

Calif. Tribe Sues DOI Over Tribal Ancestry Procedure

By [Ali Sullivan](#)

Law360 (April 3, 2024, 9:52 PM EDT) -- A California Native American tribe has accused the [U.S. Department of the Interior](#) of using an unconstitutional and unregulated race-based procedure for determining tribal ancestry in a new lawsuit in D.C. federal court.

Filed Tuesday by the federally recognized [California Valley Miwok Tribe](#) and several of its members, the suit targets the DOI's [Bureau of Indian Affairs](#)' use of a "Certificate of Degree of Indian Blood" form, arguing that the DOI and various agency officials "have recklessly trod into the thicket of tribal membership head-long."

The BIA has made efforts in recent years to organize the tribe through the formation of a tribal constitution, according to the suit. To determine the individuals eligible to participate in the process, the [complaint](#) says, the BIA required potential participants to fill out the "Certificate of Degree of Indian Blood" form, outlining their tribal lineage.

There's no regulation dictating the use of the certificate, the tribe said, and it is instead an "internal device" within the BIA that was created without a public notice and comment process.

"This court should halt defendants' unconstitutional racial practices against Indigenous peoples before the BIA extends a legacy of oppression that is antithetical to contemporary federal policies and Supreme Court precedent," the tribe said.

The complaint alleges the BIA's use of the certificate violates the federal Administrative Procedure Act because the agency never completed proper rulemaking.

The federal government is also violating the U.S. Constitution, the tribe said, "by establishing a governmentally determined race-based qualification for

participation in the creation of tribal law, governing documents, and in an electoral, federally administered referendum for the 'reorganization' or 'organization' of a federally recognized tribal government's constitution or governing documents."

The suit urges the court to declare the procedure, including the absent notice-and-comment rulemaking, violates APA and to issue an injunction barring the application of the certificate criteria until such rulemaking is completed.

The tribe noted the Interior Department recognizes that the rulemaking is necessary, and there have been unsuccessful attempts in the past to promulgate regulations surrounding the certificate.

In 2000, the BIA pursued notice-and-comment rulemaking "related to the collection of information under a Certificate of Degree of Indian Blood process," but the agency never finalized the regulations, according to the complaint. The DOI's semi-annual rulemaking agendas included the proposal to regulate the certificate between 2000 and 2011, the suit said, but the effort fizzled in 2011.

Without those regulations, there's no authority for the BIA to employ the form "to determine whether any individual meets the federally established ancestral-lineage-criteria sufficient to participate in the reformation of a currently federally recognized Indian tribe," the suit says.

Counsel for the tribe declined to comment beyond the complaint on Wednesday. The BIA did not return a request for comment.

The California Valley Miwok Tribe and its members are represented by Peter D. Lepsch and Patrick R. Bergin of [Peebles Kidder Bergin & Robinson LLP](#).

Counsel information for the federal defendants was not immediately available Wednesday.

The case is California Valley Miwok Tribe et al. v. Haaland, Secretary of the Interior et al., case number [1:24-cv-00947](#), in the [U.S. District Court for the District of Columbia](#).