

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 3, 2025

Decided October 23, 2026

No. 24-5231

CALIFORNIA VALLEY MIWOK TRIBE, ET AL.,
APPELLANTS

v.

DOUGLAS BURGUM, U.S. SECRETARY OF THE INTERIOR, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:22-cv-01740)

Elizabeth T. Walker argued the cause and filed the briefs
for appellants.

Mary G. Sprague, Attorney, U.S. Department of Justice,
argued the cause for appellees. With her on the brief were
Adam R.F. Gustafson, Acting Assistant Attorney General at the
time the brief was filed, and *Amber B. Blaha*, Attorney.

Before: PILLARD, WALKER and CHILDS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WALKER.

WALKER, *Circuit Judge*: The California Valley Miwok Tribe is a federally recognized Indian Tribe. But the Tribe has never validly completed its initial organization under the Indian Reorganization Act. For more than two decades, competing factions have disputed who may speak for the Tribe and who must be allowed to participate in adopting its organizing documents.¹ Those disputes have involved claims by various factions — as small as five people — that they are entitled to organize the Tribe without others’ participation.

The outcome of this case will determine the future of tribal governance for the California Valley Miwok Tribe. It also has significant financial stakes: California’s Gambling Revenue Sharing Trust Fund is currently holding over \$27 million that may be disbursed to the Tribe.²

¹ The long history of those disputes has been rehearsed many times and does not need to be repeated once more here. See *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 198–201 (D.D.C. 2006) (“*CVMT I*”); *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1265–66 (D.C. Cir. 2008) (“*CVMT II*”); *California Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86, 90–96 (D.D.C. 2013) (“*CVMT III*”); *California Valley Miwok Tribe v. Zinke*, No. 2:16-cv-1345, 2017 WL 2379945, at *2–3 (E.D. Cal. June 1, 2017), *aff’d*, 745 F. App’x 46 (9th Cir. 2018).

² The California Gambling Control Commission uses a Revenue Sharing Trust Fund to distribute funds to eligible Indian Tribes. It issues quarterly reports of quarterly distributions since inception. As of September 30, 2026, the Commission listed \$27,411,089.02 in distributions to the California Valley Miwok Tribe since its inception. California Gambling Control Commission, *Revenue Sharing Trust Fund (RSTF) Report of Distribution of Funds to Eligible Recipient Indian Tribes for the Quarter Ended September 30, 2026*, Ex. 1 (RSTF Distribution List), at 3 (Oct. 22, 2026), <https://perma.cc/JW9F-3K4W>.

This appeal concerns the Department of the Interior's latest effort to identify who is eligible to participate in the Tribe's initial organization process. In 2015, Assistant Secretary for Indian Affairs Kevin Washburn issued a decision identifying three eligible groups: individuals listed on a 1915 Indian Census and their descendants; descendants of Jeff Davis, a Miwok Indian who lived on the Sheep Ranch Rancheria, which has long been associated with the Tribe; and the heirs of Mabel Dixie and their descendants. JA 265. Washburn also recognized that descendants of Miwok Indians listed on a 1929 Calaveras County census might properly be included, but he left that question to the eligible groups as an "internal tribal decision." JA 266.

That decision appeared to provide a path for the Tribe to organize under defined eligibility criteria. But the process stalled after Interior revisited a key genealogical premise. Interior had treated many proposed voters as eligible Jeff Davis descendants based on the understanding that John Jeff was Davis's son. Then in 2019, Interior's Office of Federal Acknowledgment concluded that John Jeff was not Davis's son, but instead the son of another man known as "Indian Jeff." JA 380–81; *see also* JA 330–32. That conclusion dramatically reduced the number of people eligible under Washburn's criteria — from 289 to about 10. JA 276, 418.

