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**In The**

# Supreme Court of the United States

MAISIE SHENANDOAH, et al. Petitioners

v.

ARTHUR RAYMOND HALBRITTER et al. Respondents

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

Since early 1993, petitioners and respondents have been embroiled in a dispute over the legitimacy of the respondents' claim and exercise of power over the Oneida Indian Nation of New York. Petitioners are Traditional Oneida Indians recognized by the Bureau of Indian Affairs on July 29, 1987 as the Oneida Indian Nation government.

Over petitioners' objections, respondents successfully lobbied New York politicians and the BIA to have respondent Halbritter appointed as 'leader' so that a secretly negotiated Turning Stone Casino could go forward. Petitioners' appeal of the BIA's decision is still pending before the Department of Interior. In 1993-1995, respondents pronounced the petitioners guilty of 'treason' and punished petitioners by stripping petitioners of all tribal benefits and rights, labeling petitioners '*members-not-in-good-standing*'.

During 2000-2001, respondents enacted several pieces of *retroactive* legislation called a 'housing program'. Petitioners have challenged respondents' "housing program" as a ***bill of attainder*** as applied to them in violation of the Indian Civil Rights Act because only petitioners are being made homeless and incapable of living on the Nation's sovereign territory under the 'program'.

Questions presented are:

1. Whether 25 U.S.C. §1302(9) of the Indian Civil Rights Act (ICRA), vests the U.S. Courts with subject matter jurisdiction to, first, determine whether challenged legislation enacted by an Indian Nation is in fact a *bill of attainder* and then to grant such *habeas corpus* relief under 25 U.S.C. §1303 as is necessary to release the victims of a *bill of attainder* from the *lingering restraints* upon their liberty resulting from such *bill of attainder*?

2. Whether respondents' legislatively enacted 'housing program' is a *bill of attainder* as applied to the petitioners under the three pronged test articulated in Cummings v. Missouri, 71 U.S. 277, 323 (1867)?

## PARTIES TO THE PROCEEDINGS

The Petitioners are MAISIE SHENANDOAH, ELWOOD FALCON; DIANE SHENANDOAH; minor child ADAH Shenandoah by and through her mother, Diane Shenandoah; minor child PETE Shenandoah by and through his mother, Diane Shenandoah; minor child CAMERON Shenandoah by and through his mother, Diane Shenandoah DANIELLE SHENANDOAH-PATTERSON; minor child CLAIRESE Patterson by and through her mother, Danielle Shenandoah-Patterson; minor child JOLENE Patterson by and through her mother, Danielle Shenandoah-Patterson; minor child PRESTON Patterson by and through his mother, Danielle Shenandoah-Patterson; VICTORIA SHENANDOAH-HALSEY; MATTHEW JONES; minor child WESLEY Halsey by and through his mother, Victoria Shenandoah-Halsey; minor child VINCENT Halsey by and through his mother, Victoria Shenandoah-Halsey; MONICA ANTONE-WATSON; minor child MARTINA Watson by and through her mother, Monica Antone-Watson; minor child KYLE Watson by and through his mother, Monica Antone-Watson; LAWRENCE THOMAS and ARNOLD THOMAS

Petitioners consist of members of six (6) 'household families', each family living in their privately built and owned home on Territory Road within the 32-acre Oneida Nation Territory. The petitioners are primarily single mothers and children and are represented by pro bono counsel.

The Respondents are ARTHUR RAYMOND HALBRITTER; PETER CARMEN; MARILYN JOHN; DICK LYNCH, PAUL RINKO; STEWART F. HANCOCK; RICHARD SIMONS; ARTHUR PIERCE; GARY GORDON; 'JOHN DOES' being all members of the Men's Council; 'Jane Does', being all members of the Clan Mothers; JEFF JOST; JACK McQUEENIE; DAN CAPUTO; KEVIN STORM; CHRIS MANWARING; GENE RIFENBURG; LARRY KUTZ; OFFICER URTZ;



FRANK SIMINELLI; LORI BILLI; CORKY RYAN; KEVIN O'NEIL; BILL PENDOCK; and Oneida Housing Corporation, Inc.

Respondents include Raymond Halbritter whom the BIA appointed as 'leader' on August 11, 1993 and those whom Halbritter has appointed to legislative bodies he created and calls the "Men's Council" and "Women's Council", as well as those who carry out and enforce the legislation against the petitioners including Peter Carmen, the respondents' "prosecutor". Respondents exercise control over the Oneida Indian Nation and operate the Turning Stone Casino.

The Oneida Indian Nation of New York is not a party to this action because this is a *habeas corpus* action by the petitioners against the individual respondents who have legislatively enacted the 'housing program' being attacked by petitioners as a bill of attainder in violation of the Indian Civil Rights Act.

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## PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit was issued on April 2, 2004 and is reported at *Shenandoah v. Halbritter,* 366 F.3d 89, (C.A.2 (N.Y.), 2004) and appears in the Appendix at A-1 - A-6. The order denying the Petition for Rehearing and Rehearing *en banc* is unreported and appears in the Appendix at A-27.

The memorandum decision and order dated August 8, 2003 of the district court summarily granting respondents' motion to dismiss petitioners' Complaint under FRCP 12(b) for lack of subject matter jurisdiction is published at *Shenandoah v. Halbritter* 275 F.Supp.2d 279 (N.D.N.Y., 2003) and is attached at A-7 – A-26.

## JURISDICTION

The judgment of the Court of Appeals was issued on April 2, 2004. The Petition for Rehearing or Rehearing *en banc* was denied on September 14, 2004. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Pursuant to Supreme Court Rules 14(f) and 14(i)(v), the following statutory provisions are involved in the case:

> *No Indian Tribe in exercising powers of self-government shall - (9) pass* ***any*** *bill of attainder or ex post facto law.* 25 U.S.C. §1302(9) Indian Civil Rights Act (ICRA).
>
> *The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.* 25 U.S.C. §1303 - ICRA

## STATEMENT OF THE CASE

The issues raised in this Petition are of critical importance to all persons, Indian and non-Indian, throughout Indian Country who are subjected to lingering restraints upon their liberties resulting from bills of attainder.

