**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEW MEXICO**

**PUEBLO OF SANTA ANA,** and
**TAMAYA ENTERPRISES, INC.,**

Plaintiffs,

vs. No. 1:11-cv-00957BB-LFG

**HONORABLE NAN G. NASH,** et al.,

Defendants.

**MEMORANDUM IN SUPPORT OF THE PARTY DEFENDANTS' MOTION TO DISMISS FOR WANT OF FEDERAL JURISDICTION**

The *Rooker-Feldman* doctrine bars parties who have lost in state court "from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy,* 512 U.S. 997, 1005-06 (1994); *see District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983) (federal district court did not have jurisdiction to review local D.C. court refusal to waive bar admission requirement); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923) (federal court has no jurisdiction to review state court judgment by way of a bill in equity). "[J]urisdiction to review such decisions lies exclusively with superior state courts and, ultimately, the United States Supreme Court." *Plyler v. Moore,* 129 F.3d 728,731 (4th Cir. 1997).

Plaintiffs' Complaint in this Court seeks what it nothing more than a further review of the final judgments entered by the New Mexico Supreme Court in *Doe v. Santa Clara Pueblo,* 2007-NMSC-008, 141 N.M. 269, 154 P.3d 644 and *Mendoza v. Tamaya Enterprises,*

*Inc.*, 2011-NMSC-030, ___ N.M. ___, 258 P.3d 1050. *See* Point I *infra*. As a result, the *Rooker-Feldman* doctrine, requires that Plaintiffs' Complaint be dismissed for want of subject matter jurisdiction. *See* Point II, *infra*.

## I. PLAINTIFFS' COMPLAINT SEEKS THE FURTHER REVIEW IN THIS COURT OF QUESTIONS FINALLY RESOLVED BY THE NEW MEXICO SUPREME COURT IN *DOE* AND *MENDOZA*.

The first legal question sought to be presented by Plaintiffs to this Court is whether "the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.*" (IGRA), permits "the shifting of jurisdiction from tribal courts to state courts over private personal injury lawsuits brought against tribes or tribal entities with respect to claims arising within Indian country." Complaint at 1-2. That is precisely the issue resolved by the New Mexico Supreme Court in *Doe* against the tribal signators to the Compact when it ruled categorically that:

> Congress [in enacting IGRA] intended the parties to negotiate if they wished, the choice of laws for personal injury suits against casinos as well as choice of venue for the enforcement of those laws. . . . . Congress unambiguously left that subject to the parties to determine for themselves.

*Doe*, 2007-NMSC-008, at ¶ 47. Again, in *Mendoza*, the New Mexico Supreme Court explicitly reaffirmed that the very parties, who Santa Ana and Tamaya now seek to enjoin, had every right to proceed in state court, because the "jurisdiction shifting" provisions of the Compact are "enforceable and permitted . . . [their] personal injury claims to go forward in district court." *Mendoza*, 2011-NMSC-030, at ¶ 15.

The second legal question sought to be presented by Plaintiffs to this Court is whether "the attempted exercise of . . . jurisdiction by state courts directly undermines" tribal court authority. Complaint, ¶ 12, at 4. To the extent Plaintiffs present that question as something in

addition to its core claim concerning the Compact, that too was fully resolved against them by the State supreme court when it ruled that:

> The fact that the exclusive jurisdiction provision [in the Santa Ana Tribal Code] was in effect before the Pueblo entered into the Compact with the State suggests that the Pueblo knowingly relinquished jurisdiction. . . . Accordingly, by virtue of Section 8 of the Compact, the Pueblo unambiguously agreed to proceed in state court for claims involving injuries proximately cased by the conduct of the Casino.

*Mendoza,* 2011-NMSC-030, at ¶ 15. Thus, both questions Plaintiffs seek to have this Court resolve have been "finally determined" against them in the judgments of the New Mexico Supreme Court, in full compliance with Section 8(A) of the Compact.

## II. UNDER THE *ROOKER-FELDMAN* DOCTRINE THIS COURT LACKS SUBJECT MATTER JURISDICTION TO RECONSIDER THE LEGAL QUESTIONS THAT WERE FINALLY RESOLVED AGAINST THE PLAINTIFFS IN THE TWO RECENT DECISIONS OF THE STATE SUPREME COURT.

The *Rooker-Feldman* doctrine, like its sister abstention doctrines, is premised in part on concerns of comity and federalism. *See Alden v. Maine,* 527 U.S. 706, 748 (1999) (observing that the branches of the federal government must treat the states "in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation."); *Younger v. Harris,* 401 U.S. 37,

44 (1971) (describing comity as a principle based on "a proper respect for state functions"); *Cf. Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs,* 398 U.S. 281, 286 (1970) ("[F]rom the beginning we have had in this country two essentially separate legal systems. Each system proceeds independently of the other with ultimate review in [the Supreme] Court of the federal questions raised in either system."). Indeed, "[t]he independence of state courts would surely be compromised if every adverse decision in

state court merely rang the opening bell for federal litigation of the same issues. *Brown & Root, Inc. v. Breckenridge,* 211 F.3d 194, 198 (4th Cir. 2000).

