

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RUSSELL W. CHAVEZ

(*Pro Se Status*)

Plaintiff/Petitioner - Appellant,

v.

THE NAVAJO NATION TRIBAL COURTS &
THE NAVAJO NATION TRIBE et.,al.

Defendant/Respondent - Appellee.

Case No. 11-2203

Appellant/Petitioner's Opening
Brief

NOTICE AND INSTRUCTIONS

If you proceed on appeal pro se, the court will accept a properly completed Form A-12 in lieu of a formal brief. This form is intended to guide you in presenting your appellate issues and arguments to the court. If you need more space, additional pages may be attached. A short statement of each issue presented for review should precede your argument. Citations to legal authority may also be included. This brief should fully set forth all of the arguments that you wish the court to consider in connection with this case.

New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court. A copy of the completed form must be served on all opposing counsel and on all unrepresented parties and a proper certificate of service furnished to this court. A form certificate is attached.

APPELLANT/PETITIONER'S OPENING BRIEF

1. Statement of the Case. (This should be a brief summary of the proceedings in the district court.)

1.) The Civil Complaint / Petition case was filed July 7, 2011 by Plaintiff / Appellant Mr. Russell W. Chavez (*pro se*) after repeated attempts to properly follow The Navajo Nation Rules of Civil Procedures and The Navajo Rules of Civil Appellate (N.R.C.A.P.), the Plaintiff / Appellant was forced to file a Civil Complaint with The United States Federal District Court of New Mexico.

2.) The Navajo Nation Department of Justice filed a "Support Motion to Dismiss" (this above) Civil matter filed on August 16, 2011. "No Notice of Appearance" was filed by the The Navajo Nation Department of Justice", (Thereby "Stricking" Any and All" arguments utilized by The Nav. Dept. of Justice) [Continued on Page 6 under Item 1.]

2. Statement of Facts Relevant to the Issues Presented for Review.

The facts in the case and "All" legal authority utilized & presented before The Navajo Nation District Court and The Navajo Nation Supreme Court notwithstanding The United States Federal District Courts have been Incorporated in All the Plaintiff's / Appellant's Mr. Russell W. Chavez's Civil matters. Therefore, stating under : " [5] at issue in *Strate* was the adjudicatory authority of tribal courts over personal injury actions against defendants who are not tribal members" *Strate*, 520 U.S. at 442, 117 S. Ct. 1404. (this argument was presented before The Navajo Nation Supreme Court on October 4, 2011 in the Plaintiff's / Appellant's Mr. Russell W. Chavez (*pro se*) "Additional Citations" to be Adjoined with Brief submitted on August 16, 2011 (under the N.R.C.A.P. Rule 11 (c))

Because the Plaintiff / Appellant Russell W. Chavez (*pro se*) did as the directives given to him, both by The Navajo Nation District Court and The Navajo Nation Supreme Court, plus The Navajo Nation Human Rights Commission All instructed the Plaintiff / Appellant Mr Chavez, to stay within compliance of the agency / Courts. Only for after months, now years to simply Dismiss the cases for reasons Not Supported by Law & Equity of Law, including [Continued on pages 6, 7 & 8]

3. Statement of Issues.

a. First Issue:

The United States v. Nixon, 418 U.S. 685 (1974), 116, 170, 224, 259 - 66, 268, 367, 388 **Argument and Authorities:**

"The House Judiciary Committee moved toward recommending the impeachment of Nixon for "Obstructing Justice, Misusing government agencies and defying his Constitutional Duty" to see that the Laws be Faithfully Excuted.": Decision : "The Court rejected Nixon's claim of excutive privilege as inconstituent with "the fundamental Demands of Due Process of Law in the Fair Administration of Justice."

Argument : Changing of Civil Proceedings to subvert, or cause continued **delays** does **not make for a Fair Administration of Justice.**

b. Second Issue:

Smith v. Moffett , 947, F.2d 442, 444 (10th Cir.1991) and " Nail Farmers!, 471 U.S. at 857 n. 21, 105 S.Ct. 2447 (internal citations omitted). Nevada v. Hicks, 533 U.S. 353, 369, 121 S. Ct. 2304, 150 L.Ed.2d 398 (2001)

Argument and Authorities:

(stating that application of exhaustion requirement does not depend on the existence of a pending action in a tribal court). This exhaustion policy provides a tribal court the first opportunity to examine its own jurisdiction, but is subject to the following exceptions : (1) " where an assertion of tribal jurisdiction 'is motivated by the desire to harass or is conducted in **bad faith**, (2) "where the [tribal court] action is patently violative of express jurisdictional prohibitions," *Id.*: (3) "where exhaustion would be futile because of the lack of an adequate opportunity to challenge the [tribals] court's jurisdiction, " *id.* : (4) "[w]hen . . . it is plain that no federal **grant** provides for tribal governance of nonmembers' (5) it is otherwise clear that the tribal court lacks jurisdiction so that the ex -
haustion requirement " would serve **no purpose other than delay**," Resulted in procedure violations by the Navajo Nation Tribe & Courts [Continued page 9]