In response, Assistant Secretary for Indian Affairs Bryan Newland revised Washburn's decision in 2022. Newland reasoned that Washburn had proceeded from a factual mistake and concluded that excluding John Jeff's descendants would frustrate Washburn's aim of including the broader tribal community. JA 381–82. So Newland added a fourth eligible group: descendants of Miwok Indians listed on the 1929 Census. JA 382. The Plaintiffs challenged that revision under the Administrative Procedure Act. The district court upheld

the Newland Decision as reasonable and granted summary judgment to the Government. JA 433–35.

Because Newland’s decision was reasonable in light of the record evidence, and because the Plaintiffs did not preserve any of their other claims, we affirm the district court’s decision.

I. Background

A. History of the California Valley Miwok Tribe

The California Valley Miwok Tribe is a federally recognized Indian Tribe associated with the Sheep Ranch Rancheria in Calaveras County, California. JA 262–64; Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554, 7555 (Jan. 29, 2021).

Two ways of tracking individuals’ association with the Tribe are relevant to this case — a census history, and the history of the Rancheria.

In 1915, Special Indian Agent John Terrell conducted a census of the Indians “at and near Sheepranch in Calaveras Co[unty].” JA 96. The census listed twelve individuals and three apparent family groups: the Hodge family, the Davis family, and the Tecumchey family. JA 95–96. Terrell also noted that the Sheepranch Indians were “[t]o some extent . . . interchangeable in their relations” with Indians in the nearby Calaveras County communities of “Murphys, Six-Mile, Avery and Angles.” JA 96.

Then in 1929, the Bureau of Indian Affairs conducted another census of Calaveras County Indians and identified a

much broader group: 147 people, most described as “Mewuk,”³ along with some “Tuolumne,” one “Laclumne,” some children of mixed descent, and 10 non-Indians. JA 105–14. The 1929 Census included family names that had not appeared on the 1915 Terrell Census, including the Carsoner, Dixie, and Jeff families. *Id.*

The Rancheria’s history begins a year after the first census. In 1916, Interior bought an approximately one-acre parcel at Sheep Ranch for the benefit of the Indians identified on that census. JA 122, 263. That parcel became known as the Sheep Ranch Rancheria. *Id.*

Most Miwok Indians associated with Sheep Ranch did not live on the Rancheria. It “was not large enough for all members of the band [of Indians] to take up residence.” JA 265. By 1935, Jeff Davis — listed on both the 1915 and 1929 Censuses — was the only eligible adult Indian living on the Rancheria for Indian Reorganization Act voting purposes. JA 263, 279–80.

Since 1935, the record contains several examples of individuals from the 1929 Census and their descendants living on the Rancheria. According to the BIA, Tillie Jeff — John Jeff’s widow — was living on the Rancheria in 1943, and could stay “as long as she desire[d].” JA 324. Antone Azevedo, a great-grandchild of John and Tillie, lived there from 1950 to 1959. JA 173. Velma Whitebear, another great-grandchild of John and Tillie, also lived there for at least part of that period. JA 204, 259 (Whitebear’s family was “known to the BIA as the ‘Carsoner family’”), 116 (Carsoner family “moved there in 1950”). And in 1966, the BIA recorded that Mabel Dixie, a

³ Various records refer to the Tribe as Miwok, Mewuk, Mi-Wuk, or Me-Wuk.

grandchild of John and Tillie, was living there with her common-law husband, Merle Butler, and had been there continuously since about 1957. JA 117, 121.

In 1967, the BIA transferred title to the Rancheria to Mabel. JA 125. After she died in 1971, the BIA transferred the beneficial interest to her four sons and her husband. JA 127. One of her sons, Yakima Dixie, was the sole Indian resident of the Rancheria from then until his death in 2017. JA 262–63, 270. Since then, Dequita Boire (a descendant of Merle Butler) and Velma Whitebear and her heirs have held interests in the Rancheria. JA 359, 417–18 & n.5.

B. Tribal Attempts to Organize

The Tribe has been unable to organize, despite nearly 30 years of trying, because of disputes about who may participate in the organizing process.