This appeal raises novel issues of law with potentially far-reaching implications as to whether the significant fundamental rights and protections created by the U.S. Congress under the ICRA, particularly those pertaining to prohibitions against any Indian Nation enacting <u>*any*</u> bill of attainder, have meaning, substance and forum in the U.S. Courts as intended by Congress.

Moreover, the Second Circuit's decision is in direct conflict with decisions of this Court pertaining to Bills of Attainder and the *unreasonable lingering restraints* upon liberty caused by any bill of attainder.

Further, the panel's decision creates an inter-circuit conflict. In its April 2, 2004, decision, the Second Circuit Court of Appeals acknowledged that this matter was not a simple dispute over money, membership or tribal benefits, but involves questions of whether respondents' 'housing program' was a weapon designed and intended to rid the Oneida Indian Nation of the petitioners and the petitioners only. Petitioners have a decade long dispute with respondents. Respondents have themselves admitted that the "housing program" was devised as a tool to rid themselves of their political opponents, the petitioners.

In its decision below, the Second Circuit quoted the following language from *U.S. v. Brown,* 381 U.S. 437, 442, (U.S.Cal. 1965):

> Nothing is more common than for a free people, in times of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disqualification, disfranchisement, and banishment



> by acts of the legislature. The dangerous consequences of this power are manifest. *If the legislature can disfranchise any number of citizens at pleasure by general descriptions, it may soon confine all the votes to a small number of partisans, and establish an aristocracy or an oligarchy; if it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction.* <u>*The name of liberty applied to such a government, would be a mockery of common sense.*</u>' [FN18] [emphasis added]
>
> FN18. III (John C.) Hamilton, History of the Republic of the United States, p. 34 (1859), quoting Alexander Hamilton. Ibid at 444

The Second Circuit in its decision below conceded that the danger may exist here that the respondents are abusing their control over the Nation to legislatively "*disenfranchise [petitioners to] confine all the votes to a small number of partisans, and establish an aristocracy or an oligarchy*"" and further observed:

> If this danger exists in cases such as the instant one, and the presence of twenty or thirty Indian women engaged in prayer in the courtroom and adjoining hallway when this appeal was argued is some indication of its possible existence, <u>Congress should consider giving this Court power to act</u>.
> [emphasis added]

The Court of Appeals decided that while the acts complained of may, in fact, evidence respondents' "*doctrine of disqualification, disfranchisement, and banishment*", it did not vest U.S. courts subject-matter jurisdiction.

Petitioners by contrast contend that this is a misreading of ICRA and in particular that this misreading

creates a split in the Circuit courts. Other Circuit Courts of appeal have found that proper use of the ICRA, forceful but within the bounds as set, empowers and obligates the U.S. Courts to enter *habeas* orders releasing petitioners from the lingering unreasonable restraints upon their liberties caused by the respondents' bill of attainder housing program.

An appropriate balance between the sovereignty of Indian Nations and the interests of the U.S. Government will protect Indians and non-Indians from the lingering and despotic restraints upon liberty imposed by bills of attainder. By its very definition, a *bill of attainder* is the legislative infliction of *additional punishment* upon only an individual or and identifiable group.

With the enactment of the Indian Gaming Regulatory Act ("IGRA"), there is greater temptation by those in power over an Indian Nation to abuse that power to target and disenfranchise any who dare oppose them.

Refusal of the U.S. courts to hear petitioners' claims strikes at the very heart of Indian law principles with devastating consequences for all victims of bills of attainder throughout American Indian/Alaska Native communities. The decision denies to such victims the protection of the only forum *expressly available* to them, the U.S. Courts, for obtaining release from the restraints upon their liberty caused by bills of attainder.

**RESPONDENTS' ADOPTED A 'HOUSING PROGRAM' AS A BILL OF ATTAINDER AGAINST THE PETITIONERS IN THEIR DECADE LONG POLITICAL DISPUTE WITH PETITIONERS**

The petitioners and respondents have been embroiled since early 1993 in a political dispute over the legitimacy of the respondents' claim of power and control over the Oneida Indian Nation ("OIN") of New York. The petitioners are Traditional Oneida Indians and comprised the government of



the Traditional Oneida Indian Nation of New York officially recognized by the Bureau of Indian Affairs on July 29, 1987.

In early 1993, without any authority from or notice to the then recognized Traditional government of the Oneida Indian Nation of New York, Halbritter and the respondents secretly negotiated a Gaming Compact with New York. In disgust at this abuse of apparent agency, the recognized Traditional OIN government removed Halbritter. The BIA accepted this properly executed OIN action on August 10, 1993, but then, bowing to New York state political pressure, reversed and reappointed Halbritter on August 11, 1993, as 'leader' of the Nation so that the secretly negotiated casino could go forward over the objections of petitioners.

An appeal of this decision is pending before the Department of Interior. The B.I.A. has not yet acted on the appeal, as the Court of Appeals noted in *Shenandoah v. U.S. Dept. of Interior, et al.*,159 F.3d 708, (C.A.2 ,1998.)

Petitioners have continuously and peacefully expressed their rejection of and opposition to respondents' claim of authority. Petitioners maintain that respondents are wrongfully in control of the Indian Nation and are using the revenues from the Turning Stone Casino to solidify that illegitimate control.

In 1993 and 1995, the respondents used their BIA appointed control over the Nation to pronounce the petitioners guilty of 'treason' without any trial or hearing. As punishment for such 'treason', respondents stripped petitioners of all tribal benefits and participation, labeling petitioners 'members-not-in-good-standing' of the OIN.

In 1996, some of the petitioners, including petitioner Traditional Clan Mother Maisie Shenandoah, commenced a lawsuit in the U.S. Federal Courts against some of the respondents, including Halbritter, seeking *inter alia*: (a) reinstatement of the of the B.I.A.'s 1993 decision to accept petitioners as Traditional Leaders of the Traditional form of sovereign Oneida self-governance; (b) removal of Halbritter

from the Oneida government; and (c) a holding that the respondents had violated the petitioners' rights under the ICRA by stripping petitioners of any and all rights, benefits, participation and standing within the Oneida Indian Nation.

