

Supreme Court Sides With Alaskan Natives in Dispute Over Coronavirus Aid

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By Adam Liptak

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WASHINGTON — The Supreme Court ruled on Friday that Alaska Native corporations, for-profit businesses that serve tribal villages in Alaska, are entitled to part of the billions of dollars of coronavirus relief allocated by Congress in March 2020 to “tribal governments.”

Alaska Native corporations were established in 1971 to manage almost 45 million acres as part of the Alaska Native Claims Settlement Act. Tribal governments in the lower 48 states had sued to challenge the government’s decision to allocate about \$450 million to them under the 2020 law, the CARES Act, arguing that under a 1975 law, the corporations do not meet the definition of Indian tribes.

Justice Sonia Sotomayor, writing for the majority in the 6-to-3 decision, rejected that argument. The corporations, she wrote, “are Indian tribes, regardless of whether they are also federally recognized tribes.”

“The court today affirms what the federal government has maintained for almost half a century: A.N.C.s are Indian tribes” under the definitions in the 1975 law.

The court’s ruling, Justice Sotomayor wrote, followed from “the United States’ unique historical relationship with Alaska Natives.”

“When the United States purchased the Territory of Alaska from Russia in 1867, Alaska Natives lived in communities dispersed widely across Alaska’s 365 million acres,” she wrote, adding that there was no effort to isolate them on reservations. “As a consequence, the claims of Alaska Natives to Alaskan land remained largely unsettled even following Alaska’s admission to the union as our 49th state in 1959.”

In 1971, Justice Sotomayor wrote, Congress “extinguished Alaska Natives’ claims to land and hunting rights” and “authorized the transfer of \$962.5 million in state and federal funds and approximately 44 million acres of Alaska land to state-chartered private business corporations” — the Alaska Native corporations.

After the 2020 relief law was enacted, the Treasury Department announced that the Alaska Native corporations would be eligible for more than \$500 million in aid, later reduced to about \$450 million. Indian tribes promptly sued, and a federal judge ruled against them.

But the United States Court of Appeals for the District of Columbia Circuit reversed that ruling, saying that a phrase in the 1975 law limited the definition of Indian tribes to groups that the federal government had recognized. The appeals court said the wording of the 1975 law, which included the corporations in its definition of Indian tribes, required that interpretation because part of its final clause, concerning recognition, seemed to limit the sweep of what came before it.

Justice Sotomayor disagreed about how to interpret the wording, giving “an example with the same syntax” as the 1975 law.

“A restaurant advertises ‘50 percent off any meat, vegetable or seafood dish, including ceviche, which is cooked,’” she wrote. “Say a customer orders ceviche, a Peruvian specialty of raw fish marinated in citrus juice. Would she expect it to be cooked? No. Would she expect to pay full price for it? Again, no.”

Chief Justice John G. Roberts Jr. and Justices Stephen G. Breyer, Brett M. Kavanaugh and Amy Coney Barrett joined all of Justice Sotomayor’s opinion, and Justice Samuel A. Alito Jr. most of it.

In dissent, Justice Neil M. Gorsuch wrote that corporations did not satisfy the statutory definition because they are not recognized as tribes.

He took on the ceviche comparison, calling it “a bit underdone.”

“Maybe the restaurant uses heat to cook its ceviche — many chefs ‘lightly poach lobster, shrimp, octopus or mussels before using them in ceviche,’” he wrote, quoting a newspaper article. “Maybe the restaurant meant to speak of ceviche as ‘cooked’ in

the sense of ‘fish ... “cooked” by marinating it in an acidic dressing’ like lime juice,” he went on, quoting another article.

Justices Clarence Thomas and Elena Kagan joined Justice Gorsuch’s dissent in the case, *Yellen v. Confederated Tribes of the Chehalis Reservation*, No. 20-543.

In a statement, two associations representing Native corporations welcomed the decision. “Alaska’s economy is only now starting to recover,” the statement said, “and these funds are needed to help our communities get back on their feet.”