IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 04-36167

GROS VENTRE TRIBE; ASSINIBOINE TRIBE; and the FORT BELKNAP INDIAN COMMUNITY COUNCIL,
Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA; UNITED STATES BUREAU OF LAND MANAGEMENT; UNITED STATES BUREAU OF INDIAN AFFAIRS; and UNITED STATES INDIAN HEALTH SERVICE,
Defendants-Appellants.

ON APPEAL FROM THE U.S. DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HONORABLE JUDGE DONALD W. MOLLOY

PLAINTIFFS-APPELLANTS' COMBINED PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

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RULE 35(b) STATEMENT

Based on my professional judgment, I believe that en banc consideration is necessary to secure uniformity of the Court's decisions as to the following questions, which are also of exceptional importance:

1. Whether the Administrative Procedure Act's ("APA") waiver of sovereign immunity under § 702 for non-monetary actions against the government is limited by § 704's "final agency action" provision;
2. Whether treaties and other agreements with the Assiniboine and Gros Ventre tribes ("Tribes") give rise to specific trust obligations that apply to actions by the United States that occur off-reservation but have impacts on-reservation; and
3. Whether the federal government's general fiduciary trust obligation to Native American tribes is satisfied by mere facial compliance with statutes of general applicability.

STATEMENT

This case involves the world's first large-scale heap-leach cyanide mining operation and its impacts on the Fort Belknap Indian Reservation ("Reservation"), which is located adjacent to and downstream from the mountains where the mining occurred. (*See* Exhibit ("Ex.") A (map)). Mining has diverted water away from the

Reservation, and polluted water flowing onto the Reservation. As the district court acknowledged:

> [i]t is undisputed that the . . . mines have devastated portions of the Little Rockies, and will have effects on the surrounding area, *including the Fort Belknap Reservation*, for generations. *That devastation, and the resulting impact on tribal culture, cannot be overstated*.

Gros Ventre Tribe, et al. v. United States, et al., Civ. No. 00-69-M-DWM, slip op. (D. Mont. June 28, 2004) at 12 (emphasis added). The Tribes sought equitable relief against the federal agencies that permitted this mining, and invoked the waiver of sovereign immunity for non-monetary claims contained in § 702 of the APA. 5 U.S.C. § 702.

After initially agreeing with the Tribes that § 702 waived sovereign immunity, the district court changed its opinion and granted summary judgment to the government. The appellate panel acknowledged a conflict among Ninth Circuit opinions on the issue, but affirmed the district court.

REASONS WHY THE PETITION SHOULD BE GRANTED

1. This case involves a direct conflict in the Circuit's cases concerning an exceptionally important issue of administrative law.

The panel's decision recognized a direct conflict in Ninth Circuit caselaw concerning whether the APA's waiver of sovereign immunity under § 702 for non-monetary actions against the government is limited to the "final agency action"

provision of § 704. *See Gros Ventre Tribe, et al. v. United States, et al.*, No. 04-36167, slip op. at 18479 (9th Cir. Nov. 13, 2006) ("*Gros Ventre*") (attached). The panel expressly declined to resolve this conflict, however, indicating that the conflict could only be resolved by the Court through the *en banc* process. *Id*. at 18482.

In *The Presbyterian Church (U.S.A.) v. U.S.*, 870 F.2d 518, 523-26 (9th Cir. 1989), a Ninth Circuit panel held that § 702's waiver of sovereign immunity is not conditioned upon the APA's final agency action requirement.[1] In *Gallo Cattle Co. v. U.S. Dep't of Agric*., 159 F.3d 1194, 1198 (9th Cir. 1998), however, another panel held that the waiver "'contains several limitations,' including § 704's 'final agency action' requirement." The panel noted that there is "no way to distinguish" *Presbyterian Church* and *Gallo Cattle*, which are "directly contrary" to one another. *Gros Ventre* at 18482. The panel declined to resolve the matter "sua sponte en banc," however, *id*., and proceeded to hold that the Tribes have no common law cause of action for breach of trust. *Id*. at 18489.

