No. _____

In The

Supreme Court of the United States

RICKIE L. REBER, TEX WILLIAM ATKINS, STEVEN PAUL THUNEHORST, and C.R.,

Petitioners,

v.

THE STATE OF UTAH,

Respondent.

On Petition For Writ Of Certiorari To The Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioners, three adults and one minor, are members of an Indian tribe. While hunting on lands within the Indian reservation, they were cited and subsequently convicted in State court for poaching.

1. Should a jury have been able to determine whether the adult petitioners acted reasonably in relying upon published opinions of the 10th U.S. Circuit Court of Appeals?

2. Could the juvenile court delete intent as an element of the offense charged against the juvenile petitioner after receiving uncontested evidence that the juvenile acted at the direction of his father and in reliance upon federal court rulings?

3. Were the adult petitioners denied a fair trial due to bias on the part of the trial judge?

4. Did the Ute Partition Act expel the Uintah Band as a body from the Ute Tribe? Act of August 27, 1954, ch. 1009, 68 Stat. 868, 25 U.S.C. §§677-677aa.

5. Could the Ute Partition Act have any effect on the treaty rights of a person born prior to the Act who was not included on the termination roll prepared under the Act?

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PETITION FOR WRIT OF CERTIORARI

The Petitioners respectfully petition for a writ of certiorari to review the judgment of the Utah Supreme Court in *State of Utah v. Reber, et al*.

OPINIONS AND ORDERS

The opinion of the Utah Supreme Court is reported at 2007 UT 36, 576 Utah Adv. Rep. 21. App. 1-12. It was entered on April 24, 2007. The opinions of the Utah Court of Appeals are reported at 2005 UT App 485, 128 P.3d 1211, App. 13-21, and 2005 UT App 486. App. 22-23. They were entered on November 10, 2005. Petitions for rehearing before the Utah Court of Appeals were denied on March 2, 2006. App. 40, 41. The order of the Eighth District Juvenile Court of Utah, Uintah County, convicting the juvenile petitioner was entered on March 18, 2004. App. 24-30. The order of the Eighth Judicial District Court of Utah, Uintah County, granting the State's motion in limine was entered on January 21, 2004. App. 31-37. The order of the same court denying Petitioner's motion to disqualify the trial judge was entered on November 10, 2003. App. 38-39. The orders of the juvenile and district courts are unreported.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to review the final judgment rendered by the highest court of a State pursuant to 28 U.S.C. §1257(a) where any title, right, privilege, or

immunity is specially set up or claimed under the Constitution, treaties, or statutes of the United States.

CONSTITUTIONAL AND OTHER PROVISIONS

United States Constitution,
Amendment XIV, Section 1

* * * No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Executive Order of October 3, 1861

Department of the Interior
Washington, October 3, 1861

SIR: I have the honor herewith to submit for your consideration the recommendation of the Acting Commissioner of Indian Affairs that the Uintah Valley, in the Territory of Utah, be set apart and reserved for the use and occupancy of Indian tribes.

In the absence of an authorized survey (the valley and surrounding country being as yet unoccupied by settlement of our citizens), I respectfully recommend that you order the entire valley of the Uintah River within Utah Territory, extending on both sides of said river to the crest of the first range of contiguous mountains on each side, to be reserved to the United States and set apart as an Indian reservation.

Very respectfully, your obedient servant,

CALEB B. SMITH, *Secretary*.

THE PRESIDENT.

EXECUTIVE OFFICE, *October 3, 1861*

Let the reservation be established, as recommended by the Secretary of the Interior.

A. LINCOLN

STATEMENT OF THE CASE

1. *Summary of Facts, Uintah Band*. Petitioners are members of the Uintah Band of Indians. R. 167-191. The Uinta Valley Reservation was created by Executive Order of President Abraham Lincoln on October 3, 1861. Congress confirmed this Order on May 5, 1864, stating that the Uinta Valley was "set apart for the permanent settlement and exclusive occupation of such of the different tribes of Indians of said [Utah] territory as may be induced to inhabit the same." Act of May 5, 1864, ch. 57, 13 Stat. 64. R. 123.

