No.

IN THE

Supreme Court of the United States

AL DICKSON, FRED RIGGS, DONNA SINGER AND MICHELE LYMAN AND HELEN VALDEZ,
PETITIONERS

v.

SAN JUAN COUNTY AND CURRENT COMMISSIONERS; SAN JUAN HEALTH SERVICES DISTRICT AND CURRENT BOARD MEMBERS; J. TYRON LEWIS; BILL REDD; CRAIG HALLS; REID M. WOOD; CLEAL BRADFORD; ROGER ATCITTY; JOHN LEWIS; JOHN HOUSEKEEPER; KAREN ADAMS; PATSY SHUMWAY; RICK BAILEY; LAURIE SCHAFER; LYN STEVENS; JAMES D. REDD; L. VAL JONES; MANFRED R. NELSON; RICHARD BAILEY; MARILEE BAILEY; ORA LEE BLACK; GARY HOLLADAY; LORI WALLACE; CARLA GRIMSHAW; GLORIA YANITO; JULIE BRONSON; TRUCK/FARMER'S INSURANCE; R. DENNIS ICKES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

SUSAN ROSE (SMITH-SCHILDMEYER)
Counsel of Record

9553 S. Indian Ridge Dr
Sandy, UT 84092
(801) 674-9304

CURRY & TAYLOR ♦ 202-393-4141

QUESTIONS PRESENTED

ISSUE 1: Whether by Article VI Sec. 2, the Supreme Law of the Land, the question of Navajo Nation civil jurisdiction over non Indian defendants, is a 'judiciable' question, within Article III Court authority to define by *Montana v. United States,* 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981) ("*Montana*") judicially-made limitations on Indian Courts over non Indian defendants, in light of,

> **(A)** the District Court below, and Navajo Nation Supreme Court, identifying that Navajo Nation history shows express Congressional acts, executing into domestic law, the Navajo Treaties of 1868 and 1849 and Navajo law--never intending to limit Navajo Nation *equal* civil legal authority over all Indian and non Indian persons (exactly *opposite* *Montana*'s Allotment Act and Crow Allotment Acts); and,
> **(B)** since 1981's *Montana*, the President, and Congress have executed into domestic law, the 1992 Senate-ratified, United Nations International Covenant on Civil and Political Rights ("UNICCPR") Treaty—by enacting the Indian Self Determination and Education Assistance ("ISDA") nation-to-nation Indian self-governance contract program (25 U.S.C. §§450 et seq), among other statutes, wherein Congress and the President defines Navajo Nation Court *equal* civil authority over *all* persons, by *Navajo* statutes' jurisdictional definitions; and
> **(C)** these Petitioners, and all like-situated Plaintiffs, by *Montana,* are being denied *all*

access to their only Congressionally-recognized Due Process for legal injuries within the Navajo Nation?

ISSUE 2: Whether this United States Supreme Court and District Courts, exceeds 5th and 14th Amendment restraints, by adopting and applying a vague Federal Rule of Civil Procedure at 16, that gives *full* discretion to a United States District Court (1) to dismiss *any evidentiary-supported* claims as 'frivolous', by this Court not defining 'frivolous'; and (2) by any means the District Court so selects, (3) *sua sponte* without an evidentiary hearing for disputed facts, such that these Petitioners Lyman and Valdez were denied *all access* to their only Federally-recognized legal redress for federal Constitutional and statutory violations?

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STATEMENT

A. Procedurally

The *Dickson* case being appealed had federal jurisdiction to hear the appeal under 28 U.S.C. §§1331, 1291, 1294, and the Federal Rule of Appellate Procedure at 4. The case was originally an appeal for only the Navajo law Petitioners Dickson, Riggs, and Singer. However, Defendants interjected the Federal law Petitioners Lyman/Valdez into it. So, *sua sponte*, the *Dickson* panel, in its judgment below, graciously chose to incorporate by reference, and caption, *both* sets of Petitioners' and rulings, stemming from the single Utah United States District Court case 2:00cv0584 case, never moved to be or *sua sponte* bifurcated. Now, *one* U.S. District Court judge identifying the facts and issues (all *MacArthur* f. supp. Rulings); *three* 10th Circuit Court judges in *Dickson* (P. App. 11a), and *one* Navajo District Court judge in the Tribal orders, and *three* Navajo Supreme Court Justices in *Ford Motor v. Kayenta, infra,* (as separate case with similar issues identified for an amicus standing) --8 judges-- in Congressionally –recognized Courts, all identify these Petitioners position has legal support. The two Constitutional provisions involved are:

U.S. CONSTITUTION ARTICLE VI TREATY 'SUPREMACY CLAUSE'

"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, anything in the Constitution or laws of any State to the contrary notwithstanding." (P. App. 35a) Emphasis added.

U.S. CONSTITITUTION 5TH AMENDMENT DUE PROCESS CLAUSE

"No person shall ....be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."(P. App. 34a)

It appears that the principals of the 5th Amendment have been made the Article VI 'supreme law of the land', by the United States in 1992 ratifying an International Treaty that pertains to both Indian law and equal access to Due Process.