There is no dispute that the APA's waiver of sovereign immunity applies to

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[1] Justice Souter agrees with this conclusion, and has specifically noted that § 702's waiver "cannot . . . be conditioned on the APA's 'final agency action' requirement." *Gros Ventre* at 18482 (quoting *Reno v. Am.-Arab Anti-Discrimination Comm*., 525 U.S. 471, 510 n.4 (1999) (Souter, J., dissenting)).

nonmonetary claims for equitable relief. *See Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation v. Bd. of Oil & Gas Conservation*, 792 F.2d 782, 793 (9th Cir. 1986) ("section 702 does waive sovereign immunity in non-statutory review actions for non-monetary relief brought under 28 U.S.C. § 1331"). There is a direct conflict, however, as to whether this waiver is limited by the "final agency action" provision in § 704.

Where there is a split in the Circuit's caselaw as stark as the conflict between *Presbyterian Church* and *Gallo Cattle*, it will be virtually impossible for any future panel to decide the issue. To secure uniformity of the Court's decisions, the Court must resolve this issue en banc. Fed. R. App. P. 35(b)(1)(A).

In addition to there being a clear "intracircuit conflict" that stymies both district courts and appellate panels in cases like this one under the APA, the question of whether a party can enforce ongoing violations of common law rights in equity is a question of "general importance" that is "likely to recur" every time a party seeks to enforce them – whether those rights arise under treaties, the Constitution, or common law. *See, e.g.*, *Hart v. Massanari*, 266 F.3d 1155, 1172 & n.29 (9th Cir. 2001) (citing *EEOC v. Ind. Bell Tel. Co.*, 256 F.3d 516, 529 (7th Cir. 2001) (en banc) (Posner, J., concurring)). The conflict between *Presbyterian*

Church and *Gallo Cattle* should be resolved en banc following thorough briefing.[2]

The need for en banc review is dramatized by the instant case, because the panel's inability to resolve the conflict prejudiced the outcome of the case to the Tribes' detriment. The district court concluded that "[f]or jurisdictional purposes, the nature of the relief sought determines the source of the sovereign immunity waiver," *Gros Ventre Tribe, et al. v. United States, et al.*, Civ. No. 00-69-DWM, slip op. (D. Mont. Nov. 12, 2004) ("Nunc Pro Tunc Order") at 9. The court bifurcated the case into liability and remedy phases, but then granted summary judgment to the government during the liability phase on the basis that no relief was available to the Tribes, before the Tribes had an opportunity to conduct discovery, present evidence, or brief the "nature of the relief sought." *Gros Ventre* at 18476-78. On appeal, the panel affirmed the district court on the basis that the lower court's holding turned on the sovereign immunity issue. *Id*. at 18491-92.

If the panel had reversed the district court's holding on the sovereign immunity issue, the case would have been remanded for proceedings on the merits of the Tribes' common law and statutory claims, and the appropriate remedies for

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[2] Because this petition highlights a lack of uniformity in the Court's cases and/or questions of exceptional importance about the federal government's obligations to all Native American tribes, the Court would benefit from additional briefing on the merits of these issues and a hearing.

those claims.[3]

The remedies sought by the Tribes are analogous to those sought by the plaintiffs in *Presbyterian Church*. In *Presbyterian Church*, several churches challenged the actions of Immigration and Naturalization Service ("INS") agents, who wore surveillance devices and recorded church services on numerous occasions without search warrants or probable cause. *Presbyterian Church*, 870 F.2d at 520. The churches alleged that the surveillance harmed their First Amendment rights. *Id*. at 521-22. The churches requested nominal damages, declaratory judgment, and injunctive relief to redress their injuries. *Id*. at 521.

In this case, the Tribes challenged actions by the federal government that have harmed and are continuing to harm the Tribes, their members, and their protected resources. The Tribes sought declaratory relief to clarify the legal obligations of federal agencies to the Tribes, and injunctive relief to stop pollution of Tribal waters and restore historic flows onto Tribal lands.

Due to the direct conflict in the Court's cases that impedes party's ability to enforce common law rights in equity under the APA, resulting in the panel's

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[3] The district court recognized that the federal government has an "enforceable fiduciary duty toward the Tribes, and that the Tribes may bring a claim against the government for mismanaging tribal property." Nunc Pro Tunc Order at 9.

inability to resolve the Tribes' claims here, the Court should grant this petition to resolve the issue en banc.

