Supreme Court of the United States.
Peggy A. REED and Timothy A. Reed, Petitioners,
v.
Robert GUTIERREZ and Pueblo of Santa Clara, New Mexico, Respondents.
No. 10-1390.
March 10, 2011.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of New Mexico

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

In *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998), this Court observed that it may be time to abrogate tribal sovereign immunity. Although the Court did not repudiate the doctrine, it acknowledged its specious underpinnings and the doubtful wisdom of perpetuating it. In his *Kiowa* dissenting opinion, Justice Stevens (joined by Justice Thomas and Justice Ginsburg) made clear that tribal sovereign immunity at least should be constrained to reservation boundaries for three reasons: 1) this Court was wrong to have usurped the prerogative of Congress by creating tribal sovereign immunity in the first instance, 2) no reason exists for Indian tribes to enjoy greater immunity than states, the federal government, or foreign nations, and 3) tribal sovereign immunity is unjust, especially for tort victims who have no chance to negotiate for a waiver of immunity. Nevertheless, the *Kiowa* majority chose to relinquish to Congress any reform of the doctrine. Nearly thirteen years have passed and Congress has not acted. Meanwhile, New Mexico courts, deferring to *Kiowa* and tribal sovereign immunity, dismissed the Reeds' lawsuit against the Pueblo of Santa Clara and its employee, Robert Gutierrez, to recover damages for life-threatening, permanent injuries Peggy Reed suffered as a result of an off-reservation traffic collision caused by Mr. Gutierrez who had been drinking and operating a vehicle owned by the Pueblo.

The questions presented in this case are:

I. Should the doctrine of tribal sovereign immunity be abrogated?

II. Even if the doctrine of tribal sovereign immunity should not be abrogated, should it bar claims against Indian tribes or their employees for their off-reservation torts?

***III** LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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Cases

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***1** Petitioners Peggy A. and Timothy A. Reed respectfully request that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the New Mexico Court of Appeals appears in the Appendix, App. 1-8, and is reported at *Reed v. Gutierrez*, No. 28,249, 2010 N.M. App. Unpub. LEXIS 424 (N.M. Ct. App. Oct. 27, 2010). The order of the District Court for the Second Judicial District Court of Bernalillo County, New Mexico dismissing the Reeds' claims appears at App. 9-11. The decision of the New Mexico Supreme Court denying certiorari appears at App. 12 and is reported at *Reed v. Gutierrez*, No. 32,720, 2011 N.M. LEXIS 60 (N.M. Feb. 9, 2011).

JURISDICTION

The opinion of the New Mexico Court of Appeals was entered on October 27, 2010. On February 9, 2011, the Supreme Court of New Mexico denied a petition for certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

***2** STATEMENT OF THE CASE

The decisions below held that tribal sovereign immunity and specifically this Court's decision in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998) barred the Reeds' claims against the Pueblo of Santa Clara, New Mexico and its employee for injuries they caused Peggy Reed in an off-reservation traffic collision. This Court should revisit and abrogate tribal sovereign immunity for the reasons acknowledged by all members of the Court in *Kiowa*. At least, the Court should make clear that tribal sovereign immunity will not bar claims by innocent victims of the off-reservation torts of Indian tribes and their employees.

Respondents' Off-Reservation Injury to the Reeds

On November 29, 2005, at approximately noon, Peggy Reed was driving her vehicle on a public street in Albuquerque, New Mexico, far from the Pueblo or other Indian reservation land. At the same time, Robert Gutierrez, an employee of the Pueblo, was driving in the opposite direction on the same road as Ms. Reed in a vehicle owned by the Pueblo. Mr. Gutierrez suddenly made a left turn without yielding to oncoming traffic and collided with Ms. Reed's vehicle. As a result of the collision, Ms. Reed suffered a severe, life-threatening injury that has resulted in multiple hospitalizations and surgeries, caused excruciating and prolonged pain and suffering, and will ***3** require permanent lifestyle changes in order to prevent future complications. App. 15.

