NO. 14-12007-F

IN THE
UNITED SATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RONALD COLBERT ET AL.,
PLAINTIFFS-APPELLEES

V.

UNITED STATES OF AMERICA,
DEFENDANT-APPELLANT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
NO. 3:09-CV-998-J-20JRK

BRIEF *AMICUS CURAE* THE NAVAJO NATION, IN SUPPORT OF THE APPELLEES' BRIEF

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Ronald Colbert et al. v. United States, No. 14-12007-F

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to 11th Cir. Rules 26.1-1, 28-1, and 29-2, the following persons and entities have an interest in the outcome of this case:

Bentley, A. Lee, III, United States Attorney;

Biddle, Barbara C., counsel for the United States;

Carter, Ronnie S., Assistant United States Attorney;

Colbert, Amber (one of Ronald Colbert's survivors);

Colbert, Jerri, Plaintiff-Appellee;

Colbert, Ronald, III (one of Ronald Colbert's survivors);

Cunningham, Collette B., Assistant United States Attorney;

Delery, Stuart F., Asst. U.S. Attorney General;

Dore, Dennis P., Esq.;

Grandy, Todd B., Asst. U.S. Attorney General;

Johnson, Brian, Esq.;

Keeler, Bill, Esq.;

Klindt, Hon. James R., United States Magistrate Judge;

Lee, Jeffrica Jenkins, counsel for the United States;

Martine, Kandis, defendant;

Mason, Patrick, Esq.;

Mehta, Jason P., Assistant United States Attorney;

Milton, David M., Esq.;

Myers, R. Frank, Esq.;

Nelson, Pamela J., Esq.;

The Navajo Nation;

O'Neill, Robert E., former United States Attorney;

Posgay, Matthew N., Esq.;

P.V. Holding Corp., defendant;

Rhodes, David P., Asst. U.S. Attorney;

Schlesinger, Hon. Harvey E., U.S. Senior Dist. Judge;

Sorenson, Charles A., Esq.; and

United States of America, Defendant-Appellant.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

The NAVAJO NATION is a sovereign Indian nation and federally recognized Indian tribe located within the states of Arizona, New Mexico, and Utah. It is represented by its attorneys MASON & ISAACSON, P.A., and no party other than the Navajo Nation has contributed any money to fund the preparation of this brief. A Motion to Leave has not been filed, since, pursuant to 11th Cir. Rule 29(A), all parties have been contacted, and all parties consent to the filing of this brief.

The Navajo Nation is a party to the Indian Self-Determination and Education Assistance Act contract that is central to questions before this Court, and is uniquely situated to inform the Court on that contract. The Navajo Nation is also concerned by the assertions that Kandis Martine should not be deemed an employee of the United States for purposes of suit. The Navajo Nation has many tribal employees who are frequently in factual and legal circumstances similar to that of Kandis Martine, whose status could be put in jeopardy by the outcome of this case.

The United States seeks a ruling drastically at odds with the laws relating to Indian Self-Determination and Education Assistance Act contract, and the Navajo Nation has a specific interest in ensuring that its appeal is denied.

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STATEMENT OF THE ISSUE

Pursuant to the Indian Self-Determination and Education Assistance Act, any civil action against any tribe or tribal employee involving claims resulting from the performance of Self-Determination contract functions shall be deemed to be an action against the United States and afforded the full protection and coverage of the Federal Tort Claims Act. The issue before this Court is whether the underlying case against Kandis Martine, a Navajo Nation employee, involves claims resulting from the performance of Self-Determination contract functions.

SUMMARY OF ARGUMENT

This case involves Kandis Martine, a Navajo Nation employee, who was in Jacksonville Florida when she was involved in an automobile accident with the Plaintiffs-Appellees. The District Court ruled that she was performing Self-Determination contract functions at the time of the accident, and that the claims of the Plaintiffs-Appellees were thus deemed claims against the United States and afforded the full protection and coverage of the Federal Tort Claims Act.

At the time of the accident that gave rise to this case, Kandis Martine and Lucy Laughter Begay, another Navajo Nation employee, were in Florida in furtherance of the stated goal of a Self-Determination contract. In fact, the District Court ruled on the merits that Kandis Martine was working in furtherance of functions 9 and 11 of the Self-Determination contract. The District Court's rulings are in line with the clear and unambiguous language of the statutes, regulations and contract. Indeed, even the legislative history, President's signing statement, and at least one memorandum from the U.S. Department of Justice itself all support the District Court's rulings.

