No. 02-1253

Supreme Court, U.S.
FILED
MAR 28 2003
OFFICE OF THE CLERK

In The
Supreme Court of the United States

FRED RIGGS, DONNA SINGER and AL DICKSON,

Petitioners,

v.

SAN JUAN COUNTY, SAN JUAN HEALTH SERVICES DISTRICT, County Commissioner J. TYRON LEWIS, County Commissioner LYN STEVENS (official capacity only), Commissioner MANUAL MORGAN (official capacity only), RICK BAILEY, County Attorney CRAIG HALLS, REID WOOD, KAREN ADAMS, ROGER ATCITTY, PATSY SHUMWAY (official capacity only), JOHN LEWIS, LAUREN SCHAFER, TRUCK INSURANCE EXCHANGE and ATTORNEY DENNIS ICKES, and as yet unnamed JOHN and JANE DOES, in their official and individual capacities, jointly and severally,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS SAN JUAN HEALTH SERVICES DISTRICT, ROGER ATCITTY, KAREN ADAMS, PATSY SHUMWAY, JOHN LEWIS, REID WOOD AND LAUREN SCHAFER TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals erred in (i) affirming the district court's dismissal of petitioners' claim to enforce certain orders of the Navajo tribal court as against respondents Truck Insurance Exchange and Dennis Ickes and (ii) remanding petitioners' claim as against the Health District and San Juan County respondents for an analysis of subject matter jurisdiction pursuant to *Montana v. United States,* 450 U.S. 544 (1981)?

PARTIES TO THE PROCEEDINGS

Petitioners

Petitioners Fred Riggs, Donna Singer and Al Dickson are plaintiffs below and plaintiffs in the action before the Navajo tribal court.

Respondents

Respondents San Juan Health Services District, Reid Wood, Karen Adams, Roger Atcitty, Patsy Shumway, John Lewis and Lauren Schafer (collectively "respondents" or Health District respondents") are defendants below and defendants in the action before the Navajo tribal court.

Additional Parties in this Court

San Juan County, J. Tyron Lewis, Lyn Stevens, Manuel Morgan, Bill Redd, Rick Bailey, Craig Halls (collectively "San Juan County respondents"), Truck Insurance Exchange ("Truck Insurance") and Dennis Ickes are additional respondents, defendants below, and defendants in the action before the Navajo tribal court.

Additional Parties Below

Dr. Steven MacArthur, Michele Lyman, Helen Valdez, Candace Laws, Paul Kieth, Dorothy Kieth, Baxter Benally, Melvin Capitan, Candace Holiday, Percy Mitchell, Eva Pleasant, Amy Terlaak and Linda Cacapardo were additional plaintiffs below, but were not parties in the action before the Navajo tribal court.

Cleal Bradford, John Housekeeper, Gary Holliday, Dr. James Redd, Dr. Val Jones, Dr. Manfred Nelson, Marilee Bailey, Ora Lee Black, Laurie Wallace, Carla Grimshaw, Gloria Yanito and Julie Bronson were additional defendants below, but were not parties in the action before the Navajo tribal court.

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OPINIONS BELOW

The December 28, 1999 preliminary injunction entered by the District Court of the Navajo Nation, Judicial District of Shiprock, New Mexico, is reprinted in the appendix to the petition for a writ of certiorari ("P. App.") at 70a-104a. The Navajo tribal court entered three additional orders in furtherance of the December 28, 1999 preliminary injunction. These orders, dated March 1, 2000, March 2, 2000 and March 15, 2000, are reprinted in the appendix hereto ("R. App.") at 1a-20a, 21a-22a and 23a-25a, respectively. In the action below, petitioners sought enforcement of these orders entered by the Navajo tribal court.

The October 30, 2000 decision of the United States District Court for the District of Utah, Central Division, is unreported and is reprinted at P. App. 26a-51a. The October 30, 2000 order dismissed petitioner's claim seeking enforcement of the Navajo tribal court preliminary injunction with respect to respondents San Juan County, San Juan Health Services District, J. Tryon Lewis, Lyn Stevens, Manual Morgan, Rick Bailey, Craig Halls, Reid Wood, Karen Adams, Roger Atcitty, Patsy Shumway, John Lewis and Lauren Schafer. The December 12, 2000 decision of the District Court is unreported and is reprinted at P. App. 52a-69a. Pursuant to the December 12, 2000 order, the District Court dismissed the claim seeking enforcement of the tribal court preliminary order with respect to respondents Dennis Ickes and Truck Insurance.