Mr. Gutierrez had a cooler and empty beer containers in the back seat of the Pueblo's vehicle he was driving. He told an Albuquerque Police Department officer who responded to the accident scene that he had consumed two beers earlier that morning at approximately 7:00 a.m. Mr. Gutierrez submitted to a breath alcohol test which indicated he had a blood alcohol content of .04 percent. The police cited Mr. Gutierrez for Failure to Yield, Careless Driving, and Open Containers. App. 15-16.

State Trial Court Proceedings

The Reeds brought suit for the damages they suffered as a result of the collision. The Pueblo had liability insurance available to compensate the Reeds for their damages, but did not want to submit a claim for fear its insurance rates might increase. The Pueblo offered the Reeds under $2,000 for the damage to their car, Ms. Reed's medical bills, her pain and suffering, and the Reeds' other damages. App. 16.

When the Reeds declined, Respondents claimed tribal sovereign immunity and moved to dismiss their claims. Respondents argued in their motion that the Pueblo was shielded from suit for even off-reservation torts under the doctrine of tribal sovereign immunity. Respondents also contended that the Pueblo's tribal sovereign immunity extended to its employee, Robert Gutierrez. App. 16.

***4** The state trial court found that *Kiowa* allowed it no choice but to find that tribal sovereign immunity insulated the Pueblo from the Reeds' claims and granted the Pueblo's motion to dismiss. App. 9-10. At the motion hearing, the court stated:

The Court did review the briefing and the cases prior to the hearing today, and I think both sides recognize that when we're dealing with tribal immunity, that it's well-settled law and binding upon this court.…

***

And I may agree with you that the Supreme Court of the United States has changed, and looking at *Kiowa*, you could tell that they were reconsidering how far sovereign immunity should go, but until they actually reconsider that decision, this Court is bound by the *Kiowa* decision.…

Motion Hearing Transcript, pp. 17:13-19:3. The trial court also announced that it would grant Robert Gutierrez' same motion to dismiss pursuant to the doctrine of tribal sovereign immunity if Mr. Gutierrez was an employee of the Pueblo acting within the scope of his employment at the time of the crash. *Id.* The court directed the parties to conduct limited discovery to make that determination. *Id.*

The parties subsequently stipulated to the fact that Mr. Gutierrez was an employee of the Pueblo acting within the scope of his employment at the time of the collision. App. 10. The trial court consequently granted Mr. Gutierrez's motion to dismiss. *Id.* ***5** Therefore, the trial court dismissed all of the Reeds' claims on the basis of tribal sovereign immunity and *Kiowa*. *Id.*

State Appellate Court Proceedings

The Reeds appealed the dismissal of their claims to the New Mexico Court of Appeals. App. 26-33. They argued that the trial court erred by dismissing their claims on the basis of tribal sovereign immunity because that doctrine should be abrogated. *Id.* Alternatively, the Reeds contended that even if tribal sovereign immunity should not be eliminated, it should not protect Indian tribes or their employees from claims for their off-reservation torts. *Id.*

The appellate court held that pursuant to *Kiowa*, the Pueblo and its employee were shielded from liability for their off-reservation tort. App. 1-2. The court stated: “The United States Supreme Court's opinion in *Kiowa* controls our holding today.” App. 4. Specifically, the court concluded that “we believe that the majority opinion in *Kiowa* and New Mexico precedent interpreting *Kiowa* compel the conclusion that tribal sovereign immunity extends to off-reservation torts.” App. 7.

The Reeds petitioned for a writ of certiorari in the New Mexico Supreme Court on the same grounds they appealed to the court of appeals. App. 13-25. The state supreme court denied the petition. App. 12.

***6** REASONS FOR GRANTING THE WRIT

Five hundred sixty four federally-recognized Indian tribes exist in the United States. *Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 75 Fed. Reg. 190 (Oct. 1, 2010) (this list of tribes appears at App. 34-63).[FN1] They are dramatically expand-

ing the volume and sophistication of their activities which now extend well beyond reservation boundaries and permeate most states and sectors of the national economy. The continued existence of tribal sovereign immunity enables and encourages irrational and unjust practical and legal consequences as Indian tribes assert their immunity in circumstances far removed from tribal self-governance. The decisions of lower courts grappling with tribal immunity in these contexts often conflict. In this case, the lower courts' decisions that tribal sovereign immunity bars claims by victims of Indian tribes' off-reservation torts exacerbates the injustice of tribal immunity: anyone anywhere in the Nation may be injured or killed by a tribe and denied redress.

