

QUESTION PRESENTED

This is a case of first impression. This is a case to ***protect human life***, to protect these whistle blowing petitioners trying ***to protect human life***, and to protect the Navajo Court processes so it can protect human life.

Do Article III Courts have any subject matter jurisdiction to do anything other than give full force and effect to Navajo Nation Court civil law judgments, decrees, and orders of all types, including these orders?

RULE 29.6

DONNA SINGER, Fred Riggs, and
Al Dickson,
Petitioners/Plaintiffs

v.

SAN JUAN COUNTY (A Utah County) , SAN JUAN
HEALTH
SERVICES DISTRICT (a Utah Independent Political
Subdivision), ex- County Commissioner J. Tyron,
Lewis, ex- County Commissioner Bill Redd, ex-County
Commissioner Mark Maryboy (official capacity only),
County Commissioner Bruce Adams (official capacity
only), County Commissioner Kenneth Maryboy (official
capacity only), County Commissioner Lynne Stevens
(official capacity only), San Juan County Attorney
Craig Halls, Reid Wood, Cleal Bradford, Roger Atcitty,
John Lewis, John Housekeeper, Karen Adams, Patsy
Shumway (official capacity only), County
Administrator/ex San Juan Health Services District
CEO Richard Bailey, Mr. R. Dennis Ickes, Esq, Truck
Insurance, and other John and Jane Does as yet to be
identified, officially and individually, jointly and
severably,
Respondents/Defendants

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, by and through undersigned counsel, hereby respectfully petitions this Court for a Writ of Certiorari to hear their appeal of the Tenth Circuit Court's opinion in this case.

OPINIONS BELOW

Tenth Circuit Court vacating prior District Court decision and remanding the case, *MacArthur et al v. San Juan County et al*, 309 F.3d 1216; 2002 U.S. App. LEXIS 20987 (2002) US Supreme Court certiorari denied by *Riggs v. San Juan County*, 539 U.S. 902, 123 S. Ct. 2246, 156 L. Ed. 2d 110, 2003 U.S. LEXIS 4286 (2003) US Supreme Court certiorari denied by *San Juan County v. Riggs*, 539 U.S. 902, 123 S. Ct. 2252, 156 L. Ed. 2d 110, 2003 U.S. LEXIS 4287 (2003) US Supreme Court certiorari denied by *San Juan Health Servs. v. Riggs*, 539 U.S. 902, 123 S. Ct. 2252, 156 L. Ed. 2d 110, 2003 U.S. LEXIS 4288 (2003) Dismissal motions ruled upon *MacArthur v. San Juan County*, 416 F. Supp. 2d 1098, 2005 U.S. Dist. LEXIS 25235 (D. Utah, 2005) ("MacArthur")

Tenth Circuit Court affirms district court refusal to enforce Navajo Court orders, vacates those portions of the U.S. District Court decision affirming jurisdiction of the Navajo Court.

MacArthur et al v. San Juan County et al, 497 F.3d 1057; 2007 U.S. App. LEXIS 17008 (2007).

JURISDICTION

On July 18, 2007 the Tenth Circuit entered its judgment. (Appendix pg. 1a et seq.) On August 14,

2007 the Court denied the Petitioners motions for reconsideration and en banc review. (Appendix pg. 582a- 583a) . This Court’s jurisdiction to hear appeals is invoked under 28 U. S. C. §§ 1254 (1), 2101(e). The authority of a Federal District Court to grant the Petitioners’ relief is found in 28 U.S.C. §§1331, 1343, Article III, . Petitioners challenge this Court’s Article III jurisdictional authority to review, diminish, or vacate Tribal Court authority and de novo review of Navajo Court judgments as outside 28 U.S.C. §1331.

RELEVANT PROVISIONS INVOLVED

U.S. Constitution Art. 1

“Section 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...”

ARTICLE II

“Section 1.

The executive Power shall be vested in a President of the United States of America.....

Section 2.

....He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur;

Section 3

....he shall take Care that the Laws be faithfully executed....”

ARTICLE III

“Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Section 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority

....In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.”

ARTICLE IV

Section 3.

“..The Congress shall have Power to dispose of and make all needful Rules and Regulations

respecting the Territory or other Property belonging to the United States...”

ARTICLE VI

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding. “

Federal Statutes

25 U.S.C. § 1301. “*Definitions*

For purposes of this subchapter, the term –

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;...”

25 U.S.C. § 1302.” *Constitutional rights*

No Indian tribe in exercising powers of self-government shall -....

(8)deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law; ...”

25 U.S.C. § 3601.” *Findings*

The Congress finds and declares that—

(1) there is a government-to-government relationship between the United States and each Indian tribe;

(2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;

(3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;

(4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;

(5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments; ...”

(6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;...”

25 U.S.C. 3651 “Findings

The Congress finds and declares that—

(6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the most appropriate forums for the adjudication of disputes affecting personal and property rights on Native lands;...”

1. Navajo Nation Code:

7 NNC §253 Jurisdiction -generally

“ (A) The District Courts of the Navajo Nation shall have original jurisdiction over: ...

2. Civil Causes of Action. All civil actions in which the Defendant (1) is a resident of Navajo Indian Country; or, (2) causes an action or injury to occur within the territorial jurisdiction of the Navajo Nation.

3. Miscellaneous. All other matters provided by Navajo Nation statutory law, Dine` be beenahaz`aani, and Navajo Nation Treaties with the United States of America or other governments. All causes of action recognized in law, including general principals of American law, applicable to Courts of general jurisdiction.”

7 NNC §254 Territorial jurisdiction

“A. The territorial jurisdiction of the Navajo Nation shall extend to Navajo Indian Country, defined as all land within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency, all lands within the limits of dependent Navajo Indian Communities, all Navajo Indian Allotments, all land owned in fee by the Navajo Nation, all other land held in trust for, owned in fee by, or leased by the United States to the Navajo Nation or band of Navajo Indians. “

7 NNC §303 Writs or Orders

“The Supreme Court [Navajo] shall have power to issue any writs or orders:

....

B. To prevent or remedy an act of any Court which is beyond such Court's jurisdiction....”

Chapter 160

March 1, 1933. | [H.R. 11735.] 47 Stat., 1418.

