

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA**

(1) THE CADDO NATION OF OKLAHOMA, and )  
(2) BRENDA EDWARDS, in her capacity as )  
Chairman of The Caddo Nation of Oklahoma, )

Plaintiffs, )

vs. )

Case No. \_\_\_\_\_

(1) THE COURT OF INDIAN OFFENSES )  
FOR THE ANADARKO AGENCY, )

Defendant. )

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER WITHOUT  
NOTICE AND PRELIMINARY INJUNCTION AGAINST THE  
COURT OF INDIAN OFFENSES AND BRIEF IN SUPPORT**

The Caddo Nation of Oklahoma and Brenda Edwards, in her capacity as Chairman of the Caddo Nation, respectfully requests that this Court grant an Emergency Temporary Injunction against the Court of Indian Offenses, Anadarko Agency, because the “Emergency Temporary Injunction” will, and is, causing irreparable injury to the Plaintiffs. In support of the Motion, the Plaintiffs would show as follows:

**FACTS**

1. The United States Department of Interior (“DOI” or “Interior”) has established a system of Courts of Indian Offenses (“CFR Court”) in Oklahoma to provide judicial services to Indian Nations that have no judicial system. The regulations controlling the Court of Indian Offenses are outlined in 25 C.F.R. Part 11.

2. The CFR Court for the Anadarko Agency acts a tribal court for the Caddo Nation of Oklahoma pursuant to 25 C.F.R. § 11.100(b).

3. The CFR Court's jurisdiction is limited as laid out in 25 C.F.R. § 11.118.

Specifically, the section provides that:

(b) A Court of Indian Offenses may not adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

Further, the section provides that:

(d) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

4. The Caddo Nation has not granted authority to the CFR Court to adjudicate tribal disputes. Pursuant to Tribal Resolution 07-2005-02, which rescinded Tribal Resolution 07-2003-01, the Caddo Nation specifically revoked authorization for the Court of Indian Offenses to adjudicate any internal tribal disputes and election disputes. *c.f. Exhibit 1*, Resolution 07-2003-01 and *Exhibit 2*, Resolution 07-2005-02; *Exhibit 3*, Resolution 03-2014-01.

5. In July 2013, Brenda Edwards was elected Chairman of the Nation. The election was certified and Ms. Edwards was duly sworn in. *Exhibit 4*, Declaration of Brenda Edwards.

6. Shortly thereafter, on or about August 22, 2013, the Secretary of the Caddo Nation received a Petition to recall Brenda Edwards. *Exhibit 5*, Letter from Secretary. After review of the Petition, on August 29, 2013, the Secretary reported that "not enough valid registered voter signatures that signed the petition." *Exhibit 5*, Letter from Secretary. Thus, pursuant to Article XII, § 2 of the Caddo Nation Constitution, the Petition failed. *Exhibit 6*, Constitution.

7. Nonetheless, Mr. Philip Smith allegedly held an illegal meeting to remove Chairman Edwards. *Exhibit 4*, Declaration of Brenda Edwards. Under the Caddo Nation Constitution, he was not authorized to hold the meeting. *Exhibit 6*, Constitution. At that meeting,

Mr. Smith allegedly held a vote to recall Chairman Edwards, which allegedly passed. *Exhibit 4*, Declaration of Brenda Edwards. After that, Mr. Smith by force took over the Tribal Headquarters on September 25, 2013. *Exhibit 4*, Declaration of Brenda Edwards; *Exhibit 7*, Police Statements.

8. On October 19, 2013, pursuant to a duly called meeting of the Membership by Chairman Edwards, the Membership of the Caddo Nation held that Philip Smith, DeLita Butler, Christine Noah, and Ann Donaghey forfeited their positions as Tribal Council Members because they each missed four meetings without just cause. *Exhibit 8*, Resolution # 10-2013-01.

9. Despite forfeiting their positions, Philip Smith, DeLita Butler, Christine Noah, and Ann Donaghey have failed and refused to allow Ms. Edwards and the rightful Caddo Nation government to resume governmental functions at the Tribal Headquarters. *Exhibit 7*, Police Statements. Moreover, on information and belief, Philip Smith, DeLita Butler, Christine Noah, and Ann Donaghey have illegally set up a sham government to mislead the public and the United States that they are the rightful government of the Caddo Nation.

10. On or about March 13, 2014, “the Caddo Nation of Oklahoma” filed a Petition for Injunction and for Temporary and Permanent Restraining Order in the CFR Court despite the fact that there was no resolution authorizing suit in the CFR Courts. *Exhibit 9*, Petition.

