department but that five other tribes were not entitled to federal
 3 recognition. With respect to the Duwamish Tribe, Three Stars concluded that “[a]ccording to
 4 available Agency records and Agency staff comments,” the Tribe satisfied federal recognition
 5 criteria because, among other reasons, the Tribe “has had treaty relations with the United States”;
 6 “has been treated as a tribe or band by other Indian tribes”; “has been treated as having collective
 7 rights in tribal lands or funds, even though not expressly designated as a tribe” by the Department;
 8 “has exercised political authority over its members, through a tribal council or other governmental
 9 forms”; “has been recognized by the Indian Claims Commission”; “has received Federal services”;
 10 and has had regular “contacts with the BIA.” The task force determined that although the
 11 Duwamish Tribe is “[l]andless,” the Tribe “deserves recognition,” and “officially recogniz[ed] the
 12 Duwamish descendants as an Indian tribe and eligible for the benefits accruing therefrom, such as
 13 treaty fishing rights recently recognized as theirs by the court.” True and correct copies of
 14 documentation comprising the Three Stars Determination is attached as **Exhibit 10**.

15 49. In 1976, Congress issued the Report on Terminated and Nonfederally Recognized
 16 Indians: Final Report to the American Policy Review Commission (“1976 Report”), identifying
 17 the Duwamish Tribe as a “landless tribe” that satisfies nearly all of the criteria for determining if
 18 a group constitutes a tribe, including “treaty relations with the United States” and being
 19 “denominated by act of Congress,” and concluding that the Tribe is “eligible” for recognition.
 20 1976 Report at 186–87. A true and correct copy of an excerpt of the 1976 Report is attached as
 21 **Exhibit 11**. The following year, on May 17, 1977, the American Indian Review Commission

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 23 ³ The Jamestown Clallam Tribe is now known as the Jamestown S’Klallam Tribe. *See Jamestown S’Klallam Tribe*,
<https://jamestowntribe.org/> (last accessed Apr. 11, 2022).

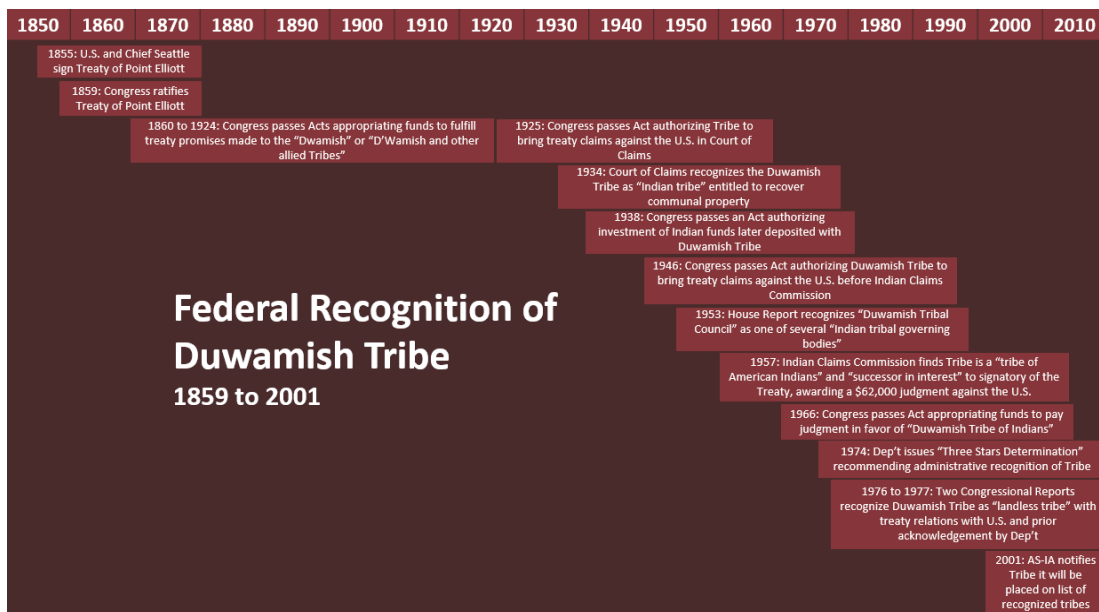
1 issued its Final Report to Congress (“1977 Report”), which identified the Duwamish Tribe as one
2 of a few Indian tribes that had treaty relations with the United States and were acknowledged in
3 Department records but had not yet been “officially” recognized by the Department. *Id.* at 454.
4 The 1977 Report concluded that “with the sole exception of termination acts,” “[t]here is no legal
5 basis for withholding general services from Indians,” “no legitimate foundation for denying Indian
6 identification to any tribe or community,” and that the “BIA has no authority to refuse services to
7 any member of the Indian population.” *Id.* at 442. A true and correct copy of an excerpt of the
8 1977 Report is attached as **Exhibit 12**.

9 50. In 1994, Congress passed the Federal Recognized Indian Tribe List Act of 1994,
10 Pub. L. No. 103-454, 108 Stat. 4791 (codified as 25 U.S.C. § 5130 *et seq.*) (“List Act”), providing
11 that an Indian tribe that is recognized by an Act of Congress, by the Department’s regulations set
12 forth under Part 83, or by a decision of a United States court must be placed on the Department’s
13 list of federally recognized tribes. Critically, the List Act provides that “a tribe which has been
14 recognized in one of these manners may not be terminated except by an Act of Congress.” 25
15 U.S.C. § 5130 note (emphasis added). The Duwamish Tribe, which has been recognized by dozens
16 of acts of Congress and two U.S. courts with jurisdiction to make such determinations, the Court
17 of Claims and the Indian Claims Commission, has never had its prior federal recognition
18 terminated by Congress.

19 51. In 2001, near the end of the Clinton administration, the Department’s Acting
20 AS-IA, Michael Anderson, determined that the Duwamish Tribe satisfied the Part 83 criteria and
21 should be placed on the Department’s list of federally recognized tribes. The Final Determination
22 to Acknowledge the Duwamish Tribal Organization, dated January 19, 2001, concluded that the
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Tribe satisfied the Part 83 criteria and “as an alternative basis for recognition, the [Tribe] has demonstrated prior Federal acknowledgement in the form of numerous statutory references of the ‘Dwamish Tribe’ or the ‘D’Wamish Tribe,’ beginning with the Senate ratification of the 1855 Treaty of Point Elliott in 1859, up until the final appropriation statute.” According to the AS-IA, “[t]hese are unequivocal expressions of congressional recognition and solicitude” and “[a]bsent any other clear congressional intent to the contrary, the fulfilling of the treaty obligations cannot be ignored.” A true and correct copy of the Final Determination to Acknowledge the Duwamish Tribal Organization, dated January 19, 2001, is attached as **Exhibit 13**.