An Act To permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes.
Section 1.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That **all vacant, unreserved, and undisposed of public lands within the areas in the southern part of the State of Utah**, bounded as follows: [property description]... **and the same are hereby, permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as the Secretary of the Interior may see fit to settle thereon: Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C., title 43, sec. 190). Should oil or gas be produced in paying quantities within the lands hereby added to the Navajo Reservation, 37 1/2 per centum of the net royalties accruing therefrom derived from tribal leases shall be paid to the State of Utah: Provided, That said 37 1/2 per centum of said royalties shall be expended by the State of Utah in the tuition of Indian children in white schools and/or in the building or maintenance of roads across the lands described in section***

1 hereof, or for the benefit of the Indians residing therein.

SEC. 2.

That the State of Utah **may** relinquish such *tracts of school land* within the areas **added** to the Navajo Reservation by section 1 of this Act as it may see fit **in favor of the said Indians**, and shall have the **right to select** other unreserved and nonmineral public lands contiguously or noncontiguously located within the State of Utah, **equal in area and approximately of the same value to that relinquished**, said lieu selections to be made in the same manner as is provided for in the **Enabling Act of July 16, 1894** (28 Stat. L. 107), except as to the payment of fees or commissions which are hereby waived.

Approved, March 1, 1933.

3. *Utah Constitutional and Statutory Provisions*

Utah Constitution

Article 3 [Right to public domain disclaimed -- Taxation of lands -- Exemption.]

Second: -- The people inhabiting this State do affirm and declare that they *forever* disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the

absolute jurisdiction and control of the Congress of the United States.

STATEMENT

This is a case of first impression. Contrary to the Tenth Circuit's re-characterization of this case as an employment case, ignoring nearly completely the dangers to the Patients (Appendix pg. 8a), effect on the Aneth and Red Mesa chapters of their employment conduct (Appendix pg. 60-61, 564-571), these Navajo Court orders were to *protect human life* [1], to protect these whistle blowing petitioners trying *to protect human life* [2], and to protect the Court processes [3], so it could *protect human life*, from the Respondents actions found to be driving Navajo patients from their

¹ (Appendix pgs. 454a (Navajo patients ...are being harmed, 455a, 467a ("endangerment of the Native American and Navajo public...") 468a, 469a (250% drop in diabetic visits), 473a, 475a (diabetics not seen for 3 months or longer), 476a (patients with life threatening disease went without care due to Court misconduct in the presence of the Court, the Court relied upon), 482a (court remedy for the patients), 496a (grossly harmed petitioners and patients), 497a, 498a, 501a)

² (Appendix pgs. 455a ("For raising such claims, the plaintiffs, as well as plaintiffs counsels, were labeled 'bold faced liars' by the defendants and likewise, San Juan Health Services District has totally disregarded the Navajo Nation's chapters' resolutions and the concerns for the Navajo patients' well being."), 462a (using the false fraud administrative and Navajo Court claims to retaliate against Mrs. Singer), 469a, 457a (Mr. Riggs informed the defendants of their discrimination and had a promotion offer withdrawn, and was further disciplined without a basis), 459a, 472a(Mr. Riggs uncle died in WWII for U.S. and Navajo interests), and 474a (all three subjected to a trial by tabloid), 462a-463a)

³ (Appendix pgs. 455a, 471a, 476a)

Treaty-guaranteed, federally-mandated free health care, and retaliating against the whistleblowing petitioners. Under *Montana v. United States*, infra, Indian tribunals are divested of authority, not by Congress or the Executive branches, but by ‘implication’ and judicially made law with certain exceptions.⁴

The Tenth Circuit refused enforcement using *Montana v. United States* 450 U.S. 544, 565-566 (1981) and its progeny [⁵], and cloaking these municipal type Respondents (Indian and non Indian alike) with *state* immunity. See, Justice Thomas’ decision for the majority in *Northern Insurance Company of New York v. Chatham County, Georgia*, 547 U.S. ___ (2006), Decided April 25, 2006, No. 04-1618. *Jinks v. Richland County*, 538 U. S. 456, 466 (2003).

As Justice Thomas observed in his concurrence in *U.S. v. Lara*, 541 U.S. 193 (2004), “Federal Indian policy is, to say the least, schizophrenic. And this confusion continues to infuse federal Indian law and our cases. “ In *Hicks*, at 376, Justice Souter wrote, “

4

“..[T]he activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” ...“[t]o be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands,” “necessary to protect tribal self-government or to control internal relations.”

Montana, pg. 565-566.

⁵ *Atkinson Trading Post v. Shirley*, 532 U.S. 645, 653 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997); and *Nevada v. Hicks*, 533 U.S. 353 (2001)

“Petitioners are certainly correct that ‘[t]ribal adjudicatory jurisdiction over nonmembers is “ill-defined,’ since this Court’s own pronouncements on the issue have pointed in seemingly opposite directions.” [citations omitted].

This decision is in conflict with new Tenth Circuit law issued September 17, 2007 by a different panel. The lower courts here use Montana to do something Respondents could not do directly, i.e. obtain a Federal Court declaratory judgment against the Navajo Nation for its Court’s exceeding authority. 28 U.S.C. 1331, is not a waiver of Indian Nation sovereign immunity to suit. *See, Minor Electric Inc. v. Muscogee (Creek) Nation*, 2007 U.S. App. LEXIS 22432,* relying on Santa Clara Pueblo v. Martinez, 436 U.S. 49, 65-66 (1978), rejecting the Montana analysis depended upon by the District Court below to deny dismissal of the action against the Nation. *See also, Auto –owners Insurance Company v. the Tribal Court of the Spirit Lake Indian Reservation, et al*, 2007 U.S. App. LEXIS 18239,*;495 F.3d 1017. Eighth Circuit May 17, 2007.

Here, Petitioners seeking enforcement of these Orders, is a federal question arising under 25 U.S.C. §1331. It seeks enforcement of an expression of Navajo sovereign authority and mandates to protect all people equally, as provided by Treaties and statutes. The enforcement action is consistent with the Federal mandate that individuals be treated equally under Navajo law. 25 U.S.C. §1302(8). It is consistent with the BIA executive agreement Indian Self Determination Act judicial program services contract, protected by Treaties. Appendix pg. 548. All federal questions not challenging any state or Navajo sovereignty. Declaring the Navajo Nation Courts lack authority when their courts are immune from suit in Federal Court is not a

federal question authorized activity. Minor, Auto-Owners, *supra*. Petitioners' standing to bring patients claims lies in Navajo culture and tradition, outside Federal Court authority to review. Appendix pg. 467a. Santa Clara Pueblo, *supra*.