> FN1. These Indian tribes are located in 32 states: Alabama, Alaska, Arizona, California, Connecticut, Florida, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming.

***7** I. This Court Should Abrogate Tribal Sovereign Immunity And Thereby Clarify Federal Indian Law

A. This Court's Decision in *Kiowa*

In *Kiowa*, this Court held that Indian tribes "enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation." *Id.* at 760. However, the majority questioned the soundness of the doctrine of tribal sovereign immunity, noting that it "developed almost by accident." *Id.* at 756. The often-cited source of tribal sovereign immunity, *Turner v. United States*, 248 U.S. 354 (1919), "simply does not stand for that proposition." *Kiowa*, at 756. "Later cases, albeit with little analysis, [simply] reiterated the doctrine." *Id.*

Kiowa observed that in 1991, this Court considered whether to perpetuate tribal sovereign immunity in *Oklahoma Tax Commission v. Citizen Band of Potawatomi Tribe*, 498 U.S. 505 (1991). The Court "retained the doctrine … on the theory that Congress had failed to abrogate it in order to promote economic development and tribal self-sufficiency." *Kiowa*, at 757, citing *Potawatomi*, at 510. But, in *Kiowa* the Court admitted that its rationale in *Potawatomi* for keeping tribal sovereign immunity did not square with reality: "The rationale, it must be said, can be challenged as inapposite to modern, wide-ranging tribal enterprises extending well beyond traditional tribal customs and activities." *Kiowa*, at 757. The Court in *Kiowa* added:

***8** There are reasons to doubt the wisdom of perpetuating the doctrine. At one time, the doctrine of tribal immunity from suit might have been thought necessary to protect nascent tribal governments from encroachments by States. In our interdependent and mobile society, however, tribal immunity extends beyond what is needed to safeguard tribal self-governance. This is evident when tribes take part in the nation's commerce. Tribal enterprises now include ski resorts, gambling, and sales of cigarettes to non-Indians. In this economic context, immunity can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims.

These considerations might suggest a need to abrogate tribal immunity, at least as an overarching rule. Respondent does not ask us to repudiate the principle outright, but suggests instead that we confine it to reservations or to noncommercial activities. We decline to draw this distinction in this case, as we defer to the role Congress may wish to exercise in this important judgment.

Id. at 758 (citations omitted).

Justice Stevens (joined by Justices Thomas and Breyer) dissented and echoed the majority's recognition of the specious underpinnings of the doctrine. *Id.* at 760. He refuted the notion that tribal

sovereign immunity is absolute absent congressional authorization or tribal waiver, *id.* at 760-64, finding that "[a]bsent express federal law to the contrary, Indians ***9** going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Id.* at 760.

Justice Stevens argued that (1) no federal statute or treaty provided the tribe with immunity from suit to its off-reservation commercial activities, and (2) the Court should not have extended the "judge-made" doctrine to preempt the authority of the state courts to decide for themselves whether to accord such immunity to Indian tribes as a matter of comity. *Id.* at 760. Justice Stevens distinguished the Court's early cases and pointed out that all had arisen out of conduct that occurred on Indian reservations. *Id.* at 762. Furthermore, he observed that states clearly have legislative jurisdiction of the off-reservation conduct of tribes, some on-reservation activities, and that there has been "no reasoned explanation for a distinction between the State's power to regulate the off-reservation conduct of Indian tribes and the State's power to adjudicate disputes arising out of such off-reservation conduct." *Id.*

Justice Stevens argued against the extension of the doctrine made by the majority. *Id.* at 764. Justice Stevens advanced "[t]hree compelling reasons" in support of his argument for judicial restraint. *Id.* First, the majority's expansion of tribal sovereignty is contrary to "the strong presumption" against construing federal law to preempt state law; a presumption that "appl[ies] with added force to judge-made rules." *Id.* Second, no reason exists for Indian tribes to enjoy greater immunity than states, the federal government, or foreign nations. *Id.* Third, tribal sovereign ***10** immunity is unjust, especially for tort victims. *Id.* Justice Stevens concluded that Indian tribes "should pay their debts and should be held accountable for their unlawful, injurious conduct" - just like everyone else. *Id.*