B. Facts and Nature of this Case

These Petitioners, and like-situated Petitioners, have *no access* to civil legal redress anywhere, based on this Court's (1) the *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981) ("*Montana*") judicially-created doctrine (Petitioners Dickson, Riggs, and Singer denied enforcement of Navajo Court orders and ability to exhaust tribal remedies) [3], and (2) a

[3] **Navajo Petitioners' Facts** Respectfully disagreeing with *Dickson*'s citation to the 2007 *MacArthur* III court for the 'facts' involved here, (P. app. 2a), these Petitioners refer this Court to the 2002 MacArthur I case, *3-6, for an nearly perfect summary of the facts regarding the Navajo Petitioner's case claims. These Navajo

Federal Rule of Civil Procedure (FRCP) Rule 16(c)(2)(A) facially and as applied, that gives *full* discretion to a District Court to define 'frivolous' , by any methods, even as to dismissing the case, with over 100 disputed facts, as supported by affidavits, depositions, and other evidence, without an evidentiary hearing (Petitioners Valdez, Lyman denied all access to an evidentiary hearing or trial) as the docket shows.[4]

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law – counter- claiming municipal corporation, non state, respondents, were found to be intentionally injuring (a) these Petitioners, (a) an entire class of Navajo clinic-dependant Treaty-protected patients being driven by Respondents intentional and knowingly injurious acts, and (c) the Navajo Court processes itself when Respondents denied their actions. Id. If these Respondents were a 'state', they waived sovereign immunity when they fully litigated false Navajo common law claims with Navajo Bar counsel and live and present witnesses for examination and cross examination, *unlike* New Mexico counterclaiming ONLY sovereign immunity, in *Mescalero Apache Tribe v. State of N.M.*, 131 F.3d 1379 (C.A.10 (N.M.), 1997). 2005 *MacArthur* at 1041-1042.) *Sutton v. Utah State School for the Deaf and Blind*, 173 F.3d 1226, (10 th Cir. 1999).

[4] **Federal Petitioners' Facts**: See Docket, P. ap.36-41a : (1) dkt. # 300 , the District Court issued an order setting the deadline for all dispositive motions on the ORIGINAL complaint(P. App.36a); (2) dkt. #438, Plaintiffs Lyman and Valdez moved the Court to amend their original complaint that absolutely did contain Mrs. Valdez's and Lyman's claims (P. App. 36a); (3) dkt. # 443-457 , after the deadline for dispositive motions, Def's counsel filed several dispositive motions, for the ORIGINAL complaint within a day or two of the Rule 16 hearing on the ORIGINAL complaint(P. App. 7a-38a); (4) dkt. #742 , the District Court denied amending the ORIGINAL complaint, refused to sign the pretrial order, and orally dismissed their original complaint claims *orally*- without a written order (P. app.39a-41a); (5) ending 2.5 years later in a written 190 page order, *MacArthur et al v. San Juan County et al*, 416 F. Supp. 2d 1098 (D. Utah, 2005) (a) *sua sponte* allowed the AMENDED complaint, *non pro tunc*, back to the date of the hearing on the ORIGINAL complaint, vacating that original

Any appeal is 'frivolous' as no court can 'abuse' discretion if by rule it has full discretion. Such vagueness, exceeds the Supreme Court's rule making authority. *Grayned v. City of Rockford,* 408 U.S. 104,108-109(1974) 1972 U.S. LEXIS 26,*7-8;408 U.S. 104; 92 S. Ct. 2294; 33 L. Ed. 2d 222 [5]
FRCP at 16(c)(2)(A) (P. App. 35a) reads as follows:

> "At any pretrial conference, the court may consider and take appropriate action on the following matters: ...(c)(2)(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses; "

See, MacArthur at 416 F. Supp. 2d 1098, 1201 and fn. 120 (D. Utah, 2005),

> "120. Neither Fed.R.Civ.P. 16(c)(1) nor the accompanying advisory committee notes articulate the legal standard to be applied in determining whether a claim or defense is "frivolous" within the meaning of the rule. The

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complaint hearing, (at pg. 1209)and (b) *sua sponte* made factual findings, some heatedly contested by the parties, (generally) (c) *sua sponte* applying them to the AMENDED complaint, *sans* a FRCP rule 16 hearing on the AMENDED complaint.

[5] Id. ("It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. n3 Second, if arbitrary and discriminatory enforcement is to be prevented, laws [*8] must provide explicit standards for those who apply them.")

> advisory' committee note to the 1983 amendment to Rule 16 makes general reference to a case from the D.C. Circuit, *Meadow Gold Products Co. v. Wright,* 108 U.S.App.D.C. 33, 278 F.2d 867 (D.C.Cir. 1960). .... does not speak of "frivolous" claims. 278 F.2d at 869 (quoting *Rosden v. Leuthold,* 107 U.S.App.D.C. 89, 92, 274 F.2d 747, 750 (D.C.Cir.1960))."

Id.

C. This Case is a Subject Matter Jurisdiction Challenge

At its earliest inception, every injury had just redress. *Marbury v. Madison,* 5 U.S. 1 Cranch 137 137, 163 (1803)([6]). *Ins. Co. of Ireland v. Compagnie Des Bauxites,* 456 U.S. 694 (1982)("Federal courts are courts of limited jurisdiction [under].... Art. III, § 2, cl. 1. Jurisdiction of the lower federal courts is further limited to those subjects encompassed within a statutory grant of jurisdiction."). Thus, *all* persons have an 'inalienable' right to equal access to United States Constitution's 5th Amendment due process, adequate notice and a hearing in a meaningful manner at a meaningful time. [7] Therefore, Petitioners respectfully assert, that Article

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[6] *Marbury v. Madison,* 5 U.S. 1 Cranch 137 137, 163 (1803)("for it is a settled and invariable principle ... that every right, when withheld, must have a remedy, and every injury its proper redress." The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right.")

