original

No. 02-1774

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), County Commissioner MANUAL MORGAN (official capacity only), RICK BAILEY, County Attorney CRAIG HALLS, BILL REDD, REID WOOD, KAREN ADAMS, ROGER ATCITTY, PATSY SHUMWAY (official capacity only), JOHN LEWIS, LAUREN SCHAFER, TRUCK INSURANCE EXCHANGE AND DENNIS ICKES; and new district officers, NETTIE PRACK (official capacity only), GLEN IMEL (official capacity only), CLEAL BRADFORD (official capacity only), JOHN FELMETH (official capacity only) 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 of the Tenth Circuit

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PETITIONERS' MOTION TO EXPEDITE CONSIDERATION OF PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS AND PROHIBITION AND TO SET EXPEDITED SCHEDULE FOR BRIEFING AND ARGUMENT BASED UPON IMMENENT ENDANGERMENT TO NAVAJO PATIENTS AND DENIAL OF EQUAL RIGHTS TO PETITIONERS

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No parties are private corporations.

PETITIONERS' MOTION TO EXPEDITE CONSIDERATION OF PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS AND PROHIBITION AND TO SET EXPEDITED SCHEDULE FOR BRIEFING AND ARGUMENT BASED UPON IMMENENT ENDANGERMENT TO NAVAJO PATIENTS AND DENIAL OF EQUAL RIGHTS TO PETITIONERS

Petitioners Riggs enrolled Navajo member, Singer wife and mother of enrolled Navajo members, and Dickson enrolled Navajo member, move this Court to expedite its consideration of their Petition for a Writ of Extraordinary Mandamus and Writ of Prohibition (Docket No. 02-1774). It is *imperative* that the United States Supreme Court hear Petitioners' claims as soon as practicable. This Court's expedited consideration of the petition for writ of extraordinary mandamus and prohibition is warranted to ensure that Petitioners' constitutional rights are not irretrievably vanquished and to restore stability to health care for publicly insured, often non-English speaking American Navajo in the Utah strip of the Navajo Reservation. Time is plainly of the essence. *Diabetic, anemic and hypertensive patients either being undiagnosed or untreated can die soon if the Navajo Orders Petitioners seek to have enforced are not immediately carried out.*

Pursuant to Supreme Court Rule 25.4, petitioners further request that, if the Court grants these petitions, it expedite the schedule for briefing and oral argument. Should this Court grant the petition for certiorari on an expedited basis, an expedited briefing schedule is necessary for the same reasons that warrant expedited consideration of the mandamus petition. Particularly given the importance of the issues presented, it is in the best interests of the parties, as well as the Nation, that this Court have as much time as possible to consider the relative merits of the parties' positions and to issue its decision prior to any further persons dying, going blind, requiring amputations, or requiring

immediate health care or before any Court below places the Petitioners on an endless round of appellate courts. Petitioners pleas for help administratively and judicially have uniformly been denied or ignored while petitioners and patients suffer.

QUESTION OF NATIONAL IMPORTANCE AND URGENCY

This is a case of the utmost national importance and urgency, involving the ability of the Indian Nations (1) to *immediately* respond to a *public safety emergency* perpetrated by non-Indians residing outside the Navajo Nation borders; (2) to *immediately* protect its Courts' processes against non-Indian court officers and insurance companies working, supporting and funding, primarily non-Indian Court parties knowledgeable bad faith litigation designed to a) deplete the limited resources; b) destroy the good names of the Navajo Court petitioners; and c) hamstring the Court from protecting the public safety; (3) to apply the protections of Navajo Law equally to 'any person' not 'any Indian', without regard to national origin, race, or title of property ownership as ordered, directed, required, demanded, mandated, by the Treaty of 1849 and 1868, Navajo customs and traditions, and resultingly, Congress' *plenary*, or absolute, *express* divestiture of Navajo sovereignty found in 25 U. S. C. §1302(8) [1] and definitions of Navajo borders found *expressly* in 18 U.S.C. 1151; (4) to apply its laws uniformly and fairly as *demanded* by its BIA- Judicial Program contracts (Pet. For Cert. L-144), a formal Executive agency action worthy of *Chevron* deference [2]; and (5) to establish confidence of people in the