The conflicts in Indian law are so great, the same circuit, depending on the panel, can issue two opposite decisions involving non Indian and Tribal Court authority over them. One Court relies on Montana and its progeny. The other ignores Montana, though briefed, about a month later, relying on Santa Clara Pueblo. 'Justice' is based on the luck of the draw of the panel. One decision or the other is political, and the other judicial. This petition presents this same conflict to this Court for permanent resolution.

Short Summary

This is a case of first impression. This petition seeks to *enforce*, not challenge, Navajo Nation Court orders, civil authority, with Federal Court full force and effect enforcement. This petition, in its simplest distilled essence, is about what is **not** found anywhere in any of the Federal Court judgments below, including *Montana's* decision itself, and its progeny's decisions....i.e. the complete lack of Congressional empowerment of the Federal Courts' subject matter jurisdiction to review and/or diminish exclusive Navajo Nation Court civil law authority over non Indians in any respect whatsoever, save as Congress so limits (such as the Price Anderson Act, for example). It is a case, where looking at the *negative* of the picture, gives a better understanding of the picture, than looking at the picture as painted under Montana and its progeny.

Petitioners challenge all acts of the Federal Courts below refusing enforcement of these Navajo Court orders, and *de novo* review of Tribal Court decisions, as lacking subject matter jurisdiction to do so. Federal Courts have 28 U.S.C. §1331 duty to duty to give nothing less than full force and effect enforcement to these Navajo Court orders, decrees and judgments, resulting from consummation of Congressional Treaties and statutes, and negotiated Executive agreements, as the will of the people as a whole. The MacArthur District Court asks, “Years ago, one discerning critic framed the essential query in these words: “If, Indians reasoned, justice is for society’s benefit, why isn’t our justice accepted?” Vine Deloria, Jr., *Custer Died for Your Sins: An Indian Manifesto* 9 (1969). MacArthur at fn. 135, Appendix 348a. Mr. Riggs uncle died for this Country in World War II in Anzio. Mr. Riggs has no Court in which he can obtain redress for his rights because he is an Indian with non Indian defendants.

U.S. citizen Petitioners have standing to seek enforcement of these Orders by their Federal and International law protected right to due process under the exclusive laws of the area, and the Navajo Nation Treaty of 1849 Art. III , Treaty of 1868 Art. 5, and the Indian Civil Rights Act (25 U.S.C. §1302(8) the Navajo Court orders upheld, the lack of enforcement of which would undermine Congress’ intent to protect individuals receiving the equal protection of Tribal laws.

Petitioners challenge the use of comity for Navajo orders enforcement. Comity undermines the supremacy of federal public policy over all other interests. It violates the Article III’s obligation to be bound by Treaties and Executive Agreements, and

uphold the United States fiduciary duty to the Navajo Nation. Navajo Nation v. United States, 2007, *supra*. *MacArthur* at 1017 and fn. 176. Appendix pg. 239a, 241a, 403a, 422a. Article III duties to enforce the will of the people is violated. Pink, Belmont, Curtiss, Dames, Youngstown, *supra*.

Purpose and Content of the Navajo Orders

This is a case of first impression. The U.S.-trained U. S./Navajo citizen judge, issued these orders after 6 hearings (Appendix pg. 507a), one 19 hours long (Appendix pg. 477a), accepting nearly all their evidence and live witness testimony with Navajo Bar associated counsel, examination and cross examination in the Court's presence (Appendix pg. 467a). The Respondents argued two Navajo counterclaims; fraud, and lack of subject matter jurisdiction. They fully litigated the liability issues of their fraud (albeit false) claim for about a year in Navajo Court, and oppressed the Petitioners with seven years of *expensive* federal court litigation using Montana as a cloak for law violations.

These Respondents (except Truck and Mr. Ickes), named jointly and severally (Appendix pg. 519a, 525a), **undividedly and voluntarily**, freely chose to litigate their own Navajo common law *fraud counterclaims* (albeit false fraud claims) over nine months. (Appendix pg. 486a, 496a). What is not in the picture, is the Navajo Court distinguishing between the County and District defendants, since the County was the District, and the evidence before the Court showed this. *It was never argued in Navajo Court otherwise, and even not in Federal Court until after the Tenth Circuits 2002 decision.* Nearly all their evidence was

fully accepted, with live witnesses in the presence of the Court, with examination and cross-examination, in over six hearings (Appendix pg. 507a), one 19 hours long (Appendix pg. 477a), under Navajo Rules of Civil Procedure nearly identical to Federal and State rules, by and through Navajo Bar associated counsel (bound by ABA Rules of Professional Conduct), with Respondents' violation of these rules as funded by Truck/Farmer's/Insurance (Appendix pgs. 507a- 509a). Save Truck and Mr. Ickes, who also did not exhaust Navajo Court remedies as they could have under 7 NNC §303, *no Respondents filed counterclaims for relief from Navajo Court in Federal District Court either.*

The Tenth Circuit dismissed the County though it never even filed a cross-appeal contrary to this Court's holding in El Paso Natural Gas Co. v. Neztosie, 526 U.S. 473, 479 (1999) (Absent a cross-appeal, an appellee ...may not "attack the decree with a view either to enlarging his own rights there under or of lessening the rights of his adversary.") Notably, contrary to the appealed Tenth Circuit Court's *factual* findings, these Petitioners and the Court did *nothing* to stop or prevent Respondents (including Mr. Ickes and Truck/Farmer's/Zurich) from *immediately* or *at any time*, exhausting the Navajo Court for relief from Navajo jurisdiction via a Petition for an Extraordinary Writ to prevent Navajo District Court's from exercising unwarranted jurisdiction, 7 NNC § 303 [⁶], or seeking federal injunction relief. Appendix pg. 531a.

Petitioners challenge the 'de novo' review of Tribal Court acts without deference to them as *ultra vires*.

⁶ <http://www.ongd.navajo.org/files/nncs.pdf>

Acts occurred in Indian Country, where there is no state/Indian checker boarding of jurisdiction.