2. <u>This case involves questions concerning interpretation of Tribal treaties and other agreements that are of exceptional importance to all Tribes holding treaties with the federal government.</u>

There are four treaties and other agreements (hereinafter "treaties") specifically at issue here: (1) the Treaty of Fort Laramie (1851); (2) the Treaty with the Blackfeet (1855); (3) an Act of Congress from 1888; and (4) the "Grinnell Agreement," which was ratified by Congress in 1896.

In September 1851, the United States entered into the Treaty of Fort Laramie, under which it promised to protect several tribes (including the Tribes here) from "all depredations by the people of the . . . United States." *See* Treaty of Ft. Laramie, art. 3. In April 1856, the United States ratified the Treaty with the Blackfeet, under which it promised to protect several Indian tribes (including the Tribes here) against "depredations and other unlawful acts which white men residing in or passing through their country may commit." Treaty with the Blackfeet, art. 7.

The 1888 Act of Congress set apart a tract of land for the Tribes and designated it as the Ft. Belknap Indian Reservation. This Act reserved to the Tribes the full use of all waters flowing to and entering Reservation lands, including all water, undiminished in quality, necessary to fulfill the purposes of the Reservation.

The 1888 Act was the subject of the seminal Indian law case *Winters v. United States*, 207 U.S. 564 (1908). *See id*. at 576 (holding that the 1888 agreement ensured that the Tribes were provided full use of all waters flowing to and entering Reservation lands). Under the 1888 Act, the original Reservation included the Little Rocky Mountains, which are the headwaters for much of the Reservation's water resources, are considered sacred by Tribal members, and are used by the Tribes for hunting, fishing, cultural, and spiritual purposes. *See* Ex. A (map).

In the early 1880s, prospectors trespassing on the Reservation discovered gold in the Little Rocky Mountains. On October 5, 1895, subsequent to the trespass, the United States initiated negotiations with the Tribes and removed the Little Rocky Mountains from the Reservation so gold could be mined. *See* 54th Cong., Senate Doc. No. 117 ("Senate Report"), art. 10. The negotiations concluded with the signing of the Grinnell Agreement. During those negotiations, the United States again assured the Tribes that the Reservation's water resources would not be affected by the agreement.

Despite the numerous promises contained in these treaties and agreements, the *Gros Ventre* panel concluded that they do not protect the Tribes against depredations to their water and cultural resources, because the actions causing the depredations occurred on lands off of the Reservation. *Gros Ventre* at 18488. The

panel inexplicably failed to address, however, the key fact that these off-Reservation actions *are* causing direct, on-Reservation impacts, including pollution of waters running onto the Reservation, and diversion of historic flows onto Reservation.

The panel stated that "nowhere do we find the government 'unambiguously agreeing' to manage off-Reservation resources for the benefit of the Tribes." *Id.* at 18487 (quoting *U.S. v. Mitchell*, 445 U.S. 535, 542 (1980) ("*Mitchell I*")). The panel placed heavy emphasis on one sentence in the Treaty with the Blackfeet, which binds the United States to "'protect said Indians against depredations and other unlawful acts which white men residing in or passing through their country may commit.'" *Id*. at 18488 (quoting Treaty with the Blackfeet at Art. 7). Reading this sentence virtually in isolation, the panel concluded that the United States is bound to "protect only against those depredations that occur on Indian land." *Id*.

The panel's narrow interpretation of the phrase "residing in or passing through" ignores Supreme Court precedent and canons of treaty construction that make clear, *e.g.*, that when interpreting tribal treaties, "ambiguities . . . will be resolved from the standpoint of the Indians." *Winters*, 207 U.S. at 576; *see also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999) ("we interpret Indian treaties to give effect to the terms as the Indians themselves would

have understood them") (other citations omitted). The panel was required to "look beyond the written words to the history of the treat[ies], the negotiations, and the practical construction adopted by the parties" when interpreting the treaties, *Choctaw v. U.S.*, 318 U.S. 423, 431-32 (1943), and to the extent they are ambiguous, the panel was bound to resolve any such ambiguity in the Tribes' favor. *Winters*, 207 U.S. at 576-77; *see also id.* at 576-77 (courts must choose inference that would "support the purpose of the agreement," not "impair or defeat it").[4]