4. Do you think the district court applied the wrong law? If so, what law do you want applied?

Yes, the Federal District Court of New Mexico applied the wrong law. The Discrimination Law; Disability Law; prohibiting a judiciary system / process that turns a "blind eye" to governmental & judiciary corruption, against tribal members of the the same class and inherent protections. Fed.Rules Civil Procedure Rule 12(b)(1), 28 U.S.C.A. (Affidavits Submissions) **"Allow It"**.

5. Did the district court incorrectly decide the facts? If so, what facts?

Yes, the Distrtict Court incorrectly decided the facts. One, the "conflict of interest issues" in order to proceed and the impending argument that the alleged defendants are sure to use, can further delay the proceedings.

6. Did the district court fail to consider important grounds for relief? If so, what grounds?

Yes, the district court failed to address the proper grounds for relief, being it is unnecessary for the *Pro Se* Plaintiff / Appellant Russell W. Chavez to address this being Fraud; Concealment; and foremost a Cover Up of a Conspiracy is the driving force behind the continued judiciary delays.

7. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what? Yes, there are many reasons why such a judgement of

"Dismissal with Prejudice" is **wrong**, because the result could **"only"** mean that more misconduct / unlawfulness issues **shall be a contributing factor in other Sovereignty** cases if allowed to be simply be **dismissed**, leaving the Navajo Nation, plus other soveriegn nations without means of **A Fair Redress process**.

8. What action do you want this court to take in your case?

Allow for the cases to proceed, in order to prevent future improper actions to come into focus, plus would allow other physical injuries to transpose, rather than remain hidden by unlawful / corruptional means, asnd Order Defaults that is already to be in existence by The Navajo Nation Rules of Civil Proceedings.

9. Do you think the court should hear oral argument in this case? If so, why?

Of Course, the Honorable Court should allow "Oral Arguments" if the Honor - ble Court finds that the Plaintiff's / Appellant's Russell W. Chavez (*Pro Se*) arguments are insufficient to over turn the Federal District Courts Ruling.

January 6, 2012
Date

Russell W. Chavez
Signature

CERTIFICATE OF SERVICE

I hereby certify that on JANUARY 8TH, 2012 I sent a copy of
(date)
the Appellant/Petitioner's Opening Brief to MR. PAUL Spruhan Esq.
Assistant Attorney General, at The Navajo Nations Dept. of Justice
(Opposing Party or Attorney)
P.O. Box 2010 Window Rock, AZ. 86515, the last known address, by
United States mail or courier. VIA: VALLEY WIDE PROCESS SERVER PHX, AZ.

JANUARY 6, 2012
Date

James W. Chavez
Signature

Also sent to : Mr. Thomas Holgate

① P.O. Box 5520
Window Rock, AZ. 86515

Mr. BEN STEEL JR.

② P.O. Box 7440
Window Rock, ARIZONA 86515

Mr. Herb Yazzie &

③ Ms. ELEANOR Shinkley
(The Navajo Nation Supreme Court)
P.O. Box 520
Window Rock, ARIZONA 86515

[Continued page 2 , Item 1.]

Item 1. : (2) Again, "No Appearance Notification" was submitted by Counsel of record Mr. Paul W. Spruhan Esq. Assistant Attorney General of The Department of Justice for The Navajo Nation. Inwhich the Plaintiff / Appellant Mr. Russell W. Chavez (*pro se*) address's within the "Response Motion to The Dismissal Request" filed by Appellant Mr. Russell W. Chavez on August 30, 2011, also Plaintiff's / Appellant's "Notice by Plaintiff for Magistrate Judge Appointment." filed same day.

[Continued page 2 , item 2.]

Item 2. : **mislead facts** in how to proceed within the Navajo Nation Tribal District Court, plus The Navajo Nation Supreme Court setting. The "**bad / ill faith**", effort came when the said, Appellant / Plaintiff / Petitioner / had repeated Non - Acceptance issues, of Motions and filings by the Navajo Nation Supreme Court Clerk. Then, by virtue of Non - Submittance of records / documents the cases were "dismissed without cause". At present moment both cases brought before The Navajo Nation Courts are currently **defaulted** inaccordance to The Navajo Nation Judiciary system that the Appellant / Plaintiff Mr. Russell W. Chavez was instructed to utilize. Once in "**default**" the Navajo Nation Court system attempted to disengage by "Dismissing the Cases" both for lack of jurisdiction and failures by Plaintiff / Appellant alleging Non - Payment, Non - Submittance of documents. Furthermore, the Appellant / Plaintiff Mr. Chavez did file the "Orginal Complaint" within The United States Federal District Court of Arizona under the 1983, 1985 and 1986 for Deprivation of Civil Rights statutes. During which time the Navajo Nation Human Rights Commission, and / or the Navajo

[Continued page 2, Item 2.]