Petitioners submit that the only fact of any consequence under their view of Indian law, is did the act complained of occur within the exterior boundaries of the Navajo Indian Reservation as found in the BIA-sanctioned 7 NNC §253.

The Navajo Court- identified actions , initially occurred (1) at Montezuma Creek Clinic, on a small square of state checker board trust lands set aside for the Navajo people [7], within the Aneth Extension of the Navajo Nation [8], purchased by the Navajo Tribal funds reimbursed by the United States in 1938 [9], and (2) in the Navajo Courtroom itself in Shiprock, New Mexico's area of the Navajo Nation. (Appendix pg. 507a-508a). The Montezuma Creek Clinic area is governed by the Aneth Chapter. (Appendix pg. 564). Delivery of services is effected in the Red Mesa Chapter area also. (Appendix pg. 568a). The land clearly is within Navajo Indian Country. Alaska v.

⁷ The Tenth Circuit Court found, that even off reservation trust land is defined as ‘Indian Country’.HRI, Inc. v. Enviromental Protection Agency, 198 F. 3d 1224 (10th Cir. 2000). If the property is set aside for use of Indians or is subject to Federal supervision (as with this IHS contract), the area can qualify as “Indian Country.” Id.

⁸ Congressional Act of March 1, 1933. 47 Stat., 1418 “An Act To permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes.” (“1933 act”). MacArthur at 959, Appendix pg. 135a.

⁹ Chapter 570, August 9, 1937. | [H. R. 6958.] 50 Stat., 564 (federal appropriations bill for 1938 reimbursing the Navajo Nation for its purchase of the lands in the 1933 act.

Native Village of Venetie Tribal Government, 522 U.S. 520 (1998) as codified in 7 NNC 254, 18 U.S.C. 1151.

Congress did away with checker boarding of state and Indian jurisdiction civilly and criminally in 18 U.S.C. 1151, as upheld in Seymour v. Superintendent of Washington State Penitentiary, 368 U.S. 351, 358 (1962), United States v. Mazurie, 419 U.S. 544, 557, (1975) [¹⁰] and Hilderbrand v. Taylor, 327 F.2d 205, 207 (10th Cir. 1964)(that has not been overturned *en banc* as is required by the Tenth Circuit in Burlington Northern & Santa Fe Ry. Co. v. Burton, 270 F.3d 942 (10th Cir. 2001).

The Aneth Extension Act, to which Utah agreed ¹¹, preserved to Utah only two authorities- to collect, share, and spend mineral royalties on the Navajo Nation people, and to trade the lands set aside for Navajo Nation use, for other 'in lieu' lands, outside the Navajo borders, of approximately the same value, relinquishing all rights.

This statute thereby preserved Sec. 6 of the Utah Enabling Act of 1894. Therefore, a United States fiduciary duty exists to protect the U.S. citizen Navajo people and those to whom they extend their equal protections of the law, any 'person'. Navajo Bill of Rights, 25 U.S.C. 1302(8). This duty is violated, *ultra vires*, when Federal Courts become the fiduciary for the non Indian interests harming them, refusing to enforce the result of the consummation of the Executive agreements. Navajo Nation v. United

¹⁰ Mazurie at 547 ("Indian country" was defined by 18 U.S.C. 1151 to include non-Indian-held lands "within the limits of any Indian reservation.")

¹¹ See "Navajo Indian Reservation SENATE DOC 64, 72ND CONG. 1ST Session; House Report No. 1883 72nd Cong. 2nd Session.

States, Federal Circuit Court of Appeals, 2006-2059, Sept. 13, 2007. Pink [¹²], Belmont [¹³], Curtiss [¹⁴], Dames [¹⁵]; Missouri v. Holland, 252 U.S. 416, 432 (1920).

Any other state or federal laws, agency rulings, or other law of a general nature must be read favorably for the Navajo Nation's sovereign authority over the Navajo Nation, consistent with and necessarily restricted by, International treaty protections, as in the Treaties cited below, preserving to the Navajo people their rights of exclusion and self-determination, the Supreme Law of the Land.

Unique Vulnerability of the Navajo population sought to be protected.

The Tenth Circuit's decision that this is a mere employment case, shows the Court was not giving any deference whatsoever to the U.S.-trained and funded Navajo Court's findings for patient help. Appendix pg. 8a. In this area diabetes is epidemic (1 in 4 within the Utah strip of the Navajo Nation). Newly published research and testimony shows that the I.H.S. patient population of Montezuma Creek Clinic were suffering

¹² U.S. v. Pink, 315 U.S. 203,242 (1942) (“..the United States speaks with one voice and acts as one, unembarrassed by the complications as to domestic issues “)

¹³ U.S. v. Belmont, 301 U.S. 324, 329-330 (1937) (“...when judicial authority is invoked in aid of such consummation [powers of foreign courts by Treaties and executive agreements], State Constitutions, state laws, and state policies are irrelevant to the inquiry and decision.”)

¹⁴ U.S. v. Curtiss-Wright Export Corp. 299 U.S. 304, 319 (1936)(“the power to make such international agreements ... [is] not in the provisions of the Constitution, but in the law of nations.”)

¹⁵ Dames & Moore v. Regan, 453 U.S. 654, 668 (1981)

from being downwinders^[16] , and also from radiation, hazardous, toxic waste exposures of air, soil, water, vegetation, and domestic and wild animals as food associated with mining, for decades. Newly released research by the Los Angeles Times writer Judy Pasternak reports^[17], and Congressman Waxman's Oct. 23, 2007 House Committee Government Oversight and Reform hearing^[18] demonstrate the vulnerability of the patients this Navajo Court was trying to protect.

Using Montana, mostly non Indian Respondents continued their Navajo Court order-disobedience with continued Navajo Court-identified harms.