The panel's suggestion that there can be no specific trust violation if the government conduct in question occurs off-reservation also ignores precedent holding that the government must protect tribal resources off- as well as on-reservation. *See, e.g., Parravano v. Babbitt*, 70 F.3d 539, 546-47 (9th Cir. 1995) (rejecting argument that tribes' treaty-protected fishing rights do not extend off-

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[4] *See also* Treaty of Ft. Laramie, art. 3 (binding the government "to protect the . . . Indian nations against the commission of all depredations by the people of the . . . United States"); 1888 Act; Treaty with the Blackfeet; Grinnell Agreement, art. II (binding reservation funds to be spent, among other things, for the purpose of agricultural irrigation); Senate Report at 3 (providing that, pursuant to the Grinnell Agreement, the Indian Department should hold "control of the waters of the streams having their sources in the mountains for much-needed irrigation" for the benefit of the Indians' domestic uses, and that "no irreparable damage [may] be done the Indians by depriving them of these important benefits, which might be vital to their very existence"); *id*. (referring to the need to "protect the Indians in the continued enjoyment of the natural resources of their reservation"); *id*. at 3-4 (stating that the Fort Belknap Indians were assured "that they would have ample water for all their needs").

reservation); *White Mountain Apache Tribe v. Hodel*, 784 F.2d 921, 925 (9th Cir. 1986) (federal government has "firm obligation to represent [a] Tribe's interests forcefully" in water rights adjudication or risk claim for "breach of duty"); *Gila River Pima-Maricopa Indian Cmty. v. U.S.*, 684 F.2d 852, 861-62 (tribes entitled to remedy for upstream diversion of protected water resources); *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F.Supp. 252, 256 (D.D.C. 1972) ("most exacting fiduciary standards" obligated federal government to send water to Pyramid Lake to support treaty-protected tribal fishery); *Nw. Sea Farms v. Corps of Eng'rs*, 931 F.Supp. 1515 (W.D. Wash. 1996) (upholding Corps' refusal of aquaculture permit because it could interfere with treaty-protected fisheries); *N. Cheyenne Tribe v. Hodel*, 12 Indian L. Rpt. 22065 (D. Mont. 1985) (rejecting the BLM's proposal to lease federal lands for coal development just outside Northern Cheyenne reservation); *Klamath Tribes v. U.S.*, No. 96-381-HA, 1996 WL 924509 (D. Or. 1996) (enjoining timber sales on Forest Service lands that supported treaty-protected deer herds).

Moreover, the panel's emphasis on the phrase "residing in or passing through" ignores the fact that the Treaty of Ft. Laramie and the 1888 Act establishing the Reservation, and the Grinnell Agreement, do *not* contain the phrase.

Finally, there is simply no dispute that depredations to protected Tribal

resources have occurred, both on and off the Reservation. The district court acknowledged that it is "undisputed" that the mines "have devastated portions of the Little Rockies, and will have effects on the surrounding area, *including the Fort Belknap Reservation*, for generations." Slip Op. (June 28, 2004) at 12 (emphasis added). The district court further acknowledged that "[t]hat devastation, and the resulting impact on tribal culture, cannot be overstated." *Id*. Indeed, the Tribes presented factual evidence to the district court and the panel demonstrating that although located on non-Reservation lands, the mines have caused extensive environmental harm on the Reservation, in addition to the harm in the immediate vicinity of the mines.[5]

When read together and from the Tribes' standpoint, it is clear that the treaties *do* protect the Tribes from the very type of depredations that occurred in this case, even if the actions causing those depredations occurred off the Reservation itself. The panel's decision fails to address these facts, and narrowly

[5] For example, the Tribes presented evidence demonstrating that mining operations have diverted flows from the Little Rocky Mountains away from the Reservation, generated waste, and polluted watersheds in the mountains, including those running onto the Reservation. The mines have also leached, and continue to leach, acid rock drainage – an acidic brew of heavy metals – into surface and groundwaters hydrologically connected to the Reservation. The Tribes' cultural and spiritual use of the mountains have also been severely eroded – for example, Spirit Mountain, once the core of Tribal religious practices in the mountains, is now an open pit.

construes one sentence of one of the Tribes' treaties to reach a result that is clearly inconsistent with the treaties as the Tribes would have understood them at the time. If allowed to stand, the panel's decision will render virtually meaningless the government's obligations to the Tribes under those agreements. For all Tribes who have treaties and other agreements with the United States, this is a matter of exceptional importance.

