No. 09-960

In the Supreme Court of the United States

WILLIAM H. HOGAN, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF ALASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*,

Petitioners,

v.

KALTAG TRIBAL COUNCIL, *et al.*,

Respondents.

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

SUPPLEMENTAL BRIEF FOR PETITIONERS

DANIEL S. SULLIVAN
Attorney General
PETER K. PUTZIER
Assistant Attorney General
STATE OF ALASKA
Department of Law
1031 West 4th Avenue
Suite 200
Anchorage, AK 99501
(907) 269-5100

GREGORY G. GARRE
Counsel of Record
MICHAEL E. BERN
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

Counsel for Petitioners

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

Page(s)

STATUTES

TABLE OF AUTHORITIES—Continued

INTRODUCTION

In opposing certiorari, respondents focused their efforts on arguing that this case is not an appropriate "vehicle" to decide the undeniably important question presented. Opp.7. We explained why respondents were wrong in our reply brief in support of certiorari. And the government acknowledges that the question presented is squarely before the Court. Instead, the government argues that certiorari is unwarranted because (1) the Ninth Circuit's ruling that tribes have inherent sovereignty over child-custody proceedings involving nonmembers outside Indian country is correct, U.S.Br.8-14, and (2) there is no practical need for this Court's review, U.S.Br.18-22. Each of those arguments only underscores the case for certiorari. The government's defense of the Ninth Circuit rule is based on a far-reaching conception of tribal sovereignty that is sharply at odds with this Court's precedents and will have profound implications for Alaska. And the government's view of the situation from Washington, D.C. is drastically out of touch with the real world problems and confusion on the ground in Alaska.

ARGUMENT

A. THE GOVERNMENT'S MERITS DEFENSE UNDERSCORES THE NEED FOR REVIEW

1. It is not surprising that the government has recommended denial given its central "policy" objective of "supporting tribal justice systems." U.S.Br.1 (parenthetical). That objective has put the government on the losing side of most of the Court's recent tribal sovereignty cases. *See, e.g.*, U.S.Br. in *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 128 S. Ct. 2709 (2008); U.S.Br. in *Nevada v. Hicks*, 533 U.S. 353 (2001); U.S.Br. in *Atkinson Trading Co. v.*

Shirley, 532 U.S. 645 (2001); U.S.Br. in *Strate v. A-1 Contractors*, 520 U.S. 438 (1997). In each case, this Court rejected the government's more expansive views concerning tribal sovereignty over nonmembers on reservations. *Plains Commerce*, 128 S. Ct. at 2721; *Hicks*, 533 U.S. at 359-65; *Atkinson Trading Co.*, 532 U.S. at 656-57; *Strate*, 520 U.S. at 456-59. What is remarkable about the government's position in this case is not that it supports the tribe, but how *far* it goes in propounding the scope of tribal sovereignty—over a nonmember, outside Indian country, to terminate parental rights—without even recognizing the novelty of the theory it advances.

2. a. As explained in the petition (Pet.16-18), this Court has consistently stressed that "the inherent sovereignty of Indian tribes" is "limited to 'their members and their territory,'" *Atkinson Trading*, 532 U.S. at 650, and repeatedly rejected "the extension of tribal civil authority over nonmembers on non-Indian land," *Plains Commerce*, 128 S. Ct. at 2722. The government argues that "[t]ribal jurisdiction over domestic relations" is immune from those fundamental limits because it goes to the "core" of the tribe's "retained sovereignty." U.S.Br.9. But this Court's precedents compel just the opposite conclusion.

This Court has already held that tribal sovereignty encompasses "domestic relations *among members*." *Montana v. United States*, 450 U.S. 544, 564 (1981) (emphasis added). And the case to which this Court has repeatedly cited to support that proposition involved an adoption proceeding where "*all* parties belonged to the Tribe and resided on its reservation." *Strate*, 520 U.S. at 458 (citing *Fisher v. District Court*, 424 U.S. 382, 386 (1976)) (emphasis added); *see Plains*

Commerce, 128 S. Ct. at 2718. Likewise, in the Court's only case concerning inherent tribal authority over adoptions outside Indian country, this Court refused to embrace the dissent's argument that ordinary tribal jurisdictional rules do not apply where the case "involves a problem of domestic relations." *DeCoteau v. District County Court for the Tenth Judicial Dist.*, 420 U.S. 425, 465 n.8 (1975) (Douglas, J., dissenting).

