

No. 02-1774

In the
SUPREME COURT OF THE UNITED STATES

FRED RIGGS, DONNA SINGER, and AL DICKSON,

Petitioners

v.

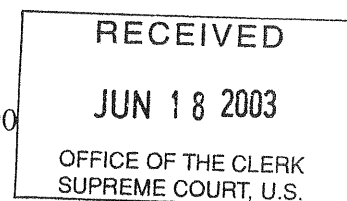
SAN JUAN COUNTY, SAN JUAN HEALTH SERVICES DISTRICT, County Commissioner J. TYRON LEWIS, County Commissioner LYN STEVENS (official capacity only), County Commissioner MANUAL MORGAN (official capacity only), RICK BAILEY, County Attorney CRAIG HALLS, REID WOOD, KAREN ADAMS, ROGER ATCITY, PATSY SHUMWAY (official 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 WRIT OF MANDAMUS AND PROHIBITION

HEALTH DISTRICT RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION
TO EXPEDITE CONSIDERATION OF PETITION FOR AN EXTRAORDINARY
WRIT OF MANDAMUS AND PROHIBITION

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Respondents San Juan Health Services District, Reid Wood, Karen Adams, Roger Atcitty, Patsy Shumway, John Lewis and Lauren Schafer¹ respectfully submit this Opposition to 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 Imminent [sic] Endangerment to Navajo Patients and Denial of Equal Rights to Petitioners. For the reasons set forth below, petitioners' motion to expedite should be denied.

INTRODUCTION

Petitioners Fred Riggs, Donna Singer and Alison Dickson are former employees of respondent San Juan Health Services District ("Health District"). Petitioners worked at the Montezuma Creek Clinic, an outpatient clinic located on fee owned land within the exterior boundaries of the Navajo reservation that was operated by the Health District prior to January 1, 2000. Singer's employment was terminated by the Health District in approximately November 1998, while Riggs and Dickson remained employed by the Health District until it ceased operating the Clinic effective January 1, 2000.²

¹In this Court, petitioners have purported to add as parties (in their official capacities only) Health District board members who joined the board after petitioners filed this action, including Nettie Pract, Glen Imel, Cleal Bradford and John Felmeth. Because suit brought against an governmental officer in their official capacity is equivalent to suit against the entity, *McMillan v. Monroe County*, 520 U.S. 781, 785 n.2 (1997) (citations omitted), joinder of these board members is unnecessary. Respondents therefore have retained and used the original caption and parties named by petitioners. However, to the extent this Court deems joinder of the new board members in their official capacities proper, such parties should be considered represented by this opposition to the motion to expedite.

²Since January 1, 2000, the Montezuma Creek Clinic has been owned and operated by Utah Navajo Health Systems, Inc. ("UNHS"), an entity of which petitioner Singer is the executive director. Riggs, Singer and Dickson have all been employed by UNHS at the Montezuma Creek Clinic since January 1, 2000.

In April 1999, petitioners brought suit in Navajo tribal court raising claims arising out of their employment with the Health District prior to its sale of the Montezuma Creek Clinic assets and operations to UNHS, and, in petitioner Singer's case, the termination of her employment. In addition, although their tribal court complaint did not include patients of the Clinic as plaintiffs, or claims that patients had been wrongfully billed for medical care by the Health District, during the tribal court proceedings petitioners alleged that the Health District had wrongfully billed Navajo patients for medical care. Petitioners sought preliminary relief, including back pay and attorneys fees, which the tribal court granted through a series of orders in late 1999 and early 2000.

In approximately August 2000, petitioners brought suit in federal district court for the District of Utah, seeking enforcement of the tribal court's preliminary orders.³ Petitioners' enforcement claim was dismissed by the district court in late 2000. Thereafter, pursuant to Fed. R. Civ. P. 54(b), petitioners obtained certification of and appealed the district court's orders dismissing their enforcement claim. On appeal, the Tenth Circuit Court of Appeals affirmed in part, reversed in part, and remanded petitioners' claim as against the Health District and San Juan County respondents. Petitioners thereafter filed a Petition for Writ of Certiorari in this Court, No. 02-1253, which the Court denied on June 2, 2003. Apparently anticipating denial of their Petition for Writ of Certiorari, petitioners filed the Petition for Writ of Mandamus on May 28, 2003, seeking essentially the same relief sought in their Petition for Writ of Certiorari.