In *Shenandoah et al v U.S. Dept. of Interior, Halbritter*, et al, 1997 W.L. 214947 (N.D.N.Y., 1997) (not herein appealed from), the district court described the leadership dispute between the petitioners and respondents. The court compared the *punitive* sanctions imposed by respondents ***up to that point in time*** to the facts and holding of *Poodry v Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir), cert denied 519 U.S. 1041 (1996). In dismissing petitioners' complaint in 1997, the district court noted:

> For purposes of this motion, *defendants Halbritter* and John do not dispute the Second Circuit's holding [in Poodry] that *permanent banishment* constitutes custody or detention. (citation omitted) Rather, they argue that the allegations of plaintiffs' complaint do not constitute permanent banishment. In other words, ***defendants contend that the punishments plaintiffs received*** fall below Poodry in the continuum of habeas corpus protection.
>
> *Shenandoah*, 1997 W.L. 214947 *supra.*

The district court dismissed petitioners' 1997 complaint for lack of subject matter jurisdiction:

> In stark contrast [to Poodry], petitioners have not alleged that Halbritter and John served them with any notice of banishment *or attempted to remove them from Oneida Nation territory*. . . . Until such time as petitioners suffer actual banishment rather than essential banishment they allege, their remedies lie within the political process of the sovereign Oneida Nation and not the confines of the federal district court.
>
> *Shenandoah*, supra, (emphasis supplied)



Petitioners appealed the district court's decision resulting in the decision of the Second Circuit Court of Appeals in *Shenandoah v. U.S. Dept. of Interior, et al.*, 159 F.3d 708, (C.A.2,1998).

In that decision (not herein appealed from), the Court of Appeals detailed the long history of the leadership dispute between petitioners and respondents and affirmed the district court's dismissal of petitioners' complaint and ruling that as of 1997 the *respondents had* ***not yet*** *done enough to petitioners* to bring petitioners' claims within the ICRA *habeas corpus* provision.

> Plaintiffs' complaint alleges that one or more of the six plaintiffs were suspended or terminated from employment positions, lost their "voice[s]" within the Nation's governing bodies, lost health insurance, were denied admittance into the Nation's health center, lost quarterly distributions paid to all Nation members, were banned from various businesses and recreational facilities such as the casino, Turning Stone park, the gym, and the Bingo Hall, were stricken from Nation membership rolls, were prohibited from speaking with a few other Nation members, and were not sent Nation mailings.
>
> Although the alleged misconduct, if true, is serious, it is insufficient to bring plaintiffs within ICRA's habeas corpus provision [at this time].
>
> *Shenandoah v. U.S. Dept. of Interior, et al.*, 159 F.3d at 714 (1998).

**RESPONDENTS' USED FIVE STEPS TO DEVISE THEIR "HOUSING PROGRAM" TO TARGET ONLY PETITIONERS FOR ADDITIONAL PUNISHMENT**

Taking lessons from *Poodry* and *Shenandoah*, supra., respondents knew that they must avoid using the term 'banish' in any scheme to remove petitioners from OIN territory. Immediately after the Second Circuit's 1998

decision in *Shenandoah*, supra., respondents instructed their attorneys "*to evict the petitioners and the other "dissidents" from the 32-acre Oneida Nation territory*".

Respondents' admitted intention was to devise a means by which to remove the petitioners from the Oneida Indian Territory and avoid actually using the term 'banish' which would trigger ICRA according to *Poodry* and *Shenandoah*. Respondents concocted a "*health and safety housing plan that could be used to accomplish the same ends [forcible ejectment and banishment of petitioners from the Territory] and provide a* <u>*seemingly*</u> *"legitimate" justification for ridding the Territory of the dissidents [the petitioners]" [quote from respondents' own attorney respondent Rinko]*.

Respondents' own attorneys admitted that the plan of respondents was to forcibly eject petitioners from the Sovereign Territory of the Oneida Indian Nation by using the subterfuge of a 'housing' program. Respondents' original plan for forcibly removing only the petitioners off of the Territory was to designate the entire 32-acre Territory as a 'cultural and historical site' and bar individuals from living on the site.

But because that plan would affect and remove individuals besides the petitioners,, respondents instead decided to enact and retroactively apply new housing standards designed to ensure that petitioners' homes, and ONLY petitioners' homes, would be condemned with no opportunity to appeal or ability to cure or avoid being condemned.

**<u>FIRST STEP - IDENTIFY EXISTING TRAITS OF PETITIONERS' HOMES WHICH WOULD BE DEFINED AS 'DEFICIENCIES' UNDER THE NEW RETROACTIVE STANDARDS</u>**

In 1999, the respondents conducted inspections of petitioners' homes for the purpose of identifying specific characteristics which respondents could specifically prohibit



under respondents' new 'housing' program. By defining existing traits of petitioners' homes as 'deficiencies' under their new retroactive housing code, respondents made certain that petitioners' homes would immediately fail to meet the new standards, and thus could be ordered condemned and demolished.

For example, petitioners' homes do not 'sit' on a 'foundation'. Respondents purposely wrote the new retroactively applied housing standards so as to require all homes within the 32-acres to be on foundations or else to be immediately demolished despite the fact that petitioners' homes are safe and habitable but for respondents' retroactive standards purposely chosen to fail petitioners' homes. The new retroactive standards dictated by respondents under the housing program followed neither national, state, nor local building codes. The selected characteristics were not a health or safety issue nor a violation under any other codes, but only a 'defect' because of respondents' intentional retrospective definition to make certain petitioners' homes 'failed' and would be condemned.

**<u>SECOND STEP – PROHIBIT ANY REPAIRS OR CORRECTIVE WORK TO CURE 'DEFICIENCIES'</u>**

Petitioners were then prevented by fiat from in any way correcting the violation. For example, respondents prohibited any home from being moved in order to place it on a foundation.

**<u>THIRD STEP - LIMIT APPLICATION OF THE NEW 'HOUSING PROGRAM' TO ONLY THE 32-ACRES UPON WHICH ALL DISSIDENTS LIVED</u>**

Because there were (and are) many homes within the OIN territory of approximately 14,000 acres with identical traits and characteristics to those of petitioners, respondents limited the scope of their new retroactive standards to only the 32-acre parcel upon which petitioners lived.

