



DUWAMISH TRIBE

The Duwamish Tribe continues to fight for federal recognition promised to it 167 years ago.

On May 11, 2022, the Duwamish Tribe filed a lawsuit against the Department of the Interior in the U.S. District Court for the Western District of Washington to secure its tribal sovereignty that predates the founding of the United States. For the past 167 years, the Duwamish Tribe has fought to realize the promises made by the United States in the Treaty of Point Elliott, signed in 1855 by Chief Seattle on behalf of both the Duwamish and Suquamish Tribes.

Since the United States' ratification of the Treaty in 1859, Congress has repeatedly recognized the Duwamish Tribe and its rights under the Treaty. *See* Complaint ¶¶ 37–38, 43, 47, 49 & Ex. 6. Other federal authorities have also recognized the Tribe and its treaty rights, including two U.S. courts (the Court of Claims and the Indian Claims Commission) and, at times, the Department itself. *Id.* ¶¶ 40, 44, 45–46, 48, 51 & Exs. 5, 7–11. Critically, Congress has *never* acted to terminate the Tribe's sovereignty or treaty rights. *Id.* ¶ 52 & Ex. 11. Yet for over 40 years the Department has unlawfully refused to acknowledge the Duwamish Tribe as a federally recognized Indian tribe. The Duwamish Tribe's lawsuit asserts five claims for relief against the Department:

First, based on the recognition of the Duwamish Tribe by Congress, two U.S. courts, and other authorities, the Tribe seeks a judicial declaration that it is a recognized Indian tribe within the meaning of the List Act of 1994, 25 U.S.C. § 5130 *et seq.* *See* 5 U.S.C. § 703; 28 U.S.C. § 2201; Complaint ¶¶ 88–95.

Second, the Duwamish Tribe seeks a judicial order to compel the Department to place the Tribe on the list of federally recognized tribes pursuant to the List Act of 1994. Based on Congress' plenary power over Indian affairs, as set forth in the U.S. Constitution, and Supreme Court precedent, *see McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Congress alone holds the authority to terminate a tribe or treaty, and only through unequivocal action. Because Congress has repeatedly recognized the Tribe and *never* acted to terminate the Duwamish Tribe's prior recognition, the Department must be compelled to place the Tribe on the list of federally recognized tribes. *See* 5 U.S.C. §§ 703, 706(1); Complaint ¶¶ 96–105.

Third, based on the Department's differential treatment of the Duwamish Tribe on the basis of sex, as a matrilineal tribe whose present-day membership primarily descends from Duwamish women, the Tribe seeks a judicial determination that the Department's refusal to recognize the Tribe violates the Tribe's constitutional guarantee of equal protection under the laws. *See* Complaint ¶¶ 67, 106–120.

Fourth, based on the Department's refusal to afford the Duwamish Tribe a formal hearing before depriving it of protected property interests associated with the Tribe's prior recognition, the Tribe challenges the Department's violation of the Tribe's due process rights. *See* Complaint ¶¶ 121–132.

Fifth, the Duwamish Tribe challenges the Department's numerous violations of the Administrative Procedure Act in refusing to recognize the Tribe, including but not limited to the Department's actions that are arbitrary, capricious, an abuse of discretion, outside of its statutory jurisdiction, and otherwise not in accordance with the U.S. Constitution, the List Act of 1994, and controlling Supreme Court precedent. *See* 5 U.S.C. § 706(2); Complaint ¶¶ 133–141.