The United States argues that Kandis Martine is precluded from coverage because she is a licensed attorney, who at times does legal work for the Navajo Nation. This argument mocks the

realities of life on the reservation. The Navajo Nation governs the largest Indian reservation in the United States, and the complexities of this governance often require tribal employees to wear many hats and fill many positions. 93-638 Contracts are in place for Indian tribes to make their own decisions in governing their people; they are Self-Determination contracts. It is disingenuous for the United States to try and escape their statutory and contractual obligations just because they do not like the fact that the Navajo Nation decided to have someone trained as an attorney assist under a contract.

Finally, it is a settled principle of statutory construction that statutes passed for the benefit of dependent Indian tribes are to be liberally construed, with doubtful expressions being resolved in favor and to the benefit of the Indians. For this reason independently the District Court's rulings should be upheld, since all of the United States arguments rest on ambiguities that must be construed to the favor of the Navajo Nation.

For these reasons, the District Court's ruling were correct, and its judgment should be affirmed.

ARGUMENT

I. THE DISTRICT COURT WAS CORRECT WHEN IT CONCLUDED THAT THE CIVIL ACTION AGAINST KANDIS MARTINE, INVOLVED CLAIMS RESULTING FROM THE PERFORMANCE OF SELF-DETERMINATION CONTRACT FUNCTIONS, AND WAS THUS DEEMED TO BE AN ACTION AGAINST THE UNITED STATES AND AFFORDED THE FULL PROTECTION AND COVERAGE OF THE FEDERAL TORT CLAIMS ACT.

This case centers around a contract entered into between the Navajo Nation and the United States Department of the Interior. The Indian Self Determination and Education Assistance Act of 1975 (hereinafter the "ISDEAA"), which is codified at 25 U.S.C. §§450 *et seq*, was enacted by Public Law No 93-638. On March 09, 2006, the Navajo Nation entered into a model Indian Self-Determination Act (93-638) contract (hereinafter "Self-Determination contract") with the United States Department of the Interior to administer the Navajo Children and Family Services Program (hereinafter the "ICWA Program").

Pursuant to statute:

> With respect to claims resulting from the performance of functions during fiscal year 1991 and thereafter, or claims asserted after September 30, 1990, but resulting from the performance of functions prior to fiscal year 1991, under a contract, grant agreement, or cooperative agreement authorized by the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq.) or by title V, part B, Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501 et seq.), an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian

> Affairs in the Department of the Interior or the Indian Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees are deemed employees of the Bureau or Service while acting within the scope of their employment in carrying out the contract or agreement: Provided, That after September 30, 1990, any civil action or proceeding involving such claims brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act:

Department of the Interior and Related Agencies Appropriation Act, 1991, PL 101-512, November 5, 1990, 104 Stat 1915 (1990)(emphasis added). This statute is clear and unambiguous, and the District Court was correct when it concluded that the claims of the Plaintiff-Appellees should be deemed to be an action against the United States and afforded the full protection and coverage of the Federal Tort Claims Act (hereinafter the "FTCA").

A. PURSUANT TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, ANY EMPLOYEE OF AN INDIAN TRIBE IS AFFORDED THE FULL PROTECTION AND COVERAGE OF THE FEDERAL TORT CLAIMS ACT FOR CLAIMS RESULTING FROM THE PERFORMANCE OF SELF-DETERMINATION CONTRACT FUNCTIONS.

Even though the United States tries to raise ambiguities in the law, the fact remains that the plain language and meaning of the law clearly support the District Court's rulings. The Indian Self-Determination and Education Assistance Act created a way for Indian tribes to provide services that had been traditionally

performed for them by the Department of the Interior's Bureau of Indian Affairs ("BIA") and the Department of Health and Human Services' Indian Health Service ("IHS"). Pub. L. No. 93-638, 88 Stat. 2203 (1975) (codified as 25 U.S.C. § 450); *See also* Thomas W. Christie, *An Introduction to the Federal Tort Claims Act in Indian Self-Determination Act Contracting*, 71 MONT. L. REV. 115, 116 (2010).