Remarkably, although it relies on *Montana*, the government never even acknowledges *Montana*'s "domestic relations *among members*" rule, much less the facts of *Fisher* and *DeCoteau*. Instead, the government asserts that *its* rule that tribes have domestic relations authority over nonmembers outside Indian country is "longstanding" and "firmly rooted." U.S.Br.8-9. But the government fails to cite a single case from this Court supporting that proposition. Instead, all the cases the government cites involve situations in which all parties were tribal members and were domiciled on a reservation. U.S.Br.9; *see Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48-49 (1989); *Fisher*, 424 U.S. at 389; *United States v. Kagama*, 118 U.S. 375, 381-82 (1886).

b. The centerpiece of the government's argument is the proposition that the *Montana* framework provides the source of authority over nonmembers in this context. U.S.Br.11-12. But the *Montana* exceptions only "permit tribal regulation of nonmember conduct *inside the reservation*." *Plains Commerce*, 128 S. Ct. at 2721 (emphasis altered). This Court has never applied the exceptions to expand tribal authority over nonmembers *outside* Indian country. The tribe in this case—like virtually all 229 tribes in Alaska—lacks Indian country. *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520

(1998). The government therefore proposes an unprecedented expansion of tribal sovereignty over nonmembers for nearly half the nation's Indian tribes.[1]

Further, *Montana* does not help the government anyway. The government invokes (Br.11-12) *Montana*'s second exception, which governs matters that "threaten[] … the political integrity … or the health or welfare of the tribe." 450 U.S. at 566; *see Strate*, 520 U.S. at 459. This Court has never found an assertion of tribal authority justified under that exception, and has stressed that the exception applies only when "necessary to avert catastrophic consequences." *Plains Commerce*, 128 S. Ct. at 2726. And it cannot seriously be argued that a tribe's ability to terminate the parental rights of a nonmember to enable the adoption of an Indian child domiciled outside Indian country by nonmembers who live in a different village is vital to tribal self-government.

c. Lacking support for its position in Indian law, the government turns to the rules governing adoptions in the inter-*State* context. U.S.Br.12-13. That argument only underscores how profoundly misguided the government's position is. First, analogizing the "Village of Kaltag" to a "home State" under child-

---

[1] The government's reliance on *Montana* also flies in the face of lower court precedent. *See, e.g.*, *Hornell Brewing Co. v. Rosebud Sioux Tribal Court*, 133 F.3d 1087, 1091 (8th Cir. 1998) ("Neither *Montana* nor its progeny purports to allow Indian tribes to exercise civil jurisdiction over the activities or conduct of non-Indians occurring outside their reservations."); *see also State v. Klamath Tribe*, 11 P.3d 701, 706 (Or. Ct. App. 2000); *Wright v. Colville Tribal Enter. Corp.*, 111 P.3d 1244, 1248 (Wash. Ct. App. 2005), *rev'd on other grounds*, 147 P.3d 1275 (Wash. 2006).

custody laws suggests that Kaltag has a territorial dimension to its sovereignty that it plainly lacks given the absence of Indian country. And second, analogizing the tribe to a State overlooks that—because "[t]ribal sovereignty … is 'a sovereignty outside the basic structure of the Constitution'"—"[t]he sovereign authority of Indian tribes is limited in ways state … authority is not." *Plains Commerce*, 128 S. Ct. at 2726 (quoting *United States v. Lara*, 541 U.S. 193, 212 (2004) (Kennedy, J., concurring)).[2]

3. The government argues that the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901, *et seq.*, "confirm[s]" its position on tribal authority over nonmembers. U.S.Br.9. Importantly, however, the government agrees with the parties that ICWA does *not* "grant" additional authority to tribes in this context. U.S.Br.10; *see* Pet.25 n.16. Accordingly, the tribal sovereign question presented turns on the *inherent* authority of the tribe. *See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 (1978) (refusing to expand inherent authority of tribes to