The Indian Reorganization Act allows an Indian tribe to “organize for its common welfare” by adopting “an appropriate constitution and bylaws.” 25 U.S.C. § 5123(a). Those documents become effective when ratified by “the adult members of the tribe” at a special election called by the Secretary of the Interior and then approved by the Secretary. *Id.* Interior’s regulations governing those elections require the agency to make eligibility-related decisions at several points, including whether a petition has sufficient support, who may register to vote, and whether challenges to the voter list or election results should be sustained. *See* 25 C.F.R. §§ 81.6(b), 81.10, 81.22, 81.32, 81.43–45.

The process of adopting a constitution and bylaws is straightforward when a tribe already has a valid government or membership roll. This case is different. The California Valley

Miwok Tribe has never validly completed formal organization, and competing factions have disputed who may speak for the Tribe and who must be included in the organizing community. So Interior cannot simply defer to an existing tribal government's membership determination. To administer a Secretarial election, it must identify the group eligible to participate in the Tribe's initial organization.

That federal role has already been recognized in earlier rounds of this same dispute. In *CVMT II*, this court held that Interior could refuse to approve a proposed constitution submitted on behalf of a small faction because tribal organization under the IRA “must reflect majoritarian values,” and because Interior has a responsibility to “ensur[e] that the will of tribal members is not thwarted by rogue leaders” when federal benefits are at stake. *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1267–68 (D.C. Cir. 2008) (“*CVMT II*”). Later, in *CVMT III*, the district court vacated an Interior decision that had treated the Tribe as composed of only five people, explaining that the record showed the Tribe's membership was “potentially significantly larger.” *California Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86, 98–100 (D.D.C. 2013) (“*CVMT III*”).

C. The Washburn and Newland Decisions

In the wake of those earlier disputes, Assistant Secretary Washburn issued a decision in 2015 defining three “Eligible Groups”:

- (1) the individuals listed on the 1915 Terrell Census and their descendants; (2) the descendants of Rancheria resident Jeff Davis (who was the only person on the 1935 IRA voters list for the Rancheria); and (3) the heirs of Mabel Dixie (the sole Indian

resident of the Rancheria eligible to vote on its termination in 1967) as identified by OHA in 1971 and their descendants (Dixie Heirs).

JA 265. Washburn did not automatically include descendants of Miwok Indians listed on the 1929 Calaveras County Census. But he recognized that including them “may be proper” because Terrell had described the Sheep Ranch Indians as “to some extent . . . interchangeable in their relations” with Indians in nearby Calaveras County communities. JA 266. Washburn left the ultimate inclusion of the 1929 Census descendants to the eligible organizing groups as an “internal tribal decision.” *Id.*

Washburn also explained that *CVMT III* had vacated the prior determination that the Tribe consisted of five people, and he read the prior judicial decisions to show that “there are far more than five people eligible to take part in the organization of the Tribe.” JA 264–65.

Interior then moved forward with a Secretarial election, which it authorized on December 21, 2018, using eligibility criteria grounded in the Washburn Decision. JA 305. BIA identified 289 eligible voters under Washburn’s criteria. JA 276. On April 15, 2019, voters ratified the proposed constitution 143 to 12, out of a total of 183 registered voters. JA 305. That Constitution identified 1929 Census descendants as “eligible for membership in the Tribe.” JA 279–80.

But that result was short-lived. Before the election, some plaintiffs had challenged whether Jeff Davis had any descendants. JA 295. Nearly all of the voters in the 2019 election had established eligibility under Washburn’s second category — descendants of Jeff Davis — by tracing their descent through John Jeff, whom Interior had mistakenly

understood to be Davis's son. JA 333–34, 346; *see also* JA 328. After reviewing new evidence from the genealogical record, the Office of Federal Acknowledgment concluded in May 2019 that John Jeff's father was a man known as "Indian Jeff," not Jeff Davis. JA 346–47. That same day, the BIA invalidated the April election. JA 333–34. It explained that "most of the participating individuals" did not meet eligibility requirements in light of the Office of Federal Acknowledgment's finding. JA 334.