**FOURTH STEP - PROVIDE FINANCIAL PACKAGE TO ENABLE ALL OTHERS EXCEPT PETITIONERS TO REBUILD NEW HOMES AND AVOID CONSEQUENCES**

There were, however, also homes on the 32-acre Territory identical to those of petitioners, including that of respondent Clint Hill, another member of the 'men's council'. Respondent Hill's home would also be condemned under respondents' new retroactive housing program because it was not on a foundation. Respondents therefore created a financial compensation/assistance program so that those whose homes were demolished could rebuild and continue living on OIN sovereign land.

This financial package includes a Nation-backed mortgage necessary to obtain mortgage financing for homes built on sovereign OIN territory as well as covering any and all costs and expenses associated with having one's home condemned including moving expenses and temporary housing while the new home was being built as well significant grants to assist with the cost of the new home.

Therefore, respondents' fourth step was to use the Nation's financial resources to enable people whose homes on the 32-acre were being condemned to replace their homes.

**FIFTH STEP – FIND A LABEL THAT ONLY REFERRED TO THE PETITIONERS AND DENY ALL FINANCIAL ASSISTANCE TO ONLY THOSE WITHIN THAT LABEL**

The fifth step in respondents' planned, constructive banishment of the petitioners was to devise a way to make the housing replacement financial package available to everyone except for petitioners.

Financial assistance was *absolutely necessary and essential* to replace condemned and demolished homes. But because respondents themselves had previously punished the



petitioners by stripping them of tribal benefits and labeling them as tribal members "NOT-in-good-standing," respondents were able to target the petitioners by denying the home replacement package to any tribal member "*NOT-in-good-standing*."

Out of the approximately 1,000 members affected by the new housing program, the only ones "not-in-good-standing" were the petitioners. Even though respondents themselves had previously cut off any and all tribal benefits to the petitioners, respondents deny any responsibility for the low-income economic status of the petitioners and now exploit it to accomplish their banishment not only from income, but from home and Nation as well.

**BY DESIGN AND INTENTION, THE CUMULATIVE IMPACT OF RESPONDENTS' HOUSING PROGRAM WAS TO LEGISLATIVELY INFLICT UPON ONLY THE PETITIONERS THE ADDITIONAL PUNISHMENT OF HOMELESSNESS AND BEING RENDERED INCAPABLE OF LIVING ON ANY OF THE ONEIDA NATION'S LANDS**

By labeling existing characteristics of petitioners' homes as 'deficiencies', respondents guaranteed that petitioners' homes would be *immediately condemned* for demolition without any ability to challenge the condemnation or do repairs to avoid the sentence.

By denying *to only the petitioners* the financial package given to all others affected by the 'housing program', the respondents targeted *only the petitioners* to suffer the additional punishment of being made homeless and unable to continue living on OIN territory. *Respondents exploited the low-income economic condition of petitioners to achieve the goal of rendering petitioners homeless.*

The targeted punitive purpose of respondents' 'housing' program' as applied to petitioners makes respondents' 'housing' program a Bill of Attainder *as*

*applied* to petitioners because only petitioners will suffer the lingering never ending restraints upon their liberties to live on OIN lands. The record shows that this is not a mere accident of the intersection of various policy elements, but was its generative intent.

## RESPONDENTS' ARMED ENFORCEMENT OF THEIR NEW 'HOUSING PROGRAM'

After respondents adopted their new 'housing program' in 2000, the petitioners immediately objected that it targeted them for different treatment and would result in their being made homeless. However, because respondents had stripped petitioners of any and all rights of Oneida Nation membership, petitioners had no voice, nor vote nor other rights to affect the legislation.

In November 2001, in direct enforcement of their 'housing program,' respondents, numbering over 20 armed and uniformed officers, issued orders to themselves authorizing themselves to forcibly enter the home of petitioner Danielle Schenandoah-Patterson to conduct an 'inspection' whose outcome was predetermined.

Petitioner Danielle Schenandoah-Patterson protested the invasion of her home by respondents. The respondents seized, handcuffed and incarcerated her. Respondents claimed that she had 'interfered' with their 'inspection'.

Approximately one year later, the respondents brought criminal charges against petitioner Danielle Schenandoah-Patterson in respondents' tribal court. On a Friday evening in October 2002, the respondents for the second time, forcibly seized and handcuffed petitioner Danielle Schenandoah-Patterson. They drove her seven (7) hours away to be incarcerated in a Pennsylvania Maximum Security Prison where she was stripped searched and body cavity searched and placed in isolation.

After three days of imprisonment and separation from her three minor children (all of whom are also petitioners in



this action), respondents in their casino jet brought petitioner back, in handcuffs and shackles, to 'stand trial' before them.

Respondents informed petitioner that she would remain in custody unless and until she gave respondents permission to demolish her home. Even though she knew this would leave her and her three children homeless, she ultimately 'consented' due to the duress and coercion and her need to be reunited with her three minor children. Respondents gave petitioner '24-hours' to remove all of her possessions and vacate her home, whereupon, respondents immediately demolished her home.

Immediately after demolishing her home and rendering her homeless, the respondents then used their control over the OIN to instigate and finance a child custody action against petitioner in the New York State Courts seeking to have custody of her three children taken away from her <u>for the sole reason that</u> she was now homeless, it being irrelevant to respondents that they themselves had made her homeless.

## LOWER COURTS IMPROPERLY DENIED JURISDICTION BECAUSE THEY FAILED TO SEE LINGERING RESTRAINTS UPON PETITIONERS' FREEDOMS CAUSED BY THE BILL OF ATTAINDER

In the decision appealed from, the district court found horrific ordeal suffered by petitioner Danielle Shenandoah-Patterson and her three minor children to show sufficient restraints upon their liberties.

The district court, and Second Circuit, completely overlooked the severe lingering restraints upon the petitioners' liberty caused by the bill attainder 'housing program.' Petitioners suffer to this day severe restraints upon their liberties due to the sentence of additional punishment under respondents' bill of attainder 'housing' program. The most critical of these restraints is petitioner's

inability, as plotted by respondents, to live on the traditional 32-acre OIN territory.