¹⁶http://www.gallupindependent.com/2007/jan/011107kh_nvjutcmsnradvctms.html

¹⁷ <http://www.latimes.com/news/nationworld/nation/la-na-navajo19nov19,0,1645689.story?page=8>

¹⁸ Hearing on the Health and Environmental Impacts of Uranium Contamination in the Navajo Nation <http://oversight.house.gov/story.asp?ID=1560>;
<http://www.radiationcontrol.utah.gov/Board/Agenda.pdf>

“Over the years, open pit mines filled with rain, and Navajos used the resulting pools for drinking water and to water their herds. Mill tailings and chunks of uranium ore were used to build foundations, floors, and walls for some Navajo homes. Families lived in these radioactive structures for decades. Radioactive dust from abandoned mines and waste piles blew in the air and was inhaled by those who lived nearby. Navajo children played in the mines and the piles of radioactive debris. They drank contaminated water that came straight from the mines. Navajo kids were swimming in open pit uranium mines in the 1990s..... Half-measures or outright neglect has been the official response.”

Id.

These facts are not Navajo jurisdiction determinative, save if Montana is still good law. However they illustrate why this petition is of national importance. Once on full judicial notice of their harmful acts, via the Navajo Court orders, with access to County Attorney Halls, Doug Moeller, esq., Mr. R. **Dennis Ickes, Esq., their private counsel of choice, they continue their Navajo Court- prohibited actions, purposely withholding the Navajo Court designated relief.** Appendix pg. 559a. The uniqueness of these Navajo people's vulnerabilities and pacifist strengths can best be understood by reference to the history of the Navajo Nation with the white man and San Juan County. Appendix pg. 559-560. Ex- San Juan County Commissioner Maryboy's affidavit. Appendix pg. 510. MacArthur at 985 fn. 135, Appendix pg. 384, fn. 135.

The Navajo orders were to prevent further interference with the Montezuma Creek Clinic under the new management -as the Navajo Court well understood. Appendix pg. 481. Respondents may argue that in 2000 they no longer had authority over the clinic so the judgments were moot nearly immediately. *Mootness is a fact based judicial doctrine that can only be determined under Navajo Court determinations.* Certainly the relief to the Petitioners is in their grasp. Petitioners did not work for the *clinic*, they were employed by the privately insured, County-controlled District that can rehire them even for a day, in their medical provider positions, to calculate all their back pay and benefits. It is for a Navajo Court to determine.

Respondents may argue the lack of patient visits in 2000 and afterward was Mrs. Singer's and the Utah Navajo Health System's fault. Respondents continued acts directly interfered with UNHS' and Mrs. Singer's

best efforts to convince patients, receiving bills or being brought into STATE court under bench warrants for bills, they could have free care at the clinic. Appendix pg. 515a, and 560-561.

The Navajo Nation Court is the Best Court to Know the People, Culture, and Overall Conditions of the Area and Non Indian Courts did not Listen

The Navajo Court, familiar with the ways of the people, understood this ahead of time, and issued fines for continued irreparable harms, even for appeals. These fines, now of tens of millions, are intended for the Court to distribute to the people of the area, *not* the Petitioners. Appendix pg. 503a, 562 . Considering the population is 6-7000, the fines are miniscule compared to Jury awards in some places for clergy abuses of even a hundred people or so. Such is well within Truck/Farmer's/Zurich Financial Services budget who has been consistently aware of the litigation, and funded the litigation all along. Appendix pg. 507a. Truck could have ordered Respondents to obey the orders, and pay as told, then seek relief, but failed to do so. Or it could have asked the Court to place payment of the Injunction in escrow. Truck could have ordered settlement. They could have sought immediate relief under 7 NNC §303 and did not. Notably, some States name insurers as parties if insurance is involved. Raskob v. Sanchez and Allstate insurance co., Docket No. 24,476, New Mexico Supreme Court, 1998-NMSC-045, Nov. 23,1998. Here, Petitioners maintain Truck controlled and financed the bad faith litigation. The Navajo Court agreed. Appendix 507a. *If Truck is not added back as a party, all non Indian insurers covering non Indian businesses within the Navajo*

Nation, will not have to worry about paying claims to those injured who are not in a direct contractual relationship with the non Indian insurer. As here, those not paid for injuries, have no courts of redress unless this petition is accepted. Such ideas violates BIA- sanctioned U.S. and Navajo public policy. Appendix pg. 507a.

The false fraud claims against the Petitioners still arise to their harm in an area where memories of people are generation-ally long. Appendix pg. 560-561. The Court noted some diabetic patients had not been seen for three or more months and that there was a 250% drop in diabetic visits [increase in absentee rates]. Appendix pg. 469a. Aneth and Red Mesa Chapters governing the east Utah portion of the Navajo Nation, informed the Navajo Nation of the harms done to the people by displacing Petitioners (at the time Mr. Riggs was suspended). Appendix pg. 564a-571a.

By 2003, we can observe (1) an increase in the number of patients on dialysis and who are dying, and the interference with UNHS' management of the Montezuma Creek Clinic (Appendix pg. 557) despite Petitioners' best efforts to convince people to return to the clinic for their free federally insured health care; and (2) Dr. Jane Shelby analyzes a survey showing of the English speaking survey respondents, showing, 63 survey respondents still knew of people not going anywhere for care. (Appendix pg. 576a-577a). In 2002, the Senate Committee on Indian Affairs, Judge Robert Yazzie, of the Navajo Supreme Court, warned how essential Navajo Court authority over non Indians was vital to the safety of the Navajo people and self-

governance. [19] The 2005 Utah Vital Statistics Table 22 [20] shows a spike in the number of deaths of people in San Juan County for the years 2001 while the billing was still going on, and again in 2003 when the survey was taken. It is unknown in what area of the county these deaths occurred. Similarly, it is impossible to know how many effected patients moved out of the area or went to Colorado, New Mexico, or Arizona for treatment or to die.

Failure of the Respondents to Marshall any Law or Facts that Give Federal Courts Authority to Dismiss Them from a Navajo Court Action even under Montana and its Progeny, if Still Valid Law

To date, contrary to the lower Court ‘presumptions’ for these Respondents, the Respondents have failed to marshal;

- (1) any law or public policy they were upholding, enforcing, or not violating;
- (2) any Utah law definitions of them carrying out ‘police powers’, as *Utah* defines them, (not Colorado or other states, as the 10th Circuit did (Appendix pg. 30a)
- (3) any state law statutes demanding they voluntarily enter into the private business enterprise of operating a health clinic profiting from federal medical insurance of Navajo people, so as to lessen the property tax burdens on the northern county predominantly white tax payers;

¹⁹ Address of Honorable Chief Justice Robert Yazzie to the Committee of Indian Affairs, 2000, section 6 ‘Juries’ <http://www.senate.gov/~scia/2002hrsgs/022702trust/yazzie.PDF>.