[7] *Mathews v. Eldridge,* 424 U. S. 319, 335 (1976)(requiring adequate notice and hearing at a meaningful time and in a meaningful manner). Grayned, supra.

III courts exceed their Constitutional-restraints on subject matter jurisdiction to (a) judicially-create an ambiguous *Montana* Indian doctrine, or (b) draft and issue a Rule 16 that (i) contains no mandatory provisions for an evidentiary hearing, (ii) and Rule 16(c)(2)(A) that has no clear definition as to what 'frivolous' means. Arguably, the rulings dismissing all Petitioners claims are void, and manifest injustice has resulted. Id. *Grayned.*

D. By Historical Analysis, Congress ordains Treaty-recognized Navajo Law as the 'Supreme Law of the Land'

By an exhaustive analysis, all branches of the United States, save this branch in *Montana* and its progeny, recognize only Navajo Nation authority is paramount within the Navajo Nation civilly over Indians and non Indians alike. **Congress' intentional silence says Federal courts can't hear Navajo claims**. In *U.S. v. Lara* 541 U.S. 193 (2004) 2004 U.S. LEXIS 2738,*14, this Court recognized Congress' power in Indian affairs is 'plenary and exclusive'. [[8]] Congress bars Federal Courts from hearing Navajo law claims by repeatedly refusing to give Federal Courts *any* authority over Navajo Nation civil claims, (28 U.S.C. §450)(P. App. 26a), never creating any ancillary or supplemental jurisdiction federal court powers, save *habeas corpus* relief, 25 U.S.C. §1303(P. app. 26a) [[9]].

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[8] See, *Lone Wolf v. Hitchcock,* 187 U.S. 553,565 (1903)(Plenary power is not in the Judiciary.)

[9] *Morton v. Mancari,* 417 U.S. 535, 551 (1974)("In light of the factors indicating no repeal, we simply cannot conclude that Congress consciously abandoned its policy of furthering Indian self-government...".); *National Farmers Union Ins. Cos. v. Crow*

By all the expressions in law covered by 2005 *MacArthur*, *infra*, Congress has always expanded Navajo authority over its lands, (2005 *MacArthur* at 961-962), (fn. 1 supra) *never* restricting its civil authority over non Indians, and has never given the Federal Courts power to define the metes and bounds of Navajo Nation Court jurisdiction[[10]] by any 'implied divestiture' doctrine unmoored from all other law. Id.

Congress' expressions say State Courts can not hear Navajo law claims. Congress bars all state authority over and within the Navajo Nation by treaty, fn. 10 *supra*, and the Aneth Extension Act, and by pre-

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Tribe, 471 U.S. 845, 855-856, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978). *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 107 S.Ct. 971, 94 L.Ed.2d 10, (1987).

[10] Treaty –Statute Provisions: The Navajo Treaty of 1849 Article I, III, and IX;1848 Treaty of Guadalupe Hidalgo Article IX.(P. ap. 16a). The Navajo Treaty of 1868 Article X, expressly promises no further concessions will be taken from the Navajo Nation without approval of ¾ of the male Indian population. (P. app. 18a); Utah's Enabling act 'forever' disclaims authority or interest in the area. (P. Ap. 18a); 1933 Aneth Extension area (P. app.19a) as purchased from Utah with Navajo Tribal funds(P. app. 21a), as the 1937 appropriations act shows all surface rights, and a large percentage of mineral rights on state school trust lands, were added to the Navajo Nation. *See Pelt v. State of Utah,* 104 F.3d1534 (10th Cir.1996); *State of Utah v. Babbitt,*53 F.3d 1145, 1149 (10th Cir.1995)(noting Congress' clear intent that oil and gas development on the Aneth Extension benefit San Juan Navajos); *Williams v. Lee,* 358 U.S. 217, 221–222, 79 S.Ct. 269, 3 L.Ed.2d 51(1959); *McClanahan v. Arizona Tax Comm'n,* 411 U.S. 164, 172, n. 7, 175, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973)(Congress prohibits checkerboarding of jurisdiction in the Navajo Nation citing 18 USC §1151, and 25 USC §§1322, 1324).*Warren Trading Post Co. v. Arizona Tax Comm'n,* 380 U.S. 685, 690 (1965).

Montana and post-*Montana* statutes[11], (the legislative history is found in 2005 MacArthur). See, 25 U.S.C. §§1322 1324, 1326 (P. app. 25a-26a), among others, domestically executing Navajo Treaties, Courts, and law, into Domestic law as the "supreme law of the land.". [12] **Congress intends only Navajo Courts can hear Navajo claims.** The Navajo Nation Supreme Court properly interprets its law as the only