The result of the new genealogical finding: only eleven or so individuals remained eligible to participate in organizing the Tribe under the Washburn Decision. That group included the nine individual Plaintiffs, who are 1915 Census descendants; one other claimed 1915 Census descendant; and Dequita Boire, who appears to be the only person eligible through Mabel Dixie's heirs. Appellee's Br. at 17–18 & n.10; JA 75, 418.

That led to the Newland Decision. On May 31, 2022, Assistant Secretary Newland revised the Washburn Decision to include 1929 Census descendants among the eligible organizing groups. JA 378–82. Newland observed that Washburn had set his eligibility criteria under the mistaken understanding that John Jeff descended from Jeff Davis. JA 381. He concluded that revision was necessary "to include those individuals that [Assistant Secretary] Washburn understood to be eligible voters in the Tribe's Organizational Process." JA 382. In explaining that revision, Newland cited Washburn's conclusion that "there are far more than five people eligible to take part in the organization of the Tribe," Washburn's statement that including the 1929 Census descendants "may be . . . proper," and Washburn's reliance on "[t]he history of the Rancheria" in defining the eligible groups. JA 379, 381.

The Newland Decision is the final agency action under review.

II. Standard of Review

We review a district court’s grant of summary judgment de novo. *Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 215 (D.C. Cir. 2013).

The APA requires reviewing courts to “hold unlawful and set aside agency action” if they find that action to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The scope of review under that standard is “narrow” and the court may not “substitute its judgment for that of the agency.” *Muwekma Ohlone Tribe*, 708 F.3d at 220. Still, courts must ensure that agency action was “reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). That requires the agency to have “acted within a zone of reasonableness” — specifically, to have “reasonably considered the relevant issues and reasonably explained the decision.” *Id.*

III. Analysis

A. The Newland Decision Was Reasonable

Newland’s decision to include the 1929 Census descendants among the groups eligible to participate in a Secretarial election was reasonable and reasonably explained. We need not decide whether some other eligibility rule would have also been reasonable, but only whether the line Newland drew was reasonable in light of the record and whether he adequately explained why he drew it. He did.

Three related points from the record demonstrate that Newland acted reasonably.

First, several prior decisions had already made clear that the eligible organizing community could not be limited to only a handful of people, as it would have been if the Washburn Decision had not been revised. The district court in *CVMT I* said so: “The Tribe . . . has submitted a list of 29 possible members, but the government estimates that the greater tribal community, which should be included in the organization process, may exceed 250 members.” *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197, 203 n.7 (D.D.C. 2006) (“*CVMT I*”).

This court said the same in *CVMT II*: “[The tribe] has a potential membership of 250.” 515 F.3d at 1265.

Then in *CVMT III*, the district court rejected a 2011 BIA conclusion that the tribe consisted of only five members, holding that conclusion “unreasonable” in light of an administrative record “replete with evidence that the Tribe’s membership is potentially significantly larger than just these five individuals.” 5 F. Supp. 3d at 98.

Citing those opinions, the Washburn Decision also concluded that “there are far more than five people eligible to take part in the organization of the Tribe.” JA 265.

So before Newland issued his decision, multiple courts and the previous Assistant Secretary for Indian Affairs had all agreed that “far more than five people” were eligible to participate in the organizing process and that the greater tribal community was much larger — likely closer to 250. JA 381. That consensus made it reasonable for Newland to reject an approach that would have left only about eleven people eligible

to participate. As Newland explained, “excluding John Jeff’s descendants severely reduces who can take part in the organizational process.” *Id.* And that reduction was difficult to square with Washburn’s conclusion that “far more than five people” were eligible to participate. *Id.*

Eleven is sometimes “far more than five.” An 11-year prison sentence is “far more than five.” Same for an 11-percent interest rate. Same for 11 over the speed limit, at least when you see lights flashing behind you. But when the constant comparator is 250, eleven is not “far more than five.” It is instead quite a lot like five. So Newland’s decision to expand the eligible groups to encompass more than eleven people was reasonable.