B. The Legacy of *Kiowa* Is Confusion About The Application And Limits Of Tribal Sovereign Immunity And Conflicting Decisions By Lower Courts

This Court should revisit tribal sovereign immunity. It has been nearly thirteen years since this Court issued its invitation to Congress in *Kiowa* to reconsider the doctrine. Congress has not rewarded the Court's deference by legislating in any way on that issue. In the wake of that inaction, courts around the country are left to struggle with tribal immunity in a variety of contexts for which it is ill-suited, usually relating to the commercial activities of tribes. Too often, the application of tribal sovereign immunity compels decisions in cases that the courts themselves decry as unjust or irrational. Moreover, as some courts endeavor to constrain immunity for Indian tribes, their decisions directly conflict with other courts that tolerate a broader notion of the immunity.

A recent example of the problematic consequences of tribal sovereign immunity is *Oneida Indian Nation of New York v. Madison County,* 605 F.3d 149 (2d Cir. 2010), where two judges of the Second Circuit ***11** court specifically asked this Court to reconsider or clarify tribal sovereign immunity.[FN2] In that case, Indian tribes refused to pay delinquent property taxes on hundreds of recently-purchased properties that had been owned and governed by non-Indians for approximately 200 years and subject to state and local taxation for generations. 605 F.3d at 153-54. The counties proceeded to foreclose on those properties under New York law to collect the tax. *Id.* at 154-55. The Second Circuit affirmed the district court's injunction preventing the foreclosures. *Id.* at 163. Circuit Judge Cabranes wrote a concurring opinion (joined by Judge Hall) that explained the panel's decision as follows: "The holding in this case comes down to this: an Indian tribe can purchase land (including land that was never part of a reservation); refuse to pay lawfully-owed taxes; and suffer no consequences because the taxing authority cannot sue to collect the ***12** taxes owed." *Id.* He continued, "[t]his rule of decision defies common sense. But absent action by our

highest Court, or by Congress, it is the law." *Id.* Characterizing the result "so anomalous that it calls out for the Supreme Court to revisit *Kiowa* and *Potawatomi* " and "[reunite] law and logic," he and Judge Hall nevertheless concurred in the judgment because they concluded they were bound by those decisions. *Id.* at 164.

> FN2. Other courts express dissatisfaction with tribal sovereign immunity. *See, e.g., Murphy v. Kickapoo Tribe of Okla.*, No. CIV-07-0118-HE, 2007 U.S. Dist. LEXIS 83031, at *11-12 (W.D. Okla. Nov. 8, 2007) ("[t]he court has previously stated its concern about tribes' assertion of sovereign immunity in cases such as this where, if sovereign immunity is not waived, plaintiffs will essentially be denied a forum for their claims. Such a result is manifestly unfair to plaintiffs.…" "If this court had the power to 'fix' the situation, it would do so. However, that power resides with Congress or the appellate courts. This court's obligation is to follow the law as it exists now."); *Cohen v. Winkelman,* 428 F. Supp. 2d 1184, 1189 (W.D. Okla. 2006) ("The circumstances of this case … [may be] the sort of use of the doctrine of sovereign immunity as discourages others from entering into commercial relationships with Indian tribes and which gives rise to the periodic calls for Congressional limitation or elimination of the doctrine of sovereign immunity.").