---

[2] The government argues that there is no conflict of authority among the lower courts. U.S.Br.14-18. That position follows largely from its mistaken reading of this Court's precedents and a selective reading of the lower court authority. *Compare, e.g., Roe v. Doe*, 649 N.W.2d 566, 576 (N.D. 2002) ("We recognize that Indian tribes retain their inherent power … to regulate domestic relations among members. However, in this case Roe and Doe are not members of the same tribe.") (citation omitted). In any event, this case raises an issue of exceptional concern to Alaska and its people. Pet.10-15. The stark conflict between the Ninth Circuit ruling and this Court's decisions is alone more than sufficient to warrant certiorari. *Cf. Venetie*, 522 U.S. 520.

reach nonmembers in criminal context "absent affirmative delegation of such power by Congress").

ICWA establishes jurisdictional rules for managing authority—*when it otherwise exists*. Pet.22-25. The government points to legislative history suggesting that Section 1911(b) was intended to adopt "a modified doctrine of *forum non conveniens*, in appropriate cases." U.S.Br.10 (quoting H.R. Rep. No. 95-1386, at 21 (1978), *reprinted in* 1978 U.S.C.C.A.N. 7530 ("1978 House Report")). But "the outset of any *forum non conveniens* inquiry" is a determination whether the alternative forum would have jurisdiction. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254 n.22 (1981).

The government's reliance (U.S.Br.9-10) on *Holyfield* is similarly misplaced. The fact that Section 1911(b) contemplates that there will be "concurrent jurisdiction" when a transfer is allowed—such as in the typical case in the Lower 48 States that Congress undoubtedly had in mind, where all parties to the proceeding are tribal members—does not answer the question whether tribes have inherent sovereignty over child-custody cases involving nonmember parents outside Indian country. Nor did *Holyfield*—a case in which *all* parties were tribal members domiciled on the reservation—address that issue. 490 U.S. at 37. The *dictum* in *Holyfield* on which the government relies therefore in no way supports its position that tribal sovereignty exists in the quite different situation here.

The government argues that ICWA's scheme "focuses on the status of the child" and that Congress did not carve an "*exception* based on the membership status of some other party." U.S.Br.12 (emphasis added). But Congress was free to base its rules managing jurisdiction—when it otherwise exists—based on any factor, including a child's status. The fact

that Congress chose to focus on this factor does not mean it intended to confer jurisdiction over nonmembers. Moreover, the government has it backwards: this Court's precedents require a tribe to identify an "affirmative delegation" by Congress of authority over nonmembers, *Oliphant*, 435 U.S. at 208; they do not adopt tribal sovereignty over nonmembers as a baseline to which Congress must make *exceptions*.

Finally, the government's efforts to wrap itself in ICWA is ironic given that its position would gut one of the important protections of the Act—an in-writing, court-recorded parental consent requirement (§ 1913(a)). The government suggests that the nonmember father did not "object[]" to the termination of his parental rights. U.S.Br.21. But one of the chief concerns that ICWA sought to address was the uninformed waiver of rights. Cert.Reply.10. And the government's attempt to equate a failure to object with informed consent epitomizes the mindset that Congress sought to eliminate when it enacted ICWA. This case was decided below on the premise that the nonmember father did *not* consent and, in any event, even the most informed consent is insufficient to confer subject-matter jurisdiction. Cert.Reply.9-11.

B. THE GOVERNMENT IS OUT OF TOUCH WITH THE REALITY IN ALASKA

The government also claims that certiorari is unwarranted because the State—and Alaskan families and children—have "no reason" to worry about the Ninth Circuit rule. U.S.Br.21. But the government's view of the issue from Washington, D.C. is starkly at odds with the reality 3000 miles away in Alaska.

The parties in this case and *amici* parents—who are far better situated to evaluate the situation in Alaska—

agree that the question presented is "one of extraordinary importance to Alaska." Opp.9; *see* Amicus.Br.6. Moreover, the government does not dispute the fundamental demographics in Alaska that guarantee this issue will constantly recur. Pet.10-15. More than 200 tribes are spread throughout Alaska. Relationships between members of different tribes or Natives and non-Natives are commonplace. And nearly 40% of Alaska Natives are minor children. The question presented thus affects potentially thousands of Alaskan children and families.