**ONLY THE PETITIONERS ARE PRESENTLY SUBJECT TO ORDERS OF RESPONDENTS TO IMMEDIATELY VACATE THEIR HOMES AND SUFFER HOMELESSNESS UNDER RESPONDENTS' SO-CALLED HOUSING PROGRAM**

In November 2002, the respondents issued their orders for the very same forced armed inspections of the other petitioners' homes as respondents had done to petitioner Danielle's home in November 2001.

In an effort to stop not only the sham inspections but also enjoin any and all other enforcement of respondents' 'housing' program against the petitioners, the petitioners commenced the subject action in the district court.

On July 23, 2003 the respondents issued their "NOTICE and **ORDER** of CONDEMNATION, DEMOLITION and REMOVAL":

A Condemning petitioners' homes for failing to have a foundation [which respondents prohibit petitioners from curing];

B ***ordering*** petitioners to immediately vacate their homes under threat of arrest; and

C ***ordering*** the immediate seizure, forfeiture, and demolition of petitioners' homes.

The petitioners live in a constant state of fear and apprehension under the tyranny of respondents. Only the petitioners are subjected by respondents' "housing" program to the additional punitive sentence of homelessness and inability to remain living within the OIN sovereign territory. Petitioner Danielle is living that sentence today. Petitioners' liberties to be secure in their homes are severely restrained and denied by respondents' 'housing' program.



There is imminent and ever-present threat that the respondents will do to the other petitioners what they did to petitioner Danielle Patterson, driving petitioners homeless from the OIN territory. The sanctions and restraints upon the liberties of petitioners caused by respondents' 'housing' program are not shared by the general membership.

The respondents' 'housing' program is a Bill of Attainder both in its purposeful structure to leave petitioners and only petitioners homeless and banished and as applied to petitioners, and as such, is in violation of 1302(9) of the ICRA. By definition, and by the clear intent of Congress, a Bill of Attainder is in and of itself an 'unreasonable restraint upon liberty' sufficient to trigger habeas corpus review under ICRA. The respondents' constructive banishment of the petitioners is in violation of the *ICRA*. Accord, *Poodry*, supra. This politically-motivated revenge is precisely what Congress intended to vest the U.S. Courts with jurisdiction to address.

## REASONS FOR GRANTING THE WRIT

### 1. The Court of Appeals for the Second Circuit Is In Direct Conflict With The Express Unequivocal Provisions of ICRA, and with Decisions of this Court Regarding Bills of Attainder, and with Established Law in Other Circuits.

The Indian Civil Rights Act of 1968 ("ICRA") clearly, unambiguously and unequivocally states: "*No Indian Tribe in exercising powers of self-government shall—(9) pass **any** bill of attainder or ex post facto law.*" § 1302. Bills of attainder were used in England during the sixteenth century to punish citizens for attempting the overthrow of the government.

The U.S. Supreme Court has defined bills of attainder as:

> ... legislative acts, ***no matter what their form***, that apply either to named individuals or to easily ascertainable members of a group in such a way as to ***inflict punishment*** on them without judicial trial. (emphasis added)
> *United States v. Lovett*, 328 U.S. 303, 315 (1945).

ICRA imposes "certain restrictions upon tribal governments, similar, but not identical to, the restrictions contained in the Bill of Rights and made applicable to states pursuant to the Fourteenth Amendment" to the United States Constitution. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57 (1978).

The authority of the US Congress to adopt the ICRA is not in question and never has been, since sovereignty of Indian nations is not absolute. The status of Indians as 'wards' of the US Federal Government has been confirmed and re-affirmed throughout the history of relations between the US Government and the American indigenous Peoples. *US v Kagama*, 118 US 375 (1886.)

When it enacted the ICRA in 1968, Congress knew that the Bill of Attainder Clause in the Bill of Rights serves as an important "*bulwark against tyranny*". United States v. Brown, 381 U.S. 437, 443 (1965).

Bills of Attainder are so repugnant that they are specifically and explicitly prohibited by the Bill of Rights.

> While history thus provides some guidelines, the wide variation in form, purpose and effect of ante-Constitution bills of attainder indicates that the proper scope of the Bill of Attainder Clause, and its relevance to contemporary problems, must ultimately be sought by attempting to discern the reasons for its inclusion in the Constitution, and the evils it was designed to eliminate. The best available evidence,



> the writings of the architects of our constitutional system, indicates that the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply--trial by legislature.
> *U.S. v. Brown,* 381 U.S. 437, 442 (1965.)

> In 1810, Chief Justice Marshall, speaking for the Court in Fletcher v. Peck, 6 Cranch 87, 138, 3 L.Ed. 162, stated that '(a) bill of attainder may affect the life of an individual, or may confiscate his property, or may do both.' This means, of course, that what were known at common law as bills of pains and penalties are outlawed by the Bill of Attainder Clause. The Court's pronouncement therefore served notice that the Bill of Attainder Clause was not to be given a narrow historical reading (which would exclude bills of pains and penalties), but was instead to be read in light of the evil the Framers had sought to bar: legislative punishment, of any form or severity, of specifically designated persons or groups.
> Ibid at 447

Congress, being likewise repulsed by bills of attainder, included a clear, specific and explicit prohibition against *any* bills of attainder when it enacted the ICRA in 1968. Congress also specifically provided, at 25 U.S.C. §1303 of ICRA, that victims of arbitrary acts on the part of tribal governments have the right to seek review by habeas corpus: "*The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.*"

> The only available federal causes of action under which an individual can assert a violation of section 1302 are habeas petitions under section 1303. *See id.* at 66-67, 98 S.Ct. at 1681-82; 25 U.S.C. § 1303. [FN7] In other words, it is the Supreme Court's opinion that, ***other than for situations under which habeas relief is applicable***, the tribal courts can be adequate adjudicators of civil rights violations under section 1302. [emphasis added]
>
> *Santa Ynez Band of Mission Indians v. Torres,* 262 F.Supp.2d 1038, *1044, (C.D.Cal.,2002)

The Second Circuit cited *Poodry, supra*, saying "*if the district court lacks subject matter jurisdiction to entertain the applications for writs of habeas corpus, the petitioners have no remedy whatsoever.*" Ibid. 85. Such is the case in this matter.