These 638 Contracts at first proved detrimental to tribes, because substantial resources were being wasted on the costs of litigation and insurance. *Id.* In an effort to help tribes with the rising insurance and litigation costs associated with performing work under the contracts, P.L. 93-638 was amended to provide FTCA coverage for tribal contractors. *Id.* at 117 (*citing* Pub. L. No. 101-121, 103 Stat. 701 (1989); Pub. L. No. 101-512, 104 Stat. 1915 (1990)).

Public Law No 101-512, Title III, § 314 provides that 638 contractors and their employees are afforded full protection and coverage of the Federal Tort Claims Act:

> With respect to claims resulting from the performance of functions during the fiscal year 1991 and thereafter resulting from the performance of functions ... under a contract ... authorized by the Indian Self Determination and Education Assistance Act of 1975 ... an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be a part of the Bureau of Indian Affairs in the Department of the Interior ... while carrying out any such contract ... and its employees are deemed

> employees of the Bureau ... while acting within the scope of their employment in carrying out the contract ... [A]ny civil action or proceeding involving such claims brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act....

Department of the Interior and Related Agencies Appropriation Act, 1991, PL 101-512, November 5, 1990, 104 Stat 1915 (1990)(emphasis added). Congress' stated purpose in extending FTCA coverage to Indian tribes carrying out 638 Contract was (1) to allow the federal government to maintain the same level of exposure associated with the operation of federal Indian programs, such as health care and law enforcement, that it had before the enactment of the Indian Self-Determination Act and (2) to give the tribes the protective benefit of the FTCA. *See* S. Rep. No. 100-274, 100th Cong. 2d Sess. (1988), reprinted in 1988 U.S.C.C.A.S.N. 2620, 2646-2647

This coverage even exists even when the contract is silent on the question of FTCA coverage. 25 C.F.R. § 900.192, and 25 C.F.R. § 900.186. Fortunately, in the present case, the 2007 Annual Funding Agreement for the Self-Determination contract also explicitly states:

> For purposes of Federal Tort Claims Act coverage, the Navajo Nation and its employees are deemed to be employees of the Federal government while performing

> work under the contract. This status is not changed by the source of the funds used by the Navajo Nation to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Navajo Nation.

(App. 198) (Doc. 104-5, page 14) (Annual Funding Agreement).

The United States argues in its brief that "The District Court's interpretation in this case – holding that the FTCA coverage provision 'encompasses *all* tribal employees who perform functions under the contract' (Doc. 110 at 32; App. 266) is stunning in its potential scope." (Appellants Brief, Page 19). However, Congress intended this law to be expansive and "stunning" in order to benefit the tribes and lead them to Self-Determination, and the District Court's ruling merely tracks the language of the law of the land.

Under this law, coverage extends to all permanent and temporary employees of the contractor[1]:

> § 900.206 What employees are covered by FTCA for non-medical-related claims?
>
> (a) Permanent employees;
>
> (b) Temporary employees;
>
> (c) Persons providing services without compensation in carrying out a contract;
>
> (d) Persons required because of their employment by a Self-Determination contractor to serve non-IHS

[1] P.L. 93-638 defines contractor as "an Indian tribe or tribal organization to which a contract has been awarded." 25 C.F.R. § 900.6.

> beneficiaries (even if the services are provided in facilities not owned by the contractor); and
>
> (e) Federal employees assigned to the contract.

25 C.F.R. § 900.206 (emphasis added). It even covers employees that are not paid by Self-Determination funds:

> § 900.197 Does FTCA cover employees of the contractor who are paid by the contractor from funds other than those provided through the Self-Determination contract?
>
> Yes, as long as the services out of which the claim arose were performed in carrying out the Self-Determination contract.

25 C.F.R. § 900.197 (emphasis added).

Even President George H. W. Bush and the United States Department of Justice itself have acknowledged the expansive nature of this law:

> The Act provides that Indian Tribes, tribal organizations, and Indian contractors and their employees shall be considered employees of the United States with respect to claims arising from contracts, grants, and cooperative agreements authorized by the Indian Self-Determination and Education Assistance Act and the Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988. The effect of this provision would be to make the United States permanently liable for the torts of Indian Tribes, tribal organizations, and contractors. This provision is fundamentally flawed because the United States does not control and supervise the day-to-day operations of the tribes, tribal organizations, and contractors. Moreover, such control and supervision would be inappropriate and inconsistent with the relationship of the United States with the tribes.