This Court indeed granted certiorari in that case on issues including "whether tribal sovereign immunity from suit, to the extent it should continue to be recognized, bars taxing authorities from foreclosing to collect lawfully imposed property taxes." *Madison County v. Oneida Indian Nation of New York,* 131 S. Ct. 459 (2010). Facing the Court's consideration of this issue, the tribe notified the Court that it had waived "its sovereign immunity to enforcement of real property taxation through foreclosure by state, county and local governments within and throughout the United States." *Madison County v. Oneida Indian Nation of New York,* 131 S. Ct. 704 (2011). The Court remanded the case to the Second Circuit. *Id.*

Since *Kiowa*, courts also have made inconsistent applications of tribal sovereign immunity in dram shop cases against Indian tribes. In *Filer v. Tohono O'Odham Nation Gaming Enterprise,* 129 P.3d 78 (Ariz. Ct. App. 2006), the court concluded that such a claim was barred by tribal sovereign immunity. [FN3] ***13** *Id.* at 84. Mr. Filer contended that casino employees over-served alcohol to an individual who drove the wrong way on a highway and collided head-on with his vehicle, injuring him and killing his wife. *Id.* at 80. The court added: "This conclusion, we hasten to add, may be unsatisfactory to some and arguably is divorced from the realities of the modern world, in which on-reservation Indian gaming and alcohol sales have become commonplace." *Id.* But, citing this Court's deference to Congress in *Kiowa*, the Arizona court explained that it had "no different or greater authority." *Id.* at 85; *see* Gary Fields, *Plaintiffs Suing U.S. Tribes Can't Get Their Day in Court*, Wall St. J., Oct. 12, 2007, at A1 (reporting results of courts' application of tribal sovereign immunity in *Filer* and other cases).

> FN3. Other courts have reached the same conclusion regarding a tribe's immunity from dram shop liability. *See Foxworthy v. Puyallup Tribe of Indians Ass'n,* 169 P.3d 53 (Wash. Ct. App. 2007); *Holguin v. Ysleta Del Sur Pueblo,* 954 S.W.2d 843 (Tex. App. - El Paso 1997).

In a conflicting decision, the Supreme Court of Oklahoma held that *Kiowa* did not immunize the Shawnee Tribe of Oklahoma from a common law negligence suit for dram shop liability where the tribe's casino sold alcohol to a visibly intoxicated person who later injured the plaintiff in a car accident. *Bittle v. Bahe,* 192 P.3d 810, 827 (Okla. 2008) . The court distinguished *Kiowa*:

This case does not involve a contract nor does it af-

fect the Tribe's membership or the Tribe's right to govern its members. This case does not interfere with the Tribe's internal affairs or tribal government.… Here, we have a tort action alleging the Tribe allowed ***14** excessive amounts of alcoholic beverages to be served to an intoxicated patron at the Tribe's casino and did nothing to prevent the intoxicated patron from leaving the casino, driving on the public roads and highways while intoxicated, and causing injury. [T]here is a strong federal interest in ensuring all citizens have access to courts. [T]here is an historical and constitutional assumption of state court jurisdiction concurrent with the federal courts under our system of dual sovereignty.

Id. at 821. In his dissent, Justice Krauger expressed his concern about possible reversal by this Court. He reminded the majority that their court "has had four strikeouts in five attempts to resolve issues relating to and involving tribal sovereign immunity" [FN4] and advocated a deathwatch for tribal sovereign immunity:

> FN4. Justice Krauger was referring to four decisions of the Oklahoma Supreme Court regarding sovereign immunity that were overruled by this Court. 192 P.3d at 837 n.18. Of course, the history of these cases highlights the difficulty lower courts have applying tribal immunity.

While the make-up of the United States Supreme Court has changed and the outcome today could be different than the outcome ten years ago [in Kiowa], any change has yet to be effectuated in the caselaw regarding tribal sovereign immunity and as Justice Summers pointed out in Hoover, "the Court would be wise to use restraint" until such ***15** time as the United States Supreme Court has spoken.

Id. at 837 n.18 (quoting *Hoover v. Kiowa Tribe of Okla.*, 957 P.2d 81, 85 (Okla. 1998) (Summers, J., dissenting)).

C. Tribes Will Not Be Harmed By Loss of Immunity

This Court's abrogation of tribal sovereign immunity would clarify federal Indian law without harming tribes: self-determination and autonomy are not and will not be insulted by abandoning the principle. Holding tribes responsible for their conduct will not impede any religious ceremonies or encumber the use and teaching of native languages or customs. Nor will liability for civil damages interfere with tribal government. Although tribal assets could be diminished by civil judgments, tribes can easily protect themselves by procuring insurance. Moreover, the long range benefits of establishing parity between Indian tribes and others far outweigh any short-term drawbacks. Tribes will enjoy less resentment and better rapport with the business community and the community at large outside the confines of the reservation.