Second Circuit Court of Appeals also noted in *Poodry*

> *Santa Clara obviously does not speak directly to the scope of Title I's habeas provision, which was a matter not raised in that case.* While our consideration of the instant case is necessarily informed by Santa Clara Pueblo's discussion of the tension between individual rights and tribal autonomy, *Santa Clara Pueblo does not resolve the jurisdictional inquiry here presented; whether the ICRA's habeas provision permits federal court review of the banishment orders.* Ibid. at 887 [emphasis]

Petitioners seek *habeas corpus* protection in the U.S. Courts pursuant to ICRA against the respondents' 'housing' program. Only petitioners will suffer the *irreparable harm* in the form of lingering, never ending severe restraints upon petitioners' liberties and loss of housing in direct violation of



the prohibitions and protections against bills of attainder expressly contained in the ICRA.

> The threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable injury, and satisfies the first prong of the test for preliminary injunctive relief."
>
> *McNeill v. New York City Housing Authority*, 719 F.Supp. 233, 254 (S.D.N.Y.,1989)

By definition, "*irreparable harm*" means that type of injury for which a monetary award would fail to be adequate compensation. *See Jackson Dairy,* 596 F.2d at 72; *Stewart B. McKinney Found. v. Town Plan and Zoning Commission of Town of Fairfield,* 790 F.Supp. 1197, 1208 (D.Ct.1992). See *Connecticut Hosp. v. City of New London,* 129 F.Supp.2d 123, 128 (D.Ct.,2001)

> The affidavits in this case ... show that there is a substantial danger that these petitioners may lose their present housing if aid is cut off prior to the fair hearing decision. For those recipients whose aid is wrongly reduced that is, who are able to persuade the hearing examiner that the shelter allowance should not be reduced or should not be reduced to the extent proposed the possible harm is clearly irreparable. *A lost home can rarely be regained in the present New York market, and homelessness cannot be adequately compensated by retroactive monetary payments.*
>
> *Viverito v. Smith,* 421 F.Supp.1305,1311(D.C.N.Y. 1976)

Petitioners presented to the district court approximately twenty (20) undisputed and unrefuted affidavits that unless this court intervenes, the petitioners will be rendered homeless and unable to live on the Territory.

> "The petitioners and the other members of the class would be irreparably harmed if the relief requested were not granted. Absent this court's ... order, they would be obliged to cope with the elements--rain, snow, wind and freezing temperatures." *Hilton v. New Haven,* Superior Court, judicial district of New Haven, Docket No. 8904-3165 (December 27, 1989).
>
> *Hilton v. City of New Haven* 233 Conn. 701, 709-710, 661 A.2d 973,977 (Conn.,1995)

Federal Courts when confronted with issues of whether litigants have been afforded due process of law in tribal courts have expressly held that basic due process guarantees must be adhered to in the tribal forum:

> A federal court must also reject a tribal judgment if the respondent was not afforded due process of law.... The guarantees of due process are vital to our system of democracy. We demand that foreign nations afford United States citizens due process of law before recognizing foreign judgments, we must ask no less of Native American tribes.
>
> *Wilson v. Marchington*, 127 F. 2d 805, 811 (9th Cir. 1997)

In holding that the petitioners were not required to exhaust their tribal remedies before filing their ICRA claims, the Eighth Circuit stated:

> ... to require the appellees to resort to tribal remedies would be a futile gesture and would cause irreparable harm. There is sufficient evidence to support the District Court's conclusion that appellees could not receive a fair hearing from the Tribal Council ... and the Tribal Council was the supreme judicial authority.
>
> *Rosebud Sioux Tribe of South Dakota v. Driving Hawk*, 534 F.2d 98, 101 (8th Cir. 1976)



Thus, Congress, using its plenary powers over Indian tribes, expressly, specifically and unequivocally provided that the U.S. Courts have subject matter jurisdiction over petitioners' challenge of respondents' housing program as a being a bill of attainder as applied to petitioners. The U.S. Courts have jurisdiction to grant *habeas corpus* releasing petitioners from the lingering unreasonable restraints upon petitioners' liberties caused by the housing program.

**2. This case has significant ramifications in Indian Country, with substantial continuing importance due to a conflict among Circuits over the jurisdiction of Federal Courts as well as division of the standard for determining the fact sensitive question of whether legislation is a bill of attainder resulting in non-uniform application of Federal Law and Rights.**

This case presents the cleanest circuit split imaginable. In addition to the pressing general need to resolve a continuing and expanding split, this case itself presents a compelling vehicle in which to address the question presented. The question whether the ICRA vests the U.S. Courts with subject matter jurisdiction is of great practical importance. As an initial matter, the fact that several different federal courts reach direct contrary conclusions on the same question of law highlights the confusion among the circuits and the need for a uniform law on this subject.

If the U.S. Courts do no have subject matter jurisdiction to determine whether challenged legislation is in fact a bill of attainder in violation of ICRA, then the rights of victims of bills of attainder in Indian country will be significantly undermined for there will be absolutely no forum for victims to obtain enforcement of the rights which Congress intended to bestow. These cases will continue to

arise and will continue to result in the inconsistent administration of justice due to the circuit split.

Directly contrary to the Second Circuit, the Federal Courts at least two other Districts - Arizona District and Central District of California - had absolutely NO difficulty in enforcing the express provisions of ICRA vesting U.S. Courts with subject matter jurisdiction to grant habeas corpus relief to a victim of a bill of attainder in order to release such victim from the unreasonable restraints of such bill of attainder, whatever nature those restraints might be.

In *Dodge v. Nakai*, D.C.Ariz. 1969, 298 F.Supp. 26, a tribal council order excluding from the reservation the program director of a non-profit legal service corporation *was found to constitute an unlawful bill of attainder in violation of ICRA.*

> The factors to be considered in determining whether a legislative act imposes 'punishment' on a person are set forth in Kennedy v. Mendoza- Martinez, 372 U.S. 144, 168-169, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). Upon consideration of those factors, the Court concludes that the exclusion of Mitchell from the Navajo Reservation constitutes 'punishment' as that term has been interpreted by the Courts.
>
> *Dodge v. Nakai*, 298 F.Supp. 26, 34 (D.C.Ariz. 1969.)