Two facets of Alaskan life underscore the far-reaching significance of the question presented. First, Alaskan Natives comprise a relatively large percentage of the entire population in Alaska (15.2%), U.S. Census Bureau, *Alaska Quick Facts* (2010)—much greater than the percentage of Native Americans in any other State. And second, most communities—whether urban centers or rural villages—are mixtures of Natives and non-Natives. Even Native villages are typically mixed communities. Pet.13. The entire fabric of Alaskan society, in other words, is different in ways that magnify the importance of this case.[3]

The government asserts that there are "no untoward consequences" from the Ninth Circuit's rule. U.S.Br.19. But the government simply shrugs off the adverse consequences spelled out in the petition, Pet.25-30, and ignores much of the evidence before the

---

[3] Unlike *amici*, the State is not questioning tribal status. Pet.17 n.12. Indeed, the State is partnering with tribes and rural communities across Alaska. But that in no way diminishes the extraordinary importance of the question presented.

Court, including concerns about tribal court procedures in child-custody matters, Pet.27-28 nn.18-19, reports of tribes competing over jurisdiction, Pet.26 n.17, and graphic accounts of nonmember parents stripped of their children by tribal courts with little notice or process, Amicus.Br.2-6. Instead, the government asserts that there is no cause for concern because "tribes are often able to work cooperatively," and "do not *always* seek jurisdiction" in child-custody cases. U.S.Br.19-20. But that says nothing about the growing body of cases in Alaska—like this one—in which tribes *have* asserted jurisdiction and conflicts *have* arisen.

Evansville Village v. Taylor is just one example. There, the tribal court—headquartered in a village of *thirty* residents, only *fourteen* of whom are Natives—purported to extinguish a non-Native mother's custody of her daughter, even though the nonmember mother had sole custody from 2000 and lived with her daughter in Fairbanks, and the daughter was only one-sixteenth Native Alaskan. Amicus.Br.4-6. Pursuant to the tribe's order, the child was physically seized by Evansville Village. Respondents suggested that such conflicts are easily resolved by Alaska's courts. Opp.35 n.9. But the tribe has issued further orders since then in defiance of Alaska's courts, claimed that the "Fairbanks Police Department and the maternal parent are non-compliant," Add.2a, and asserted continued custody over the child. Similar occurrences are becoming commonplace. As recent tribal orders illustrate, tribes are asserting authority over child-custody proceedings when *neither* parent is a member and even when the *child* is not a member. Add.3a-10a.

The government's effort to turn the tables by suggesting that it is the involvement of *the State* in

these matters that is problematic is unavailing and remarkable in light of the State's sovereign *parens patrie* interest concerning Alaskan children. The State has a comprehensive child protective services system that exists to protect *all* children in Alaska, and the State is currently overseeing hundreds of cases in which a child is of mixed tribal heritage. Pet.4-5, 12. Likewise, the state courts are perfectly capable of adjudicating these disputes, no matter where they arise. But more fundamentally, the question is not which forum (tribal or state) is more *convenient*; it is whether a tribal court can subject nonmembers—who have no say in the tribe—to its jurisdiction. Pet.18.[4]

The government also suggests that the fact that nonmembers may object to jurisdiction in tribal court or invoke the Indian Civil Rights Act to protect their interests is a reason to dismiss the concerns with subjecting nonmembers to tribal jurisdiction. U.S.Br.21 n.8. This Court has seen—and rejected—this line of argument before. *Oliphant*, 435 U.S. at 211-12. And for good reason. Under the decision below, a tribe may simply dismiss such objections. And parallel state court litigation over the adequacy of tribal courts is precisely the kind of follow-on litigation that Alaska predicted would occur—requiring Alaska's courts to sort out the legitimacy of up to 229 different tribal court regimes as applied to particular cases, while prolonging child-custody disputes. Pet.29-30.