3. This case concerns questions of exceptional importance concerning the nature and scope of the federal government's general fiduciary trust obligation to all Native American tribes.

The panel determined that, in the absence of specific treaties or agreements, the federal government's general fiduciary trust obligation to Native American tribes requires nothing more than what the government is obligated to provide for every other, non-Indian citizen: facial compliance with statutes of general applicability, enforced only through statutes containing a private right of action, or, alternatively, the APA. *Gros Ventre* at 18480 & n.7. Whether the federal government's trust obligations to Indian Tribes are limited in this way is a question of exceptional importance that has far-reaching implications for all Native American tribes, and, thus, should be resolved by the Court en banc.

There is now extensive confusion on the important question of the nature and scope of the government's general trust obligation to Native American tribes. This

confusion stems from Ninth Circuit opinions that have suggested that the general trust obligation may be satisfied simply by facial compliance with statutory and regulatory requirements. These opinions began with *North Slope Borough v. Andrus*, 642 F.2d 589 (D.C. Cir. 1980), in which the court mistakenly applied the requirements for waiver of sovereign immunity under the *Tucker Act*, 28 U.S.C. § 1505, which governs claims for money damages by Tribes against the federal government, to a case for equitable relief arising under *§ 702's* waiver of immunity. *Id*. at 612.

In *North Slope Borough*, the Inupiat Tribe of Alaska sued the Department of the Interior for endangering the survival of the bowhead whale, upon which the Inupiat depend, through oil leasing. The Inupiat sought injunctive relief – the cessation of oil leasing – to remedy the Department's violations of its general trust responsibility. *Id*. at 597. The *North Slope Borough* court, relying on *Mitchell I*, a Tucker Act case involving claims for money damages, ruled against the Inupiat and held that a trust responsibility can only arise from a statute, treaty or executive order. *Id*. at 611 (citing *Mitchell I*, 445 U.S. at 535). The *North Slope Borough* panel cited to *Mitchell I*'s holding that, for *Tucker Act* money claims, unless there is "an unambiguous provision by Congress that clearly outlines a federal trust responsibility," the general trust obligation is met through compliance with general

statutes and regulations. *Id*. at 612.

The Tucker Act gives the United States Court of Claims jurisdiction over "any [damages] claim against the United States founded either upon the Constitution, or any Act of Congress." 28 U.S.C. § 1505. Jurisdiction under the Tucker Act is thus expressly limited to specific textual sources – acts of Congress or the Constitution. The *Mitchell I* court held that the General Allotment Act, relied upon by the Tribe as its source of textual, substantive law, did not support a claim for money damages and therefore did not meet the jurisdictional requirements of the Tucker Act. *Mitchell I*, 445 U.S. at 546.

Since 1980, the Ninth Circuit has followed the *North Slope Borough* opinion without distinguishing between Tucker Act claims for money damages and § 702 claims for non-monetary damages. *See, e.g.*, *Morongo Band of Mission Indians v. F.A.A.*, 161 F.3d 569, 574 (9th Cir. 1998); *Havasupai Tribe v. U.S.*, 752 F.Supp. 1471, 1486-88 (D. Ariz. 1990), *aff'd sub nom*. *Havasupai Tribe v. Robertson*, 943 F.2d 32 (9th Cir. 1991), *cert. denied*, 503 U.S. 959 (1992); *Inter-Tribal Council of Arizona v. Babbitt*, 51 F.3d 199, 203 (9th Cir. 1995).