Indian tribes have become sophisticated participants in the national economy. Indian gaming revenues in the United States in 2009 exceeded $26 billion.[FN5] ***16** Indian tribes are using this wealth to diversify their interests into the general economy. For example, the 3,300 member Seminole Tribe of Florida purchased Hard Rock International for $965 million in 2006. Matt Krantz, *Seminole Tribe of Florida Buys Hard Rock Cafes, Hotels, Casinos*, USA Today, Dec. 7, 2006, available at http://www.usatoday.com/money/industries/food/2006-12-07-seminoles-hardrock_x.htm. In Oklahoma, the Muscogee (Creek) Nation plans on leading a $1 billion investment in economic development projects in Tulsa, including a toll bridge spanning the Arkansas River. Clifton Adcock, *Tribal Authority Sees Bridge As $1 Billion Boon*, Tulsa World, Mar. 31, 2010, available at http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20100331_11_A1_TheCEO59034&rss_lnk=1.

> FN5. National Indian Gaming Commission (NIGC), Gaming Revenue Reports, 2009 Report, available at http:www.nigc.gov/Gaming_Revenue_Reports.aspx (last visited May 9, 2011). Accord-

> ing to the NIGC Report to the Secretary of the Interior on Compliance with the Indian Gaming Regulatory Act (December 31, 2009), approximately 240 tribes are licensed by the NIGC to conduct gaming operations, with those tribes located in Arizona, California, Colorado, Connecticut, Florida, Iowa, Nebraska, Idaho, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, New Mexico, Nevada, New York, Oklahoma, Oregon, South Dakota, Texas, Washington, Wisconsin, and Wyoming. (The NIGC's December 31, 2009 report is available at http://www.nigc.gov).

In fact, this case demonstrates how tribal sovereign immunity hurts those without a remedy, like the Reeds, and how the Pueblo is an example of a tribe for whom the doctrine has outgrown any legitimate purpose. The Pueblo, through Santa Clara Development Corporation, a private corporation wholly owned by the tribe, operates the Big Rock Casino, the ***17** Big Rock Bowling Center, the Big Rock Event Center, the Black Mesa Golf Club, and the Puye Cliffs Travel Center. Santa Clara Development Corporation, http://www.santaclaradevcorp.com/scdc.html (last visited May 9, 2011). The Pueblo has emerged as a sophisticated market participant in the economy outside the confines of its reservation. Like other sophisticated businesses, the Pueblo had liability insurance available to compensate the Reeds for their loss. Unlike other businesses, the tribe did not have to submit a claim to its insurance carrier and risk a rise in its rates because it has been shielded from liability by its tribal immunity.

II. Tribal Sovereign Immunity Should Not Bar Claims Against Indian Tribes Or Their Employees For Off-Reservation Torts

Even if the Court elects to continue to wait for Congress to make other reforms to tribal sovereign immunity, it should at least make clear that claims for off-reservation torts are not barred by the doctrine. In *Kiowa*, the entire Court recognized that tribal sovereign immunity resulted in a particular injustice for tort victims who had no choice in their interaction with Indian tribes, but who were barred from seeking damages resulting from those encounters. *See* 523 U.S. at 758, 766. *Kiowa* did not explicitly hold that tribal immunity barred such claims, but Justice Stevens cautioned that "nothing in the Court's reasoning limits [immunity] … to lawsuits arising out of voluntary contractual relationships." *Id.* at 766. His concerns are realized in the lower courts' opinions ***18** that bar claims for off-reservation torts. If not corrected by this Court, Indian tribes can cite the lower courts' decisions to assert tribal immunity as a defense for any off-reservation negligent, or even intentional tort anywhere in the United States.

CONCLUSION

For the reasons stated above, petitioners Peggy A. and Timothy A. Reed request that this Court grant their petition for a writ of certiorari.

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