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[11] See, Indian Self Determination Act ('ISDA') 25 U.S.C. §§450 (a)(federal domination is destructive to Indian Nations)(P. app. 26a); 450l (model agreement mandating Indian Civil Rights Act equality and no state intrusions (Indian Civil Rights Act 'ICRA', 25 USC 1302(8) and 1322, 1324, 1326))(P. app.29a and 43a¶3); 450m-1, (if Navajo law jurisdiction is to change under its ISDA judicial program contract, the Navajo law makers must make the change.)(P. app.30a-31a); 450f (Congress insures all persons claiming injury by a ISDA contractor.)(P. app. 31a). See Navajo ISDA judicial program contract mandating Navajo law and ICRA apply within the Navajo Nation. (p. app.43a par. 3). See, 25 USC §3651(6) 2005 *MacArthur* at pg. 995 reversing *Montana*'s presumptions. BIA contract Navajo law defines jurisdiction: Navajo Nation Code, tit. 7, § 253(B) and 254 (1995). *Supra.*

[12] *McCulloch v. Maryland*, 17 U.S. 316, 400-401 (1819), *United States v. Belmont*, 301 U.S. 324, 331-332 (1937)("Plainly, the external powers of the United States are to be exercised without regard to state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning.")*Medellin v. Texas*, 552 U.S.)______ *Medellin v. Texas*, 552 U.S. ______, 128 S. Ct. 1346; 170 L. Ed. 2d 190; 2008 U.S. LEXIS 2912, (holding that if there is an international treaty recognizing a court where the treaty is executed by Congress into domestic law, the Court actions, subpoena, summons, injunction, are fully binding), and while not binding, instructive for BIA contracted Indian Nations, *Cabazon Mission Band of Indians, v. Smith*, 2004 U.S. App. LEXIS 22772,*18 et seq;388 F.3d 691; *The Skull Valley Band of the Goshutes, et al v. Utah*, et al, 2004 U.S. App. LEXIS 16055,*42-43;376 F.3d 1223;58 ERC (BNA) 2099;198 A.L.R. Fed. 741

Congressionally-recognized authority in the Navajo Nation. [13]

Navajo Nation Code tit. 7, § 253 (1995)
'[t]he District Courts of the Navajo Nation shall have original jurisdiction over ....All civil actions in which the defendant is a resident of Navajo Indian Country, or has caused an action to occur within the territorial jurisdiction of the Navajo Nation."

Id. emphasis added.

Navajo Nation Code tit. 7, § 254 (1995)
"Navajo Indian Country, defined as all land within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency, all land within the limits of dependent Navajo Indian communities, all Navajo Indian allotments, and all other land held in trust for, owned in fee by, or leased by the United States to the Navajo Nation or any Band of Navajo Indians."

Id. emphasis added.

Navajo Nation Bill of Rights Art. 3
"Life, liberty and the pursuit of happiness are recognized as fundamental individual rights of all human beings. Equality of rights under the law

[13] See, Navajo Nation Supreme Court ruling in *Ford Motor v. Kayenta District Court*, SC-CV-33-07 page 3-6. See, Westlaw and Navajo Nation Supreme Court website. http://www.navajocourts.org/NNCourtOpinions2008/Ford%20v.%20Kayenta.pdf

> shall not be denied…nor shall any person within its jurisdiction be denied eequal protection, …nor be deprived of life, liberty, or property, without due process of law. " P. ap. 22a

By ***Montana*** there is no uniform predictable law. As applied in the *Dickson* referenced rulings below, confusion reigns by panel rulings, contrary to District Court findings, contrary to *prior* panel rulings, without *en banc* hearings, contrary to other Supreme Court rulings going in two directions[[14]]. Right now the

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[14] Very Conflicted Outcomes of Rulings below: (1) Most National insurance companies need not pay the victim (2002 *MacArthur I *18*) it lacks a contract with the victim. (2) There is no 'inherent' authority for Navajo Courts to directly discipline only non resident non-Indian Navajo Bar counsel *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991) 2002 *MacArthur I* *19-20. (3) Federal Courts can make new fact findings displacing the Navajo judge completely. (Id. and 2007 MacArthur III generally) (4) Petitioners can prevail in 2002 *MacArthur I* on the issues of (a) these Respondents are not the state (Id. fn. 5), but merely a political subdivision municipal corporation, without state sovereign immunity *Cook County v. Ex Rel Chandler*, 538 U.S. 119, 126 (2003), and (b) Respondents were violating Navajo law on multiple levels (Id. *3-6), for which there is no state sovereign immunity here, (c) state sovereignty is less than the inherent soveriegnty of the Navajo Nation who, unlike states, reserved to itself unlimited inherent authority (2002 *MacArthur*13-14, and fn. 5*) over all persons equally, within its borders. All the foregoing points are wholly reversed *without an enbanc hearing* by the 2007 *MacArthur III* panel (*MacArthur et al v. San Juan County et al*, 2007 U.S. App. LEXIS 17008,*32, 43-44, 52, generally;497 F.3d 1057) based upon an ever morphing *Montana* doctrine. (5) The 2002 *MacArthur I* can observe the Navajo case encompasses tort, Navajo common law, etc. Navajo law violations endangering an entire population and the Navajo Court itself, (2002 *MacArthur *3-9*), *and without an en banc hearing, the 2007 MacArthur decision*, generally, can address the case as basically an 'employment' matter and make Respondents

average time for resolving *Montana* Indian law jurisdictional cases is about ten years [15] or longer.