³In 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, including claims of wrongful billing for medical services by the Health District. The claims of these additional plaintiffs are not at issue in this Court.

Petitioners now request expedited review of their Petition for Writ of Mandamus. For the reasons set forth below, petitioners cannot show a basis for expedited relief, and their motion should be denied.

ARGUMENT

I. PETITIONERS CANNOT DEMONSTRATE A LEGITIMATE BASIS FOR EXPEDITED RELIEF

Petitioners assert that expedited consideration of their Petition for Writ of Mandamus is necessary to end a health care crisis among and restore stability to Navajo patients of the Montezuma Creek Clinic eligible for health care services through Indian Health Services ("IHS"). Petitioners suggest that patients are not seeking necessary medical care because of fears over the cost of such care, which petitioners claim arise from allegedly improper billing of IHS Navajo patients by the Health District in approximately 1999 or early 2000. Petitioners' arguments are without merit.

As an initial matter, as set forth above, the Health District ceased operating the Montezuma Creek Clinic three and one-half years ago, on December 31, 1999. Since that time, UNHS, an organization directed by petitioner Singer, has operated the Clinic. Given the significant length of time since respondents operated the Montezuma Creek Clinic, as well as the fact that petitioners have been operating the Clinic since January 2000, their assertion that the Health District's alleged past actions have created a current crisis in health care lacks merit. Patient care decisions are much more likely to have been influenced by the current management of the Clinic than by respondents, who have not operated or otherwise been involved with the Montezuma Creek Clinic for three and one-half years.⁴

⁴Petitioners claim that enforcement of the tribal court orders will solve the alleged health
(continued...)

Second, petitioners' argument is premised on the notion that while operating the Montezuma Creek Clinic, the Health District billed Navajo patients improperly, as Native Americans are entitled to health care through IHS and may not be billed for health care. Petitioners' argument and the premise on which it is based fail to distinguish between care at an IHS contracted facility, such as the Montezuma Creek Clinic, and care at non-IHS facilities such as the Health District's off-reservation facilities. Regulations governing IHS state that IHS may provide medical services to the covered population both through IHS owned facilities and at facilities under contract with IHS to provide such services. 42 C.F.R. § 136.11. Pursuant to its mandate, IHS contracted with the Health District to provide outpatient services at the Montezuma Creek Clinic to the population served by IHS. Under this contract, in exchange for certain monthly payments, the Health District provided out-patient health care to Navajos living in the Utah strip portion of the Navajo reservation. Eligible patients receiving outpatient care at the Montezuma Creek Clinic were not billed for such services.

However, the IHS contract did not cover medical care provided to Navajo patients at the Health District's off-reservation facilities (including the San Juan Hospital in Monticello, Utah, and the Health District's outpatient clinics in Blanding and Monticello). At non-IHS facilities such as the Health District's off-reservation facilities, IHS will pay for medical services to IHS

⁴(...continued)

care crisis because it will require the Health District to inform Navajo patients that they can receive care free of charge at the Montezuma Creek Clinic, which will result in more Navajo patients seeking health care. Leaving aside the validity of petitioners' claim that there is a health care crisis and the Health District's alleged role in it, this argument again demonstrates petitioners' unwillingness or inability to acknowledge that they, and not the Health District, now control the Clinic. The Health District does not operate the Montezuma Creek Clinic and has not done so for years. The Health District respondents are not in a position to tell anyone about procedures or policies of the Montezuma Creek Clinic, or when or if patients will be charged for medical care.

covered patients only if (i) notice of the need for such services is given to IHS either before or within 72 hours of such services, *and* (ii) IHS approves such care and issues a purchase order to the medical facility for the care. 42 C.F.R. § 136.24. If IHS is not timely notified of or does not approve the medical services, IHS will not pay and the patient is liable for the cost of such services and properly billed by the Health District. Thus, notwithstanding the Health District's contract with IHS covering the Montezuma Creek Clinic, the Health District properly could bill Navajo patients for care received at District facilities other than Montezuma Creek if IHS did not approve the care and issue a purchase order, which was often the case. The mere fact that a Navajo patient received a bill from the Health District does not mean that the bill was improper.⁵