The October 7, 2002 decision of the United States Court of Appeals for the Tenth Circuit is reported at 309 F.3d 1216, and is reprinted at P. App. 1a-25a. On November 8, 2002, the court of appeals denied a petition for panel

rehearing submitted by petitioners as well as a petition for rehearing en banc submitted by the respondents. The Order denying the petitions is reprinted at P. App. 105a-106a.

BASIS FOR JURISDICTION

The decision of the court of appeals was entered on October 7, 2002, and the court of appeals denied the petitions for panel rehearing and rehearing en banc on November 8, 2002. Petitioners Riggs, Singer and Dickson filed the petition for a writ of certiorari in the United States Supreme Court on February 6, 2003.

In reliance on Supreme Court Rule 15.3, this Brief in Opposition to the petition for a writ of certiorari is filed within thirty days from February 26, 2003, the date on which the petition was placed on the docket.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, REGULATIONS AND ORDINANCES

Respondents do not believe that the constitutional provisions, treaties, statutes, or other authorities identified by petitioners as involved in this case are relevant to the question of whether the court of appeals erred in (i) affirming the district court's dismissal of petitioners' claim to enforce certain orders of the Navajo tribal court as against respondents Truck Insurance and Dennis Ickes and (ii) remanding petitioners' claim as against the Health

District and San Juan County respondents for an analysis of subject matter jurisdiction pursuant to *Montana v. United States,* 450 U.S. 544 (1981).

STATEMENT OF THE CASE

The Health District is a special service district organized by respondent San Juan County pursuant to Utah Code Ann. § 17A-2-1204. The individual Health District respondents are employees of the Health District or members of its board of trustees. The individual San Juan County respondents are County officials or employees of San Juan County.

The Health District operates a hospital in Monticello, Utah, as well as several out-patient clinics. Prior to January 1, 2000, the Health District operated an outpatient clinic located in Montezuma Creek, Utah. The Montezuma Creek Clinic is located within the exterior boundary of the Navajo Reservation on fee land held in trust by the State of Utah as part of the Utah Navajo Trust Fund. P. App. at 3a. The Health District provided medical services at the Clinic to Native Americans residing on the Navajo reservation pursuant to a contract with Indian Health Services, a federal government agency. Petitioners Fred Riggs, Donna Singer and Al Dickson were employed by the Health District at its Montezuma Creek Clinic. *Id.* In approximately November 1998, the Health District terminated Singer's employment, while Riggs and Dickson remained employed by the Health District at the

Montezuma Creek Clinic until January 1, 2000, when the Health District ceased operating the clinic.[1]

In April 1999, petitioners filed a Complaint for Damages in the Navajo tribal court. P. App. at 3a. While petitioners assert that they alleged violations of Navajo law in tribal court, Petition at 8-9, the Complaint in fact asserted a broad array of claims against the Health District and San Juan County respondents, including federal civil rights claims, state law tort claims and claims based upon the Navajo Preference in Employment Act.[2] P. App. at 4a, n.2. Riggs' and Dickson's claims arose generally out of their employment relationship with the Health District, while Singer's claims arose primarily from the Health District's termination of her employment.

Respondents asserted both sovereign immunity and lack of jurisdiction as defenses to the Navajo tribal court Complaint. P. App. at 30a. Nevertheless, on December 28, 1999, the Navajo tribal court issued a preliminary injunction in which it ordered the Health District to reinstate petitioner Singer to her previous position and awarded back pay and attorneys' fees (an amount petitioners claimed was in excess of $500,000) to each of the petitioners. *Id.* at 101a-104a. Despite the fact that the Health District owned and operated the Montezuma Creek Clinic,

[1] Since January 1, 2000, the Montezuma Creek Clinic has been owned and operated by Utah Navajo Health Systems, Inc. ("UNHS"), an entity of which Singer is the executive director. Singer, Riggs and Dickson have all been employed by UNHS at the Montezuma Creek Clinic since January 1, 2000.