52. As determined by the former Acting AS-IA, since Congress ratified the Treaty in 1859, Congress has never terminated or otherwise abrogated its prior recognition of the Duwamish Tribe or its treaty rights. *See* PF at 20. A timeline is shown below and attached as **Exhibit 14**:



The Department has since attempted to terminate the prior federal recognition of the Duwamish Tribe and its rights under the Treaty of Point Elliott.

53. Although Congress, the Court of Claims, and the Indian Claims Commission have already recognized the Duwamish Tribe as an Indian tribe, and as the successor in interest to the

1 tribe that signed the Treaty of Point Elliott—and indeed, certain Department officials have as
 2 well—the Department has to date refused to place the Duwamish Tribe on the list of federally
 3 recognized tribes.

4 54. In 1977, the Duwamish Tribe first wrote the Department, asking it to place the Tribe
 5 on the list of federally recognized tribes. At that time, the Department recognized Indian tribes on
 6 a case-by-case basis.

7 55. In 1978, for the first time, the Department promulgated regulations establishing a
 8 uniform procedure for acknowledging Indian tribes and for processing petitions for
 9 acknowledgement. Procedures for Establishing that an American Indian Group Exists as an Indian
 10 Tribe, 43 Fed. Reg. 39,361 (Sept. 29, 1978) (“1978 regulations”).

11 56. The following year, in 1979, after the Duwamish Tribe had intervened in a case
 12 pending before this Court to secure its fishing rights guaranteed by the Treaty of Point Elliott,
 13 Judge Boldt concluded that the Duwamish Tribe was not the successor in interest to the tribe that
 14 signed the Treaty. *See United States v. Washington*, 476 F. Supp. 1101 (W.D. Wash. 1979). The
 15 Ninth Circuit affirmed, concluding that although the Duwamish Tribe, among other tribes, has a
 16 formal Constitution and government, engaged in organized fishing operations, and had previously
 17 pursued treaty claims, the Duwamish Tribe had not sufficiently “controlled the lives of the
 18 members,” nor “clearly established . . . [a] continuous informal cultural influence,” and its
 19 members “have intermarried with non-Indians and many are of mixed blood.” *United States v.*
 20 *Washington*, 641 F.2d 1368 (9th Cir. 1981). Neither Judge Boldt nor the Ninth Circuit specifically
 21 addressed the dozens of Acts of Congress denominating the Duwamish Tribe from 1859 to 1966,
 22 the Court of Claims’ relevant findings in 1934, the Indian Claims Commission’s relevant findings
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1 in 1957, or the Congressional reports from 1953 to 1977—all of which recognized the Duwamish
2 Tribe as an Indian tribe and/or the successor in interest to the historic tribe that signed the Treaty.

3 57. Despite these adverse rulings with respect to the Tribe’s treaty rights, the
4 Duwamish Tribe persevered and submitted a formal acknowledgement petition to the Department
5 in 1987 and a revised petition in 1989.

6 58. By 1994, the Department had promulgated revised regulations to officially
7 recognize Indian tribes. Procedures for Establishing that an American Indian Group Exists as an
8 Indian Tribe, 59 Fed. Reg. 9280 (Feb. 25, 1994) (“1994 regulations”). But the Department had still
9 not reached a conclusion as to whether the Duwamish Tribe satisfied the criteria under the 1978
10 regulations. The 1994 regulations were adopted after the Department’s acknowledgment process
11 had been routinely criticized, namely because the process took too much time, was too expensive
12 for petitioning tribes, and produced inconsistent results. Even after the 1994 regulations were
13 promulgated, the Department’s recognition process continued to draw criticism.

14 59. On June 28, 1996, nearly 20 years after the Duwamish Tribe first sought
15 administrative recognition, the Department published its Proposed Finding (“PF”) against federal
16 acknowledgement of the Duwamish Tribe. The Department found that the Duwamish Tribe had
17 satisfied four of the seven criteria demonstrating that the Tribe has existed as an Indian tribe,
18 including: The Tribe has sufficient governing procedures and membership criteria, 99 percent of
19 the Tribe’s membership descends from the Tribe as it existed in treaty times, most of the Tribe’s
20 members were not members of other Indian tribes, and Congress has never terminated the federal
21 relationship with the Tribe. Yet, the Department denied the Tribe’s petition on the ground that the
22 following three criteria were not satisfied: (a) the Tribe was not identified as an American Indian
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1 entity on a substantially continuous basis since 1900, (b) a predominant portion of the Tribe did
2 not comprise a distinct community from historical times until the present, and (c) the Tribe did not
3 maintain sufficient political influence or authority over its members from historical times until the
4 present. The Department also improperly concluded that the Duwamish Tribe was somehow “not
5 the same entity as the historically acknowledged tribe” that signed the Treaty of Point Elliott.

6 60. After the period for comment closed, on January 19, 2001, the last day of President
7 Bill Clinton’s administration, the Acting AS-IA concluded that the “express statutory references”
8 to the Duwamish Tribe “are unequivocal expressions of congressional recognition and solicitude,”
9 and, “[a]bsent any other clear congressional intent to the contrary, the fulfilling of the treaty
10 obligations cannot be ignored.” The Acting AS-IA called Plaintiff Cecile Hansen that day to tell
11 her that the Duwamish had been acknowledged.

12 61. Shortly after President George Bush took office on January 20, 2001, however, the
13 Department informed Plaintiff Hansen that the final determination on the Duwamish Tribe would
14 not be sent to the Federal Register. Several months later, on September 25, 2001, the new AS-IA
15 signed a final determination reversing the Final Determination to Acknowledge the Duwamish
16 Tribal Organization, dated January 19, 2001, declining to acknowledge the Duwamish under the
17 1978 regulations and refusing to otherwise consider the Duwamish under the 1994 regulations.

18 62. After the Duwamish Tribe unsuccessfully petitioned the IBIA and the Secretary for
19 reconsideration, the Secretary declined the request that the AS-IA reconsider the final
20 determination against acknowledgment on May 8, 2002.

21 63. The Duwamish Tribe then sued Defendants in this Court, challenging the final
22 determination against acknowledgment of the Tribe. On March 22, 2013, the Court concluded that
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1 the Department's failure to either consider the Duwamish petition under both the 1978 and 1994
 2 regulations, or provide an explanation of its different treatment of the Duwamish Tribe relative to
 3 other tribes, "violated fundamental norms of administrative procedure and was arbitrary and
 4 capricious," and that the Duwamish were entitled to "the benefit of a more transparent decision
 5 making process." *Hansen v. Salazar*, No. C08-0717-JCC, 2013 WL 1192607, at *10 (W.D. Wash.
 6 Mar. 22, 2013). The court vacated the final determination declining to acknowledge the Duwamish
 7 Tribe. *Id.* at *11.