Finally, in support of their assertion that a medical crisis exists, petitioners point to a "survey" which purports to demonstrate that Navajo patients are failing to seek health care because of fears over improper billings and their ability to pay for care.⁶ This survey not only lacks scientific methodology and validation, it also fails to support the assertion that Montezuma Creek Clinic patients are not seeking available health care because of unlawful billing or any

⁵In fact, petitioners have never provided any evidence that the Health District improperly billed Navajo patients for services at the Clinic. As noted above, the tribal court action did not include any specific claims of wrongful billing. Although the tribal court vaguely concluded that the Health District had improperly billed Navajo patients, the court's conclusion was based solely on its erroneous conclusion that the Health District could never bill Navajo patients for care, and a letter from a Clinic health care worker stating that patients had been billed for medical care by the Health District. The tribal court did not make any specific findings of improper billing, nor did it or the Clinic worker distinguish between billings for services provided at the Clinic versus the Health District's off-reservation facilities. Moreover, as noted earlier, in the district court action, several non-tribal court plaintiffs brought claims of wrongful billing by the Health District. While these claims are not at issue here, the bills ultimately produced by these non-tribal court plaintiffs in support of their wrongful billing claims were bills for medical services rendered not at the Montezuma Creek Clinic, but at other off-reservation Health District facilities. These claims were dismissed by the district court.

⁶Petitioners' "survey" was conducted in late April 2003 and therefore was not part of the record below. Appendix to Petition for Writ of Mandamus ("Mandamus App.") at 61a -69a.

other action by the Health District. For example, the survey asked whether patient bills from the Health District during 1999 or 2000 had made survey respondents reluctant to go to the Clinic for health care, but it did not seek information regarding whether those answering in the affirmative believed that the bills allegedly received were improper or whether their reluctance to seek services continued after the Health District ceased operating the Montezuma Creek Clinic.

Similarly, the survey asked whether patients believed that they currently had to pay for services at the Clinic; however, it did not ask any questions to establish whether that belief was based on past conduct by the Health District, or whether it was based on actions by UNHS or others during the past three and one-half years. Finally, the survey asked whether the survey respondents knew of anyone who did not seek medical care at the Clinic because of fears over payment, but again never established whether those fears were related to any conduct by the Health District, much less whether the fears arose from Health District billings or whether the patient believed any billings were in fact improper. Mandamus App. at 61a -69a. Thus, the survey on which petitioners rely does not support their claim for expedited relief.

Petitioners have failed to demonstrate any legitimate need for expedited relief and their motion should therefore be denied.

II. PETITIONERS' MOTION TO EXPEDITE IS AN IMPROPER ATTEMPT TO SUBMIT ADDITIONAL ARGUMENT IN SUPPORT OF PLAINTIFFS' PETITION FOR WRIT OF MANDAMUS AND DOES NOT SUPPORT THE REQUEST FOR EXPEDITED RELIEF

While titled a motion to expedite, petitioners' motion instead appears to be an attempt to submit additional argument in support of the affirmative relief sought in the Petition for Writ of Mandamus. For example, petitioners' motion asserts that this case presents questions of national importance regarding a tribal court's ability to adjudicate the liability of non-Native Americans.

In support of this assertion, petitioners provide lengthy argument regarding why tribal courts have jurisdiction over non-Native Americans. Motion to Expedite at 2-5. Petitioners' arguments are directed at the relief sought through the Petition for Writ of Mandamus and do not relate to or otherwise support their request for expedited relief. Similarly, petitioners allege that new case law supports their petition, citing to this Court's recent decision in *Inyo County v. Paiute-Shoshone Indians of Bishop Community*, 538 U.S. ___ (slip op. 02-281, May 19, 2003). Motion to Expedite at 6-9. Again, petitioners' arguments are simply further elaboration of the arguments made in the Petition itself, and are irrelevant to the question of whether expedited relief is appropriate.⁷ Petitioners' attempt to bolster their Petition for Writ of Mandamus with additional argument is inappropriate and should be rejected.

⁷The Health District respondents believe it is more appropriate to address the merits of the Petition in their opposition to the Petition.

CONCLUSION

For the reasons set forth above, petitioners' motion to expedite should be denied.

Dated this 16th day of June, 2003.

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