²⁰ http://health.utah.gov/vitalrecords/pub_vs/ia05/05bx.pdf page S-25

(4) any facts or law as to how obeying this Navajo Court orders would have interfered with their *contractual duties*, to protect the patients, be sensitive to their cultures, and obey Tribal law, and bring the County government to a stand still (Appendix pg. 473a, 493a) ;

(5) any Utah state law that gives them immunity for NAVAJO law violations, is immunity outside Utah's legislative authority under Utah's disclaimer Enabling act and U.S. Constitutional Article VI, and Navajo Treaty of 1849 and 1868 limits,(McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973); Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U.S. 685, 690 (1965); Williams v. Lee, 358 U.S. 217, (1959) (MacArthur at 978-979, 983, 1011 and fn. 176, 1013, 1053- 1054 and fn. 93, Appendix at 172a, 183a, 182a, 231a, 234a, 306a, 307a, 361a, 363a fn. 93));

(6) any explanation of how, contrary to lower court factual findings relying SOLELY on County Counsel's colloquy, the County was not completely controlling the Health District's compliance with the Health Districts' voluntarily bid upon Indian Health Service independent contractor contract [²¹];

²¹ The Navajo Court cites as to how Rick Bailey, was both the County Commission's administrator and the San Juan Health Service District's CEO. (Appendix pg. 476). He was counseled by San Juan County's attorney Craig Halls to be the Petitioner's administrative hearing officer, even though he participated in their termination and discipline. Appendix pg. 519a, and 460a. Ex Commissioner Maryboy's assertion in Court and by affidavit witnesses that the County Commissioners ran the Health District. Appendix pg. 514. All were named jointly and severally in Navajo Court and *did nothing* to argue differently in that Court. Theoretically, at least, if all rely on Mr. Halls non-State sanctioned Navajo law advice, and he is immune by these Courts for his civil

(7) any explanation of how the state's fisc is at risk, or the State was ordering or requiring the Respondents intentionally harm these Patients, petitioners, and the Court, such that they should be cloaked with state sovereign immunity, Northern, supra;

(8) Nor has a single case or statute been cited giving these privately insured quasi-corporate entities immunity for contract breaches, as identified by the Navajo Court. Appendix pg. 473a, 493a.

REASONS FOR GRANTING THE PETITION

Standard of Review

The standard of review of a Federal Court's subject matter jurisdiction is *de novo*. High Country Citizens Alliance v. Clarke, 454 F.3d 1177, 1180 (10th Cir. 2006) (citations omitted). Likewise, interpretations of Treaties, Statutes, and the like are reviewed *de novo*. Utah v. Babbitt 53 F.3d 1145, 1148 (10th Cir. 1995).

Accepting this Petition, and granting Petitioners their relief, (1) will help resolve the following seven areas of conflicts in Indian Law, (2) will introduce six new or different approaches to resolving these conflicts, and (3) will harmonize Indian law with the 12 step plan endorsed by the United States, Navajo, and International Communities.

List of Conflicts to be Resolved

Navajo law advice, outside a duty of a Utah state officer, then all will be immune- theoretically that is.

Petitioners assert this petition should be accepted based on the appealed Tenth Circuit decision (1) creating inter-circuit conflicts in giving federally recognized U.S. Indian Treaty Nation Courts comity or full faith and credit. (MacArthur at 1016-1017; Appendix pg. 241a);

(2) creating interstate conflicts on federal questions (MacArthur at 1018-1019; Appendix pg. 243);

(2) creating conflicts with Supreme Court decisions on federal questions, as discussed below (MacArthur generally throughout);

(3) raising questions of national importance, exemplified by how serious the damages to unprotected Tribal Court parties can be, as discussed above;

(4) identifying other Supreme Court decisions where, Petitioners respectfully assert, this Court erred in not examining the unique Navajo history, and doing an extensive required *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U. S. 845, 855-856 (1985) analysis, of this Court's own authority, as in Atkinson (MacArthur at 962; Appendix pg. 140a) ;

(5) demonstrating Montana's doctrine is vague, unpredictable, without restraint on Courts as it is not moored to any currently viable laws, creating political, rather than judicial decisions, compare Montana with Hicks and Atkinson (MacArthur fns. 139, 232, and 90; Appendix pgs. 358a, 427a, 362.)

(6) *de facto* eliminates Navajo culture and tradition as a basis for Navajo Court rulings, *contra* Congressional purposes of the Indian Civil Rights Act as predicted by Santa Clara Pueblo. MacArthur at 995, Appendix pg. 204a.

(7) conflicting with new Tenth Circuit law Minor v. Muskegee Creek Nation, 2007 U.S. App. LEXIS 22432, issued September 19, 2007 (Not allowing non Indian to

challenge the authority of the Court over non Indians, since the Nation has the same sovereign immunity from suit as the United States.)

The Petition Should be Accepted Because Petitioners Present Six Revolutionary Arguments as to Why the Lower Courts Acted Outside Their Subject Matter Jurisdiction and Conflicts can be Resolved

Petitioners are grateful to the U.S. District Court's exhaustive efforts in this case that enlightens all concerned as published in *MacArthur v. San Juan County*, 416 F. Supp. 2d 1098, 2005 U.S. Dist. LEXIS 25235 (D. Utah, 2005) and attached to the petition in accord with the Supreme Court rules. U. S. v. Lara 2004 U.S. LEXIS 2738,*23-25;541 U.S. 193), and *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565, 23 S.Ct. 216, 221, 47 L.Ed. 299 (1903) , agree Congress' authority is plenary in Indian affairs. If 'plenary', then the Courts have correspondingly none. The Executive's authority in foreign affairs and international law is without question. Pink, Belmont, Curtiss, Dames, Youngstown, supra. This Court's duty to examine its own jurisdiction an adjust its own powers accordingly is without question. Freytag v. Commissioner, 501 U.S. 868 (1991)(J. Scalia concurrence). Congress leaves the Federal Court no authority to review Navajo Court decisions, and the Constitution obliges it to enforce Treaties and statutes and executive agreements, conflicts in Indian law are resolved. Santa Clara at 65-66. *MacArthur* at 988. Appendix pg. 191a.