8 64. Around this time, in 2015, the Department again promulgated revised
 9 acknowledgment regulations seeking "to make the process and criteria more transparent, promote
 10 consistent implementation, and increase timeliness and efficiency." Federal Acknowledgement of
 11 American Indian Tribes, 80 Fed. Reg. 37,862 (July 1, 2015) ("2015 regulations"). The Department
 12 acknowledged that "[f]or decades, the current [Part 83] process has been criticized as 'broken' and
 13 in need of reform" because it is "too slow . . . expensive, burdensome, inefficient, intrusive, less
 14 than transparent, and unpredictable." *Id.* The 2015 regulations would, among other things,
 15 "institutionaliz[e] a phased review that allows for faster decisions; reduc[e] the documentary
 16 burden while maintaining the rigor of the process; allow[] for a hearing on a negative proposed
 17 finding to promote transparency and integrity; enhanc[e] notice to tribes . . . ; establish[] the
 18 Assistant Secretary's final determination as final for the Department to promote efficiency; and
 19 codify[] and improv[e] upon past Departmental implementation of standards . . . to ensure
 20 consistency, transparency, and predictability and fairness." *Id.*

21 65. On remand, and in disregard of the Court's order, the Department refused to permit
 22 the Tribe to supplement the record or to otherwise afford the Tribe a formal hearing. Although the
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1 Tribe submitted 298 exhibits, nine declarations, and expert research with its Second Request for
2 Reconsideration before the IBIA, the IBIA improperly concluded that even if it could consider this
3 new evidence, such evidence would not affect the Final Decision. The Department also refused to
4 consider the Duwamish Tribe under the 2015 regulations, despite the Tribe's specific request to
5 be considered under those more favorable regulations.

6 66. As a result, the Department again denied the Duwamish Tribe's acknowledgement
7 petition under the 1978 and 1994 regulations, thereby illegally terminating the Tribe's prior
8 recognition by Congress and by two U.S. courts, which had already concluded that the Duwamish
9 Tribe is an Indian tribe and the successor in interest to the Tribe that signed the Treaty of Point
10 Elliott. The Department issued its Final Decision on July 24, 2015, determining that the Duwamish
11 Tribe failed to satisfy criteria (a), (b), and (c) under both versions of the regulations. The Final
12 Decision was upheld by the IBIA on April 17, 2019, and by the Secretary on July 17, 2019. The
13 action by the Secretary constitutes a final agency action marking the continuation of the federal
14 government's efforts to extinguish the Tribe as it existed at treaty times.

15 67. To justify its refusal to recognize the Duwamish Tribe, the Department has
16 repeatedly emphasized a blatantly discriminatory justification—namely, that some of the Tribe's
17 members, since 1926, have descended from Duwamish women who, according to the agency,
18 “founded families of mixed-blood ‘Indians.’”

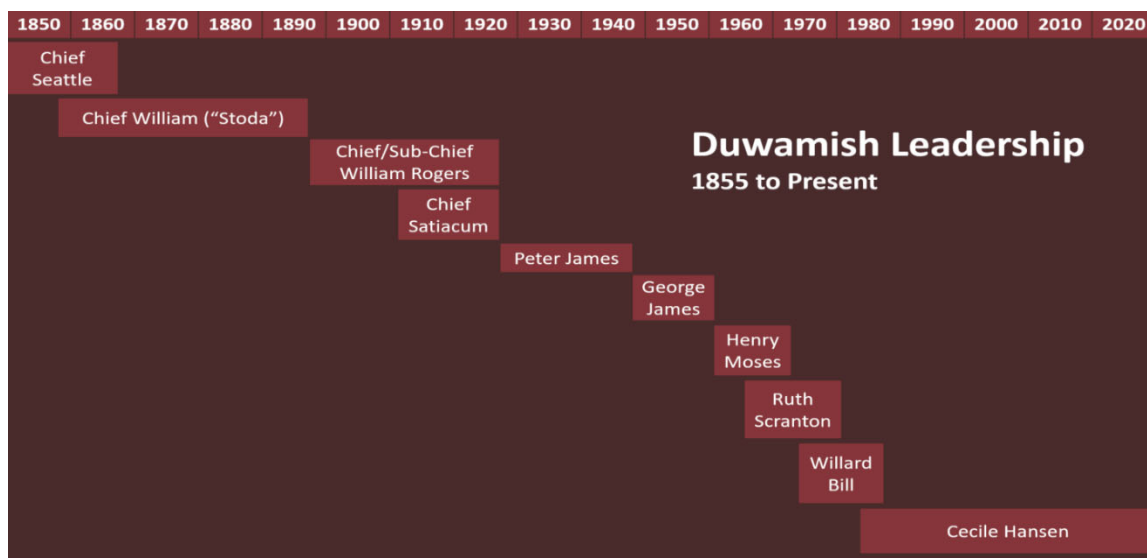
19 **The Duwamish Tribe continues to persevere today.**

20 68. To date, and despite the best efforts of Duwamish leaders since 1855, the federal
21 government has not created a reservation for the Duwamish Tribe or secured many other treaty
22 rights promised to its members in the Treaty of Point Elliott.

69. Most of the Duwamish Tribe's members continue to reside in King, Pierce, and Kitsap counties to this day.

70. The Duwamish Tribe's members today are direct descendants of members of the Duwamish Tribe on whose behalf Chief Seattle signed the Treaty of Point Elliott. The Department concedes that 99 percent of the Tribe's members today "descend from the historical Duwamish Indian tribe as it existed before 1880." 66 IBIA 149, 156 (Apr. 17, 2019).

71. Since the signing of the Treaty in 1855, an unbroken chain of leadership has governed the Tribe, including Chief Seattle, Chief William, Chief William Rogers, Chief Satiacum, Honorable Peter James, Honorable George James, Chief Henry Moses, Honorable Ruth Scranton, Honorable Willard Bill, and Honorable Cecile Hansen. Throughout this time, Duwamish tribal members and their descendants have participated in tribal meetings, gatherings, and cultural practices and have been engaged with the larger Seattle and Pacific Northwest community. A timeline of tribal leadership is shown below and attached as **Exhibit 15**:



72. Since 1981, Duwamish Tribal Services ("DTS") has operated as a 501(c)(3) nonprofit organization to promote the social, cultural, and economic survival of the Duwamish

1 Tribe. DTS continues to administer the Emergency Food Assistance Program funded by the state
2 government, providing an average of 72 native people and their families with monthly food
3 vouchers and other support services.

4 73. In 1989, the Duwamish Tribe hosted the “Paddle to Seattle” along with the
5 Suquamish Tribe, a two-day event involving a flotilla of 18 native canoes that were carved and
6 paddled by members of 13 regional tribes on a seven-mile journey from Suquamish to Duwamish
7 native lands on Shilshole Bay (present-day Golden Gardens Park). More than 5,000 people,
8 including tribal members, the press, supporters, and onlookers, participated in the event.