Statement by President George Bush Upon Signing H.R. 5769, 1990 U.S.C.C.A.N. 3283-4, 3283-5 (1990) (emphasis added); *see also* Coverage Issues Under the Indian Self-Determination Act, 22 U.S. Op. Off. Legal Counsel 65 (1998).

The law regarding Indian Self-Determination is expansive and stunning, and it leaves no room for ambiguity. The law clearly states that any employee of the Navajo Nation is deemed to be an employee of the Federal government while performing work in furtherance of a Self-Determination contract. There is no dispute in this case that Kandis Martine was at the time of the accident an employee of the Navajo Nation, and the only question that remains is whether she was performing work in furtherance of a Self-Determination contract at the time of the accident that gave rise to this case.

B. KANDIS MARTINE WAS PERFORMING SELF-DETERMINATION CONTRACT FUNCTIONS AT THE TIME OF THE ACCIDENT THAT GAVE RISE TO THE CLAIMS OF THE PLAINTIFF-APPELLEE. FURTHER, HER TRAINING AS A LAWYER DOES NOT PRECLUDE HER FROM RECEIVING FEDERAL TORT CLAIMS ACT COVERAGE.

On March 09, 2006, the Navajo Nation entered into a model contract with the United States Department of the Interior to administer the Navajo Children and Family Services Program. This Self-Determination contract incorporates by reference the annual funding agreement that was in effect in 2007 (the year of the accident giving rise to this case). (App. 177) (Doc. 104-2, page

16) (Navajo Nation Self-Determination Contract). Attachment A to this Annual Funding Agreement is entitled "Scope of Work", and this attachment sets forth in specific detail the goals and work to be undertaken by the Navajo Nation pursuant to the contract. (App. 203)(Doc. 104-6, page 3)(Scope of Work). In particular, the scope of work states that "[t]he goal of the Navajo Children and Family Services (NCPS) Program, Indian Child Welfare Act Unit, is to prevent the breakup of Navajo families, to protect the best interest of Navajo children and to promote the stability of Navajo families." (App. 203)(Doc. 104-6, page 3)(Scope of Work).

Additionally, the Scope of Work of the Self-Determination contract specifies particular activities to be undertaken by the Navajo Nation and its employees in furtherance of contract:

1. NCFS Program receives written/oral referrals on Navajo children whose cases are pending in state court due to neglect, abuse, termination of parental rights and/or adoption.

2. NCFS Program maintains a master file on all ICWA referrals and cases.

3. Coordinate with the Navajo Nation Office of Vital Records of each referred child's eligibility of enrollment with the Navajo Nation,

4. Provide case management services to eligible Navajo children and families.

5. Request coordination of legal services from the Navajo Nation Department of Justice on behalf of Navajo children and families, when applicable.

6. Identify and recruit potential adoptive and kinship homes for Navajo children.

7. Provide special needs assistance to Navajo children and families depending on availability of funds.

8. Monitor and facilitate existing Intergovernmental Agreements (IGA) with applicable states.

9. Provide education and training on the provisions of ICWA.

10. Provide statistical reports in accordance to the Government Performance and Results Act of 1993 on a quarterly basis.

11. Monitor the efforts made by the State to comply with the ICWA, such as, placement preference and whether active efforts are being provided.

(App. 203)(Doc. 104-6, page 3)(Scope of Work)[2].

[2] Note that "ICWA" here refers to the Indian Child Welfare Act and not the Self-Determination contract program. ICWA was passed in order to protect Indian tribes and Indian children. In part it states:

> Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—
>
> ***
>
> (2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
>
> (3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
>
> (4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and
>
> (5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the

In the present case, the District Court concluded on the merits that:

> In short, Martine was not in Jacksonville for personal travel or tribe business unrelated to the NCFS program. Rather, at the time of the collision, Martine had traveled to Jacksonville on NCFS' request for coordination of legal services to provide education and training to a local attorney on the provisions of the ICWA, and to ensure that a state court adoption proceedings' placement of the Navajo child complied with the ICWA. By helping a local attorney intervene on behalf of the Navajo Nation in the adoption proceedings of a Navajo child, Martine performed functions 9 and 11 in the "Scope of Work" and acted in furtherance of NCFS' purposes to "prevent the breakup of Indian families, to protect the best interests of Navajo children and promote the stability of Navajo families." Therefore, at the time of the collision, Martine was performing functions under the 2006 Self-Determination contract and will be entitled to FTCA coverage if her tortious conduct occurred in the scope of her employment.

