

*Akiachak Native Community v. Salazar*, 953 F. Supp.2d 195 (D.C.C. March 31, 2013).

In *Akiachak Native Community v. Salazar*, Alaskan Native Tribes and an individual brought suit challenging a regulation that prevented Alaskan Natives from entering into the land-into-trust application process in the state of Alaska.<sup>1</sup> In 1971 Congress passed into law the Alaska Native Claims Settlement Act (ANCSA), which “revoked the various reserves set aside for Native use’ by legislative or executive action, except for the Annette Island Reserve inhabited by the Metlakatla Indians, and completely extinguished all aboriginal claims to Alaska land.”<sup>2</sup> Native Alaskans instead received funds in their state-chartered private businesses as shareholders.<sup>3</sup> The first issue the court examined was whether the Secretary of the Interior retained his land-into-trust authority, or whether it was extinguished by the passage of the act.<sup>4</sup>

After the ANCSA was passed into law, a land-into-trust regulation was published, that stated that it applied only to the Metlakatla tribe in Alaska and not to other Alaskan Tribes.<sup>5</sup> The regulation was based largely on an opinion written by the Associate Solicitor for Indian affairs, which argued that the ANCSA precluded the Secretary from taking former reservation land into trust.<sup>6</sup> Although that opinion was later withdrawn, the final rule continued to bar land-into-trust for Native land in Alaska.<sup>7</sup>

The state argued that the ANCSA explicitly revoked the Secretary’s ability to take land-into-trust in Alaska.<sup>8</sup> They argued that the revocation came with the ANCSA’s extinguishing of “all claims against the United States, the State [of Alaska], and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land.”<sup>9</sup> The Plaintiffs argued that petitions to take land into trust are not “claims” within the meaning of the statute, because the decision on whether to grant or deny such claims is at the discretion of the Secretary.<sup>10</sup> The court agreed with the Plaintiffs’ interpretation of what a “claim” meant in the ANCSA,<sup>11</sup> The court cited the ordinary meaning of a claim, as necessarily adverse to the interests of another party, and the court stated that it would be unnecessary for Congress to have specifically repealed the Allotment Act if Congress had really intended that all claims be extinguished in the ANCSA.<sup>12</sup> The court reasoned that if the State’s argument were true, the Metlakatla Indians would also be barred from submitting trust-into-land petitions.<sup>13</sup> Thus, the

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<sup>1</sup> *Akiachak Native Community v. Salazar*, 953 F. Supp.2d 195, 197 (D.C.C. March 31, 2013).

<sup>2</sup> *Id.* at 199.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 201.

<sup>6</sup> *Id.* at 200.

<sup>7</sup> *Id.* at 202.

<sup>8</sup> *Id.* at 204.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 205.

<sup>11</sup> *Id.* at 205.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

court concluded that the Secretary of the Interior's authority to consider such petitions was unaltered by the ANCSA.<sup>14</sup>

Finally, the court examined the legality of the Secretary's land-into-trust regulations.<sup>15</sup> These regulations provide that they do not cover acquisition of land in trust in Alaska.<sup>16</sup> The Plaintiffs argued that the regulation was in violation of 25 U.S.C. 476(g), which does not allow a regulation to classify, enhance, or diminish the privileges of a federally recognized tribe relative to those of other federally recognized tribes.<sup>17</sup> The court agreed with the Plaintiffs and held that because the regulation diminished privileges for non-Metlaktlan Alaskan Natives, it was void.<sup>18</sup>

This case is a win for Alaskan Native Tribes. It could possibly have a sizeable impact in Alaska, because tribes could create trust lands that are potentially more self-governing. The case also asserts that Alaskan Tribes have the right to be treated the same as all other tribes in the United States.

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<sup>14</sup> *Id.* at 206.

<sup>15</sup> *Id.* at 208.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 209.

<sup>18</sup> *Id.* at 211.