9 74. In the 1990s, the Tribe started planning the design and construction of the
10 Duwamish Longhouse and Cultural Center (“Longhouse”) with the support of a broad coalition of
11 partners, including local and state governmental entities and other nongovernmental organizations.
12 The Longhouse, which officially opened its doors in 2009, is located in present-day West Seattle
13 and overlooks the Duwamish River Valley across the street from the historic village of həʔapus
14 (“Ha Ah Poos”) (where Chief Seattle grew up and which settlers burnt down in 1895) and other
15 historic Duwamish villages. The Longhouse houses the “Birthplace of Seattle Log House
16 Museum,” and the Tribe continues to host its annual meeting and other cultural, educational, and
17 social events at the Longhouse to this day. Just last year, the Tribe welcomed more than 3,500
18 people to the Longhouse. Virtual tours of the Longhouse are also available through the Tribe’s
19 partnership with the University of Washington.

20 75. Through the Longhouse, the Tribe is engaged in increasing knowledge and
21 understanding of the Tribe’s cultural and historical ties to the Duwamish River. The Tribe’s
22 ecotourism program, in partnership with the Duwamish River Cleanup Coalition and the
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1 Duwamish Alive Coalition, recruits and trains members to be environmental stewards for the
 2 restoration and protection of the Duwamish River. Last year, the Tribe conducted 65 ecotours that
 3 served 616 people.

4 76. In 2017, Real Rent Duwamish (“Real Rent”) was launched. Through this nonprofit
 5 organization, people who live and work in the Seattle area make rent payments to the Duwamish
 6 Tribe. Today, about 20,758 renters participate in Real Rent and more than 100,000 individuals
 7 have signed a Change.org petition to #StandWithTheDuwamish and support the Tribe’s federal
 8 recognition.⁴ Today’s petition is in stark contrast to the petition by the City’s early non-Indian
 9 settlers who opposed and eventually prevented the creation of a Duwamish reservation in the
 10 1860s.

11 77. The Tribe is honored that the company Salish Sea Tours, launched last year by
 12 Chinook Tribe member Kyle Griffith, guides tourists on two 93-foot catamarans each year to
 13 provide tours of the Puget Sound that include Indigenous voices, including the story of the
 14 Duwamish.

15 78. In late 2021, DTS purchased land to the north of the Longhouse and plans to
 16 develop the property over the next couple of years to include parking, a coffee stand (which will
 17 serve a “Duwamish Blend”), and additional offices for the Tribe. The property is just across the
 18 street from the historic village site of Ha Ah Poos and is now connected by a newly installed lighted
 19 pedestrian crosswalk, which makes it possible to walk from the trail system on the ridge to the
 20 Longhouse, then across Marginal Way to the Duwamish River. The Tribe is in the process of
 21 applying for public and non-profit grants to restore the system of trails within the West Duwamish

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 23 ⁴ The Change.org petition for federal recognition of the Duwamish Tribe is available at:
<https://www.change.org/p/federal-recognition-for-the-duwamish-tribe> (last accessed Apr. 11, 2022).

1 Greenbelt. Until then, has partnered with the University of Washington, Seattle Parks and
 2 Recreation, and others to monitor the quality of water within the watershed and to create signage
 3 identifying native plant species and their traditional use by the Tribe. The Tribe has also been
 4 asked to collaborate with the Boeing Company to restore water quality, address invasive plant
 5 species, and ensure a healthy ecology of the watershed, as part of a project funded by Boeing and
 6 involving the Department of Ecology and the Port of Seattle.

7 79. The Tribe has government-to-government relations with other tribes, as well as
 8 local governments. In 1976, the Duwamish Tribe, under the leadership of Cecile Hansen, led
 9 efforts to establish the Small Tribes Organization of Western Washington (“STOWW”), which
 10 provides social services to members of these allied tribes. Today, the Duwamish Tribe continues
 11 to be a member of the STOWW’s Emergency Food Assistance Program along with allied tribes,
 12 including the Chinook, Cowlitz, Hoh, Makah, Samish, Sauk-Suiattle, Snoqualmie, Steilacoom,
 13 Stillaguamish, Suquamish, and Upper Skagit Tribes. The Tribe then joined the Affiliated Tribes
 14 of Northwest Indians in 1977 and the National Congress of American Indians in 1980.

15 80. In December 2021, the City passed an ordinance recognizing Seattle’s “first
 16 peoples” led by Chief Seattle and establishing an Indigenous Advisory Council to advise the
 17 Mayor, the City, and the City’s departments on policies directly affecting Indigenous populations.
 18 Duwamish Councilmember Ken Workman has been asked to sit on the City’s Indigenous Advisory
 19 Council and the Green New Deal Oversight Board, both of which are pending Council
 20 confirmation. In addition, the Seattle School Board, since 2018, has formally recognized the
 21 Duwamish Tribe and has called on the federal government to do the same. More recently, in June
 22 2021, the Martin Luther King, Jr. County Labor Council passed a similar resolution to support the
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1 Tribe's fight for federal recognition. Several other local establishments, including the Frye
2 Museum and Seattle Mennonite Church, provide land acknowledgment to the Duwamish Tribe.

3 81. The Duwamish Tribe also enjoys government-to-government relations with the
4 State of Washington. In August 2021, for example, the State of Washington's Recreation and
5 Conservation Office contacted the Duwamish Tribe to initiate a formal consultation regarding
6 anticipated state-funded construction projects to ensure the avoidance or minimization of adverse
7 effects to the Tribe's historic, archeological, cultural, or sacred sites and buildings, as required by
8 the Governor's Executive Order 21-02. Likewise, the Tribe regularly engages in legislative
9 advocacy at the state and local levels. During the 2021–2022 legislative session, the Tribe
10 supported H.B. 1725 concerning the creation of an endangered missing person advisory for
11 Indigenous persons, which passed the state legislature on March 10, 2022. That same legislative
12 session, the Tribe successfully opposed S.B. 5161, which would have required Washington school
13 districts to incorporate into its newly adopted or revised curricula the history, culture, and
14 government of only "federally recognized" Indian tribes—necessarily excluding the teaching of
15 the Duwamish Tribe's history, culture, and government.

16 82. To this day, the Duwamish Tribe has survived against all odds, and the Tribe
17 continues to act pursuant to its Constitution, bylaws, and its Tribal Council, which seeks, secures,
18 and administers group resources for the benefit of the Duwamish Tribe's members.