(App. 267-68)(Doc. 110, pages 33-34)(District Court's November 21, 2012 Order)[3].

The United States does not present any evidence that contradicts these undisputed facts. Instead, it attempts to cloud the issue by arguing that Kandis Martine's training as an attorney

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> essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

25 U.S.C.A. § 1901 (emphasis added).

[3] Rather than recite all the testimony supporting this ruling on the merits, the Navajo Nation instead only cites the District Court's order, and hereto voices its support of the factual record as cited by the Plaintiffs-Appellee.

precludes her from being covered by the FTCA coverage provisions of Self-Determination contracts. They argue that, since the Bureau of Indian Affairs (hereinafter the "BIA") did not traditionally have attorney positions, then any tribal attorney doing work under a Self-Determination contract cannot be covered.

It is ridiculous that an employee would be precluded from FTCA coverage under a Self-Determination contract just because that employee is trained as an attorney. In fact, one would think that the United States would be happy to have highly trained employees, such as attorneys, assisting in the carrying out of Self-Determination contracts. The reality of life on the reservation is that tribal employees often have to wear many hats in order to take on the functions contemplated under Self-Determination contracts, and Navajo Nation attorneys, due to their extensive training in critical thinking, are often called upon to do work in furtherance of Self-Determination contracts.

Further, as discussed above, the law is clear that it is up to the Indian tribe to determine how they are going to carry out a Self-Determination contract. In fact, President George H. W. Bush said it best when he said that "…the United States does not control and supervise the day-to-day operations of the tribes, tribal organizations, and contractors. Moreover, such control and supervision would be inappropriate and inconsistent with the

relationship of the United States with the tribes." Statement by President George Bush Upon Signing H.R. 5769, 1990 U.S.C.C.A.N. 3283-4, 3283-5 (1990)(emphasis added). The Navajo Nation determined that Kandis Martine should undertake sections 9 and 11 of the Scope of Work in furtherance of the Self-Determination contract, and it is not up to the United States to second guess the Navajo Nation's decisions in carrying out the contract.

Additionally, the United States relies heavily on two Ninth Circuit District Court cases to support its point. However, on the day this brief was being written, the Ninth Circuit Court of Appeals issued an opinion overturning the arguments upon which the United States relies. In *Loren R. Shirk v. United States of America*, the Ninth Circuit Court of Appeals ruled that a two prong approach must be employed in determining whether a tribal employee is covered by the FTCA provisions of a Self-Determination contract.

> At the first step of the §314 inquiry, courts must determine whether the alleged activity is, in fact, encompassed by the relevant federal contract or agreement. The scope of the agreement defines the relevant "employment" for purposes of the scope of employment analysis at step two. Second, courts must decide whether the allegedly tortious action falls within the scope of the tortfeasor's employment under state law. If both of these prongs are met, the employee's actions are covered by the FTCA.

Loren R. Shirk v. United States of America, No. 10-17443, Doc. 64-1(9th Cir.)(2014).

The Ninth Circuit also gave a very illustrative and relevant example for us:

> An example illuminates the relationship between the two requirements. Suppose an auto mechanic is employed by an Indian tribe. In that capacity, the mechanic maintains two flights of vehicles: those used exclusively for carrying out the tribe's contractual obligations under an ISDEAA contract, and those used by the tribe exclusively for non-contractual purposes. The contract requires the tribe to maintain the ISDEAA vehicles. One day, the mechanic negligently installs brakes in one of the vehicles, and, shortly thereafter, the vehicle is involved in an accident caused by the faulty brakes. A person injured by the accident brings suit against the United States under § 314 for the negligence of the mechanic.
>
> In determining whether the mechanic's tort is encompassed by the scope of his employment, a court would need to know what the relevant "employment" was: was the mechanic engaged in his employment under the ISDEAA or in his employment exclusively for the tribe? The answer might depend on whether the defective vehicle was an ISDEAA vehicle. The point, however, is that the court could not determine the "scope of employment" for the mechanic without first identifying the relevant "employment" at issue, and because § 314 only covers employment under the federal contracts, such contracts define the "employment" for purposes of the "scope of employment" analysis.