---

[4] The government is wrong in suggesting (U.S.Br.21) that the State failed to respond appropriately in this case. Cert.Reply.11-12. And as is true for the federal government's own officers, state officials are entitled to a presumption of good faith and regularity.

Despite the urgent need for this Court's review, the government suggests (U.S.Br.17-18) that the Court should pass on this case and wait for *State v. Native Village of Tanana*, No. S-13332 (Alaska S. Ct.). But the *Tanana* case does not arise on any concrete set of facts, creating a serious impediment to judicial review of the context-specific tribal authority issue. Alaska.Br.10-14. Moreover, the absence of facts has led to a dispute over what *is* at issue. Notably, the trial court stated that its decision "addresses issues related to tribal members and *not* nonmembers," Order at 2, *Native Village of Tanana v. State*, No. 3AN-04-12194CI (Alaska Super. Ct. Dec. 8, 2008) (emphasis added), and the tribe has argued that there are no fewer than *four* reasons why the issue of tribal jurisdiction over nonmembers in child-custody proceedings "is simply not presented," Appellees.Br.33.

By contrast, this case undeniably presents the nonmember issue and arises on a concrete set of facts that the government acknowledges squarely presents the issue—making it an ideal vehicle for resolving the scope of tribal authority over nonmembers outside Indian country in child-custody cases. And in any event, nothing the Alaska Supreme Court says in *Tanana* can undo the Ninth Circuit precedent below.

The government has filed a brief squarely joining issue on the question presented and defending the Ninth Circuit's extraordinary conception of tribal sovereignty over nonmembers outside Indian country. Respondents are represented by expert counsel in Indian law matters. And the decision below is the product of a Ninth Circuit precedent that was wrong when it was decided nearly 20 years ago—and even more wrong today in light of this Court's subsequent cases. There is no reason to put off review of the

important question presented. Indeed, to do so will only exacerbate the confusion, uncertainty, and jurisdictional chaos currently facing Alaska.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DANIEL S. SULLIVAN
Attorney General
PETER K. PUTZIER
Assistant Attorney General
STATE OF ALASKA
Department of Law
1031 West 4th Avenue
Suite 200
Anchorage, AK 99501
(907) 269-5100

GREGORY G. GARRE
Counsel of Record
MICHAEL E. BERN
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

Counsel for Petitioners

ADDENDUM

TABLE OF CONTENTS

EVANSVILLE TRIBAL COURT
Evansville, ALASKA

In the Matter of:	)
	)
NAME:	)
Madison A Costello	)
	)
DOB:	)
8/12/1999	) Case No. 2010-01-09
	)
	) Tribal Court Phone Number
Minor Tribal Member	) (907) 692-5005

ORDER GRANTING TEMPORARY CUSTODY

The Evansville Tribal Court held a hearing on July 8th, 2010 AT 3:00 PM. After considering all of the available evidence, the Tribal Court finds that the safety and welfare of the child, Madison Arianna Costello, is endangered if the Tribe does not take continued temporary legal custody.

The Tribal Court HEREBY FINDS:

1. Madison A Costello is a minor Evansville Tribal Member and;
2. Evansville Tribal Family & Youth Services, the petitioner in the case, requests an extension from the Evansville Tribal Court to take legal custody over the child, and to place her in the physical custody of Tribal Family & Youth Services for a period of **120 days from July 8th, 2010**, at which point there will be a review hearing. The review Hearing is to be held **November 5th, 2010**.

3. There is cause for needed care from the Evansville Tribal Court and Evansville Tribal Family and Youth Services regarding the above named minor Tribal Member because, the Fairbanks North Star Borough School District, the Fairbanks Police Department and the maternal parent are non-compliant with the Tribal Court Orders set out from previous hearings; and the State of Alaska Office of Children's Services has been non-communicative and negligent towards this minor Tribal Member's health, safety and well-being.

The Tribal Court CONCLUDES:

1. The above named minor Tribal Member is a child in need of aid; and
2. It is in the best interest or the child for the Tribe to have continued temporary legal custody of her in order to secure her care; and
3. It is in the best interest of the child to remain in the temporary physical custody of Evansville Tribal Family & Youth Services for **120** days; and
4. It is in the best interest of the child for Evansville TFYS, to monitor the child's safety and well-being.