In other opinions, the Ninth Circuit has acknowledged the crucial distinction between Tucker Act claims and equitable claims for breach of trust. For example, in *Rincon Band of Mission Indians v. Harris*, 618 F.2d 569 (9th Cir. 1980), the

Court noted that in an equitable suit for breach of trust, courts need not face the "jurisdictional dilemma" presented by tribal claims for money damages. *Id*. at 575 n.8. In *Hoopa Valley Indian Tribe v. Ryan*, 415 F.3d 986 (9th Cir. 2005), the Court evaluated an equitable claim for breach of trust in the awarding of contracts under the Indian Self-Determination and Education Assistance Act without reference to, nor analysis of, the Tucker Act standard pertaining to damages. *Id*. In *Hoopa Valley*, the Court rejected the breach of trust argument on the merits, not because such duties are nonjusticiable. *Id*. Importantly, there was no suggestion that such duties are unenforceable in the absence of specific delineation in a statute, a result the Tucker Act cases have been read to hold.[6]

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[6] The panel in the instant case relied on *Morongo Band* to conclude that the general trust obligation can be satisfied simply through facial compliance with statutory and regulatory requirements. *Gros Ventre* at 18486-87 (citing *Morongo Band*, 161 F.3d at 573). *Morongo Band*, however, cannot bear the weight the panel gives it. The Tribe there did not allege a violation of the trust duty itself, but rather argued that the Federal Aviation Administration's duties to implement the National Environmental Policy Act, the National Historic Preservation Act, and the Transportation Act were infused with a special duty of care to protect tribal interests. The decision's summary of the Tribe's claims omitted any mention of a breach of trust. *Morongo Band*, 161 F.3d at 572. The Court refused to give the relevant statutes a trust gloss, and the Court's comments on the scope of the trust duty is nothing more than *dicta*. Moreover, *Morongo Band* does not address the distinction between claims for damages and equitable relief, a distinction clarified in *U.S. v. White Mountain Apache Tribe*, 537 U.S. 465, 478-79 (2003), decided years after *Morongo Band*. *Id*. at 478 (affirming distinction between equitable breach of trust claims and claims seeking damages, which must be based upon specific law "meant to provide a damages remedy for breach").

The potential for confusion created by trust law opinions conflating § 702 claims with Tucker Act claims is further illustrated by *Pit River Tribe v. Bureau of Land Mgmt.*, 306 F. Supp. 2d 929 (E.D. Cal. 2004), *rev'd on other grounds*, *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768 (9th Cir. 2006). In *Pit River*, the Court left in place dicta reflecting the principle that where harm to tribal *property* is involved, the federal agencies' fiduciary obligations to tribes is not necessarily met through agency compliance with statutes of general applicability. *Pit River Tribe*, 306 F. Supp. 2d at 951 ("Because this case does not involve tribal property, the federal agencies' duty to the Tribe is to follow all applicable statutes."); *Pit River Tribe*, 469 F.3d at 788 ("we do not reach the question of whether the fiduciary obligations of federal agencies to Indian nations might require more"); *see also supra* at 13-14 (cases construing government's trust obligation to require protection of tribal property and resources).

The Court's failure to distinguish between money damages and equitable relief in prior decisions involving Indian trust claims has, unfortunately, led to the illogical result that, despite acknowledging a general trust obligation, the federal government owes no greater obligations to tribes than to any citizen. As one scholar has stated, "[i]f the Court finds a prevailing fiduciary obligation only when statutory law already imposes duties on the executive branch, then the doctrine

arguably amounts to little more than an emboldened principle of statutory interpretation." *See* Mary Christina Wood, *Indian Land and the Promise of Native Sovereignty: The Trust Doctrine Revisited*, 1994 Utah L. Rev. 1471, 1521-22 (1994).

This petition presents an opportunity for the Court to clarify the law regarding the federal government's general trust obligation to all Indian tribes. Accordingly, the Tribes' petition for review of this issue should be granted.

CONCLUSION

For the foregoing reasons, the Tribes respectfully request that this panel or the Court en banc rehear this case and reverse the panel's decision.

Dated: December 27, 2006.

Respectfully submitted,

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Brief Format Certification Pursuant to Circuit Rule 32-1

I hereby certify that Plaintiffs-Appellants' Brief is proportionally spaced, has a typeface of 14 points, and contains 4,187 words and 367 lines.

Amy Atwood Date

Certificate of Service

I hereby certify that on December 27, 2006, I served two true and correct copies of Plaintiffs-Appellants' Petition for Rehearing *En Banc* , via Federal Express, overnight delivery, to:

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