19 **The Duwamish Tribe has suffered and continues to suffer substantial injury as a result of**
20 **the Department's illegal termination of the Tribe's unambiguous prior federal recognition.**

21 83. The Duwamish Tribe and its members have suffered substantial injury as a result
22 of Defendants' actions, including the deprivation of protected property rights held by the Tribe
23 that are contingent on recognition by the Department. At some point, the federal government
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1 stopped issuing members of the Duwamish Tribe blue cards, which made members eligible for
2 state fishing and hunting licenses, among other rights. Members also lost health care benefits, the
3 right to apply for certain federal scholarships on account of their tribal membership, and other
4 federal benefits because the Defendants unlawfully terminated the Duwamish Tribe's prior
5 unambiguous federal recognition.

6 84. In addition, beginning in 2013, the Duwamish Tribe lost eight ancient cultural
7 artifacts that had been excavated from a historic Duwamish village after the Muckleshoot and the
8 Suquamish Tribes, both of which are federally recognized, requested that such artifacts be
9 transferred to them and held in their permanent custody. In response, the Duwamish Tribe offered
10 to buy the eight artifacts that had been previously on loan to the Tribe and were displayed with
11 great pride at the Longhouse. The Duwamish's request was denied, despite the fact that these
12 artifacts came directly from a Duwamish village site, directly across the street from the Longhouse
13 (and with no geographic or historical connection to any tribe other than the Duwamish). Because
14 the Duwamish Tribe is not a federally recognized tribe, the Tribe cannot seek repatriation of these
15 sacred artifacts under the Native American Graves Protection and Repatriation Act, 25 U.S.C.
16 § 3001(7), which permits recognized Indian tribes to repatriate cultural items from federal agencies
17 and museums.

18 85. The Duwamish Tribe and its members are further injured, and will continue to
19 suffer injuries, because of Defendants' unlawful termination of the Tribe's prior recognition. That
20 unlawful termination deprives the Tribe and its members of support and entitlements important to
21 their ability to maintain and support their distinct tribal and cultural identity, community, health,
22 and welfare. *See, e.g.*, Indian Financing Act, 25 U.S.C. § 1452(c); Indian Health Care Improvement
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Act, 25 U.S.C. §§ 1603(13)(D), (14); Indian Child Welfare Act, 25 U.S.C. § 1903(8); Indian Alcohol and Substance Abuse Prevention and Treatment Act, 25 U.S.C. § 2403(3); Tribally Controlled Schools Act, 25 U.S.C. § 2511(4); Indian Law Enforcement Reform Act, 25 U.S.C. §§ 2801(5)–(6); Native American Languages Act, 25 U.S.C. § 2902(5); and Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. § 3202(10) (each conditioning the eligibility for tribal members to receive these benefits on the tribe’s recognition by the Department).

86. Most recently, for example, when Congress passed COVID-19 relief, it set aside \$43 billion to help recognized tribes. Because the Duwamish Tribe is not recognized by the Department, it was not eligible for this relief. Like many others, the Duwamish Tribe has lost members of its own due to COVID-19.

87. The Duwamish Tribe has also suffered immeasurable harm to its ability to preserve and protect its Indigenous culture, history, beliefs, traditions, as well as its ancestral lands and environment, due to the Department’s indefensible position that the Duwamish Tribe no longer exists—the modern manifestation of the federal government’s historical efforts to extinguish the Tribe’s very existence.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**Declaratory relief under the Administrative Procedure Act, 5 U.S.C. § 703
and the Declaratory Judgment Act, 28 U.S.C. § 2201, against all Defendants**

88. Plaintiffs reallege paragraphs 1 through 87 above and incorporate those paragraphs in their entirety herein.

1 89. The Administrative Procedure Act explicitly authorizes the Court to grant the type
2 of declaratory relief the Duwamish Tribe seeks under 5 U.S.C. § 703.

3 90. In addition, under the Declaratory Judgment Act, the Court may declare the rights
4 and other legal relations of any interested party seeking such declaration, whether or not further
5 relief is or could be sought, and any such declaration shall have the force and effect of a final
6 judgment under 28 U.S.C. § 2201(a).

7 91. Under the List Act, “Indian Tribes presently may be recognized by Act of Congress;
8 by the administrative procedures set forth in [25 C.F.R. pt. 83]; or by a decision of a United States
9 court,” and “a tribe which has been recognized in one of these manners may not be terminated
10 except by an Act of Congress.” 25 U.S.C. § 5130 note.

11 92. Based on Congress’ plenary power over Indian affairs set forth in the U.S.
12 Constitution, along with separation of powers principles and longstanding Supreme Court
13 precedent, most recently articulated in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Congress
14 alone holds the constitutional authority to repudiate a treaty or terminate a tribe, and only through
15 unequivocal Congressional action.

16 93. Beginning in 1859 through at least the 1970s, dozens of acts of Congress and two
17 U.S. courts—the Court of Claims and the Indian Claims Commission—have recognized the
18 Duwamish Tribe as an Indian tribe and the successor in interest to the Tribe that signed the Treaty
19 of Point Elliott.

20 94. Congress has never abrogated its recognition of the Duwamish Tribe or otherwise
21 limited its rights under the Treaty of Point Elliott. Rather, each time Congress has addressed the
22 issue, it has reaffirmed the Tribe’s status a federally recognized tribe.

1 95. The Duwamish Tribe therefore seeks a declaration pursuant to 5 U.S.C. § 703 that
 2 the Duwamish Tribe has been recognized by Congress and other federal authorities as an Indian
 3 tribe within the meaning of the List Act and as the successor in interest to the Tribe that signed the
 4 Treaty of Point Elliott.

5 **SECOND CLAIM FOR RELIEF**
 6 **Mandamus relief under 5 U.S.C. §§ 703 and 706(1) against all Defendants**

7 96. Plaintiffs reallege paragraphs 1 through 87 above and incorporate those paragraphs
 8 in their entirety herein.

9 97. The Administrative Procedure Act authorizes this Court to compel agency action
 10 unlawfully withheld and to hold unlawful and set aside agency action, findings and conclusions
 11 found to be contrary to a constitutional right, power, privilege, or immunity and in excess of the
 12 Department's statutory jurisdiction and authority. 5 U.S.C. § 706(1); *see also id.* § 703 (explicitly
 13 authorizing the Court to grant the type of mandamus relief the Duwamish Tribe seeks).

14 98. Under the List Act, "Indian Tribes presently may be recognized by Act of Congress;
 15 by the administrative procedures set forth in [25 C.F.R. pt. 83]; or by a decision of a United States
 16 court," and "a tribe which has been recognized in one of these manners may not be terminated
 17 except by an Act of Congress." 25 U.S.C. § 5130 note. The List Act further compels the Secretary
 18 to publish a list of all Indian tribes that are currently recognized by the Secretary, an Act of
 19 Congress, or a decision of a U.S. court and to make those tribes eligible for special programs and
 20 services provided by the United States to Indians because of their status as Indians. *Id.* § 5131.