The Tribal Court ORDERS:

1. The Evansville Tribal Court will continue to have temporary legal custody of the child; and
2. The physical custody of the child is temporarily granted to Evansville Tribal Family & Youth Services for **120** days. During this time, the TFYS shall exercise full powers of guardianship, this includes medical, dental and academic

concerns and supervised visitation with parent; and

3. The Evansville Tribal Court requests that the Evansville TFYS, monitor this case; and
4. The Evansville Tribal Court requests that the Evansville TFYS and the TCC Child Protection Team work closely with OCS while there is an open case concerning the above named minor Tribal Member.
5. The Evansville Tribal Court will reconsider this matter in a hearing on **November 5th, 2010**, to determine whether temporary custody by the court shall be extended for a period not to exceed **120** days.

DONE BY TRIBAL COURT ACTION THIS 8th DAY OF JULY 2010.

[illegible]
Tribal Court Judge

07-14-2000
Date

ETC Order-2010-01-09

IN THE SUPERIOR COURT FOR
THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA, on its own behalf and as *Parens partriae* on behalf of its members,	)	
Plantiff,	)	
v.	)	
STATE OF ALASKA, PATRICK S. GALVIN, in his official capacity of Commissioner of the Alaska Department of Revenue and JOHN MALLONEE, In his official capacity of Director of the Alaska Child Support Services Division.	)	Case No. IJU-10 -376 CI
Defendants.	)	

PLAINTIFF'S RESPONSES TO DEFENDANTS' FIRST AND SECOND SETS OF DISCOVERY REQUESTS

Plaintiff responds to defendants' first and second sets of discovery requests as follows:

* * *

RFA No. 6: Please admit that CCTHITA does not have subject matter jurisdiction to issue a child support order if one parent is a nonmember.

Response: Deny. The Tribe has inherent subject matter jurisdiction to issue valid child support orders for children who are members of the Tribe or eligible for membership in the Tribe.

RFA No. 7: Please admit that CCTHITA does not have subject matter jurisdiction to issue a child support order if the child's custodian is a nonmember.

Response: Deny. The Tribe has inherent subject matter jurisdiction to issue valid child support orders for children who are members of the Tribe or eligible for membership in the Tribe.

RFA No. 8: Please admit that CCTHITA does not have subject matter jurisdiction to issue a child support order if both parents are nonmembers.

Response: Deny. The Tribe has inherent subject matter jurisdiction to issue valid child support orders for children who are members of the Tribe or eligible for membership in the Tribe.

* * *

As to responses to requests for production, responses to requests for admission, and objections:

DATED this 19th day of August, 2010.

s/ Holly Handler
Holly Handler, Bar No. 0301006
ALASKA LEGAL SERVICES CORPORATION
419 Sixth Street #322
Juneau AK 99801
Phone: (907) 586-6425
Fax: (907) 586-2449

As to responses to interrogatories:

DATED this 19th day of August, 2010.

s/ Eddie Brakes
Eddie Brakes
CCTHITA Tribal Child Support Unit Manager

Subscribed to and sworn before me this 19th day of August 2010.

s/ Hollis L. Handler
Notary Public for the State of Alaska
My commission expires: 1-1-2011

[notary seal omitted]

THE KENAITZE INDIAN TRIBAL COURT
IN AND FOR THE KENAITZE INDIAN TRIBE
FIRST JUDICIAL DISTRICT OF KENAI
CHILDREN'S DIVISION

[TRIBAL COURT SEAL OMITTED]

In the Matter of:	)
Skylair Childress	)
DOB: 04/08/96	)
	)
	)
Minors Under the Age	) Case No. CT 10 004 SC
Of Eighteen Years	)