[2] Respondents dispute petitioners' assertion that they are subject to the Navajo Preference in Employment Act. Petition at 8-9.

the preliminary injunction order also purported to preclude respondents from "interfering" with the management of and numerous services provided at the Clinic and directed respondents to take certain affirmative steps with respect to its operation of the Health District. *Id.* at 102a-104a. Moreover, although in their Complaint petitioners sought relief only with respect to the employment actions allegedly taken against them by the Health District, the Navajo tribal court provided broad relief to members of the Navajo Tribe in general, including prohibiting the Health District from billing Navajo Tribe members for health care services, regardless of whether the services were provided at the Montezuma Creek Clinic or at Health District facilities off the reservation. *Id.* at 103a. The order also precluded the Health District from eliminating emergency and other services on the reservation. *Id.*

In March 2000, the tribal court entered several orders supplementing the preliminary injunction, including the Order Denying Defendants' Motion to Dissolve or Modify the Preliminary Injunction Order dated March 1, 2000, R. App. at 1a; the Special Order in Aid to Satisfaction of Preliminary Injunction dated March 2, 2000, *id.* at 21a; and the Order Mandating that All Defendants' [sic] Be Bound by the Preliminary Injunction Order. *Id.* at 23a. Pursuant to these orders, the Navajo tribal court ordered respondents immediately to pay back wages and attorneys' fees, *id.* at 16a-17a; imposed a $10,000 per day penalty upon respondents in the event they failed to comply immediately with the Navajo tribal court's orders, $1,000 of which was to be paid by the individual respondents, *id.*

at 20a; and ordered that the penalty would apply during any period of appeal. *Id.*[3] The tribal court also purported to grant petitioners leave to seek immediate enforcement of its orders in any Utah or federal court. *Id.* at 22a. Finally, the Navajo tribal court permitted petitioners to add as defendants Truck Insurance, the Health District's insurer, and Dennis Ickes, counsel for the Health District and San Juan County respondents in Navajo tribal court, and the tribal court bound both of them to its previously-entered orders. *Id.* at 24a-25a.

In August 2000, petitioners filed this action in the United States District Court for the District of Utah seeking to enforce the Navajo tribal court orders discussed above.[4] Shortly after the institution of this action, respondents moved to dismiss petitioners' claims to enforce the Navajo tribal court orders based on their sovereign immunity from suit in tribal court. By Order dated October 30, 2000, the district court dismissed petitioners' enforcement claim with respect to the Health District and San Juan County respondents. P. App. at 26a. According to the district court, as political subdivisions of the State of Utah and their officials or employees, the Health District and

[3] Petitioners mislead this Court by asserting that the tribal court "threatened" to impose a penalty of $10,000 per day against respondents. Petition at 9. In fact, the tribal court did impose the penalty and, as noted, ordered that $1,000 per day of the penalty should be paid personally by the individual respondents. R. App. at 20a.

[4] In addition to the enforcement claim asserted by petitioners, the district court action named as plaintiffs a number of individuals other than petitioners. These additional plaintiffs asserted a broad range of federal civil rights and other claims against respondents as well as other defendants. The claims of these additional plaintiffs are not at issue before the Court.

San Juan County respondents shared in the State's sovereign immunity from suit in the Navajo tribal court. *Id.* at 43a. On December 13, 2000, the district court entered an order dismissing the enforcement claim as against Truck Insurance and Ickes on the grounds the tribal court lacked subject matter jurisdiction over them. *Id.* at 52a.

Thereafter, petitioners sought and obtained certification of the October 30 and December 13, 2000 orders pursuant to Fed. R. Civ. P. 54(b). On appeal, the court of appeals reversed the district court's ruling with respect to the Health District and San Juan County respondents. *MacArthur v. San Juan County*, 309 F.3d 1216 (10th Cir. 2002); P. App. at 2a. While the court of appeals acknowledged that cross-petitioners may have been entitled to sovereign immunity from suit in the Navajo tribal court, it found that the district court should have addressed the issue of the tribal court's subject matter jurisdiction under *Montana v. United States*, 450 U.S. 544 (1981), prior to addressing cross-petitioners' claim of sovereign immunity:

> The threshold question in our review of the Navajo court judgment is whether the Navajo Nation's decision to exercise adjudicative power over County and Health District defendants passes muster under *Montana*. If, and only if, appellants overcome the heavy presumption *Montana* establishes against the existence of tribal jurisdiction will a federal court have occasion to address the sovereign immunity issue at all.