11. Based on the Petition, on or about March 13, 2014, the CFR Court issued an *ex-parte* “Emergency Temporary Injunction and Order” against Chairman Edwards. Moreover, the Injunction ordered:

**Further any third party that owes money to the Nation shall pay the funds to Petitioner and the Third Party Payor is relieved from any further liability with regard to the payment herein.**

Such order was entered *ex-parte* without any notice or opportunity to be heard by Chairman Edwards or the true Caddo Nation of Oklahoma. Finally, the order, even though it directed the

payment of money to Petitioner, did not provide for any bond as required by Rule 65 of the Federal Rules of Civil Procedure to the extent that such *ex-parte* order may be invalid. *Exhibit 10*, Emergency Temporary Injunction.

12. Moreover, the “Emergency Temporary Injunction and Order” has never been personally served on Chairman Edwards as required by Rule 65 of the Federal Rules of Civil Procedure. *Exhibit 4*, Declaration of Brenda Edwards. Yet, the order has been served on all persons and entities doing business with the Caddo Nation of Oklahoma which has significantly disrupted services. *Id.*

13. On or about March 17, 2014, Chairman Edwards specially appeared in the CFR Court and sought an Emergency Motion to Dissolve the Emergency Temporary Injunction. *Exhibit 11*, Motion to Dissolve Injunction. Chairman Edwards could not seek relief on Friday March 14, 2014 because the CFR Court is closed. Counsel for Chairman Edwards provided notice to Counsel for Mr. Smith. Unlike the prior Motion, the Court did not immediately hear the motion, but instead set it for hearing on March 20, 2014 at 2:00 P.M.

14. In the interim, Mr. Philip Smith has attempted to use the order to obtain monies from the Caddo Nation’s Bank Account which has in excess of \$1.5 million dollars in it. *Exhibit 12*, Facsimile to Firstar Bank.

### **ARGUMENT AND AUTHORITY**

The requirements for issuance of a Temporary Restraining Order are essentially the same as those for a preliminary injunction: “the moving party must establish that (1) the movant will suffer irreparable injury unless the injunction issues; (2) the threatened injury . . . outweighs whatever damage the proposed injunction may cause the opposing party; (3) the injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood of

success on the merits.” *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003); *see O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 342 F.3d 1170, 1177 (10th Cir. 2003), *reh'g en banc*, 389 F.3d 973 (10th Cir. 2004), *aff'd sub nom.*, 546 U.S. 418, 126 S. Ct. 1211, 163 L. Ed. 2d 1017 (2006). The Plaintiffs must identify an injury that is “both certain, great, actual and not theoretical.” *See Heideman*, 348 F. 3d at 1189. Plaintiff “satisfies the irreparable harm requirement by demonstrating ‘a significant risk that he or she will experience harm that cannot be compensated after the fact by monetary damages.’” *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009)(*quoting Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir.2003)).

In this case, there is a significant risk to the fundamental operations of the Caddo Nation by the continued exercise of improper jurisdiction by the Court of Indian Offenses (“CFR Court”). Moreover, the injury that is being caused by the Court of Indian Offenses in the disruption of governmental services to the Caddo Nation’s members greatly outweighs any potential damage to the CFR Court. Further, there is little to no risk public if the temporary restraining order is issued. In fact there is risk to the public by failing to issue the temporary restraining order because of the disruption to governmental functions. Finally, the Plaintiffs have a substantial likelihood of success on the merits. Thus, a temporary restraining order and a temporary injunction should issue.

#### **A. INJURY TO THE NATION**

The Caddo Nation and Chairman Edwards face significant injury if a temporary restraining order and a temporary injunction are not issued. The “Emergency Temporary Injunction” issued by the Court of Indian Offenses seeks to enjoin the Chairman of the Caddo Nation from exercising her authority under the Constitution of the Caddo Nation. Moreover, Mr Philips, who claims to

be the Caddo Nation Vice Chairman, is attempting to obtain \$1.5 million dollars from the Caddo Nation treasury. If the temporary restraining order and the preliminary injunction are not issued, the status quo will be disrupted, and there is a significant potential that Mr. Smith will convert the treasury of the Nation to his own purposes.

**B. THREATENED INJURY TO THE PLAINTIFFS OUTWEIGHS THE INJURY TO THE CFR COURT**

As explained above, the Temporary Restraining Order and the Preliminary Injunction are necessary to maintain the current status quo. The improper exercise of jurisdiction by the CFR Court, which was taken without any notice to the Caddo Nation or Chairman Edwards, will disrupt governmental services and prevents the Chairman of the Caddo Nation from exercising her authority under the Caddo Nation Constitution. This is an impermissible interference with the self-governance of the Caddo Nation. There will be very little harm if the government is allowed to run as it has for many years.