Upon creation of the reservation, the Department of the Interior set up the Uintah Agency to manage the affairs of the Uinta Valley Reserve. Those Indians of Utah Territory who gathered in the Uinta Valley and came under the jurisdiction of the Uintah Agency became known as the "Uintah Band." Few if any members of the Uintah Band were ethnically Ute. R. 151.

In 1881, the White River Band and the Uncompahgre Utes were brought to Utah under military escort from Colorado, having been previously divested of all lands within the continental United States. R. 152. Although the

Uintah Band, the White River Band, and the Uncompahgre Utes all reside on the present-day reservation within the State of Utah, all Indian rights in the Uinta Valley under the 1861 Order and the 1864 Act are those of the Uintah Band, inasmuch as neither the Whiterivers nor the Uncompahgres inhabited the reservation in 1861, nor are they "Indians of said [Utah] territory," as set forth in the Act of May 5, 1864. R. 232.

Moreover, the Uintah Band has always maintained a distinctly different culture and lifestyle from the other two bands. This included intermarriage with other tribes and non-Indians, and a higher standard of living and education. Accordingly, the Uintah Band has always been known throughout the reservation as the "Mixed-bloods." R. 419-425, App. 67-98. The separate rights of the separate bands have been recognized by various acts of Congress. R. 152.

In 1937, the three bands of Indians inhabiting the reservation adopted a constitution as the "Ute Indian Tribe of the Uintah and Ouray Reservation." R. 169. Nothing in the constitution empowered either the tribe as a whole or any of the three bands to determine the membership of any of the individual bands. By its own terms, the tribal constitution is subject to supervening federal law. App. 45.

Petitioner Rickie Reber was born on June 27, 1952. Petitioner Steve Thunehorst's mother, Leanna Chivers Thunehorst, was born on May 31, 1951. At birth, both Mr. Reber and Ms. Thunehorst were fully eligible for enrollment in the Ute Tribe as members of the Uintah Band. R. 153, 298, 581:10, 28.

On August 27, 1954, Congress passed the "Ute Partition Act" (68 Stat. 868) (hereinafter referred to as "the UPA"). The UPA was part of a policy engaged in by

Congress from 1953 to 1966 of "terminating" federal supervision over select Indian tribes. The policy has since been firmly renounced, commencing with President Richard Nixon's Special Message to the Congress on Indian Affairs in 1970. Pub. Papers 564 (Richard M. Nixon, July 8, 1970). R. 154.

Under the UPA, the tribe was directed to draw up two rolls, one consisting of "mixed-bloods" and the other of "full-bloods." The "mixed-bloods" were then to be terminated from federal supervision. App. 43-44. The UPA makes no mention whatsoever of the separate bands that up to that time constituted the Ute Tribe.[1] Nevertheless, of 490 persons included on the termination roll, 456 were members of the Uintah Band. App. 67-98, R. 226-251. Two hundred and eight members of the Uintah Band were included on the "full-blood" roll, and approximately 220 other Uintahs, including Mr. Reber and Ms. Thunehorst, were not included on either roll, but were nevertheless excluded thereafter from membership in the Ute Tribe. The ultimate effect of the UPA was thus to expel between 68.68 and 76.47% of the Uintah Band from the Ute Tribe. Cross-Petition to Utah Supreme Court, May 30, 2006, page 7; Brief of Cross-Petitioners, October 13, 2006, page 7; Reply Brief of Cross-Petitioners, December 18, 2006, page 2.

Pursuant to the Ute Constitution, the UPA would take precedence over any terms of that Constitution. App. 45. As a terminated tribe, the Uintah Band would thus no longer be a constituent band within the Ute Tribe.