Id.

Kandis Martine is like the mechanic from the example in *Shirk*, she sometimes is engaged in Self-Determination contract work, and she is sometimes engaged in other work. In the present case, the District Court performed the two prong analysis set forth by the Ninth Circuit. First, it determined that Kandis Martine was

performing functions 9 and 11 under the scope of work of the Self-Determination contract. (App. 267-68)(Doc. 110, pages 33-34)(District Court's November 21, 2012 Order). Second, it concluded (and the United States does not dispute) that Kandis Martine was acting within the course and scope of her employment when the April 2, 2007 crash occurred. (App. 268-70(Doc. 110, pages 34-36) (District Court's November 21, 2012 Order).

There is no doubt that the claims against Kandis Martine arose while she was doing work in furtherance of a Self-Determination contract with the United States, and thus the District Court correctly determined this action to be one against the United States and afforded the full protection and coverage of the Federal Tort Claims Act.

C. STATUTES PASSED FOR THE BENEFIT OF DEPENDENT INDIAN TRIBES ARE TO BE LIBERALLY CONSTRUED, WITH DOUBTFUL EXPRESSIONS BEING RESOLVED IN FAVOR AND TO THE BENEFIT OF THE INDIANS.

Finally, the entire basis of the United States' appeal rests on alleged ambiguities in the law and in the facts. The United States argues that these ambiguities should have been construed in its favor by the lower court, rather than in the favor of the tribe. This argument made by the United States is contrary to long established precedents in the law.

Since the beginning of this country, there have been many hardships imposed by the United States on Indian tribes. In order

to right some of these wrongs, "it is a settled principle of statutory construction that statutes passed for the benefit of dependent Indian tribes are to be liberally construed, with doubtful expressions being resolved in favor of the Indians. *See, e.g., Bryan v. Itasca County*, 426 U.S. 373, 392, 96 S.Ct. 2102, 2112, 48 L.Ed.2d 710 (1976); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89, 39 S.Ct. 40, 42, 63 L.Ed. 138 (1918)." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g, P.C.*, 467 U.S. 138, 149, 104 S. Ct. 2267, 2275, 81 L. Ed. 2d 113 (1984).

This Court itself echoed this point in *Sanderlin v. Seminole Tribe of Florida*, ruling that:

> "[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, 105 S.Ct. 2399, 2403, 85 L.Ed.2d 753 (1985); *Oneida County v. Oneida Indian Nation*, 470 U.S. 226, 247, 105 S.Ct. 1245, 84 L.Ed.2d 169 (1985)(same); *see also Florida Paraplegic Ass'n*, 166 F.3d at 1130 ("[W]e should not assume lightly that Congress intended to restrict Indian sovereignty through a piece of legislation.").

Sanderlin v. Seminole Tribe of Florida, 243 F.3d 1282, 1285 (11th Cir. 2001).

It benefits the Navajo Nation that it be permitted to determine which employees do what work under Self-Determination contracts, and it benefits the Navajo Nation that claims arising

from such work be covered by the United States. For this reason alone, even if the ambiguities raised by the United States actually exist, this case should still sway to the favor of the tribe, and in favor of Kandis Martine being deemed an employee of the United States for purposes of suit.

CONCLUSION

For the foregoing reasons, the District Court's judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Rule 32(a)(7)(B) and 29(d) because it contains 4,361 words. This brief also complies with the typeface and type style requirements of Rules 32(a)(5) and (6) because it has been prepared in proportionally spaced typeface using Microsoft Word 12-point Courier New, and 14-point Times New Roman font.

CERTIFICATE OF SERVICE

I certify that on December 09, 2014, I caused copies of this Brief to be dispatched via electronic-mail and Federal Express (overnight delivery) to the Clerk of the Court, and to counsel as follows:

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I further certify that I will electronically file this Brief with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system, which constitutes service on all parties under the Court's rules, as soon as my *pro hac vice* status is approved.

MASON & ISAACSON, P.A.

/s/Patrick T. Mason