(1) The Navajo Orders were issued pursuant to an Executive Agreement, protected and consistent with Treaties and statutes. Just as this Court observed

Russian decrees to be the U.S. Constitution's Article VI Supreme Law of the Land, binding on all courts without policy review, so should the Navajo decrees be treated likewise. Pink, Belmont, Curtiss Dames ;Missouri v. Holland,, *supra*. Contrary to the Tenth Circuit's holding that enforcement of Tribal Orders is within the Federal Court's discretion (Appendix pg. 2a), it is mandatory, or otherwise a Court is interfering with the will of the people as a whole. Id. The MacArthur Court did not discuss the Bureau of Indian Affairs Contract, though it was submitted to the Court. Appendix pg. 318a. MacArthur at fn. 4.

(2) It is 'irrebuttable' that Congress and the Executive have pre-empted and reversed *Montana's* doctrine's presumption against Tribal Court authority over non Indians, also, correspondingly eliminating this Court's subject matter jurisdiction to review the Navajo Nation Court actions.[²²]Appendix pgs. 190a-192a. MacArthur at 988-989. Congressional and Executive actions have restored to the Navajo

²² The 2000 repeal of the allotment act (25 USC §§301-303) (*Ex Parte McCardle*, 74 U.S. 506 (1868)); The Indian Civil Rights Act of 1968 (25 U.S.C. §§1301-1326); the Indian Self-Determination Act (25 U.S.C. §§450, 450a-450nn); the Tribal Justice Support Act (25 U.S.C. §§3601-3631); the Indian Tribal Justice Support and Legal Assistance Act of 2000 (25 U.S.C. §§3651-3681); the Indian self-governance act (25 U.S.C. 458aa et seq.); Utah's Enabling Act of 1894 Section 3 Second, Section 6;; the Congressional Act of March 1, 1933. 47 Stat., 1418 "An Act To permanently set aside certain lands in Utah as an addition to the Navajo Indian Reservation, and for other purposes." ("1933 act"); Chapter 570, August 9, 1937. [H. R. 6958.] 50 Stat., 564 (federal appropriations bill for 1938 reimbursing the Navajo Nation for its purchase of the lands in the 1933 act.

Nation the civil jurisdiction it had over all within its borders, taken initially by the BIA Court of Indian Offenses, in 1892 (MacArthur at 966, Appendix pg. 145a-147a) without its formal permission or compensation payment. Such reasoning is in accord with International Treaties, the Article VI supreme law of the land. See; a. The Treaty of Guadalupe Hildago of 1848,(signed March 16, 1848 and ratifications exchanged May 30, 1848) Art. XI promises exclusive United States authority over the Mexican-treaty bound Navajo Nation; b. The U.S.-Navajo Treaty of 1849 (9 stat. 974) Article 1 promises ‘forever’ exclusive federal government ‘jurisdiction and protection’ over the Navajo Nation; c. Treaty of 1868 does not restrict this promise as upheld by this court; d. The U.N. charter was ratified and signed United Nations Charter, art. 73(a), and (b), 59 Stat. 1031, 1051(June 26, 1945 (recognizing self-determination of states territories); e. the U.N. International Covenant on Civil and Political Rights,)(signed 5 Oct.1977 ratified 8 Jun 1992) Art. 1 (recognizing self-determination for Indian Nations), Art. 16, Art.17 sec. 1 (entitled to be free from unlawful attacks on his honour or reputation), Art. 26 (equality before the law), Art. 27 (preserving ethnic minority rights to enjoy their own culture, religion, and language), signed 5 Oct 1977, ratified 8 Jun 1992 .

(3) The Atkinson Court ruling was in error.

(a) using Montana’s Crow Nation Treaty and history to effectively displaces Congressional purposes of the Navajo Nation treaties of 1849 and 1868, and 1933 Aneth Extension Act and Utah law. MacArthur at 962 (Appendix pg. 140a),

(b) failing to observe the Navajo Nation is like unto the Choctaw and Cherokee Nations the *Montana* Court exempted from its doctrine, Montana fn. 5, as verified by this Court's Navajo trilogy, as found in McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973); Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U.S. 685, 690 (1965); Williams v. Lee, 358 U.S. 217, (1959) (MacArthur at 978-979, 983, 1011 and fn. 176, 1013, 1053- 1054 and fn. 93, Appendix at 172a, 183a, 182a, 231a, 234a, 306a, 307a, 361a, 363a fn. 93).

(4) Congress never gave its required authority to Federal Courts to review Navajo Court decisions. Santa Clara, *supra*. Iowa Mutual Ins. Co. v. LaPlante, 480 U.S. 9 (1987). Congress affirmatively displaced such Federal Court presumptions, and thus, its authority to review Navajo Nation sovereign's Court decisions. MacArthur at 995, Appendix pg. 204a.

(5) All other branches of law are superior authorities in Indian affairs to 1981 judicially made federal common law of Montana and its progeny. Santa Clara Pueblo, *supra*. Lone Wolf, *supra*. This Tenth Circuit decision shows all known Indian law, other than Montana and is progeny, observes Navajo law and Navajo Courts are the exclusive law and forum for resolving civil disputes within the Navajo Nation over Indians and non Indians alike. Congress expressly prohibits state law from applying therein under 25 U.S.C. §§1322-1326, McClanahan, Warren, Williams, *supra*. MacArthur at 995, Appendix pg. 202a-203a.

(6) The United States and the International Community accept, ratify, uphold a design of Indian

Nation self-determination that supersedes state interests. This tragic case demonstrates why Tribal Court authority over non Indians is essential to self governance, as Congress dictates in 25 U.S.C. §§1301(2) and 1302(8), to protect all ‘people’, Indian and non Indian alike, within the Navajo Nation exterior borders.

Based on the foregoing, all the lower court actions that refuse to enforce the Navajo Court orders are void, as if they never occurred. Elliot v. Piersol, 1 Pet. 328, 340, (1828). See Void Judgment Black’s Law Dictionary Sixth Edition Page 1574. The retrying of the case that took place in each lower court is void. Hilton v. Guyot, 159 U.S. 113, 203 (1895) (“[T]he merits of the case should not . . . be tried afresh . . . upon the mere assertion. . . that the judgment was erroneous in law or in fact.”).