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[1] With the exception of an oblique reference in 25 U.S.C. §677r. App. 44.

This *de facto* termination of the Uintah Band has had several unfortunate consequences. First, notwithstanding the Uintah Band has continued to maintain its tribal identity without federal supervision, the State of Utah, the Ute Tribe, and indeed, even the United States have insisted on only recognizing as Indian the diminishing rump portion of the Uintah Band still enrolled in the Ute Tribe. App. 11. Secondly, misguided members of the Uintah Band itself have expended a regrettable amount of time and resources attempting to assert rights under a Ute Constitution to which the Uintah Band is no longer a party (*See, e.g.*, *United States v. Von Murdock*, 132 F.3d 534 (10th Cir. 1997)). Finally, and most significantly, under the color of the UPA, the State of Utah has assumed powers and jurisdiction over members of the Uintah Band vastly beyond those conferred under the Act. "Termination of the mixed-blood Utes, division and distribution of assets, and the organization of UDC under the Partition Act has spawned extensive litigation." *Hackford v. Babbitt*, 14 F.3d 1457, 1463 (10th Cir. 1994). Some excellent studies documenting this tragedy include *Termination's Legacy: The Discarded Indians of Utah* (R. Warren Metcalf, Lincoln, University of Nebraska Press, 2002), and *The Dispossessed: Cultural Genocide of the Mixed-Blood Utes* (Parker M. Nielson, Norman, University of Oklahoma Press, 1998).

In 2000, a group of Uintah Band members acting under the name Timpanogos Tribe sought injunctive relief against State wildlife officers for obstructing tribal hunting on tribal lands. In an interlocutory ruling, the 10th U.S. Circuit held that even terminated tribes nevertheless retain the right to hunt and fish on tribal lands. *Timpanogos Tribe v. Conway* (hereinafter "*Conway*"), 286 F.3d 1195, 1203 (10th Cir. 2002), *citing Menominee Tribe*

v. United States, 391 U.S. 404, 88 S.Ct. 1705, 20 L.Ed.2d 697 (1968). App. 64-65. The court also held that, as Indians of Utah Territory inhabiting the Uinta Valley, the plaintiffs had made out a prima facie case that they possessed the right to hunt and fish on the Reservation. *Id.* at 1204. App. 66.

2. *Summary of Facts, Uintah and Ouray Reservation*. Independent of any issues as between the Uintah Band and the Ute Tribe, the Ute Tribe itself has engaged in extensive litigation against the State of Utah regarding the respective limits of State and tribal jurisdiction. After a series of journeys back and forth between the federal district court and the 10th Circuit[2] (and one trip to this Court[3]) this litigation culminated in the 10th Circuit's holding in *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 114 F.3d 1513 (10th Cir. 1997), *cert. denied*, 522 U.S. 1107, 118 S.Ct. 1034, 140 L.Ed.2d 101 (1998) (*hereinafter Ute V*). App. 48-57.

In short, *Conway* recognized a right in terminated tribes to hunt and fish on Indian lands, while *Ute V* defined those lands.

3. *The Reber prosecution*. The *Conway* ruling was released in April, 2002. In October, 2002, fully aware of the

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[2] *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 521 F. Supp. 1072 (D.Utah 1981) (*Ute I*); *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 716 F.2d 1298 (10th Cir. 1983) (*Ute II*); *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 773 F.2d 1087 (10th Cir. *en banc* 1985), *cert. denied*, 479 U.S. 994, 107 S.Ct. 596, 93 L.Ed.2d 596 (1986) (*Ute III*); *Ute Indian Tribe of Uintah & Ouray Reservation v. Utah*, 935 F. Supp. 1473 (D.Utah 1996) (*Ute IV*).

[3] *Hagen v. Utah*, 510 U.S. 399, 114 S.Ct. 958, 127 L.Ed.2d 252 (1994).