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[1] See, *S.R.I. v. Polacca*, Navajo Supreme Court, SC-CV-86-98, 2000 (Pet. For Cert. Lodging at 26-27 ("Once an individual obtains the right to enter the Navajo Nation, due process of law requires that the Navajo Nation extend the protections of its law to all individuals."). http://www.tribal-institute.org/opinions/2000.NANN.0000006.htm

[2] *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., et al,*. 1984 U.S. LEXIS 118,*17-18 ;467 U.S. 837; 104 S. Ct. 2778;81 L. Ed. 2d 694 ("We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer").

Navajo Nation judiciary as against *any individual* who would injure any individual while within the Navajo Nation borders.

Notably, these respondents claiming immunity in their denied cross-petitions, docket no. 02-144, and 02-1445, filed non-compulsory counterclaims of Navajo fraud that waived any immunity. [3] There is no legal reason why 28 U.S.C. §1738 full faith and credit should not be given these orders that grant **only Indian law relief**. Indian Nations are *presumed* to have authority over non-Indians in areas of contracts, economic security, customs and traditions, and political and civil rights protections as found in *Montana v. United States,* 450 U.S. 544, 565- 566, 67 L. Ed. 2d 493, 101 S. Ct. 1245 (1981). **This Court has previously granted expedited treatment of cases involving substantial questions of national importance.** *See, e.g., Dames & Moore v. Regan,* 453 U.S. 654 (1981); *United States v. Nixon*, 418 U.S. 683 (1974); *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952); *Ex parte Quirin*, 317 U.S. 1 (1942). The importance of this case is at least equal to, if not greater than, **Montana's** landmark decision as it will effect *every Individuals'* rights to seek Indian Nation legal protections within hundreds of America's Indian Nations as against bullying non-Indians residing outside reservation boundaries. **Indian nations will not be havens of lawlessness and Indian victims of non-Indians who can not afford federal or state courts, often without interpreters, hundreds of miles from home [as here].** *Santa Clara Pueblo et al v. Martinez et al*, 1978 U.S. LEXIS 8,*;436 U.S. 49; 98 S. Ct. 1670; fn. 19 and 30. Without full faith and

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[3] *Sutton v. Utah School of the Deaf and Blind*, 173 F.3d 1226, 1233 (10th Cir. 1999). The 10th Circuit didn't speak to this argument as raised below. This Court addressed municipal immunity in *Cook County v. United States ex rel Chandler*, 538 U.S. ___ (slip opinion)(Docket no. 01-1572) and *Jinks v. Richland County, South Carolina*, 538 U.S. _____(slip opinion)(April 23, 2003) and found these 'natural persons' have none for nearly 'all statutory and Constitutional analysis' (*Cook*).

credit, these American citizen Navajo and non-Navajo Petit oners and patients have been denied Federal equal treatment with parties from all other U. S. States, territories, or possessions... all equally under Congress' plenary power to limit or expand authority.

STATEMENT OF FACTS

Petitioners, after 32 hours and about 14,000 pages o documents, in tedious hard litigation, won a Navajo Nation Court preliminary injunction (December 28, 2003) and supporting orders (March 1, March 2, and March 15, 2000) the Petitioners have sought to enforce federally. **Both** respondents and petitioners sought Navajo legal relief in Navajo Court. *See Extraordinary Writ (Ew) Appendix 1a-60a.* These Navajo claims arise within the Navajo Nation borders at (1) Montezuma Creek Clinic [4]; (2) Shiprock District Court; (3) and in hundreds of Navajo patients homes through respondents sending illegal bills to publicly insured patients [5] with whom respondents had individual contracts. The Navajo Court found petitioners had standing to raise the patient endangerment issues in custom and the judicial doctrine found in *Halona v. MacDonald*, 1 Nav. R. 189 (Navajo, 1978).[6] The Court fines were issued for *Respondents choosing* to ignore and disobey the Navajo orders and **continuing to willfully endanger these patients and Navajo policy**. They are compensatory, not penal, in nature. (EW P. Ap. 60a). **At all times, the fines were within the respondents' ability to control**. Respondents, including the federally dismissed Truck and Navajo Court officer Ickes, have not sought to exhaust their Navajo