21 99. Based on Congress' plenary power over Indian affairs set forth in the U.S.
 22 Constitution, along with separation of powers principles and longstanding Supreme Court
 23 precedent, most recently articulated in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Congress
 24

1 alone holds the constitutional authority to repudiate a treaty or terminate a tribe, and only through
2 unequivocal Congressional action.

3 100. Beginning in 1859 through at least the 1970s, dozens of acts of Congress and two
4 U.S. courts have recognized the Duwamish Tribe as an Indian tribe and the successor in interest
5 to the Tribe that signed the Treaty of Point Elliott. Congress has neither abrogated its recognition
6 of the Duwamish Tribe nor otherwise limited the Tribe's rights under the Treaty of Point Elliott.

7 101. The Duwamish Tribe has an indisputable right to mandamus relief based on the
8 dozens of acts of Congress and two U.S. court decisions recognizing the Duwamish Tribe as an
9 Indian tribe and the successor in interest to the Tribe that signed the Treaty under the List Act, 25
10 U.S.C. § 5130 *et seq.*, longstanding Supreme Court precedent, and the U.S. Constitution.

11 102. The Defendants' duty is nondiscretionary, ministerial, and so plainly prescribed in
12 the List Act, 25 U.S.C. § 5131, to be free from doubt.

13 103. No other adequate remedy is available to the Duwamish Tribe, as the Tribe has
14 attempted for over 40 years to seek recognition through the Part 83 process, and to be afforded a
15 formal hearing with the ability to supplement the record and confront witnesses, all to no avail.

16 104. Mandamus relief is appropriate in this case because Defendants' improper attempt
17 to terminate the Duwamish Tribe's recognition and treaty rights violates separation of powers
18 principles embedded in the U.S. Constitution. Critically, Defendants' termination of the Tribe's
19 recognition and treaty rights threatens the Tribe's political and cultural survival.

20 105. The Duwamish Tribe respectfully seeks an order pursuant to 5 U.S.C. §§ 703 and
21 706(1) vacating the Final Decision against acknowledgement and compelling Defendants to place
22 the Duwamish Tribe on the list of federally recognized tribes, as required under the List Act, and
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1 to adhere to the unambiguous prior recognition of the Duwamish Tribe as conclusive evidence of
 2 federal acknowledgment of the Tribe.

3 **THIRD CLAIM FOR RELIEF**
 4 **Violation of Equal Protection under Fifth Amendment of the**
 5 **U.S. Constitution against all Defendants**

6 106. Plaintiffs reallege paragraphs 1 through 87 above and incorporate those paragraphs
 7 in their entirety herein.

8 107. Under the Fifth Amendment, discrimination based on sex is presumptively
 9 unconstitutional and subject to heightened scrutiny.

10 108. The descendants of Duwamish women and non-Indian men have suffered a long
 11 history of extreme discrimination in Washington State and across the United States, and they
 12 continue to suffer discrimination to this day. The Department's decisions with respect to the
 13 Duwamish Tribe reflect and repeat this discrimination by relying upon the fact that the Tribe's
 14 members primarily descend from Duwamish women who married non-Indians when concluding
 15 that the Tribe could not satisfy criteria (a), (b), and (c) under the 1978 and 1994 regulations.

16 109. The former version of criterion (b), which the Department applied to the
 17 Duwamish, *see* 25 C.F.R. § 83.7(b)(1)(i) (1994), requires tribes to demonstrate that they have
 18 maintained sufficiently distinct communities. That criterion, on its face and as applied,
 19 discriminates on the basis of sex against the Duwamish Tribes' members, who are largely the
 20 descendants of Duwamish women married to non-Indians.

21 110. In applying former criterion (b), the Department disparaged the patterned "out
 22 marriages" (i.e., marriages outside the tribe) of the Duwamish members' female ancestors because
 23 those marriages were not "with other Indian populations." This requirement not only facially
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1 classifies tribal ancestors based on the race of their spouse, but it also classifies tribal ancestors on
2 the basis of their sex because, at the turn of the twentieth century, the out marriages between
3 Indians and non-Indians were almost exclusively among Indian women and non-Indian men. In
4 other words, the prior version of criterion (b) excluded matrilineal tribes that primarily descend
5 from Indian women who married outside the tribe (and did not apply to tribes that primarily
6 descend from Indian men who married outside the tribe).

7 111. In 2015, the Department revised criterion (b) by deleting the requirement that
8 applicants show evidence of their ancestors' patterned out marriages "with other Indian
9 populations," thereby expressly permitting applicants to present evidence of their ancestors'
10 patterned out marriages with Indians or non-Indians. *See* 25 C.F.R. § 83.11(b)(1)(i) (2015). At that
11 time, the Duwamish Tribe's acknowledgement petition was still being reviewed by the
12 Department. Had the Department granted the Duwamish Tribe's request to be considered under
13 the 2015 regulations, instead of the 1978 or 1994 regulations, the Department would have
14 considered the evidence of the Tribe's female ancestors' patterned out marriages in the late 1800s
15 and early 1900s.

16 112. Defendants, in applying the former version of criterion (b), expressly refused to
17 consider the evidence showing that the Tribe's female Duwamish ancestors who married non-
18 Indian men nevertheless maintained a sufficiently distinct tribal community from the late 1800s to
19 early 1900s, in part because these women's patterned out marriages were not explicitly recognized
20 under former criterion (b).

21 113. Defendants' application of former criterion (b) treats the Tribe's members, who
22 largely descend from Duwamish women who married outside the Tribe, differently than similarly
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1 situated tribes comprising mixed-race descendants of Indians who married outside their tribes, and
2 its application to the Duwamish violates the Tribe's guarantee of equal protection of the laws.

3 114. Defendants' application of former criterion (b), requiring that the Duwamish
4 members present evidence that their ancestors entered patterned out marriages "with other Indian
5 populations" is not substantially related to any important government interest. Indeed, it is not
6 even rationally related to any legitimate government interest.

7 115. Similarly, the Department's decisions heavily relied on the data and reporting from
8 the early 1900s that largely excluded the Tribe's female Duwamish ancestors and their mixed-race
9 children from tribal enrollment. This data was compiled at a time when the Department, based on
10 an official policy, refused to recognize Indian women and their mixed-race children as members
11 of the mother's tribe. Moreover, the federal agent that compiled the tribal enrollment rolls of the
12 Duwamish from 1916 to 1919 held outward biases against Duwamish women who married non-
13 Indian men, as he did not perceive the so-called "mixed-blood" children of Duwamish women as
14 "Indian" at all.

15 116. Defendants' overreliance on the discriminatory data and reporting by federal agents
16 during this time period means that the Duwamish Tribe, whose members primarily descend from
17 Duwamish women, were undeniably treated differently than similarly-situated tribes that primarily
18 descend from Indian men, which violates the Tribe's guarantee of equal protection of the laws.