10th Circuit's holding regarding terminated tribes (App. 58-66), Mr. Reber took his (then) 13-year-old son C.R. hunting on lands they knew to be defined as Indian under *Ute V*. Although C.R. was able to shoot his first buck, it was confiscated shortly thereafter by State wildlife officials, who charged C.R. in Utah's Eighth District Juvenile Court, Uintah County, with "Wanton Destruction of Protected Wildlife," i.e., poaching. R. C.R. 30-31. Mr. Reber was charged in the Eighth District Court, Uintah County, with Aiding and Abetting in the Wanton Destruction. Since the spread of the deer's antlers exceeded 24 inches, the animal constituted a trophy buck, and the offense was elevated to a third degree felony against both father and son. App. 2, R. 2-3.

Petitioners Atkins and Thunehorst shot a smaller deer the following month in a separate location, albeit still within the reservation as defined under *Ute V*, and fully aware of the holdings in both *Ute V* and *Conway*. R. Atkins 73-107, Thunehorst 74-109. Both men were charged with Wanton Destruction of Protected Wildlife, a Class A Misdemeanor. The cases were assigned to the same judge hearing Mr. Reber's case, and both Petitioners subsequently stipulated to be bound by the trial court's pretrial rulings in the *Reber* case. App. 3.

In the trial court, the point of contention was the distinction between the rights of Indian *tribes*, on the one hand, and those of *individual* Indians, on the other. The Petitioners maintained that Indian status derives *either* from membership in an Indian tribe *or* from blood quantum. *Zarr v. Barlow*, 800 F.2d 1484 (9th Cir. 1986). R. 178-180. The Petitioners never claimed the right to hunt on any other basis than as members of the Uintah Band. They asserted that once an Indian tribe acknowledges persons as members, the sole question remaining for the

court is whether the *tribe* holds rights, *not* whether the defendants are Indians. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72, n.32, 98 S.Ct. 1670, 1684, n.32, 56 L.Ed.2d 106 (1978) (Tribe retains the sovereign right to determine its own membership). R. 178-180.

In contrast, the trial judge would accept no argument or evidence either from or regarding the Uintah Band, insisting that the Petitioners must prove their status as Indians individually or not at all. R. 260-265. Indeed, the trial judge stated at the outset that he was under no obligation to follow federal law. App. 99-105. When it became apparent that the judge was as good as his word on this point, the Petitioners moved to have him disqualified. R. 276-292, App. 38-39.

At the trial court's request, the parties briefed the effect of the UPA on the rights of the Petitioners. R. 580:43. Since Mr. Reber was born two years prior to enactment of the UPA and was never included on the termination roll, he contended that it had no effect on his rights at all. R. 180-181. The trial court rejected this argument, implying that hunting and fishing rights could not be inherited, but termination could be. R. 260-265.

Mr. Reber attempted to introduce evidence that he could not possess criminal intent if he possessed a good faith belief that he was not committing a crime, and that that belief was based upon a reasonable reading of published court rulings by a court of competent jurisdiction. App. 47, R. 305-309. The trial court prohibited all such evidence, holding that any reliance by the Petitioners upon *Ute V* or *Conway* was "unreasonable as a matter of law," App. 36-37.

Notwithstanding his best efforts, Mr. Reber was prohibited from putting on any defense evidence at all, and the jury convicted him in less than seven minutes.

R. 548:168-196. When Mr. Atkins and Mr. Thunehorst were likewise prohibited from presenting any evidence as to their reliance upon *Ute V* and *Conway*, they agreed to plea to reduced charges on condition that their right to appeal be reserved. App. 3.

In the juvenile court, C.R. was charged under the same statute as was his father in the district court. C.R. was more successful in introducing evidence that he had acted in reliance upon his father, who had acted in reliance upon the holdings of the 10th Circuit. In response, subsequent to trial, the trial judge asserted a distinction between "willful" and "scienter," found that "scienter" was not an element of a statute unrelated to the one under which C.R. was charged, and proceeded to convict C.R. The juvenile court stayed sentencing until the outcome of all appeals. App. 24-30.