Id. at 1226; P. App. at 22a. On this basis, the court of appeals remanded petitioners' claim against the Health District and San Juan County respondents to district court for a determination of the tribal court's subject matter

jurisdiction. *Id.* at 1228; P. App. at 25a. With respect to the district court's dismissal of petitioners' claim against Truck Insurance and Ickes, the court of appeals affirmed, concluding that the Navajo tribal court lacked jurisdiction pursuant to *Montana*. *Id.* at 1223-24; P. App. at 14a-15a.

REASONS FOR DENYING THE PETITION

Petitioners argue that the petition should be granted because in remanding petitioners' claim to enforce the tribal court orders as against the Health District and County respondents for an analysis of tribal court subject matter jurisdiction under *Montana* and its progeny[5] the court of appeals acted (i) contrary to the law of other circuits, and (ii) outside its own jurisdiction. For the reasons set forth below, this Court should deny the petition.[6]

[5] The Health District respondents address only the claim that the court of appeals erred in remanding petitioners' claim as against the Health District and San Juan County respondents. This brief does not address petitioners' claims of error with respect to Truck Insurance and Ickes.

[6] The Health District respondents have also filed a Conditional Cross-Petition for a Writ of Certiorari. As set forth in the Cross-Petition, respondents believe that the court of appeals erred not for the reasons set forth by petitioners, but rather in failing to affirm the district court's dismissal of petitioners' claim as against the Health District and County respondents on the basis of sovereign immunity.

I. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH *UNITED STATES V. ENAS*

Petitioners assert that the court of appeals' decision conflicts with *United States v. Enas*, 255 F.3d 662 (9th Cir. 2001) (en banc), *cert. denied*, 534 U.S. 1115 (2002), in which the United States Court of Appeals for the Ninth Circuit held that Indian tribes have criminal jurisdiction over non-member Indians under the 1990 amendments to the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1301, *et seq.* According to petitioners, *Enas* holds that the reach of a tribal court's inherent sovereignty is not a constitutional issue to which the courts may speak, but rather an issue which only Congress has the authority to determine. Petition at 14. From this premise, petitioners argue that the court of appeals' failure to recognize tribal court jurisdiction over non-members under 25 U.S.C. § 1302(8), which contains ICRA's equal protection mandates,[7] conflicts with the *Enas* court's finding of tribal court jurisdiction under section 1302. In addition, petitioners assert a conflict exists because the court of appeals determined that *Montana* and its progeny should govern the district court's subject matter analysis, but under *Enas*, *Montana*

[7] The relevant portions of section 1302 provide:

> No Indian tribe in exercising powers of self-government shall –
>
> . . .
>
> (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

25 U.S.C. § 1302(8).

and its progeny are moot. Petitioners misinterpret *Enas*, and their argument is flawed from beginning to end.

A little background is important in understanding the holding of *Enas*. In *Duro v. Reina*, 495 U.S. 676 (1990), this Court addressed whether an Indian tribe may assert criminal jurisdiction over nonmember Indians (i.e., Indians who are not members of the prosecuting tribe). The Court concluded that Indian tribes do not possess this form of inherent sovereign authority, nor had Congress delegated such authority to the tribes. *Id.* at 688. In response to *Duro*, Congress enacted amendments to ICRA (the amendments are commonly known as the "*Duro* fix") that were intended to override *Duro*. These amendments redefined tribal "powers of self-government" as

> all government powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and . . . the inherent power of Indian tribes, hereby recognized and affirmed, *to exercise criminal jurisdiction over all Indians*.