In a 9th circuit-referred Navajo tort law, Ford Motor case, the Navajo Nation Supreme Court Chief Justice Herbert Yazzie, in Navajo case, *Ford Motor v. Kayenta District Court* SC-CV-33-07 (fn. 13 *supra*), forthrightly asked Ford Motor's attorney in oral argument to the effect, (1) "How many dead Indians does it take before the Navajo Nation's Courts have jurisdiction?"; (2) to the effect, "Do these plaintiffs have

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immune by relying on *Colorado* state interpretations of 'police powers', citing to *Hill v. Colorado*, 530 U.S. 703, 715, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000). (Id. *45), factually finding Respondents were seriously in some way enforcing a state law, when this Court recognizes *all state law authority* is barred within the Navajo Nation completely. [14]P. app. 25a-26a. (6) Land can be determined to be Navajo land, purchased by state and tribal agreement with tribal funds by federal statute (2005 *MacArthur at 961-62*), solely for Navajo beneficiaries, and without an en banc hearing, contrary proof, or oral hearing or discussion, the 2007 *MacArthur* at *52, court can declare the land is non Indian 'state land', presumably so as to fit within the latest *Montana* pronouncements from this Court, and eliminate *National Farmer* completely.

[15] *Nevada v. Hicks*, 533 U.S. 353 (2001) (ten year tribal state sovereignty dispute); *Ford Motor Company v. Todecheene*, 394 F.3d 1170 (9th Cir. 2005)(having been decided by the Navajo Court and settled after oral argument about 10 years); *Atkinson Trading Post v. Shirley*, 532 U.S. 645 (2001)(Indian/non Indian jurisdiction question 8 years); *Sinanjani v. Board of Education of San Juan County*, 10th Circuit Court, No. 99-4130 Nov. 30, 2000(several appeals involving a 25 year consent decree challenged by San Juan County School district and its duty to Navajo children taken from their homes to schools outside their Nation); *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818 (10th Cir. 2007) (State/Indian jurisdictional authority for taxing motor vehicles, nine years, three appeals.

any other courts into which they can go to receive redress?" The Ninth Circuit Court shared this same concern in oral argument in *Ford Motor Co. v. Todecheene,* 394 F.3d 1170 (9th Cir.2005)(self-vacated to allow *Nat'l Farmer, infra,* analysis) after the case came back to the 9th Cir. from the Navajo Supreme Court, whereupon Ford settled the case. The United States District Court in"2005 *MacArthur*" at fn. 135, sees a third. (3) ""If, Indians reasoned, justice is for society's benefit, why isn't our justice accepted?"

E. America Has Two Opposite Types of Indian Land and Indian Sovereigns

This Court in *Lara*, as Justice Thomas accurately observed, identified Indian law as "schizophrenic". Id. 2005 *MacArthur* III at 961-962 and fn. 105, in the finest, most exhaustive 263 page Indian law Court-analysis in American history, [[16]] found

> "Consistent with the court of appeals' mandate, this court has applied the *Montana* analysis in deciding the jurisdictional issues on remand. Yet the **drastic differences in historical context and current consequence** between the 1933 [Aneth extension] Act and the Crow Allotment Act necessarily raise the question whether *Montana'* s limited reading of the Crow Tribe's authority under its 1868 Treaty has any logical bearing upon the Navajo Nation's authority *under the 1868 Navajo Treaty* over the lands within its boundaries, particularly over parcels

[16] taking 2.5 years to research, draft, and issue by Judge Bruce S. Jenkins and his long time clerk Russell Kearl and staff.

> **that were purchased with Navajo trust funds** and **are still held in trust for the Navajo people of San Juan County**.... Viewed through the lens of the relevant Indian policy of the political branches in 1934, the *Atkinson* Court may have erred by importing *Montana's* "general principle" into the context of the Navajo Nation without examining the historical relevance of *Montana'* s rationale."

Id. [17] emphasis added.

Congress intended, historically, two opposite types of Indian lands, and types of Indian Communities: (1) "280" *land* types [18], and at (*Montana* 565-566), '280' type Indian "tribes"[19]) historically Congress designed

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[17] See P. App. 21a for Aneth Extention act, P. App. 25a , for federal appropriations act showing Navajo Nation purchased all surface rights within the Utah addition to the Navajo Nation, leaving only some mineral rights to Utah, with all lands and other mineral royalties set aside only for the sole benefit of the Navajo people. Also the 1968 Aneth amendment. (P. App. 23a)

[18] (28 U.S.C. §1360) (Pub.L. No. 83–280 (1953) *Montana* at 545 Crow allotment and Allotment act (repealed 25 U.S.C. 331-333(repealed 2000).

[19] Limitations exceptions: Id.("A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. *[citations omitted]*.... A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. [citations omitted].")

to be under some state authority; <u>*versus*</u> (2) **"638"** [20] lands (*Montana* at 558-559) [21] and Indian Nations promised, as for the Navajo, fn. 10 *supra*, 'forever', to be under *exclusive* federal authority. *Montana* at fn. 5. [22] *See* Navajo Nation Supreme Court in *Kayenta, supra*. Further, *Montana* limitations were not initially intended to be a blanket policy for all Indian Nations as

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[20] (Pub.L. 93–638)(Indian Self Determination and Education Assistance Act "ISDA")

[21] Id. at 558-559....) ("The treaty, therefore, obligated the United States to prohibit most non-Indians from residing on or passing through reservation lands used and occupied by the Tribe, and, thereby, arguably conferred upon the Tribe the authority to control fishing and hunting on those lands.[fn omitted]. But that authority could only extend to land on which the Tribe exercises "absolute and undisturbed use and occupation." Id. at 558-559....).