4. *Utah Court of Appeals Decision*. In response to the Petitioners' appeal to the Utah Court of Appeals, the State of Utah promptly conceded that the Petitioners *were* in fact on Indian land. The Court of Appeals thus vacated both the adult and juvenile convictions, finding that under *Ute V*, the Ute Tribe was the victim of the crime, and the State was thus divested of jurisdiction. App. 17. Interestingly, both the State of Utah and the Court of Appeals considered themselves bound by the very 10th Circuit ruling upon which the trial court found it "*unreasonable* as a matter of law" for the Petitioners to rely. App. 36. (Emphasis added).

The Petitioners fully briefed the Court of Appeals on the issues of reasonable reliance (adult case) and scienter (juvenile), as well as the rights of persons born prior to the UPA yet not included on the termination roll. Due to its

threshold finding on jurisdiction, the Court of Appeals found it unnecessary to address these issues. App. 17. Unfortunately, the court based its jurisdictional finding on an assertion that the Uintah Band has no existence independent of the Ute Tribe. App. 17. In short, the court had come to the right conclusion for the wrong reason. The Petitioners thus cross-appealed to the Utah Supreme Court to question how the Uintah Band could fail to have an independent existence when the UPA expelled well over two thirds of its membership from the Ute Tribe.

5. *Utah Supreme Court Decision*. The Utah Supreme Court did not dispute that *Ute V* was applicable, nor did it find reliance thereon to be "unreasonable as a matter of law." ("[T]he language of *Ute Tribe V* gives us pause." App. 6.) Rather, the Court was influenced by three other factors: (1) In the Ute Tribe's zeal to defeat the Uintah Band, the Ute Tribe actually appeared before the court and renounced the very jurisdiction otherwise accorded to it under *Ute V*,[4] App. 7; (2) Rather than finding the Ute Tribe to be a victim, the Utah Supreme Court found the crimes to be victimless, App. 8; and (3) the court apparently recognized no distinction between federal treaty rights (reserved even to terminated tribes) and federal recognition (withdrawn from the Uintah Band by the UPA). App. 11, n.28.

Although the Utah Supreme Court did not reject *Ute V* as had the trial court, it did not address the separate due process question as to whether a jury should have

[4] At no time have either the Ute Tribe or the State of Utah ever complied with the requirements for relinquishing and acceding to jurisdiction under 25 U.S.C. §§1321(a), 1324, and 1326. R. 21-23.

determined the factual element of intent. Given the opportunity either to sustain the Utah Court of Appeals' holding on this alternative basis or remand the matter to the trial court, the Utah Supreme Court did neither. The State's appellate courts have thus implicitly sustained a trial ruling directly in conflict with this Court's precedents regarding due process.

REASONS FOR GRANTING THE PETITION

The Petitioners have yet to present their reasonable reliance defense to a jury, even though two appellate courts have found one of the rulings not only reasonable, but binding. But more importantly, no federal court has ever addressed the effect of the Ute Partition Act on the Uintah Band, nor its effect on those persons excluded from the termination rolls who were living at the time of its enactment. As the potential for friction between the Uintah Band, the Ute Tribe, and the State of Utah continues to grow, the need for a clear judicial interpretation of the UPA becomes ever more urgent.

A. The trial court's order prohibiting the Respondents from presenting evidence of reasonable reliance on published court opinions directly contradicts the holdings of this Court regarding due process of law.

Conway stated that even terminated tribes retain hunting rights. App. 64-65. *Ute V* defined Indian lands within the reservation. App. 49-57. Relying on *Conway* and *Ute V*, the Petitioners believed that as members of the Uintah Band they could hunt on reservation lands. They

were subsequently charged and convicted of being non-Indians poaching on non-Indian lands.