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[4] Owned by the Utah Navajo Trust Fund by federal mandate, Act of June 14, 1934, ch. 521, 48 Stat. 960-962, and P.L. 72-403, 47 Stat. 1418, a private purpose fund (Utah code 63-88-102) and is built and paid for with Navajo money derived from non-renewable resources within the Aneth extension (Utah strip) of the Navajo Nation.

[5] Public law 102-573, "Sec. 222 (a) A **Patient** who receives contract health care services that are authorized by the Service Unit CHS [Contract Health Services] **shall not be liable** for payment of any charges or costs associated with the provision of such services....." Id. Emphasis Added.

[6] http://www.tribal-institute.org/opinions/1978.NANN.0000002.htm

Court remedies as required under *National Farmers Union Ins. Co. et al v. Crow et al*, 1985 U.S. LEXIS 27,*;471 U.S. 845;105 S. Ct. 2447;85 L. Ed. 2d 818 (1985). **Respondents had full access to federal, state, Navajo levels of due process.** [7] **All** their evidence was fully accepted and duly considered by the Navajo Nation Court. [8] The respondents were to inform patients they could go to Montezuma Creek Clinic without pay, **knowing of a 250% drop in diabetes patients visits**, and chose not to.

PENDING IMINENT HARM TO THE NAVAJO PETITIONERS AND PATIENTS

An April 28, 2003 survey, statistically analyzed by medical sociologist Dr. Jane Shelby, Ph.D. (Petition for Extraordinary Writ at 61a), shows that of the presumably English speaking/reading respondents about **21% believed they have to pay for their health care at Montezuma Creek Clinic; nearly 28%, reported knowing people who did not go to either Montezuma Creek or Monument Valley clinics for fear of payment and fear of billing; 17.2% reported knowing someone who did not go to the clinic and later died or became more seriously ill**. About 20% of all patients is about **1200 patients** either not being seen anywhere or having to travel in excess of 60 to 100 miles in any one direction to receive health care. … a lethal trip due to travel time.[9]

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[7] The Respondents could have (1) **certified any questions** as to jurisdiction, due process, bad faith, or any other issues, if any existed, to the Navajo Nation Supreme Court; (2) **sought special writs** of mandamus or prohibition from the Navajo Nation Supreme Court; (3) **sought immediate relief in federal court** for any subject matter jurisdiction claims, if lack of due process or bad faith or futility were involved; (4) **could have chosen *not* to raise any non-compulsory counterclaims** of Navajo common law fraud in Navajo Court; (5)**chosen not to submit evidence and live witnesses**, without restraint; (6) filed a judicial misconduct complaint if there was a basis and ***chose not to.***

[8] **The full and complete oral and written record of the Navajo Court was submitted to Federal District Court and is located in the Federal Court's basement for purposes of 28 U.S.C. § 1738, full faith and credit.**

[9] There **are about 50 people who are missing from the diabetic program anywhere.** Petitioners do not know if they are alive, dead, or moved. **Another 50 registered diabetic dialysis patients must travel minimally over 100 miles round trip several times a week.**

It is unknown how many diabetic, and untracked anemic and hypertensive patients are blind, had gangrene and amputations or are years closer to dialysis and dying, strokes or coronaries, due to not being seen, diagnosed, treated or taking meds, or going without vegetables to pay bills they weren't liable to pay.[10]