[22] Id. at fn. 5 . "Under the Choctaw treaty, the United States promised to convey new lands west of the Arkansas Territory in fee simple, and also pledged that "no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation . . . **and that no part of the land granted to them shall ever be embraced in any Territory or State**." Treaty of Dancing Rabbit Creek, Sept. 27, 1830, 7 Stat. 333-334, quoted in *Choctaw Nation v. Oklahoma,* 397 U.S. at 397 U. S. 625. In 1835, the Cherokees signed a treaty containing similar provisions granting reservation lands in fee simple and promising that the tribal lands would **not become part of any State** or Territory. *Id.* at 397 U. S. 626. In concluding that the United States had intended to convey the riverbed to the Tribes before the admission of Oklahoma to the Union, the *Choctaw* Court relied on these circumstances surrounding the treaties and placed special emphasis on the Government's promise that the reserved lands would never become part of any State. *Id.* at 397 U. S. 634-635. Neither the special historical origins of the Choctaw and Cherokee treaties nor the crucial provisions granting Indian lands in fee simple and promising freedom from state jurisdiction in those treaties have any counterparts in the terms and circumstances of the Crow treaties of 1851 and 1868."

it was a narrow fact bound case. [23] This Court previously found that Congress never intended these '638' Nations to be under federal court doctrines' domination. Fn. 9 *supra*. (28 U.S.C. §450 P. app. 26a). The Navajo Nation is a '638' Nation with a ISDA judicial program contract, P. app. 43a par. 3, the President says executes into domestic law, (P. app. 31-32a) the 1992 Senate-ratified United Nations International Covenant on Civil and Political rights (P. app. 28a) (UNICCPR) (P. App. 27a-28a). The President, Senate, and Congress have acted in such away that now the question of the metes and bounds of Navajo jurisdiction, is within the Navajo Nation itself, by BIA and Navajo mutual agreement, now ratified in an International Treaty, as executed into domestic law by the ISDA and the Navajo Nation-BIA judicial program contract. (P. Ap. 43a-44a).

Justice Thomas is quite correct finding Indian law is 'schizophrenic' (*Lara, supra*, J. Thomas concurrence) because '280' 'tribal' limits, are put on '638' Nations. Partially because some Nations came into the United States under terms of a foreign Treaty of Guadalupe Hidalgo, (P. Ap. 15a), that set parameters on what authority Indian Nations would be under. Navajo Treaty of 1849 (P. Ap. 16a). This conflict may be resolved by this new International Treaty designed to execute into Article VI status (a) a re- confirmation of Navajo Treaties retention of civil authority equally

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[23] *Jicarilla Apache Tribe v. Supron Energy Corp.* 728 F.2d 1555, 1571 n.6 (10th Cir. 1984)
(Seymour, J., dissenting in part), *adopted as opinion en banc*, 782 F.2d 855 (10th Cir.), *cert. denied*, 479 U.S. 970 (1986) finding *Montana* was a narrow 'fact bound' case.

over all persons, to protect and preserve America's aboriginal self-governance and self- determination, and (b) the 5th Amendment and 14th amendment Due Process rights protections, over and above all other Constitutional provisions, without exception of any party 'status'. Now, all Indian Nations meeting ISDA criteria qualify for '638' status. Fn. 12, *supra.*

F. *A New International Treaty Fully Executed Domestically Appears to Make the 5th Amendment's Due Process and the 14h Amendment's Equal Protection And Indian Treaties, Article VI "Supreme Law of the Land"-without exceptions*

In *McCulloch v. Maryland,* 17 U.S. 4 Wheat. 316 316, 405-406 (1819) 1819 U.S. LEXIS 320,*62;17 U.S. 316; 4 L. Ed. 579;4 A.F.T.R. (P-H) 4491, a State citizen sued Maryland for a law it passed under the Federal Constitution. . The *McCulloch* Court identified the power of Article VI and how all states fully agreed to it. *Id. McCulloch* *116-117, also identified that conflicts "must be decided peacefully, or remain a source of hostile legislation, perhaps of hostility of a still more serious nature; and if it is to be so decided, by this tribunal alone can the decision be made." Id. Since 1819 the Court has enacted a broad variety of judicially-created doctrines that close the Federal Court-room doors to America's citizens, some based on 10th or 11th immunities, and now, *Montana* is yet another and the ambiguous Rule 16 is yet another, contrary to Article VI's federal pre emption. Fn. 12, *supra. Lara, supra,* acknowledged Congress' power to execute all treaties. *Lara* dealt with a Indian tribe's *criminal* jurisdiction over Indian nonmembers. Id. *Lara,* did not address *Montana*'s judicially-created doctrine that bars Indian

Nation Courts from having *civil* jurisdiction over non Indian non residents, as it applies to '638' Indian Nations. *Lara* did not address the new 1992 Senate-ratified United Nations International Covenant on Civil and Political Rights (P. app. 28a) (UNICCPR), a Treaty signed by the United States President, ratified in 1992 by the Senate, and Congressionally-executed into law. [[24]] Articles 1 and 26.

> "**ARTICLE 1 sec. 1**
> All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
>
> **ARTICLE 26**
> All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Id. emphasis added.