**C. IF THE INJUNCTION WERE TO ISSUE, IT WOULD NOT BE ADVERSE TO THE PUBLIC INTEREST**

In this case, the issuance of the temporary restraining order and the preliminary injunction would not be adverse to the public interest. In fact, the issuance would allow the Caddo Nation's government to reopen and perform the necessary services and functions for its members.

**D. LIKLIHOOD OF SUCCESS ON THE MERITS**

Under federal jurisprudence, Tribal governance disputes must be resolved by Tribal procedures, not by the Federal or State Government or its courts including this Court where jurisdiction has not been specifically authorized by the Tribe. *See, e.g. Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65; *Fisher v. District Court of Sixteenth Judicial Dist.*, 424 U.S. 382, 386-89 (1976); *Wheeler v. United States Dep't of Interior, Bureau of Indian Affairs*, 811 F.2d 549 (10th

Cir. 1987). “Internal matters of a tribe are generally reserved for resolution by the Tribe itself, through a policy of Indian self-determination and self-government as mandated by the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1341.” *Timbisha Shoshone Tribe v. Joseph Kennedy*, 2009 WL 3615971, at \*11 (E.D. Ca. 2010). As held by the United States Court of Appeals for the Eighth Circuit, “jurisdiction to resolve internal Tribal disputes and interpret Tribal Constitutions and Laws lies with Indian Tribes and not in the District Courts.” *Sac & Fox Tribe of the Miss. v. BIA*, 439 F.3d 832, 835 (8th Cir. 2006)(internal citations and quotations omitted). “Unless surrendered by the tribe, or abrogated by Congress, tribes possess an inherent and exclusive power over matters of internal tribal governance.” *Timbisha Shoshone Tribe*, 2009 WL 3615971, 11, citing *Nero v. Cherokee Nation of Oklahoma*, 892 F.2d 1457, 1463 (10th Cir. 1989). Federal interference in internal Tribal affairs diminishes the powers of Tribal Sovereignty and Tribal self-governance recognized by the Federal Government. *See, Fisher*, 424 U.S. at 387-88. Federal intrusion also subjects disputes arising on Indian reservations among tribal members to a forum other than the one they have set up for themselves, risks conflicting adjudication, and diminishes Tribal authority. *Id.*

The Federally created court is not a “tribal court” as the Caddo Nation has not given it jurisdiction over this case, thus there is no requirement to exhaust “tribal remedies.” Moreover, to the extent that is necessary, the Caddo Nation has enacted a resolution confirming that the CFR Court has no jurisdiction. In general federal jurisdiction exists to decide “the federal question whether a tribal court has exceeded the lawful limits of its jurisdiction, [but] exhaustion is required before such a claim may be entertained by a federal court.” *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 857, 105 S. Ct. 2447, 85 L. Ed. 2d 818 (1985). This Court has jurisdiction to determine this issue where the root issue is a matter of federal law over which tribal

courts would lack jurisdiction. *Muhammad v. Comanche Nation Casino*, 2010 U.S. Dist. LEXIS 114945, 4, 2010 WL 4365568 (W.D. Okla. Oct. 27, 2010); *See also Nevada v. Hicks*, 533 U.S. 353, 367-68, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001) (holding in an action under 42 U.S.C. § 1983 that tribal courts are not courts of "general jurisdiction" that can decide a federal claim or issue without an express federal grant of such authority). The CFR Court is not a tribal court and is not an Article II Court. Pursuant to 25 C.F.R. 11.118, the Court lacks authority to exert jurisdiction over the Caddo Nation because it has not been granted authority. Thus, at a very basic level it lacks the authority to make the decision. That is an issue left to the Federal courts.

Based on the Federal regulations and due to the fact that Federal intrusion is impermissible into an intra-tribal dispute, the CFR Court cannot act. It is evident that Resolution 07-2005-02 withdrew any authorization for the CFR Court to resolve any alleged intra-tribal dispute. Moreover, each separate governmental faction cannot create jurisdiction in the CFR Court after the alleged dispute has begun. In those situations, each faction would simply enact laws establishing and abolishing jurisdiction at will – each enjoining the other. Thus, this Court would never be able to initially determine the true jurisdiction of the CFR Court. That would frustrate the Tribes ability to resolve the situation among its own people.

WHEREFORE, this Court must issue a Temporary Restraining Order without notice and a Temporary Injunction.



Dated this 20<sup>th</sup> Day of March 2014.

Respectfully submitted,

/s/Eugene Bertman

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