Item 2. : Nation Department of Justice could of / should of acted upon it. Especially, since the Navajo Nation Tribal Courts / Department of Justice was made aware of the severe permanent injuries to a Navajo Nation Tribal member. Motions to dismiss for lack of subject matter jurisdiction may take one of two forms : (1) a party may make a facial challenge to the plaintiff's allegations concerning subject matter jurisdiction, thereby questioning the sufficiency of the complaint, in which case the district court must accept the allegations in the complaint as true, or (2) a party may go beyond allegations contained in the complaint and challenge the facts upon which subject matter jurisdiction depends, in which case the court does not presume the truthfulness of the complaint's factual allegations, but has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts. Fed. Rules Civ. Proc. Rule 12(b)(1), 28 U.S.C.A.. Normally this would be the case, "only" whereas in this case the Navajo Nation Tribal Court and Tribal Officials "**conspired**" with Az. State Officials by simply not enforcing the Appellant's / Plaintiff's Russell W. Chavez (*pro se*) Sovereignty Status. The Supreme Court has held : " To say substantive state laws apply to off - reservation conduct, however, **is not to say that a tribe no longer enjoys immunity from suit**" *Kiowa Tribe of Okla. v. Mfg. Techn., Inc.* 523 U.S. 751, 755, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998). Moreover, the Tenth Circuit has to inquire into whether a party had a **full and fair opportunity to litigate an issue . . .** [we] focus on whether there were significant procedural limitations in the prior

[Continued page 2 Item 2.]

proceedings, whether the party had the incentive to litigate **fully the issue, or whether effective litigation was limited by the nature or relationship of the parties.**' "*Murdock v. Ute Indian Tribe of Uintah & Ouray Reservation*, 975 F.2d 683, 689 (10th Cir. 1992) (internal citation omitted) ; see also *Bell v. Dillard Dep't * 1173 Stores*, 85 F.3d 1451, 1456 (10th Cir. 1996); and in *Fletcher*, 116 F.3d at 1324 states : [6][7] "Indian tribes are domestic dependant nations that exercise inherent sovereign authority over their **members and territories**". Giving rise to the fact that The Navajo Nation Tribe and The Navajo Nation Tribal Courts by **not allowing these proceedings** has relinquished the Appellant / Plaintiff's Russell W. Chavez (pro se) sovereignty status, thereby relinquishing All "**sanctity**" of Sovereignty Status across the United States under The "**Equal Protection of Laws**" clause. The Navajo Nation Tribal Courts and The Navajo Nation Tribe **can not** withhold The United States Constitutional Amendments due in fact that the Sovereignty Status can "**only**" be Upheld by and thru The United States Constitutional Amendments, or **can not be** recognized unless The United States Constitutional Amendments acknowledges such treaties, or sovereignty status. Neither the chicken; or the egg can exist unless both are in acknowledgement, as so be **Tribal Sovereignty can not properly protect** individually unless both can co - inhabit to protect equally, or not at all; is what the Law requires.

[Continued page 3, Item **b.**]

Item **b.** : In addition under The United States v. Kagama, 118 U.S. 375, 6 S. Ct. 1109, 30 L.Ed. (U.S. 1886) express's and states : " They ***384** are communities dependant on the United States, - dependant largely for their daily food; depend - ant for their political right. They (tribes) owe no allegiance to the States, and receive from them No protection. Because of "ill feelings, the people of the States where they are found are "Often" their (tribes) **deadliest enemies**. From their very weakness, and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties inwhich it has been promised, "there arises the duty of protection, and with it power." This statement of law has never been so prevailing as in Russell W. Chavez v. The Arizona State Hospital et.,al. and in Russell W. Chavez v. The United States Government et.,al.. Only, now the Navajo Nation Tribe and The Navajo Nation Tribal Courts are factual participants in **"hate crimes"** against it's own people inherent to Navajo Nation Sovereignty. The intended purpose of the Organic / Sovereignty Act was meant to **protect**, plus provide a symbalic order of law, including **Redress**. Instead this National Sovereignty has grown to **"Cover Up"** Federal and State judicial corruption from **coming forward**. The Honorable Federal District Court of New Mexico has a opportunity to establish The Navajo Nation and other Tribal Nations Sovereignty back to a symbol of **protection**, inwhich it was orginally meant for and **Not hidden agendas and / or cover ups as it continues to be a "ongoing" process !**