NEW CASE LAW SUPPORTS THESE PETITIONS

Less than just one month ago, this Court defined Indian Nations as states and territories and possessions. *Inyo County et al v. Pauite-Shoshone Indians of Bishop community of the Bishop colony*, 538 U. S. ____(slip opinion)(02-281, May 19, 2003) page 6 and fn. 6 (Indian Nations are like 'states' and 'territories' for 1983 purposes). [11] *See, Branch v. Smith*, 538 U. S. ___(slip opinion)(Docket no. 01-1437, March 31, 2003)[12] . Here, defining 'territory' to include sister sovereign Indian Nations should apply equally for 28 U.S.C. §1738 and 42 U.S.C. §1983 in keeping with early U.S. definitions of territory that include Indian Nations.[13] **States, territories, possessions, and Indian**

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[10] The clinic is designated 'frontier'. The next available help for a *clinic* is in Blanding, about 35 miles away and Shiprock Indian Health Service *hospital* between 65 to 100 miles one way. Hitchhiking to health care is not uncommon even in frigid winter conditions. If care is 65-100 miles farther down the road, it can be lethal for people afraid to be seen or think they can not afford clinic care, whose conditions worsen.

[11] *See Superior Oil Co. v. Merritt*, 619 F. Supp. 526, 531 (D Utah 1985) (holding that an Indian tribe is not a foreign state for purposes of diversity jurisdiction under 28 U.S.C. § 1332(a)(4), which creates jurisdiction over a foreign state as plaintiff and a citizen of a state); *c.f. Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1223 n.3, 1226 (9th Cir. 1989).

[12] "The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them . . . . If a thing contained in a subsequent statute, be within the reason of a former statute, it shall be taken to be within the meaning of that statute . . .; and if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute." *United States* v. *Freeman*, 44 U.S. 556, 3 How. 556, 564-565, 11 L. Ed. 724 (1845)." *Branch, supra*

[13] *Embry v. Palmer*, 107 U.S. 3, 9 (1883) (looking at the 1804 amendments to the original 1790 act finds the statute "must be taken to mean, such faith and credit as they are

nations are all equally subject to Congress' *plenary*, or absolute, authority, not Article III Court's authority. [14] **Congress has never divested** Indian Nation Sovereign Authority over all acts that occur within Indian Nation borders as this Court in *Montana* and its progeny. See, 10th Cir. 2002 ruling in *NLRB v. San Juan Pueblo*, 276 F.3d 1186;2002 U.S. App. LEXIS 587 *12-13. "**Indian tribes** are not states. They **have a status higher than that of states**. They are subordinate and dependent nations possessed of all powers [except] to the extent that they have *expressly* been required to surrender them by the superior sovereign, the United States." Id. fn. 6 Respondents have not met their burden of proof to show that Congress intended to divest this Navajo Court of authority over its Court officers and all who seek to interfere with its processes, to adjudicate Navajo legal injuries, and protect Navajo public safety from non-Indian intruders. Id. *13. "..[I]mplied preemption of such sovereign authority does not suffice. *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 18, 94 L. Ed. 2d 10, 107 S. Ct. 971 (1987) (" . . . The proper inference from silence . . . is that the sovereign power . . . remains

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entitled to in the courts of the state, territory, or other country *subject to the jurisdiction of the United States from which they are taken.*"). See, also, *United States ex rel. Mackey v. Coxe*, 18 How. 100, 103 (1856) and *Standley v. Roberts*, 59 F. 836, 845 (CA8 1894), appeal dismissed, 17 S. Ct. 999, 41 L. Ed. 1177 (1896)." A well-established canon of Indian law states that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766, 85 L. Ed. 2d 753, 105 S. Ct. 2399 (1985). This rule means "doubtful expressions of legislative intent must be resolved in favor of the Indians." *South Carolina v. Catawba Tribe of Indians*, 476 U.S. 498, 506, 90 L. Ed. 2d 490, 106 S. Ct. 2039 (1986). The rule applies to other statutes, even where they do not mention Indians at all. *EEOC v. Cherokee Nation*, 871 F.2d 937, 939 (10th Cir. 1989) (interpreting the Age Discrimination in Employment Act).