In *Santa Ynez Band of Mission Indians v. Torres*, 262 F.Supp.2d 1038, 1047, (C.D.Cal., 2002 ), the Central District of California also interpreted ICRA as vesting the U.S. Courts with subject matter jurisdiction over bills of attainder:

> Therefore, the Court holds that the ICRA is an applicable defense to this action. Accordingly, Torres has submitted evidence that creates a material issue of fact surrounding the passage of the ordinance excluding him from the Reservation, in support of his argument that the ordinance constitutes a deprivation



> of property without due process, and that the **ordinance amounts to an unlawful bill of attainder**. In that regard, the Tribe has not satisfied its burden on summary judgment, even assuming the Tribe can cure its evidentiary defects noted above, and its motion must fail. [emphasis added]
>
> *Santa Ynez Band of Mission Indians v. Torres*, 262 F.Supp.2d 1038, 1047, (C.D.Cal., 2002 )

**3. The Court of Appeals and the District Court Rewrote ICRA and Rendered a Nullity throughout Indian Country the Clear, Express and Unequivocal Protections Against Any Bills of Attainder being enacted by any Indian Nation**

It is settled law that in construing a statute, the court must follow its plain meaning. 2A Norman J. Singer, Sutherland on Statutes and Statutory Construction § 46.01 (5th ed.1992) (hereinafter Sutherland ). "[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain ... the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470 (1917).

"The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances,' when a contrary legislative intent is clearly expressed." *Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129, 135-36, (1991) (citations omitted) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). It is settled law that "[w]here the language is plain and admits of no more than one meaning, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." *Caminetti v. U.S.*, 242 U.S. 470, at 485 (1917). The courts do not have authority to rewrite ICRA in a manner that Congress did not intend. See, e.g., *Heckler v.*

*Mathews*, 465 U.S. 728, 741-742 (1984) ("[A]lthough this Court will often strain to construe legislation so as to save it against constitutional attack, it must not and will not carry this to the point of perverting the purpose of a statute * * *, or judicially rewriting it.") (citation and internal quotation marks omitted).

The Second Circuit violated the Act's plain meaning by failing and refusing to enforce and apply Act as plainly, clearly, unambiguously and unequivocally written that "No Indian Tribe in exercising powers of self-government shall—(9) pass any bill of attainder or ex post facto law." 25 U.S.C. §1302(9)

The District Court and the Court of Appeals below, by improperly refusing to apply and enforce ICRA as plainly written and intended by Congress, have rewritten this significant piece of legislation out of existence, rendering it a nullity. This interpretation of ICRA would deny victims of bills of attainder access to the U.S. Courts for relief as directed by ICRA.

The decisions appealed from failed to address the effects of the punishment caused by bills of attainder that continue even today. The panel's decision also directly conflicts with the decisions in Poodry v. Tonawanda Band of Seneca Indians, supra. and Shenandoah v. United States Department of Interior, Halbritter et al, supra. and contradicts the purpose and intent of the bill of attainder clause of ICRA:

> Our reluctance is strongly reinforced by the specific legislative history underlying 25 U.S.C. § 1303. This history, extending over more than three years, indicates that Congress' provision for habeas corpus relief, and nothing more, reflected a considered accommodation of the competing goals of "preventing injustices perpetrated by tribal governments, on the one hand, and, on the other, avoiding undue or precipitous interference in the affairs of the Indian people." Summary Report 11.



In *Harvey v. State of N.D.*, 526 F .2d 840, 841 (8th Cir.1976) held that, in the context of a petition for federal habeas corpus filed by a state prisoner, the custody requirement has been equated with significant restraint on liberty. While the Supreme Court has not attempted to define with exactness the liberty guaranteed by the Constitution, it has recognized that

> **[liberty] denotes not merely freedom from bodily restraint but also the right of the individual to** contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, **establish a home** and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized ... as essential to the orderly pursuit of happiness by free men. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.
>
> *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972).
>
> *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 66-70, (1978)

**4. Bills of Attainder "Detain" Their Victims Even Without, or Beyond the End of, Actual Physical Custody or Incarceration.**

The punitive effects of a bill of attainder never end. Because of the lingering, never ending restraints upon liberties caused by *any* bill of attainder, Congress determined that '*any*' bill of attainder created sufficient lingering restraints upon liberties to constitute 'custody' or 'detention'

for purpose of vesting the US Courts with subject matter jurisdiction to grant *habeas corpus* relief under ICRA.

At common law, bills of attainder often imposed the death penalty; lesser punishments were imposed by bill of pains and penalties. Article I, Section 9, Clause 3 of the Constitution prohibits these lesser penalties as well as those of imposing death. *Cummings v. Missouri*, 71 U.S. 277, 323 (1867). Historically used in England in times of rebellion or "violent political excitements", bills of pains and penalties commonly imposed imprisonment, banishment, and *the punitive confiscation of property*. See, *Nixon v. Administrator of General Services*, 433 U.S. 425, 474 (1977). In this country, the list of punishments has been expanded to include legislative bars to participate by individuals or groups in specific employments or professions. See., e.g., *United States v. Brown*, 381 U.S. 437 (1965), Communist Party members were barred from offices in labor union); *United States v. Lovett*, 381 U.S. (1946) (salaries terminated to three named Government employees).

The Supreme Court in *Santa Clara Pueblo* made the following observation regarding the legislative history underlying 25 U.S.C. §1303 (right of habeas corpus relief):

> This history, extending over more than three years, indicates that Congress' provision for *habeas corpus* relief, and nothing more, reflected a considered accommodation of the competing goals of "preventing injustices perpetrated by tribal governments on one hand, and on the other, avoiding undue or precipitous interference in the affairs of the Indian people. Ibid.