25 U.S.C. § 1301(2) (2000) (emphasis added).[8] Congress' amendment was intended to override *Duro* in two ways. First, tribes were given *criminal* jurisdiction over nonmember Indians. Second, contrary to *Duro's* historical analysis, Congress stated that such jurisdiction was inherent, not delegated by Congress.

[8] Prior to the amendments, this provision ended after the term "Indian offenses."

Subsequent to the *Duro* amendments, in *Enas*, a non-member Indian was prosecuted for the same conduct in both tribal court and federal court. Defendant protested that the dual prosecutions violated the Double Jeopardy Clause because the tribal court's criminal jurisdiction was congressionally delegated through the *Duro* amendments and, based on *Duro's* analysis, could not be considered part of the tribe's inherent powers.[9] The district court agreed with defendant and held the Double Jeopardy Clause precluded his federal prosecution. The Ninth Circuit reversed and remanded, finding that Congress, not the federal courts, had the last say on the nature of tribal court criminal jurisdiction over non-member Indians. The Ninth Circuit further held that through the *Duro* fix, Congress had declared that tribal inherent sovereignty included criminal jurisdiction over non-member Indians.[10]

Thus, contrary to petitioners' assertion, *Enas* did not hold and does not support petitioners' argument here and

[9] Under established principles of Constitutional jurisprudence, dual prosecutions are allowed if a tribe is prosecuting pursuant to its inherent sovereign power, as opposed to congressionally delegated power. On the other hand, if a tribe is prosecuting pursuant to congressionally delegated power, it is acting as an arm of the federal government, and the Double Jeopardy Clause precludes both tribal and federal government prosecutions. *Enas*, 255 F.3d at 664 (citing *United States v. Wheeler*, 435 U.S. 313, 328 (1978)).

[10] In its separation of powers analysis, the Ninth Circuit found that the courts have the last say with respect to Constitutional issues, while Congress can trump a court on issues of statutory interpretation by amending the statute. *Enas*, 255 F.3d at 673. The Ninth Circuit found that *Duro's* historical analysis of a tribe's sovereign power over non-member Indians was one of "federal common law," which is more akin to statutory interpretation than Constitutional issues, giving Congress the last word on such issues. *Id.* at 674-675.

in the court of appeals that section 1302(8) provides tribal courts with general jurisdiction over non-Indians, rendering *Montana* and its progeny moot. First, *Enas'* finding that tribal courts have criminal adjudicatory power over non-member Indians was based not on the equal protection provisions contained in 25 U.S.C. § 1302(8), on which petitioners relied in the Tenth Circuit, but rather on the language of 25 U.S.C. § 1301(2). Following the *Duro* amendments, section 1301(2) specifically provides that the inherent sovereignty of tribes includes criminal jurisdiction over non-member Indians. *Enas* did not suggest that the language of section 1302(8) provided any basis for jurisdiction.

Second, *Enas* addressed, and was specifically limited to, the question of a tribal court's *criminal* adjudicatory power over non-member *Indians*. This case involves the question of a tribal court's *civil* adjudicatory power over *non-Indians*. Finally, *Enas* does not support petitioners' argument that federal courts lack authority to adjudicate the issue of tribal court jurisdiction, particularly in a case involving civil jurisdiction, thereby rendering *Montana* and its progeny moot. As noted above, *Enas* involved only the issue of tribal court criminal jurisdiction over non-member Indians, not civil jurisdiction over non-Indians. Moreover, *Enas* did not hold that courts cannot adjudicate the reach of tribal court jurisdiction, but only that the historical reach of tribal sovereignty involved interpretation of the federal common-law, an issue on which Congress has the last word.

In conclusion, *Enas* does not conflict with the court of appeals' decision in this matter or suggest that tribal courts have civil jurisdiction over non-Indians.