None of the Court's rulings below address this Treaty, though raised. **UNICCPR's Article 1**, is

[24] See, 42 U.S.C. §1983, and Indian Civil Rights Act ("ICRA") 25 U.S.C. 1301-1326, (P. ap. 24-26a) and the Indian Self Determination and Education Assistance Act ("ISDA") 25 U.S.C. 450 et seq. (as greatly amended in 1994 and thereafter)(P. app. 26a-30a)

executed into domestic law by the Indian Self-Determination and Education Assistance Act ("ISDA") self-governance contract project (of which the Navajo Nation and its judicial system is part) as executing, effecting now, the BIA-reported about 200 Indian Nations in the project. See, President's State Department reports to the U.N. of 1994 (P.Ap.33-34) declaring this Treaty to be fully domestically executed.

UNICCPR's Article 26, executed into domestic law by the pre existing 5th and 14th Amendments and by all of Congress' Civil Rights Acts (42 U.S.C. §1983, 28 U.S.C. §1343) and Indian Civil Rights Act (25 U.S.C. §§1301-1326), now by Treaty expressly allows for *no* exceptions or immunities based on any 'status' of any parties. See, President's state department report on "Implementation" (P.ap. 34a)(preexisting law executes this Treaty.) Article VI states, Treaties are the "Supreme Law of the Land", "anything in the Constitution or laws of any State to the contrary notwithstanding." The President, Senate, and Congress arguably have now re-affirmed, re- ratified, and executed into domestic law the very brilliant vibrant light of hope, reduced to the 'great law' 'All men are created equal' with 'inalienable' rights as in our Declaration of Independence, and 5th and 14th amendments, by Article VI Treaty law without *any* exceptions for the defendants' status, as not only U.S. and Navajo, but international policy binding all the U.S., Navajo, and state courts, domestically (P. Ap. 41a-43a). Fn. 12, *supra.*

G. Under Article VI, Full Enforcement of Navajo Court Orders is a Duty, not Discretionary Authority

Rulings below would not enforce Navajo rulings based on 'comity'. 2007 *MacArthur* III, 2007 U.S. App. LEXIS 17008,*1;497 F.3d 1057. Based on the historical statutes executing the Navajo Treaty of 1849 and 1868 (P. app. 16a-17a) into domestic law, (fn. 10, *supra*) and now based on the UNICCPR, Article 1 and 26, as executed by the ISDA self governance contract program, as the President states, (P. App. 33a-34a), the Navajo Nation law and its own jurisdictional definitions, are Treaty- recognized Courts, as executed into domestic law, and by a mutual executive agreement, that is also executed by a statute (model ISDA agreement 450l) (Navajo judicial agreement P-Ap. 43a). *Medellin* holds such Courts and their actions are the 'supreme law of the land', domestically binding throughout the United States. Id. See, *Lone Wolf v. Hitchcock*, 187 U.S. 553,565 (1903)(Plenary power is not in the Judiciary.) *Dames & Moore v. Regan*, 453 U. S. 654, 680-681(1981); *United States* v. *Belmont*, 301 U. S. 324, 330 (1937).

Notably, there is no record of Federal Courts having 'justice' concerns when non Indians enjoy Navajo justice as against Indians, it is only when the non Indian is on the receiving end that unsubstantiated fears of unfairness arise. With an estimated 11 million non members entering the Nation annually, an area the size of 4 or 5 eastern states, who can injure others or be injured, anything less than full enforcement of these orders destroys Congressionally- intended self governance and self determination of the Navajo

Nation. With Congress making no other sovereigns' courts available, an entire body of Plaintiffs has no place to go, ripe targets for those who would intentionally harm them, exactly as here, by Respondents claiming immunity because most of them are "non Indians", now morphing into them becoming suddenly state employees enforcing state law, for the first time since Lord Coke in England [[25]]. 2007 *MacArthur* at *43. Given the UNICCPR and Article VI, Navajo Treaty issues are outside state policy concerns as Congress bars state authority in the Navajo Nation expressly. Fn. 9 *supra.* If these Respondents were a 'state', they waived sovereign immunity when they fully litigated false Navajo common law claims with Navajo Bar counsel and live and present witnesses for examination and cross examination, in a 19 hour evidentiary hearing, *unlike* New Mexico counterclaiming ONLY sovereign immunity in another case.[[26]] Congress insures those harmed by the ISDA contractors. 25 U.S.C. §450(f).(P. App. 31a) Under the UNICCPR as executed, and Article VI, the 10th and 11th amendments cannot trump treaties or the 5th amendment.

REASONS FOR GRANTING THE PETITION

There are **(6)** arguments for granting this Petition. Based on the foregoing, **(1) Manifest injustice.** 5th Amendment restraints on Article III courts are violated here and for every like-situated

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[25] *Cook County v. Ex Rel Chandler*, 538 U.S. 119, 126 (2003).(municipal corporations are not the state)

[26] *Mescalero Apache Tribe v. State of N.M.*, 131 F.3d 1379 (C.A.10 (N.M.), 1997). 2005 *MacArthur* at 1041-1042.) *Sutton v. Utah State School for the Deaf and Blind*, 173 F.3d 1226, (10 th Cir. 1999).