ORDER FOLLOWING REVIEW HEARING OF CHILD IN NEED OF AID

1. This matter came before the Kenaitze Tribal Court on July 22, 2010 at 3:20 p.m. This hearing took place in front of Tribal Court Judges Rita Smagge, Mary Ann Mills and Rusty Swan. Court Clerk, Annette Schultz, Tribal Court Liaison, Nate Esteban and CASA Kym Miller were also present in the courtroom.
2. The above name-child (Skylair) is not a Kenaitze Tribal Member nor is his Mother (Nancy Childress) who is deceased and Father (Jorge Morena Jr.). Skylair is a member of The Native Village of Kotzebue IRA. At this time Skylair lives with his Maternal Grandparents Rhoda and Gary Dailey whom are being enrolled with The Native Village of Kotzebue IRA. The Kenaitze Tribal Court received a letter from The Native

Village of Kotzebue IRA asking the Kenaitze Tribal Court to take jurisdiction of this case. Therefore the Court has jurisdiction over the above named minor under the Kenaitze Indian Tribe Domestic Relations Code Chapter 1 Sections 2 (A) (1) and (2).

3. Mrs. Dailey and Mr. Dailey were noticed of this hearing on July 8, 2010 by mail.
4. The hearing was recorded by a digital recording device. Mrs. and Mr. Dailey were present in the courtroom for the hearing and testified. The following people testified: Nate Esteban (Tribal Court Liaison) and Kym Miller (CASA).
5. The purpose of the hearing on July 22, 2010 was a review hearing.
6. Kym Miller testified that Skylair is set up for counseling at Nakenu Family Center. She stated Skylair is still requesting to live with his step father, Mathew Grant. There has been no more contact between Skylair, Mr. Grant and Mr. Morena. Mrs. Miller also stated the account at AK USA has been closed.
7. Nate Esteban testified that he received a copy of the actual resolution from the Native Village of Kotzebue. He stated Skylair is scheduled to start therapy on July 29th at Nakenu Family Center. Mr. Esteban also stated he sent petitions to Mr. Grant and Mr. Morena for them to fill out so they can become parties to the case; he has not yet received the petitions.
8. Mr. Dailey testified he has told Skylair he is not going to live with Mr. Grant. Mr. Dailey stated he don't think he will see Mr. Grant, he is not

welcome here. He stated they are waiting for Skylair to see a therapist.

9. Mrs. Dailey testified she still wants to raise Skylair.
10. The Court finds that it is in the best interest of the above-named child to be under Guardianship of his Grandmother Mrs. Dailey and Grandfather Mr. Dailey at this time. The child's mother past away and the father has not been part of his life.
11. The Court finds that based on the testimony presented that Skylair is a Child In Need of Aid pursuant to the Domestic Relations Code Chapter 2 Section 6.

IT IS HEREBY ORDERED

1. The above named child is placed in temporary custody of the Kenaitze Indian Tribe.
2. The child's primary placement with temporary guardianship is to be with his maternal grandparents, Mr. and Mrs. Dailey.
3. Protective measures are to be set in place to protect the child from harm.
4. Skylair is to continue with Mental Health Counseling at Nakenu Family Center and follow all recommendations made by the counselor.
5. Mr. and Mrs. Dailey are to attend parenting classes or some sort of support group for parenting teens.
6. Mr. and Mrs. Dailey are to fill out the CSSD paperwork in order to initiate a child support case.
7. Mr. Moreno is to sign releases of information in order to obtain and gather information regarding

any outstanding and or recent court actions and or criminal proceedings where he is a party.

8. No visits or phone visits are granted to Jorge Morena Jr. or Mathew Grant at this time pending psychological and physical evaluations.
9. Mathew Grant is to provide to the Courts the marriage certificate between Ms. Childress and him.
10. CASA Worker, Kym Miller is to check into respite care for Mr. and Mrs. Dailey.
11. Review hearing in October 2010.

Dated this 22nd day of July, 2010

s/ Rita Smagge
Rita Smagge, Chief Tribal Judge

s/ Mary Ann Mills
Mary Ann Mills, Tribal Judge

s/ Rusty Swann
Rusty Swan, Tribal Judge

Copies Distributed to:
Mr. and Mrs. Dailey via Mail
Jorge Morena Jr. via Mail
Mathew Grant via Mail
Nate Esteban – Tribal Court Liaison via Inter Office
Kym Miller – CASA via Inter Office