This Court has held that a person cannot be convicted of a crime if they undertook the prohibited conduct in reasonable reliance upon a published interpretation of the law. *United States v. Caceres*, 440 U.S. 741, 753 n.15, 99 S.Ct. 1465, 1472 n.15, 59 L.Ed.2d 733 (1979). The defense of mistake of law is based on the due process clause contained in the Fifth and Fourteenth Amendments to the U.S. Constitution. *Cox v. Louisiana*, 379 U.S. 559, 571, 85 S.Ct. 476, 484, 13 L.Ed. 487 (1965); *Bouie v. City of Columbia*, 378 U.S. 347, 354, 84 S.Ct. 1697, 1703, 12 L.Ed.2d 894 (1964). The Utah legislature has codified this rule as Section 76-2-304(2) of the Utah Code. App. 47.

The trial court had already declared that it was not bound by either *Ute V* or *Conway* (App. 99-105), that the Petitioners were not Indians, and that they were not on Indian land. R. 260-265. However, even accepting this as the "Law of the Case," the Petitioners were still entitled to show the jury, *not* that *Ute V* or *Conway* were the law, but that the Petitioners were *reasonable* in *believing* that they were Indians hunting on Indian land based on their reading of *Ute V* and *Conway*. R. 305-309. The issue here is not whether the rulings are or are not correct, but whether the Petitioners were deprived of their right to have a jury determine the factual element of reasonableness. *Pennsylvania Co. v. United States*, 236 U.S. 351, 361, 35 S.Ct. 370, 373, 59 L.Ed. 616 (1915) (reasonableness is a question of fact). Both the Utah Court of Appeals and the Utah Supreme Court have vindicated the Petitioners' belief in the authority of *Ute V*, but neither of these courts have accorded the Petitioners the opportunity to have their defense heard by an impartial jury.

Moreover, the trial court's rejection of the 10th Circuit's precedents does not stand in isolation. As was pointed out at the trial level, to the Utah Court of Appeals, and to the Utah Supreme Court, the Uintah people have had long experience being told by this trial judge that they are not who they are. R. 280-292; 578:3-5; 579:6-10; 580:14-28; 581:28-35; 583:4-5; 584:10-11, 13, 74, 109-120, 125, 150, 168-169, 172-175, 190-195. The Petitioners were denied a fair trial due to bias on the part of the trial judge, and the Utah Supreme Court has compounded this inequity by failing to remedy it.

The adult Petitioners were simply prohibited from challenging the State's case as to intent. In the juvenile Petitioner's case, the court removed intent from the elements of the offense *ex post facto*. If intent can be inferred from conduct, it seems safe to infer that the trial courts did not intend for any of the Petitioners to receive a fair trial.

This Court needs to send a clear message to the State of Utah that due process of law includes (1) the right to have a jury determine each and every factual element of a crime, including whether the defendant's good faith reliance upon published federal rulings negates the element of intent; (2) the right to be tried before an impartial judge; and (3) the right to be tried on the same offense for which one has been charged and defended.

B. The effect of the Ute Partition Act on the Uintah Band is an important question of federal law which has never been addressed by a federal court and which the State courts have no authority to determine.

Whether the UPA terminated 68.68% or 76.47% of the Uintah Band from the Ute Tribe, there is no question that

the majority of the Uintah Band was terminated from federal supervision under the Act. The question thus arises how any body politic can exist other than where the majority of its members are found. It is clear that a band that acts independently of a tribe is no longer a part of that tribe. *Montoya v. United States*, 180 U.S. 261, 269-270, 21 S.Ct. 358, 361-362, 45 L.Ed. 521 (1901). The UPA has rendered the Uintah Band independent from the Ute Tribe by sheer force of the numbers involved.