As originally proposed, ICRA would have provided for a trial *de novo* in the district court of all tribal 'convictions'. The ultimate change to habeas corpus as the only procedure for review was intended to limit the inquiry to deciding whether an accused's Constitutional rights were



violated, not to exclude certain criminal cases from review altogether. See, *Santa Clara Pueblo v. Martinez*, Ibid. 76 (dissenting opinion) (quoting from the Senate Summary Report) The Supreme Court also specifically recognized in *Santa Clara Pueblo* that ICRA was passed to modify cases such as *Talton v. Mayes*, 163 U.S. 376 (1896) which had held that the Fifth Amendment did not affect tribal self-government:

> As the court in Talton recognized, however, Congress has plenary authority to limit, modify or eliminate the powers of self-government which tribes otherwise possess (citations omitted). Title I of the ICRA, 25 U.S.C. §§1301-1303, represents an exercise of that authority. In 25 U.S.C. §1302, Congress acted to modify the effect of Talton and its progeny by imposing certain restrictions upon tribal governments similar, but not identical, to those contained in the Bill of Rights and Fourteenth Amendment.
> Ibid.

Over 25 years ago, the Ninth Circuit recognized the remedial or curative purpose of habeas corpus in the context of Indian criminal proceedings in *Settler v. Lameer*, 419 F.2d 1311 (9th Cir. 1969) and *Settler v. Yakima Tribal Court*, 419 F.2d 486 (9th Cir. 1969),cert.denied 398 U.S. 903 (1970).

In fact, the Supreme Court referenced *Settler v. Yakima*, supra, in *Santa Clara Pueblo* as an example of a situation where a writ of habeas corpus would be available "to a person detained by a [tribal] court in violation of the Constitution." 436 U.S. at 56, n.7.

It is respectfully submitted that bills of attainder of any kind or nature by their very definition of legislative infliction of additional punishment such as seizure, forfeiture and confiscation of private homes is typical of "*the most serious abuses of tribal power [which occur] in the administration of criminal justice", which Congress sought*

*to remedy by enacting the ICRA*". *Santa Clara Pueblo v. Martinez*, Ibid. at 71.

The Second Circuit recognized the expansive jurisdiction of the United States Courts under the ICRA in *Poodry v Tonowanda*, 85 F.3d 874 (1995). "*We begin with three decades of case law rejecting the notion that a writ of habeas corpus ... is a formalistic remedy whose availability is strictly limited to persons in actual custody.*" Id, at 893.

*Poodry* also quoted from the case of *Jones v Cunningham* as follows: "*It [habeas corpus] is not now and never has been a static narrow, formalistic remedy: its scope has grown to achieve its grand purpose-the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.*" Id.894, Jones, 371 U.S. 236, 240. Actual physical custody is not a jurisdictional prerequisite for federal habeas review under Indian Civil Rights Act of 1968. *Poodry v. Tonawanda Band of Seneca Indians*, C.A.2 (N.Y.) 1996, 85 F.3d 874, cert.denied 519 U.S. 1041.

**5. The District Court and the Court of Appeal Ignored Numerous Questions of Material Fact and Applied the Wrong Legal Standard When Summarily Dismissing Petitioners' ICRA Claims that Respondents' Housing Program was a Bill of Attainder as applied to petitioners**

The determination of whether legislation constitutes an impermissible bill of attainder is *very fact dependent* and *requires an examination* under the three-pronged test.

The material questions of fact cannot be decided in a summary manner without any hearing or record being created going to the proofs to determine whether respondents' 'housing program' is a 'textbook' bill of attainder *as applied* to petitioners: (a) *historically*, the seizure and forfeiture of homes (whether estates or mobile homes) has been punishment historically inflicted by bills of attainder; (b)*functionally*, *only the petitioners* are identified



[using the label 'members-not-in-good-standing'] for suffering the sentence under the 'housing program' of homelessness and inability to remain living on the Nation's sovereign Territory; and (c) *motivationally*, the respondents' own admission indisputably confirms the real purpose of respondents' housing ordinance was to 'rid' the Territory of the petitioners, which purpose the panel's decision is permitting.

In its seven page summary decision, the panel completely failed to engage in any analysis supporting its legal conclusion that the 'ordinance' was not a bill of attainder. The Second Circuit also failed to examine the facts or make any findings as to whether the total cumulative effect of respondents' 'housing program' upon only the petitioners was a bill of attainder.

In *Trop v. Dulles*, 356 U.S. 86 (1958), supra, this Court disposed of semantics as follows:

> How simple would be the tasks of constitutional adjudication and of law generally if specific problems could be solved by inspection of the labels pasted on them. Manifestly the issue of whether [the law in question] is a penal law cannot be thus determined. 356 U.S. at 94.

Not only is the present matter is directly on point with *Dodge v Nakai*, supra., but it is also consistent with *Davis v Kinloch*, 752 S.W. 2d 420 (Mo. Ct. App. 1988) in which the court found the legislative act of respondents sending a letter revoking the petitioner's license to continue operating his restaurant constituted a prohibited bill of attainder.

The rights and protections under ICRA must be examined in accordance with the analysis and holdings regarding bills of attainder such as *McMullen v United States of America*, 953 F.2d 761 (2nd Circuit 1992) in which the court specifically found that "a *Supplementary Extradition*

*Treaty is a bill of attainder as applied to McMullen*". Ibid 764

> [The district court] held that the three requisites had been satisfied, since the Supplemental Extradition Treaty: (1) specified the affected parties; (2) imposed punishment, and (3) failed to provide the protection of judicial process. [Selective Service] at 847,; McMullen, 769 F. Supp. 1278, 1284 (S.D.N.Y. 1991). We agree. Ibid 765.

Other circuits have recognized the broader scope of a writ of *habeas corpus* to protect persons in circumstances similar to those suffered by Petitioners in this case. See *Dry v. CFR Court of Indian Offenses for Choctaw Nation*, 168 F.3d 1207 (10th Cir., 1999.); *Dodge v. Nakai*, 298 F. Supp. 26 (D. Ariz. 1969). Those courts held that the writ of habeas corpus provides relief where a person is subjected to "severe restraints on their liberty," and when the restraint is "not shared by the public generally." *Hensley v. Municipal Court*, 401 U.S. 345, 351 (1973); *Jones v. Cunningham*, 371 U.S. 236, 240 (1963); *Dry*, 160 F.3d at 1207.

The divergent results reached by several federal courts in interpreting the protections under ICRA against bills of attainder runs retrograde to the goal of uniform federal law and undermines the fair administration of justice.

## CONCLUSION

For all of the foregoing reasons, the petitioners respectfully request that this Court grant their petition.

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Respectfully submitted,

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