Plaintiff seeking relief in Navajo and Federal courts. (2) **National Importance**. This Court only accepts about 80 petitions a year. The rulings below unless reversed deprive all persons of all access to Due Process *anywhere*. (3) **The case is a subject matter jurisdiction challenge case**. It must be addressed, and can "be raised at any time" as structural authorities are involved. *Freytag v. Commissioner*, 501 U.S. 868 (1991). (4) **Uniformity in the law will be produced.** The foregoing-identified (a) splits between this Court and Congress, and (b) splits between this Court and the 5th amendment, and (c) splits between this Court with prior Supreme Courts [[27]], all result a *de facto* policy of 'justice' on a case by case, judge by judge basis, that *Marbury*, intensely vilified as the antithesis of our Constitution, and now the antithesis of the International adopted 5th amendment standards Congress makes binding on all U.S. tribunals under the UNICCPR and Article VI. (5) **Splits in the Circuits need resolution**. The Navajo Nation is divided into two parts, *(Ariz.) 9th cir.* (allowing *National Farmer's* tribal exhaustion) and *(N.M. & Utah) 10th Cir.* using *Montana* to eliminate *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 855-856, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985) exhaustion *and* analysis entirely, contrary to the 2002 *MacArthur* panel. 2007 *MacArthur* *18 *supra* as upheld in *Dickson*. Full enforcement of '638' type Indian Nation orders is split [[28]] unless Article VI federal preemption applies. See,Fn.

[27] *See, Nevada v. Hicks*, 533 U.S. 353, 376, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001) (Souter, Kennedy & Thomas, JJ., concurring) cited in 2005 *MacArthur* at 231.

[28] *Atchison, T. & S.F. Ry. v. Sowers*, 213 U.S. 55, 65 (1909); *Embry v. Palmer*, 107 U.S. 3, 9 (1883) (looking at the 1804 amendments to the original 1790 act finds the statute "must be taken to mean,

12 *supra*. (6) **Collateral Damage won't be possible if this Petition is accepted**. While not directly a petitioners claim here, this Court should be aware of all the ramifications of these issues. In a separate case below,[29] the Utah State Bar is combining the federal abstention doctrine of *Middlesex County Ethics Committee v. Garden State Bar Association* 457 U.S. 423, (1982), with the well entrenched *Montana* doctrine and Rule 16(c)'frivolous' ambiguities, to say there are 'no good faith arguments' this attorney can make...ongoing here for about 5 -6 years. So, it is usurping the Federal Court's inherent authority to discipline this attorney, in the first instance, *non* reciprocally, based upon this *pre-existing* heated political federal case where the Federal Judges *repeatedly* denied opposing counsel's motions for sanctions, discipline, costs. (P. app.11a, 13a-15a).[30] The Bar collateral attack on this solo attorney, in her first complaint-until-now filed case, was initiated by Bar-complainant opposing-counsel Carolyn Cox *during* this litigation, that no court is stopping. The process is under Utah Rules of Lawyer Discipline and Disability failing entirely to meet numerous U.S. Constitutional

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such faith and credit as they are entitled to in the courts of the state, territory, or ***other country*** *subject to the jurisdiction of the United States from which they are taken*."); *United States ex rel. Mackey v. Coxe*, 18 How. 100, 103 (1856) and *Standley v. Roberts*, 59 F. 836, 845 (CA8 1894), appeal dismissed, 17 S. Ct. 999, 41 L. Ed. 1177 (1896). 8th Cir. is the predecessor of the 10th cir. 2007 MacArthur III reverses without an *enbanc* hearing.

29 See, Utah 3rd District court case 070917445, In re discipline Susan Rose, and 10th Cir. case 10-4000 (Rose v. Utah) (facing a motion to dismiss at this time.).

30 The Bar matter also includes a 'state' case involving Navajo Nation jurisdiction, the Utah Court of Appeals observed lacked subject matter jurisdiction.

standards, ostensibly the 11th amendment allows an immunity from adhering to, based on more immunity doctrines. Cf. *Taylor III, v. Kentucky State Bar Association,* 424 F.2d 478 (6th Circuit 1970); *Hawaii Housing Auth. V. Midkiff,* 467 U.S. 229 (1984).

Final Summary

For one quiet moment, just imagine yourself as an attorney on Main Street, U.S.A. A like-situated Plaintiff as these Petitioners, with *intentional civil Navajo or Federal law* injuries, for him/her and for an entire group of persons threatened with losing their lives or professional livelihood, names and reputations, comes to you for advice as to what to do. You are fully aware of all the rulings below outcomes. What counsel would you give the Plaintiff? Will the Plaintiff consider 'self help' or, possibly, suicide by your answer? Accepting this Petition places the World and all Americans, Indian and non Indian alike, on clear notice, that if you do business, work, live in America, or live, work travel in the Navajo Nation in America, the Court room doors are wide open, with clearly defined rules, fully enforceable orders, decrees, judgments, and equal access to adequate notice of fair standards, at a meaningful time and in a meaningful manner, before a Congressionally- recognized tribunal...*without* exceptions for status of any parties. America's Public Policy has arguably destroyed the policy of 'separate but equal' that never worked for schools, buses, and now Courts. Given the choice between the other two Branches Treaty-executed public policy, and this Court's doctrines and rules, these Petitioners respectfully plead for this Court to choose as it did in *Lara*, and give all persons a level playing field to access

peaceful resolution of their injuries in all the United States Courts.

CONCLUSION

For all the foregoing reasons, this Petition should be accepted.

Respectfully Submitted.
Susan Rose (Smith-Schildmeyer)
Counsel of Record
9553 South Indian Ridge Drive
Sandy, Utah 84092
(801) 545-0441