Remarkably, although the numbers have been well known since the time the termination rolls were drawn up in 1956, the effect of the UPA on the Uintah Band has never been addressed by a federal court. The issue was laid before the Utah Supreme Court, and while that court correctly held that it did not have the authority to determine the Uintah Band's eligibility for federal benefits, it incorrectly assumed that Petitioners were seeking such eligibility. App. 11. Hunting rights are not a federal benefit. They are a treaty right unaffected by any termination act. *Menominee Tribe v. United States*, 391 U.S. 404, 412-413, 88 S.Ct. 1705, 1711, 20 L.Ed.2d 697 (1968).

In refusing to recognize the rights retained by the Uintah Band, the Utah Supreme Court ignored important precedents and rules of construction set forth by this Court and the 10th Circuit Court of Appeals. This Court has held that any ambiguities in an act affecting Indians' rights must be interpreted in favor of the Indians. *Bryan v. Itasca County*, 426 U.S. 373, 392, 96 S.Ct. 2102, 2112, 48 L.Ed.2d 710 (1976). As between the Ute Tribe and the Uintah Band, the 10th Circuit has held that this rule of construction should be specifically applied in favor of those terminated under the UPA. *United States v. Felter*, 752 F.2d 1505, 1511 (10th Cir. 1985).

In summary, the effect of the UPA on the Uintah Band is an important question of federal law which has not been, but ought to be, decided by this Court, and which the Utah Supreme Court addressed in a manner contrary to the governing precedents established by this Court and the 10th Circuit.

C. The effect of the Ute Partition Act on persons born prior to its enactment yet omitted from the termination rolls is an important question of federal law which has never been addressed by a federal court and which the trial court decided contrary to the relevant federal authorities.

Quite independent of the UPA's devastating effects on the Uintah Band, no federal court has ever taken up what effect, if any, the UPA could have on persons born prior to its enactment yet excluded from either roll. This group, and their descendants, represent a sizeable and growing number of persons whose fate under the UPA remains undetermined.

Ironically, in 1955, at the very height of the termination fever, the U.S. Solicitor opined that no authority existed to place children on the termination roll not otherwise already there. Indeed, he gave it as his opinion that it was the intent of the UPA to actually break up families. App. 106-107. Confronted with the question, the State trial court imputed termination to all such persons, contrary to the suggestion of the 1955 memorandum, and indeed, contrary to the canons of construction set forth by this Court and the 10th Circuit Court of Appeals. *Bryan v. Itasca County*, *supra*; *United States v. Felter*, *supra*. R. 260-265.

It is important that this Court address this question, not only to correct the error of the trial court, but to clarify the status and future of the substantial number of persons whose tribal rights and heritage are at stake.

D. A dispositive ruling by this Court as to the effects and limits of the Ute Partition Act would bring an end to over 50 years of protracted litigation.

A grave injustice has been committed here. A termination act has been extended beyond its scope to not only terminate federal benefits, but to strip an entire people of their heritage, their identity, and their treaty rights. No other termination act has ever been so construed, and nothing in this termination act gives it such power. The UPA must be limited to its actual terms. Those terms were merely to terminate federal supervision over the Uintah Band, not to terminate its existence and appropriate its name and rights to two rival tribes. Likewise, the UPA could not extinguish the tribal rights of persons excluded from the termination rolls completely. By addressing these timely questions, this Court can finally bring an end to over 50 years of fractious litigation.

CONCLUSION

It is as important to understand what this case is not about as well as what it is. This Petition is *not* a challenge to the validity of the Ute Partition Act, but only a request that the Act be limited to its actual terms under the law.

Likewise, this Petition is *not* a backhanded attempt to obtain federal recognition for the Uintah Band, but merely

an effort to uphold those treaty rights reserved to all terminated tribes, and which remain unaffected by Termination Era legislation.

Finally, this Petition is *not* an effort to either challenge or vindicate the 10th Circuit's holdings in *Ute V* and *Conway*, but merely to determine whether the Petitioners' reliance upon those rulings should have been submitted to a jury.

For the reasons stated herein, Petitioners request that certiorari be granted as to the questions set forth in this Petition.

Respectfully submitted,

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