On this point, the Plaintiffs’ current position is hard to square with the position they and their faction took before. They now insist that the unrevised Washburn Decision properly leaves organization of the Tribe to a small group of 1915 Census descendants. “A group of 10 people is not inconsistent with the intent of Washburn,” they say, because “it does not take many people to establish future member criteria, it takes the right people with the historic connection to the tribe.” Appellants’ Br. at 53–54.

But that is a sharp reversal from the Plaintiffs’ prior position. Their reply brief admits that they “advocated in prior court decisions, that a larger community existed.” Reply Br. at 2. And the district court, in denying preliminary relief, made the point more directly: “for years prior to this litigation, Mr. Mendibles and several other Plaintiffs recognized, welcomed, and defended [1929 Census descendants] as part of the CVMT”; indeed, Mendibles proposed a 2013 constitution extending membership to 1929 Census descendants, and in 2018 he and six other plaintiffs supported a constitution

recognizing those descendants as members. JA 402. The court described the Plaintiffs' position as an "unequivocal about-face" because they were asking the court to treat "the same eligibility criteria they proposed and defended over several years" as an "affront to the sovereignty of the Tribe." JA 402–03 (quoting Declaration of Michael Mendibles in Support of Motion for a Preliminary Injunction (Oct. 10, 2023)).

The Plaintiffs now ask us to uphold the Washburn Decision but to ignore one of its central premises. They argue that the Washburn Decision "identifies the families connected to the historic tribe known as Sheep Ranch" and "should not be modified," Appellants' Br. at 53–54, but they ignore that Washburn also said that "there are far more than five people eligible to take part in the organization of the Tribe," JA 265. In all, they say Washburn got it right while asking us to exclude more than 96% of the people Washburn thought his decision included. Reasonable decision-making does not require an agency to leave a decision untouched when doing so would produce results so far removed from the decision's own stated premises.

Second, Washburn himself recognized that including the 1929 Census descendants "may be proper." JA 266. To be sure, he did not include the 1929 Census descendants outright. Instead, he left that decision to the other eligible groups. *Id.* But nothing in his decision suggested that including them would be historically unsupported, inappropriate, or unreasonable.

After the Office of Federal Acknowledgment concluded that John Jeff was not Jeff Davis's son, the John Jeff descendants whom Washburn understood to be included in the organizing process would instead be excluded. JA 381. So Newland modified the Washburn Decision "to include those

individuals that Assistant Secretary Washburn understood to be eligible voters in the Tribe's Organizational Process." JA 382.

Including the 1929 Census descendants was a reasonable way to effectuate Washburn's intent. Newland did not choose that group out of thin air. Washburn — whose decision the Plaintiffs support — had already said their inclusion "may be proper." JA 266. Newland quoted that reasoning in his decision. JA 379. And because the corrected genealogy would remove a substantial group that Washburn had understood to be part of the eligible organizing community, Newland reasonably concluded that direct inclusion of the 1929 descendants was warranted.⁴

Third, the history of the Rancheria further supports Newland's decision.

The federal government purchased the Rancheria to benefit the Miwok Indians. JA 263. Washburn relied on that history in deciding that, "for purposes of reorganization," the eligible voters should be "drawn from the Mewuk Indians for whom the Rancheria was acquired and their descendants." JA 265. He also framed two of the three eligible groups by reference to their connection to Rancheria residents: "descendants of Rancheria resident Jeff Davis" and "the heirs

⁴ The Washburn Decision stated that "[w]hether the descendants of the Miwoks identified in the 1929 Census shall be included in the organization of the CVMT is an internal tribal decision that shall be made by the individuals who make up the Eligible Groups." JA 266. But that statement rested on Washburn's understanding that the Eligible Groups comprised approximately 250 people, including many 1929 Census descendants. Newland could reasonably conclude that Washburn did not contemplate leaving that question to an "internal tribal decision" by a group consisting of only 11 people.

of Mabel Dixie (the sole Indian resident of the Rancheria eligible to vote on its termination in 1967).” *Id.*

That logic makes historical residence on the Rancheria important evidence of eligibility to participate in the Tribe’s organization. And that evidence supported including the 1929 Census descendants.