[14] See, *e. g., United States* v. *Hellard*, 322 U.S. 363, 367 (1944)("the power of Congress over Indian affairs is plenary"); *United States* v. *Sandoval*, 231 U.S. 28, 45-46(1913); *Tiger* v. *Western Investment Co.*, 221 U.S. 286, 315(1911) ("It is for that body [Congress], and not the courts"); *Lone Wolf* v. *Hitchcock*, 187 U.S. 553, 565 (1903)("Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning . . . not . . . the judicial department of the government"); *United States* v. *Rogers*, 45 U.S. 567, 572.

intact.")." NLRB at *12-14. *See, also* 2002 Fifth Circuit, *Bank One v. Shumake*, 2002 U.S. App. LEXIS 2412,*9;281 F.3d 507 (**Tribal jurisdiction** over non-Indians is a **vital aspect of sovereignty**); 1999 Seventh Circuit *Thomas v. United States*, U.S. App. LEXIS 21404,*12-13;189 F.3d 662 cert denied 2000 U.S. LEXIS 4881 ("Tribes are sovereign **only** to the extent that their sovereignty has not been qualified by **statutes or treaties.**"); 2002 Ninth Circuit *Solomon v. Interior Regional Housing Authority* 2002 U.S. App. LEXIS 26370,*16-17;313 F.3d 1194 (enforcement of the Indian Preference Acts [as here] should be left to the Indian Nations in the face of Congressional silence). Referring these American Navajo petitioners back to Navajo Court for exhaustion of respondents remedies is brutal torture, due to **respondents' lack of willingness** to (a) affirmatively litigate their relief until now, or (b) provide the County and District organization Respondents separate counsel(as ethics rules dictate (Writ of Prohibition)) as is consistent with judicial economy and due process....especially in **the face of current political, physical, economic Navajo genocide facing the Utah strip petitioners and patients**. The Indian Civil Rights Act is worthless, without off reservation enforcement for 'any person' harmed within Indian Nation borders. We live in an age of rapid transportation, computers, business, economic, intermarriage, and social intercourse. State and federal claims don't work for all the reasons these orders have been unenforceable. Under current Supreme Court law, *Indian Nation orders are worthless, individual Indians' rights under Indian law are worthless*. Here, Petitioners have fought for 3 years against teams of federal court attorneys, in hostile federal courts, hundreds of miles from home, at huge expense, with ever changing case law tests that eventually can never be met by single individual Indian Court parties. ***Congress never intended such results***, and 28 U.S.C §1738 full faith and credit can rectify this entire

situation very simply and quickly. The United States funded and controlled modern democratic dependant sovereign of the Navajo Nation, handling 90,000 cases a year for non-Indian and Indian alike, with bar members of all races and backgrounds, should not be confused with mysterious cults, hippie communes or foreign countries. If the Navajo Nation government carries out its Congressional statutory and treaty obligations, and BIA's contractual demands, to protect *all persons* equally for Indian claims arising within Congress' defined borders, then Article III Courts should be required to give these Petitioners' orders full faith and credit equally with parties of all other U.S. sovereigns, particularly as here if it will save lives. ***If one innocent American faced a government drawn death sentence, expedited relief from this court would be accessible.*** **Here there are now** ***unknown numbers of diagnosed and undiagnosed diabetic, hypertensive, and anemic American Navajo patients*** facing a likely death sentence due to ignorance, poverty, lack of familiarity with and fear of anglo courts, and respondents who refuse to carry out Navajo orders to inform these patients otherwise.

CONCLUSION

Based upon the foregoing, the Petitioners respectfully move the Court to grant these motions and to expedite the briefing and oral argument in any manner that the Court deems to be fair and just. Petitioners also pray for any and all other relief under comity that the Court may find applicable for enforcement of these Navajo orders.

So Signed this 6th day of June, 2003

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