More specifically, the *Rooker-Feldman* doctrine enforces express constitutional principles of separation of powers which underlie two basic propositions of federal jurisdiction. It is, after all, the Constitution which confers on Congress the authority to create the lower federal courts, *see* U.S. Const., art. III, § 1, and to allocate the jurisdiction of those courts. "Congress has the constitutional authority to define the jurisdiction of the lower federal courts." *Keene Corp. v. United States,* 508 U.S. 200, 207 (1993). In the exercise of that authority, Congress has empowered the federal district courts to exercise only *original jurisdiction. See, e.g.,* 28 U.S.C. § 1331, 1332; *Rooker,* 263 U.S. at 416. "While the lower federal courts were given certain powers in the [Judiciary Act of 1789], they were not given any power to review directly cases from state courts, and they have not been given such powers since that time." *Atlantic Coast Line,* 398 U.S. at 286.

Second, and correlatively, Congress vested the authority to review state court judgments in the United States Supreme Court alone. *See* 28 U.S.C. § 1257(a); *Feldman,* 460 U.S. at 482. The *Rooker-Feldman* doctrine thus "interprets 28 U.S.C. § 1257 as ordinarily barring direct review in the lower federal courts of a decision reached by the highest state court, for such authority is vested solely in [the Supreme] Court." *ASARCO Inc. v. Kadish,* 490 U.S. 605, 622 (1989).

Thus, as explained in Part I, *supra,* the Complaint filed by Santa Ana and Tamaya seeks this Court's review of the New Mexico Supreme Court's final judgments in *Doe* and *Mendoza*--a result which is precluded by the *Rooker-Feldman* doctrine.

Even if Plaintiffs could be viewed as presenting somewhat different claims than those presented in the state district court, *Rooker-Feldman* bars not only direct review of issues actually decided by the state court, but also consideration of those which are "inextricably intertwined" with state court decisions. *See Feldman*, 460 U.S. at 486-87; *Plyler*, 129 F.3d at 731. The "inextricably intertwined" prong of the doctrine bars federal jurisdiction where "success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." *Plyler,* 129 F.3d at 731 (citation omitted). *See also, Exxon Mobil,* 544 U.S. at 286 (noting that *Feldman* held that the claim sought to be litigated in federal court "could not be pursued for it was 'inextricably linked' with the [D.C. court's] decisions." *See also Kenmen Engineering v. City of Union,* 314 F.3d 468, 476 (10th Cir. 2002) (we approach the ["inextricably intertwined" question by asking whether the state-court judgment *caused,* actually and proximately, the *injury* for which the federal-court plaintiff seeks *redress.* If it did, *Rooker-Feldman* deprives the federal court of jurisdiction.

The Supreme Court recently limited *Rooker-Feldman's* applicability where there is concurrent jurisdiction, related cases are brought in both federal and state court, and "a state court reaches judgment on the same or related questions while the case remains *sub judice* in federal court." *Exxon Mobil Corp. v. Saudi Basic Industries,* 544 U.S. 280, 292 (2005). In doing so, however, the Supreme Court reaffirmed the core applicability of *Rooker-Feldman* to the circumstances present here. Noting that "Exxon Mobil plainly has not repaired to federal court to undo the . . . [state court] judgment in its favor," *id.* at 293, the *Exxon Mobil* Court reaffirmed the central holdings of both *Rooker* and *Feldman* that control here—i.e., where "the losing party in state court filed suit in federal court, after the state proceedings ended, complaining of an injury caused by the state court

judgment and seeking review and rejection of that judgment, . . . .the Districts Courts . . . lacked subject matter jurisdiction." *Exxon Mobil,* 544 U.S. at 291-92.

Santa Ana and Tamaya may not avoid the strictures of *Rooker-Feldman* by waiting until the State Supreme Court's final resolution of the legal questions they wish to attack results in a remand to state district court for trial in accordance with those rulings. Plaintiffs' challenge to the authority of the state court to comply with the mandate from the Supreme Court and its final rulings is no less a federal district court attack on the final judgments of the State Supreme Court than those precluded bys the U.S. Supreme Court in both *Rooker* and *Feldman.*

The fact remains that Plaintiffs are challenging the clear and unequivocal rulings by the New Mexico Supreme Court in *Doe* and *Mendoza*, which they were free challenge by way of review in the United States Supreme Court, and which they chose not to do. What they may not do is wait until those final judgments of the state Supreme Court are being applied, and seek to relitigate those judgments by an improper invocation of the original jurisdiction of this Court.

Nor may Santa Ana avoid being bound by *Doe* on the ground that it was not a plaintiff-party in that case. First, in the related preclusion context, the Supreme Court has recently made clear that "a nonparty may be bound by a judgment [when] 'adequately represented by someone with the same interests who was a party to the suit.'" *Taylor v. Sturgell,* 553 U.S. 880, 894 (2008). Here, where all of the tribal signators to the Compact, including Santa Ana, participated in *Doe,* in cooperation with lead counsel in that case, who represents Santa Ana directly in this case, it must be that the original plaintiffs in *Doe* "understood themselves to be acting in a representative capacity" and that the *amicus* status of all the tribal-signators was a "special procedure[] to safeguard [their] interests," *id.* at 898, thus satisfying the requirements of *Taylor.*

Second, there is no question of full-party status in *Mendoza* which reaffirmed *Doe* and held it controlling with respect to Santa Ana in this case.

**CONCLUSION**

For the foregoing reasons, and those contained in the Party Defendants' Motion supported by this Memorandum, the Court should dismiss the Plaintiffs' Complaint for want of federal subject matter jurisdiction.

Respectfully submitted,

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I hereby certify that on December 20, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record, Richard Hughes and Donna Connolly of The Rothstein Law Firm, and that a copy of the foregoing was faxed and mailed to Matthew Jackson atf the Office of the Attorney General.

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