Members of that group regularly lived on the Rancheria since at least the early 1940s and continuously since at least 1950. Tillie Jeff lived there in 1943 and could stay “as long as she desire[d].” JA 324. Antone Azevedo from 1950 to 1959. JA 173. Don Carsoner and Velma Whitebear from 1950 to an unknown time. JA 116, 259. Mabel Dixie from about 1957 until her death in 1971. JA 117, 121, 125–27. And Yakima Dixie as the Rancheria’s sole resident from 1971 until his death in 2017. JA 262–63, 270.

So the 1929 Census group and their descendants have had someone living on the Rancheria for over 70 years — sometimes the *only* person living on the Rancheria. That connection is important because Washburn himself treated “[t]he history of the Rancheria” as central to deciding who should be eligible to organize the Tribe. JA 265. Newland therefore acted reasonably in ensuring that a group with that long historical connection was not excluded from the organizational process.

Newland’s explanation was also adequate. He identified the problem created by the corrected genealogy: excluding John Jeff’s descendants would “severely reduce[] who can take part in the organizational process.” JA 381. He explained that Washburn had expected “far more than five people” to participate. *Id.* He quoted Washburn’s recognition that including the 1929 Census descendants “may be . . . proper.”

JA 379. And he explained that his revision was designed “to include those individuals that [Assistant Secretary] Washburn understood to be eligible voters in the Tribe’s Organizational Process.” JA 382.

That explanation clears the APA’s deferential bar. Newland considered the relevant history, responded to a concrete record problem, selected a category already identified by Washburn as potentially proper, and explained why the revision was necessary to preserve the broader organizing process contemplated by prior decisions. The Newland Decision was therefore not arbitrary or capricious.

To be clear, the only question presented — and the only question we decide here — is about who is entitled to participate in organizing the Tribe. The federal government may exercise authority in answering that question so that “the will of tribal members is not thwarted by rogue leaders.” *CVMT II*, 515 F.3d at 1267–68. We do not address who has a legitimate claim to membership in the Tribe. Under established law, it is the prerogative of the Tribe itself to set membership criteria for tribal membership. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978). Nothing in this decision suggests otherwise.

B. The Plaintiffs Did Not Preserve Their Other Claims

The Plaintiffs raise several other objections. They argue that the Newland Decision — issued seven years after the Washburn Decision — “unreasonably delayed” Secretarial Elections and that the statute of limitations for modifying the Washburn Decision had run. Appellants’ Br. at 46–50. They also argue that the Government is precluded from recognizing the Newland Decision. *Id.* at 50–52. None of these arguments are preserved.

The district court correctly observed that the Plaintiffs' summary-judgment briefing presented "no argument addressing how, why, or what agency action was unlawfully delayed or withheld." JA 420. We therefore agree with the district court that the Plaintiffs "abandoned" that claim, *id.*, and cannot renew it now. And the Plaintiffs did not make the statute-of-limitations argument or the issue-preclusion argument in the district court at all. *See Micula v. Government of Romania*, 101 F.4th 47, 53 (D.C. Cir. 2024) ("It is well settled that issues and legal theories not asserted at the District Court level ordinarily will not be heard on appeal." (quoting *District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077, 1084 (D.C. Cir. 1984))).

IV. Conclusion

Newland's decision to include the 1929 Census descendants among those eligible to participate in organizing the California Valley Miwok Tribe was not arbitrary or capricious. That decision reasonably followed from prior judicial findings that the organizing community should include "far more than five" people, from Washburn's conclusion that including the 1929 group "may be proper," and from the strong historical connection between some 1929 Census descendants and the Rancheria. The Plaintiffs did not preserve any of their other claims.

We therefore affirm the district court's judgment denying the Plaintiffs' motion for summary judgment and granting the Government's cross-motion for summary judgment.

So ordered.