II. THE COURT OF APPEALS DID NOT EXCEED ITS JURISDICTION IN DETERMINING THAT *MONTANA* AND ITS PROGENY GOVERN THE ANALYSIS OF A TRIBAL COURT'S SUBJECT MATTER JURISDICTION

In reliance on various statutory or other authorities, petitioners argue Congress has clearly declared that tribal court sovereignty includes civil jurisdiction over all actions arising within the exterior boundary of a reservation, whether on tribe or fee land, including actions brought against non-Indians. Based on their interpretation of *Enas*, as discussed above, petitioners argue these "clear" congressional declarations in favor of tribal court jurisdiction render *Montana* and its progeny moot and establish that the tribal court had jurisdiction over petitioners' claims. Petitioners assert that in failing to recognize the tribal court's jurisdiction and instead remanding for a subject matter analysis under *Montana*, the court of appeals acted outside of its own jurisdiction. In fact, Congress has neither declared that tribal sovereignty includes civil jurisdiction over non-Indians, nor has it delegated such power to Indian tribes. The statutes and other authorities to which petitioners cite do not even address tribal court civil jurisdiction over non-Indians, much less confirm that such jurisdiction exists.

A. 25 U.S.C. § 1302 Does Not Provide a Basis for Tribal Court Civil Jurisdiction Over Non-Indians

Petitioners argue that because 25 U.S.C. § 1302 extends certain enumerated guarantees of the Federal Constitution to "any person," rather than "any Indian," Congress has declared that tribal courts have jurisdiction

over civil claims against non-members arising on the reservation. Petitioners' argument is without merit. Section 1302(8), on which petitioners rely, provides that tribes must provide equal protection or due process to any person "within its jurisdiction." This language establishes only that the tribe owes certain obligations to those who are within its jurisdiction; it does not establish the parameters of that jurisdiction or extend tribal court jurisdiction to non-members. *See Oliphant v. Squamish Indian Tribe*, 435 U.S. 191, 196 (1978) (the extension of certain due process and equal protection guarantees to all "persons" in section 1302(8) does not demonstrate congressional intent to confer tribes with criminal jurisdiction over non-members). Petitioners' assertion that section 1302(8) established a congressional delegation of general civil adjudicatory jurisdiction over non-Indians to tribal courts for any action arising within the exterior boundaries of the reservation is absurd.

B. The 2000 Technical Assistance Act Does Not Provide Tribal Courts with Civil Jurisdiction Over Non-Indians

Petitioners next contend that Congress has declared tribal courts have civil jurisdiction over non-Indians through the 2000 Technical Assistance Act (the "2000 Act"), codified at 25 U.S.C. §§ 3651 and 3665. The 2000 Act provides for certain financial and other assistance to tribal courts by the federal government. Section 3651 of the Act simply incorporates certain general findings by Congress regarding the importance of tribal courts. However, nothing in section 3651 specifically addresses tribal court civil jurisdiction over non-members, much less provides for such jurisdiction. Similarly, section 3665 addresses generally

the authority of the tribal courts and provides that nothing shall diminish the inherent jurisdiction of such courts. Again, section 3665's general acknowledgments regarding tribal courts do not in any way create a congressional declaration that tribal court jurisdiction includes general civil jurisdiction over non-members.[11]

Petitioners also cite to a provision in the Senate report that accompanied the 2000 Act, which states that tribal courts are charged with resolving the rights and interests of both Indian and non-Indian individuals. As an initial matter, a senate report is not legislation and does not have the force of law. *See In re North*, 11 F.3d 1075, 1078 (D.C. Cir. 1995). Moreover, given that the 2000 Act did not address tribal court jurisdiction, but rather involved funding for tribal courts, the senate report accompanying the 2000 Act clearly could not demonstrate Congress' intent to delegate civil jurisdiction over non-members to Indian tribes. Finally, the provision in the report to which plaintiffs cite contains language from *Montana* and an earlier case. Congress' recognition that situations may arise in which a tribe has jurisdiction over non-Indians, consistent with *Montana*, does not equate with a specific delegation or recognition of such authority. The senate report simply provides too tenuous a link on which to imply jurisdiction.

[11] In their petition, petitioners string together pieces of different statutes to support their assertion that Congress has declared that tribes may exercise civil jurisdiction over non-Indians in actions arising within the exterior boundaries of a reservation. Petition at 19. In that section, petitioners cite to 25 U.S.C. § 1351 for the proposition that tribes are the "most appropriate" courts for resolving civil disputes. There is no section 1351 of title 25 of the United States Code.