Accepting this Petition and Granting Petitioners Their Tendered Solution to Indian Law Conflicts is Consistent with America’s 12 Step Plan for United States Indian Nation Self-Determination and Self-Governance.

The U.S. District Court’s outstanding National Farmer’s analysis shows the Montana doctrine violates 12 foundational legal principals of American Indian law. All the above law sources with which Montana conflicts, upholds these bedrock principals.

- (1) Treaties and statutes thereto are the supreme law of the land binding on Federal Judges and states. Art. VI. U.S. Constitution. MacArthur pg. 987, Appendix pg. 187a.

- (2) America as a whole has adopted the Treaties supporting equal protection of Navajo law over Indian and non Indian alike, and Navajo Nation self-determination and self-governance abilities to prevent harm to any 'person' within its Navajo Nation Indian Country. See, Treaties and statutes cited above.
- (3) Congress carries out these Treaties by statutes including particularly, 25 U.S.C. §§3601 et seq; and §§3651 et seq.. MacArthur at 988, Appendix pg. 191.
- (4) (In keeping with these Treaties' requirements, the U.S. promises to the world, that all 'persons' have 'equal' access to legal remedies. [23]

²³ **1994 Report of the United States of America** to the UN Committee on Human Rights Concerning the International Covenant on Civil and Political Rights, Article 3("The rights enumerated in the Covenant and provided by U.S. law are guaranteed equally to men and women in the United States"); Article 1, II Native Americans ("The Supreme Court has held that tribal courts are the proper forum for the adjudication of civil disputes involving Native Americans and non-Native Americans arising on a reservation. *Fisher v. District Court*, 424 U.S. 382 (1976). "Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty, and, as a result, "[c]ivil jurisdiction over such activities presumptively lies in the tribal courts, unless affirmatively limited by a specific treaty provision or federal statute." *Iowa mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987).");

Second and Third Periodic Report of the United States of America to the UN Committee on Human Rights Concerning the International Covenant on Civil and Political Rights ¶¶18, 21, 26 and Article 26¶ 437 ("....all persons in the United States are equal before the law. all persons in the United States enjoy the equal protection of the laws.....")
<http://www.state.gov/g/drl/rls/55504.htm#art2>

- (5) (The President has authority to enter not only Treaties, but also Executive Agreements, as the Article VI supreme law of the land. [24])
- (6) Indian Nations have a sovereign-to sovereign relationship with the United States not subject to state laws. McClanahan and Progeny. MacArthur at 944 fn. 76, Appendix pg. 354a-355a. .
- (7) Federal Courts have a mandatory duty to enforce and uphold court orders fostered and protected by Executive Agreements including those made with the Navajo Nation judicial program, to provide judicial services in the Navajo Nation, enforcing Navajo law, equally in a uniform and fair manner, (Appendix pg. 548 et seq) constitute the Executive carrying out Treaty obligations and statutory expressions of those obligations found in the Indian Self-Determination Act, enforcing the U.N. International Covenant of Civil and Political Rights Treaty, U.N. charter, the Supreme Law of the Land. Article VI. Pink, Belmont, supra.
- (8) Aside from the Indian Civil Rights act, Congress and the Executive have never diminished Navajo Court authority over non Indians, MacArthur at 989, fn. 139, Appendix pg. 385 fn. 139, and has affirmatively barred state law from applying therein. Utah Enabling Act, 1933 act, 25 U.S.C. §§1323-1326, Santa Clara, McClanahan, Williams, Warren, supra

²⁴ Pink, Belmont, Dames, Curtiss, and Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 585-86(1952)(President's power is the strongest when it is furthering a Constitutional or and act of Congress). MacArthur at 943, fn. 75, Appendix pg. 352a fn. 75.

- (9) The Treaty-, Statute-, Executive Agreement sanctioned- Navajo Bill of Rights and Navajo statutes 7 NNC §§253, 254, *supra*, mandates Navajo law apply equally to all people, persons, entities, on all land types, no matter the land type or ownership, within Navajo Nation borders, previously adopted, and not diminished by the Indian Civil Rights Act, is the Supreme Law of the Land, Navajo orders binding on all States and Judges. Article VI, Pink, Belmont, Curtiss, Dames, Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 585-86(1952)(President's power is the strongest when it is furthering a Constitutional or and act of Congress).
- (10) Article III Courts are not allowed to write law from the bench, as doing so would infringe on both the Congress and Executive authority. MacArthur at 954 fn. 93 . Appendix pg. 538a, fn. 93. Montana is "judicially made" federal common law. MacArthur at 987, citing Lara, *supra*; Appendix pg. 188a.
- (11) Article III Courts are bound to the U.S. fiduciary trust responsibility to the Indian Nations.
- a. Chief Justice John Marshall's opinion in Cherokee Nation v. Georgia (1831), 30 U.S. 1,(1831) held Indian tribes are "domestic dependent nations" resembling "that of a ward.";
 - b. In Worcester v. Georgia 31 U.S. 515 (1832) Marshall referred to tribes as being "under the protection of the United States."

- c. Morton v. Mancari 417 U.S. 535 (1974) cited to "Congress's unique obligations toward the Indian...";
- d. In Nevada v. U.S. (1983) 463 U.S. 110, 103 S.Ct. 2906, 7 L.Ed.2d 509 (1983) the Court emphasized that the "United States owes a strong fiduciary duty to its Indian wards."

(12) Congress has not authorized Article III Courts to review Tribal Court actions, save habeas relief in criminal cases (25 U.S.C. §1303). Santa Clara Pueblo pgs. 65-66 and fn. 26

Petitioners have found no law contrary to these 12 principals enforcing the Navajo orders, decrees, judgments of all types, upholds. Most respectfully, there is no authority for Federal Courts to violate them. U.S.-drafted Navajo treaties of 1849 and 1868, protected by U.N. treaties sighted above, Executive agreements and statutes, are contracts to be read broadly and favorably for the Indians, and keeping with America's fiduciary duty to the U.S./Navajo citizens and persons protected within the Navajo nation. McClanahan and Progeny. Kinney v. Clark, 1844 U.S. Lexis 32, *, 43 U.S. 76.

CONCLUSION

Based on the foregoing, Petitioners pray for this Court to accept their petition and to grant them all other relief that is fair in equity and just under the law.

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