19 117. Defendants' overreliance on this discriminatory data and reporting is not
20 substantially related to any important government interest. Indeed, it is not even rationally related
21 to any legitimate government interest.
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118. The sex of one's Indian ancestor bears no relation to whether the Duwamish Tribe, which has been previously federally recognized on several occasions, warrants recognition by the Department.

119. The Duwamish Tribe respectfully requests a judicial declaration under 5 U.S.C. § 703 that Defendants' differential treatment of the Duwamish Tribe based on the sex of its ancestors violates the Tribe's equal protection rights, and absent such differential treatment, the Tribe would satisfy criteria (a), (b), and (c) of the 1978 and 1994 regulations. The Duwamish Tribe further seeks an order under 5 U.S.C. §§ 703 and 706(1) compelling the Department to place the Duwamish Tribe on the list of federally recognized tribes.

120. Alternatively, the Tribe seeks an order under 5 U.S.C. §§ 703 and 706(1) compelling the Department to apply criteria (a), (b), and (c) in a manner that does not discriminate against matrilineal tribes like the Duwamish, which primarily descend from Indian women who married non-Indians.

FOURTH CLAIM FOR RELIEF
Violation of due process under the Fifth Amendment of the U.S. Constitution
against all Defendants

121. Plaintiffs reallege paragraphs 1 through 87 above and incorporate those paragraphs in their entirety herein.

122. The Due Process Clause of the Fifth Amendment guarantees a formal hearing before the government may deprive one of any protected property rights.

123. The Duwamish Tribe and its members have protected property interests in the Indian identification cards (i.e., "blue cards") that the Department previously issued to members of the Duwamish Tribe, which made members eligible for state-issued hunting and fishing

1 licenses, the right to apply for federal scholarships for tribal members, and the right to apply for
2 other federal health and welfare benefits available only to members of tribes on the Department's
3 list of federally recognized tribes.

4 124. The Duwamish Tribe and its members previously received federal and state benefits
5 and entitlements that were cut off by virtue of the Department illegally terminating the Tribe's
6 federal recognition.

7 125. It is well established that such fundamental health and welfare benefits to which
8 tribes or their members are entitled cannot be removed without a hearing to determine eligibility.
9 Once Congress narrowed the eligibility for fundamental health and welfare benefits to tribes on
10 the Department's list of federally recognized tribes, the Due Process Clause requires a meaningful
11 hearing to determine whether those previously eligible can meet the new and narrowed
12 requirements before the Department could unilaterally terminate those entitlements.

13 126. The Due Process Clause requires an opportunity for a hearing before the
14 deprivation of a protected property interest. Where important decisions turn on questions of fact,
15 due process requires an opportunity to confront and cross-examine adverse witnesses.

16 127. In terminating the Duwamish Tribe's prior unambiguous federal recognition under
17 both the 1978 and 1994 regulations, Defendants refused to permit the Tribe to supplement the
18 record and otherwise failed to afford the Tribe a formal hearing with the right to confront
19 witnesses.

20 128. To determine whether the Department's prior acknowledgement procedures are
21 sufficient, the Court considers (1) the private interest that will be affected by the official action;
22 (2) the risk of an erroneous deprivation of such interest through the procedures used; (3) the
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1 probable value, if any, of additional or substitute procedural safeguards; and (4) the government's
2 interest, including the fiscal and administrative burdens that the additional or substitute procedural
3 requirement would entail.

4 129. The Duwamish Tribe's interests in meeting the threshold eligibility requirements
5 for the myriad federal benefits available to federally recognized tribes and their members are
6 significant. The risk that such eligibility might be unfairly denied is real because of the lack of the
7 Department's procedural safeguards. The Department's informal decision making with respect to
8 the Duwamish Tribe over the past 40-plus years has been very protracted, highly adversarial, and
9 obscured by closed-door review. It has been an inappropriate and unconstitutional process for the
10 determination of matters of such gravity.

11 130. Defendants' administrative burdens are relatively slight because the Department's
12 2015 regulations now permit petitioning tribes to challenge a negative proposed finding at a formal
13 hearing before an administrative law judge on the record. *See* 25 C.F.R. § 83.39. Had the
14 Department granted the Duwamish Tribe's request to be considered under the 2015 regulations,
15 the Tribe would have been entitled to this type of formal hearing as a matter of right. *Id.* Such
16 procedures are routine in other types of federal entitlements as well. *See* 20 C.F.R. § 404.929 (right
17 to a social security hearing before an administrative law judge).

18 131. Defendants' refusal to permit the Duwamish Tribe to supplement the record and
19 failure to afford the Tribe a formal hearing with the right to confront witnesses in accordance with
20 25 C.F.R. § 83.39 is contrary to the Duwamish Tribe's due process rights guaranteed by the Fifth
21 Amendment.

1 would have been required to consider the evidence of the Tribe's female ancestors' patterned out
2 marriages, or so-called "pioneer marriages," in the late 1800s and early 1900s. *Compare* 25 C.F.R.
3 § 83.7(b)(1)(i) (1994), *with* 25 C.F.R. § 83.11(b)(1)(i) (2015). Because pioneer marriages were
4 almost exclusively among Indian women and non-Indian men at the turn of the twentieth century,
5 the Department's former regulations disproportionately excluded matrilineal tribes that primarily
6 descend from Indian women who married outside the tribe (and generally did not exclude tribes
7 that primarily descend from Indian men who married outside the tribe). Defendants' refusal to
8 permit the Duwamish Tribe to proceed under the 2015 regulations is contrary to the Duwamish
9 Tribe's right to equal protection of the laws guaranteed by the Fifth Amendment. *See* 5 U.S.C.
10 § 706(2)(B).

11 136. The Department acted arbitrarily and capriciously, abused its discretion, violated
12 its own regulations, and acted contrary to its own precedent and to the Tribe's constitutional rights,
13 by requiring the Tribe to satisfy the criteria under Part 83, despite overwhelming evidence of
14 unambiguous previous federal recognition under 25 C.F.R. § 83.8(a)–(d) (1994). Congress and at
15 least two U.S. courts have regularly acknowledged the Duwamish Tribe since the signing and
16 ratification of the Treaty of Point Elliott in 1855, including numerous acts of Congress
17 denominating the Tribe from 1860 to 1924, the 1934 Court of Claims decision, a 1953
18 Congressional report identifying the Duwamish Tribe as an Indian tribal governing body, the 1957
19 Indian Claims Commission decision, the Act of 1966, and other Congressional reports through at
20 least the 1970s—each identifying the Duwamish Tribe as an Indian tribe and/or the successor in
21 interest to the historic tribe that signed the Treaty of Point Elliott. Defendants entirely failed to
22 consider or cite at least some of this record evidence, and therefore failed to meaningfully consider
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1 whether this body of evidence is “[u]nambiguous previous Federal acknowledgement” of the
2 Duwamish Tribe, or whether the Duwamish Tribe has been identified “as the same tribal entity
3 that was previously acknowledged or as a portion that has evolved from that entity” under 25
4 C.F.R. § 83.8.

5 137. The Department acted arbitrarily and capriciously, abused its discretion, violated
6 its own regulations, and acted contrary to its own precedent and to the Tribe’s constitutional rights
7 in applying the acknowledgement regulations to the Tribe’s petition because it entirely failed to
8 consider an important aspect of, and took no account of relevant factors related to, the historical
9 and present-day context of the Duwamish Tribe. Namely, the Department failed to recognize the
10 actions of local governments, non-Indian settlers, and the federal government itself in the late
11 1800s and early 1900s that forced the Duwamish people from their ancestral lands and attempted
12 to destroy the Duwamish Tribe as it existed at treaty times. For example, the federal government
13 promised to create a separate reservation for the Tribe on the Black River but never fulfilled that
14 promise; attempted to forcibly remove Duwamish members to other tribes’ reservations; expressly
15 excluded, as a matter of official policy, Duwamish women who married settlers, and their kin,
16 from tribal enrollment and benefits; and then, in conjunction with local governments, overlooked
17 the actions of non-Indian settlers who destroyed Duwamish villages and took actions to drain the
18 Black River in 1916, causing the last historic Duwamish village on the river to disappear. Today,
19 the Department concludes that the Duwamish Tribe’s dispersal throughout Western Washington
20 (primarily King, Pierce, and Kitsap counties) does not meet the standard of a geographically
21 defined community, but that improper conclusion entirely fails to consider or account for the
22 federal governments’ own actions or attempts to eradicate the Tribe as it existed at treaty times.
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1 138. The Department acted arbitrarily and capriciously, abused its discretion, violated
2 its own regulations, and acted contrary to its own precedent and to the Tribe's constitutional rights
3 by treating the Tribe differently than similarly situated tribes by, among other things, construing
4 the fact that the majority of Duwamish did not move to a reservation against the Tribe; failing to
5 consider the proper historical context of the Tribe's membership rolls and improperly interpreting
6 those rolls against the Tribe; failing to consider the proper historical and cultural context of pioneer
7 marriages and improperly interpreting those marriages against the Tribe; failing to interpret the
8 continuity of the Tribe's leadership as evidence of organizational continuity; and failing to
9 consider specific federal actions, including dozens of acts of Congress, two U.S. court decisions,
10 and other evidence of unambiguous prior federal recognition, as evidence of prior federal
11 acknowledgement of the Duwamish Tribe.

12 139. Under the 1978 and 1994 regulations, the Department acted arbitrarily and
13 capriciously, abused its discretion, violated its own regulations, and acted contrary to Department
14 precedent by failing to accord the evidence its proper weight. The Department disregarded the
15 "reasonable likelihood" standard mandated by its regulations by resolving all doubts against the
16 Tribe and willfully omitting, failing to consider, and/or misconstruing evidence, both within and
17 outside of its possession, that supports the Tribe's petition. The Department also evaluated and
18 discounted each piece of evidence standing alone without properly considering the record as a
19 whole.

20 140. The 1978 and 1994 regulations require acknowledgment decisions to be made on
21 factual and historical evidence weighed in a reasoned and unbiased fashion in accordance with
22 defined criteria. The Department's evaluation of the Duwamish petition does not meet that
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1 standard. Instead of considering the evidence according to required legal standards and applying
 2 the professional expertise appropriate to the authority delegated by Congress in accordance with
 3 the federal fiduciary responsibility and Department precedent, the Defendants evaluated the
 4 Duwamish Tribe's petition with undue prejudice, applying arbitrary and capricious methodology
 5 contrary to Department regulations and precedent, while selectively rejecting, failing to consider,
 6 and/or mischaracterizing evidence and analysis that would have supported the Tribe's petition.

7 141. Because the Department failed to present an adequate basis and explanation for its
 8 Final Decisions, failed to apply the correct standard of proof, violated and misinterpreted its own
 9 regulations, and applied those regulations contrary to Congressional and judicial recognition of the
 10 Tribe, without observance of procedure required by law, differently to the Tribe than other
 11 similarly situated tribes, and contrary to Department precedent, the Final Decision was arbitrary
 12 and capricious, an abuse of discretion, not in accordance with the law, made in clear error, and
 13 unsupported by substantial evidence.

14 VI. REQUESTED RELIEF

15 142. The Duwamish Tribe respectfully requests that this Court, pursuant to 5 U.S.C.
 16 § 703 and 28 U.S.C. § 2201(a), issue a declaratory judgment that the Duwamish Tribe has been
 17 recognized by Congress and other federal authorities as an Indian tribe within the meaning of the
 18 List Act and as the successor in interest to the Tribe that signed the Treaty of Point Elliott.

19 143. The Duwamish Tribe respectfully requests that this Court, pursuant to 5 U.S.C.
 20 §§ 703 and 706, compel the Defendants to list the Duwamish Tribe on the Department's list of
 21 federally recognized tribes and to adhere to the unambiguous prior recognition of the Duwamish
 22 Tribe as conclusive evidence of federal acknowledgment of the Tribe.

1 144. In the alternative, the Duwamish Tribe respectfully requests a judicial declaration
2 under 5 U.S.C. § 703 that Defendants' differential treatment of the Duwamish Tribe based on the
3 sex of its ancestors violates the Tribe's equal protection rights and absent such differential
4 treatment, the Tribe would satisfy criteria (a), (b), and (c) of the 1978 and 1994 regulations.

5 145. In the alternative, the Duwamish Tribe respectfully requests that this Court,
6 pursuant to 5 U.S.C. § 706, hold unlawful and set aside the Final Decision on Remand and remand
7 to the Department with instructions to reconsider the Duwamish Tribe's petition for recognition
8 under the Department's 2015 regulations in a manner that does not discriminate against matrilineal
9 tribes like the Duwamish, which primarily descend from Indian women.

10 146. In the alternative, the Duwamish Tribe respectfully requests that this Court,
11 pursuant to 5 U.S.C. § 706, hold unlawful and set aside the Final Decision on Remand and remand
12 to the Department with instructions to grant the Tribe a formal on the record hearing before an
13 administrative law judge in accordance with 25 C.F.R. § 83.39.

14 147. The Duwamish Tribe respectfully requests that this Court award such other or
15 further relief as the Court may in its judgment deem necessary and appropriate, including awarding
16 the Duwamish Tribe its reasonable fees and costs pursuant to the Equal Access to Justice Act, 28
17 U.S.C. § 2412, or other laws.

18 DATED this 11th day of May, 2022.
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