As the *Duro* amendments demonstrate, if Congress wishes to recognize tribal court jurisdiction beyond that recognized by the courts, it can and has done so very directly. Petitioners have failed to provide any evidence that Congress has given tribal courts civil jurisdiction over non-Indians with respect to all claims arising on a reservation. Petitioners' request for certiorari is without merit and should be denied.

C. The United States' Ratification of the United Nations Covenant on Civil and Political Rights Does Not Suggest Tribal Courts Have Jurisdiction Over Non-Indians with Respect to Claims Arising Within

Petitioners argue that the United Nations International Covenant on Civil and Political Rights ("UNICCPR"), dated December 16, 1966, and allegedly ratified by the United States in 1992, authorizes tribal courts to exercise jurisdiction over all persons, including non-Indians, on the reservation. In making this argument, petitioners rely on general language in the UNICCPR providing that "States Parties" (parties to the covenant) will promote the right of self-determination for the non-self-governing and trust territories subject to their authority. Petition at 16. This language simply does not address the jurisdiction of Indian tribal courts, nor does it provide any basis for concluding that tribal courts have authority over non-Indians with respect to matters arising on fee land within the exterior boundary of a reservation.[12]

D. Tribal Court Jurisdiction Over Non-Indians Is Not Mandated by Executive Orders

Finally, petitioners argue that Executive Order 13175, signed by President Clinton on November 6, 2000, and a November 21, 2001 proclamation issued by President Bush as part of National American Indian Heritage month (petitioners' Lodging at L-138), somehow demonstrate that tribal courts have jurisdiction over non-Indians with respect to any claim arising within the exterior boundaries of the reservation. Executive Order 13175, along with President Bush's later proclamation, are simply general expressions of support for tribal self-government. That the executive branch has voiced continued support of tribal governments and respect for tribal self-government is simply an inadequate basis on which to imply tribal court civil jurisdiction over non-Indians for actions that occurred

[12] Petitioners also cite language purportedly from a Department of State report regarding UNICCPR, but they neither provide a complete copy of the report nor an adequate citation. For that reason alone, the Court should disregard this argument. Moreover, a report prepared by some unidentified employee or division of the State Department provides no basis for finding a congressional delegation of tribal court jurisdiction. Finally, petitioners rely on the report's citation to *Fisher v. District Court*, 424 U.S. 382 (1976), for the proposition that this Court has held tribal courts are the proper forums for the adjudication of civil disputes involving Native Americans and non-Native Americans arising on a reservation. In fact, in *Fisher*, this Court held only that the tribal court was the proper forum for litigation where all parties were tribe members, and the dispute arose on the reservation. *Id.* at 383, 389.

on fee-owned land within the reservation. Moreover, petitioners' claim of jurisdiction is based on their assertion that Congress has provided for such jurisdiction. Declarations of the executive branch regarding tribal sovereignty and authority are irrelevant to the question of *congressional* intent.

CONCLUSION

For the reasons set forth above, the Petition should be denied.

Respectfully submitted,

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**IN THE DISTRICT COURT OF
THE NAVAJO NATION
JUDICIAL DISTRICT OF SHIPROCK, NEW MEXICO**

DONNA SINGER; Fred Riggs C#18570; Alison Dickson C#212,765; Plaintiffs, vs. **SAN JUAN COUNTY**; San Juan Health Service District; Rick Bailey; Reid Wood; Lauren Schafer; Craig Halls; Commissioner Bill Redd; Roger Atcitty; Commissioner Mark Maryboy[1]; John Lewis Commissioner J. Tyron Lewis; Karen Adams; Patsy Shumway[2], and other John and Jane Does as yet unnamed in their personal and official capabilities, Defendants.	SR-CV-162-99 **ORDER DENYING DEFENDANTS' MOTION TO DISSOLVE OR MODIFY THE PRELIMINARY INJUNCTION ORDER**

THE COURT having received and reviewed (1) the defendants' "Motion to Dissolve or Modify Findings, Opinion and Judgment at Preliminary Injunction" and (2) the plaintiffs' response to the same motion, hereby denies the defendants' motion, and makes the following findings of fact and conclusions of law, that will incorporate herein and add to the original Preliminary Injunction Order raised in issue, as follows: