

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 15-705

X-----X

JEFFREY PITRE, SR. and AWENHA PITRE,
Individually and on behalf of their children
DP, SK, DP, SP, EP and JP
Appellants-Plaintiffs

-v-

LORRIE A. SHENANDOAH; JAMES DOOLEY;
ONONDAGA SOCIAL SERVICES DEPARTMENT;
OSWEGO SOCIAL SERVICES DEPARTMENT; and
the ONONDAGA NATION
Appellees-Defendants

X-----X

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF ON APPEAL AND ADDENDUM FOR APPELLANTS-
PLAINTIFFS PROCEEDING IN FORMA PAUPERIS

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLANT-PLAINTIFFS

Jurisdictional Statement

On March 18, 2014, Jeffrey and Awenha Pitre (the “Parents”) filed a pro se complaint (the “Complaint”-Addendum B [Complaint redacted for privacy]) in the Federal District Court for the Northern District of New York on their behalf and on behalf of their six minor children (the “Children”). On that date, the Parents also filed a motion for leave to proceed in forma pauperis and for the appointment of

counsel. In a June 24, 2014 order, the District Court granted the Parents leave to proceed in forma pauperis (Addendum at C).

The federal district court had jurisdiction pursuant to 28 U.S.C. § 1331 [original jurisdiction of civil actions arising under Constitution, laws or treaties of the United States], pursuant to 28 U.S.C. § 1332 [diversity jurisdiction], and pursuant to 28 U.S.C. § 1343 [original jurisdiction of civil action to recover damages or to secure equitable relief under any act of Congress providing for protection of civil rights] and 28 U.S.C. § 1362 and 25 U.S.C. § 1914.

The Parents and Children appeal to this Court from a final judgment entered on February 17, 2015 in which the District Court for the Northern District of New York dismissed the Complaint on the grounds that it was barred by the Rooker-Feldman doctrine [Addendum at D].

On March 9, 2015, in accordance with Fed. R. App P. Rule 3 and 4, the Parents filed a timely notice of appeal (Addendum at E).

Issues Presented for Review

1) Whether the Rooker-Feldman doctrine required the dismissal of the Complaint?

2) Whether the Indian Child Welfare Act supports dismissal of the Complaint ?

Statement of Case

This is an appeal of a February 17, 2015 final judgment dismissing the Complaint on the grounds that it is barred by the Rooker-Feldman doctrine and that in accordance with the Indian Child Welfare Act, 25 U.S.C. 1901, et. seq. the Onondaga Nation has exclusive jurisdiction in matters regarding the Children.

The Complaint was filed on March 18, 2014 and the order of dismissal was entered on February 17, 2015. The within appeal involves a review of whether the Parents and Children invited the District Court to review state court judgments dismissing neglect/abuse cases against the Parents, terminating placement and transferring jurisdiction to the Onondaga Nation and whether the Parents and Children were injured by the state court judgments and thus, whether the Rooker-Feldman doctrine and whether the Indian Child Welfare Act (“ICWA”) support dismissal.

The Complaint alleged that the detention of the Children during the period from January 25, 2013 until the filing of the Complaint was improper, without justification of law or court order and violative of family rights guaranteed by due process. The Parents allege that such period of detention was improper because they and the Children were not afforded communication or association with each other, there was no charge or adjudication of unfitness and there was no legal basis

for such conduct that severed the family unit and irreparably harmed the Parents and the Children.

BACKGROUND

For purposes of the motion to dismiss, the District Court accepted as true the facts alleged in the Complaint (Addendum D- 2/17/15 Decision and Order at p. 3)

The District Court found, inter alia, that:

(1) that the Parents were married in June 1998 and have six biological children together [District Court Decision and Order at p. 3];

(2) that the Father is not a Native-American and the Mother is a Native American, who “left the Onondaga Nation reservation at age sixteen and has not been a part of that tribe since and the children are part-Native American but are not part of the Onondaga Nation or any other recognized tribe” [District Court Decision and Order at p. 3] ;

(3) that “the family residence is not on Indian land” [District Court Decision and Order at p. 3] ;

(4) that on June 25, 2012, “the Pitre family became the subject of a child abuse/neglect investigation” based on the allegation, asserted by one minor daughter, that the Parents had “sexually abused her” [District Court Decision and Order at p. 4] ;

(5) that in June 2012 the Father and the Mother, who was then seven months pregnant, “were arrested, criminally charged and jailed” and at that time, the Oswego DSS “removed” the children from the custody of the Parents [District Court Decision and Order at p. 4] ;

(6) that on July 10, 2012, Oswego DSS “commenced a child abuse/neglect proceeding in Oswego County Family Court [District Court Decision and Order at p. 4] ;

(7) that at some point, the daughter “recanted her allegations of sexual abuse” [District Court Decision and Order at p. 4] ;

(8) that in January 2013, “the criminal charges against both parents were dismissed” and on January 25, 2013, “the child abuse/neglect case with Oswego SSD was similarly closed” ” [District Court Decision and Order at p. 4] ;

(9) that “on February 6, 2013, the Oswego County Family Court issued an order “terminating the placement of the children as the proceedings were transferred to the jurisdiction of the Onondaga Nation” [District Court Decision and Order at p. 4] ;

(10) that at a later point, there was a “transfer of custody proceedings to defendant Onondaga Nation, and the placement of the children with defendants Lorrie A. Shenandoah (“Shenandoah”) and James Dooley (“Dooley”) [District Court Decision and Order at p. 2] ;

(11) that the Onondaga County and Oswego County Family Courts “transferred the proceeding for foster care placement of the Pitre children, who were not living on the reservation at the time, to the tribal court of the Onondaga Nation” [District Court Decision and Order at p. 7] ;

(12) and “there is no indication that the parents--who were each reportedly represented by counsel at the time--objected to said transfer” and neither did the Parents “identif[y] any ‘good cause’ to prevent such transfer” [District Court Decision and Order at p. 7] ;

(13) that “through proceedings before the Onondaga Nation and pursuant to ICWA,” “custody of the children was formally transferred to the foster parents” [District Court Decision and Order at p. 5] ;

(14) that in 2013, in Onondaga County Family Court, Dooley and Shenandoah “initiated separate ‘family offense’ proceedings seeking orders of protection against the Parents--on June 11, 2013, the Family Court dismissed Dooley’s family offense petition and on December 11, 2013, Shenandoah withdrew her family offense petition [District Court Decision and Order at p. 4] ;

(15) that in August 2013, the Father filed a petition for custody of the Children in the Onondaga County Family Court and on August 11, 2014, the

Onondaga Family Court dismissed the petition on the grounds that “it lacked jurisdiction” [District Court Decision and Order at pp. 4-5] ; and

(16) that on March 18, 2014, plaintiff Parents commenced this action pro se on their own behalf and on behalf of their six minor children [District Court Decision and Order at p. 2].

ARGUMENT

POINT I

THE ROOKER-FELDMAN DOCTRINE DID NOT BAR THE COMPLAINT AND DISMISSAL WAS NOT WARRANTED.

On appeal, as they did below, the Parents and Children assert that the Rooker-Feldman doctrine did not require or warrant dismissal of the pro se Complaint. It is correct that before this action was commenced, the Oswego Family Court issued two orders--i.e., the January 25, 2013 Order of Dismissal [of petitions alleging neglect/abuse] (Addendum at F); and the February 6, 2013 Order (Addendum G) recognizing that placement had been terminated and the proceeding had been transferred to the Onondaga Nation. The Complaint did not claim that the Parents and Children had been injured by such orders, and did not seek the District Court’s review or nullification of these prior state court judgments.

Significantly, as the Supreme Court emphasized in Lance v. Dennis, 546 U.S. 459 (2006), the Rooker-Feldman doctrine, stemming from its determinations in Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia v. Feldman, 460 U.S. 462 (1983), has a narrow application. In Lance, the Court cited

to Exxon Mobile v. Saudi Basic, 544 U.S. 280 (2005) and its recognition that the doctrine only applied where a person who lost in a state court judgment that was rendered before the commencement of the district court action was barred in district court from inviting the district court to review and reject the state court judgment since such would be tantamount to an appeal.

Of course, a party dissatisfied with a state court judgment may not seek review of such judgment by filing an action in a federal District Court, which lacks appellate jurisdiction. However, Exxon Mobile v. Saudi Basic Corp. emphasized that the Rooker-Feldman doctrine is not triggered simply by the entry of judgment in state court and that the pendency of an action in state court is no bar to proceedings concerning the same matter in a federal court having jurisdiction. See also, Skinner v. Schwitzer, 562 U.S. 521 (2011) [in criminal proceeding, where plaintiffs did not challenge the adverse state court decisions themselves, the Rooker-Feldman doctrine did not bar the action];

Importantly, this Court recognized in McKitchin v. Brown, 626 F.3d 143, 154 (2d Cir. 2010) that the Rooker-Feldman doctrine is applicable only where:

1) the plaintiff lost in state court; 2) the plaintiff complains of injuries caused by the state court judgment; 3) the plaintiff invites direct review of that judgment; and 4) the state court judgment was entered before the federal suit commenced. Under these guidelines, the Rooker-Feldman doctrine is not applicable to the pro se Complaint in the instant case.

As an initial matter, the Parents and Children were not injured by the prior state court judgments, nor can it be said that they lost in the state court where the neglect/abuse charges were dismissed, the placement was terminated and the state court transferred jurisdiction to the Onondaga Nation. Accordingly, seeking redress in the District Court for the constitutional deprivations they suffered in a period of time after the state court judgments, not only did the Parents and Children not ask or invite the District Court to review these prior state court orders, but there would be no reason for them to seek such a review since the prior state court orders caused them no injury. See, Exxon Mobile v. Saudi Basic Corp., 544 U.S. 280 (2005) [Supreme Court recognized that the plaintiff in the federal District Court did not request that the District Court review a Delaware state court judgment in its favor].

Focusing on the four factors set forth in McKitchin v. Brown, it is clear that the Complaint here did not complain of injuries caused by the state court judgment and did not invite direct review of a state court judgment. Rather than assert that

the state court judgment resulted in harm, in the Complaint, the Parents and the Children focused on the separation that was imposed for a period in excess of one year prior to the commencement of this action (Complaint at para. 20) that is during a period after the issuance of the state court judgments. It was the alleged conduct during that period of time that caused the harm and injury that the within Complaint seeks to redress, rather than prior state court judgments.

Nor could it be found that the subject matter of the within complaint was inextricably intertwined with the prior state court orders. As noted, the Complaint in the case at bar pertains to wrongdoing that occurred after the neglect/abuse charges were dismissed, the placement was terminated and jurisdiction was transferred to the Onondaga Nation. The Complaint alleges that after the transfer to the Onondaga Nation, the conduct that occurred--the detention of the Children without notice to or a hearing; without family visitation--constituted a constitutional deprivation and was unauthorized by any law or court order.

That contention is not inextricably intertwined with prior state court judgments that caused no injury to the Parents and Children. That assertion is not diminished by the fact that the Parents in their pro se Complaint requested the injunctive relief of return of their Children. That request does not support the District Court's finding that this Complaint is "inextricably intertwined with the state court judgments" [District Court Decision and Order at p. 8]. The state court

judgments did not award custody to anyone. The state court merely dismissed the neglect/abuse petitions, terminated the placement and transferred jurisdiction to the Onondaga Nation. The state court orders did not cite to or discuss ICWA or set forth the underlying reasons for the orders. On this record, it cannot be said that the claims set forth in the Complaint are inextricably intertwined with the state court judgments.

Finally, the Rooker-Feldman doctrine is not applicable to the Onondaga County Family Court order that was entered on August 11, 2014. By that order, the Onondaga County Family Court dismissed the Father's custody petition with prejudice. Because that order was entered after the within action was commenced by the filing of the pro se Complaint, the Rooker-Feldman doctrine is not relevant.

In sum, the Rooker-Feldman doctrine did not warrant or require dismissal of the within Complaint and the District Court's determination to the contrary-- that the Complaint was barred by the Rooker-Feldman doctrine (2/17/15 Decision and Order at p. 9, Addendum C)--should be reversed and the Complaint should be reinstated.

POINT II

THE INDIAN CHILD WELFARE ACT DOES NOT AUTHORIZE OR JUSTIFY THE COMPLAINED-OF DETENTION AND CONDUCT SET FORTH IN THE COMPLAINT NOR DOES IT SUPORT DISMISSAL OF THE COMPLAINT.

On appeal, the Parents and Children contend that the complained-of behavior--detention of the Children against the will of the Parents, absent a charge and finding of unfitness, and without permitting any communication and visits--deprived the family of constitutionally recognized and protected rights. See, Troxel v. Granville, 530 U.S. 57, 66 (2000) [recognized fundamental and protected right of parents to care, custody and control of their children].

Further, the complained-of conduct set forth in the Complaint was not consistent with or authorized by ICWA or any other law or court order (Complaint at paras. 37-38, 53-54). ICWA does not support or require dismissal of the Complaint.

In the pro se Complaint (Addendum A), the Parents alleged that during the approximate one year before filing (Complaint at paras. 20, 32, 55, 60), the Children were wrongfully detained because: a) although there is no pending charge, adjudication or finding of parental unfitness, the detention severed the family unit; b) the family relationship and integrity was severed without affording notice and an opportunity to be heard; c) during the period from the January 2013

dismissal of the neglect/abuse petitions and termination of placement, the familial relationship was severed by the failure to permit and foster visitation and communication between the Parents and the Children; and d) such detention and conduct was without the authority of any law, including ICWA, or court order (Complaint at paras. 13-15, 17, 18, 22, 37, 55, 59, 60, 64). Because the family relationship was severed during the detention, the social services departments, the Onondaga Nation and Shenandoah in effect, terminated the Parents' parental rights (Complaint at para. 59).

ICWA did not authorize the complained-of detention. Not only is the complained of conduct and detention not authorized by ICWA, it is inconsistent with the purpose and the rights recognized in ICWA. See, Ogala Sioux v. Van Hunik, 993 F.Supp.2d 1017 (D S D 2014) (summary judgment granted to Ogala tribe on March 30, 2015) [Ogala tribe challenged state practice of requiring Indian parents to wait at least 60 days after removal of children to obtain notice and an opportunity to be heard and District Court recognized that "the risk of erroneous deprivation [is] high when Indian parents are not afforded the opportunity to know what the petition against them alleges and is compounded if the child is taken from the parents without considering whether the emergency that permitted the child's removal still exists." "Keeping Indian parents in the dark as

to the allegations against them while removing a child from the home for 60 to 90 days certainly raises a due process issue].”

Notably, the purpose of ICWA is to protect Indian parents against removal of Indian children from Indian families and placement of such children in non-Indian foster care. See, 25 U.S.C. §§ 1901, 1902. Adoptive Couple v. Baby Girl, 133 S. Ct. 2552 (2013); Mississippi Choctaw Indian Band v. Holyfield, 490 U.S. 30, 32 (1989).

It is significant that ICWA requires that basic due process rights be afforded to parents with respect to the removal of children and termination of parental rights. For example, ICWA requires that parents shall be afforded notice and an opportunity to be heard, the right to review all records pertaining to the custody issue, and that attempts be made to cure family deficiencies before the drastic measure of foster care or termination of parental rights can occur. Under ICWA, no termination of parental rights, which is effectively what occurred here, may be ordered in the absence of a determination supported by proof beyond a reasonable doubt and testimony by a qualified expert that parental continued custody is likely to result in serious emotional or physical damage to the child. Importantly, where the emergency for a temporary emergency has ended and removal is no longer necessary to prevent imminent harm or damage, the removed children are to be

returned to their parents. 25 U.S.C. §§1912, 1922. See, Santosky v. Kramer, 455 U.S. 745, 750 (1982).

The rights that ICWA confers on parents are consistent with the recognition that for parents the consequence of an erroneous termination of parental rights is the unnecessary destruction of their family. The safeguards for parents set forth in ICWA are consistent with the Supreme Court's recognition in Santosky v. Kramer, 455 U.S. 745, 758 (1982) that, as it acknowledged in Lassiter v. Department of Social Services, 452 U.S. 18 (1981), it is "plain beyond the need for multiple citation" that a natural parent's "desire for, and right to, the companionship, care, custody, and management of his or her children" is an interest far more precious than any property" (emphasis in original). ICWA's purpose is to protect this "precious" parental right. ICWA's purpose and safeguards are not compatible with the complained-of detention in this case and ICWA does not support dismissal of the pro se Complaint.

Moreover, the District Court's references and findings regarding ICWA are not supported on this record and are not accurate. For example, the District Court found that "the Onondaga County and Oswego County Family Courts determined, ICWA provides the Onondaga Nation with exclusive jurisdiction over the custody proceeding." The court deemed such finding and the ensuing transfer to be proper

under ICWA (2/17/15 Decision and Order at p. 7, 9). The record is not consistent with this finding.

As a beginning matter, it is significant that, although the Oswego Family Court acknowledged the transfer of jurisdiction to the Onondaga Nation (see, February 6, 2013 Order at p. 4-Addendum G), the Family Court did not cite, mention or discuss ICWA in either its January 25, 2013 Corrected Order of Dismissal (Addendum F) or in its February 6, 2013 Order (Addendum G). Although the District Court stated that “the Onondaga County and Oswego County Family Courts determined, ICWA provides the Onondaga Nation with exclusive jurisdiction over the custody proceeding” (2/17/15 Decision and Order at p. 7), there was no finding to that effect in the Family Court orders in which ICWA was not cited, mentioned or discussed.

The Oswego Family Court orders (Addendum F and G) did not link the transfer of jurisdiction to ICWA. In that regard, it is notable that this case did not comport with the purpose of ICWA so in that context, the Family Court would not cite ICWA. A core purpose of ICWA is to insure the stability of an Indian family threatened with removal of a child and to offer protections that would end the unjust practice of removing children from from Indian parents in a manner that violated the rights of such parents and placed children in non-Indian home.

Adoptive Couple v. Baby Girl, 133 S. Ct. 2552 (2013).

Here, the Children lived with their Indian mother and non-Indian father. This was not a case where the Children were threatened with being moved to a non-Indian foster home. Although the Mother left the Onondaga Nation at the age of 16 and married the non-Native American Father with whom she had six children who were raised and lived apart from the Onondaga Nation (Addendum D-2/17/15 Decision and Order at pp. 3, 6, 7), the Onondaga Nation considers the Mother to be Indian. Thus, when the Children lived with the Mother and the Father in their home away from Indian land, in the eyes of the Onondaga Nation the Children lived in an Indian home. This was not a situation where intervention was necessary to protect against placement of children in non-Indian foster care and arguably ICWA did not come into play. After all, the neglect/abuse petitions against the Parents had been dismissed and the placement had been terminated. There was no bar to the Children returning to the custody of their Indian mother and non-Indian father. In such circumstance, this was not a situation where ICWA protections were relevant to prevent children from being removed from Indian families.

In addition, it is relevant that 25 U.S.C. § 233 provides that:

the courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person . . . to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as not or hereafter defined by the laws of such State.

25 U.S.C. 233 is analogous to Public Law 280 or 28 U.S.C. § 1360. 28 U.S.C. § 1360 provides that the states enumerated in that section:

shall have jurisdiction over civil causes of action between Indians or to which Indians are parties . . . to the same extent that such State has jurisdiction over other civil causes of action and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere with the State.

See, Doe v. Mann, 415 F.3d 1038 (9th Cir. 2005) [recognized that Public Law § 280 provides state with civil adjudicatory jurisdiction over Native Americans and in a child protective proceeding regarding termination of parental rights of a Native-American mother, ICWA did not provide the Indian tribe with exclusive jurisdiction over child dependency proceedings involving Indian child]. In the instant case, the pending neglect/abuse case had been dismissed and thus, that there was not a pending foster care action to transfer. In any event, in light of 25 U.S.C. 233, an ICWA transfer may not have been required. And certainly, the language and discussing in the Family Court orders did not cite ICWA or provide that the transfer referenced was pursuant to ICWA. In light of the legal principles noted above, ICWA did not support further detention of the Children and the Family Court orders did not analyze the case in terms of ICWA or cite ICWA in its determination.

Nor could it be said that this was a voluntary transfer to the Onondaga Nation. Had this been a voluntary relinquishment, it would have been necessary for the judge to certify such and to have fully and with detail explained the relinquishment and consent in open court where with the execution of a consent in open court.

In short, the Family Court orders did not provide that the transfer was in accordance with ICWA, contrary to the District Court's finding, and it is not clear on this record that such transfer was required by ICWA and certainly, the ensuing detention and severing of the familial relationship was not consistent with or condoned by ICWA and ICWA does not require dismissal of the Complaint.

Equally without record support, is the District Court finding pursuant to ICWA, the Onondaga Nation had conducted "proceedings" that "formally transferred" "custody of the children" to the foster parents (2/17/15 Decision and Order at p. 5). As the Parents alleged in their pro se Complaints, assertions that must be accepted as true for purposes of a motion to dismiss, they did not receive notice of charges, notice of any proceeding or an opportunity to be heard (8/18/14 affidavit in opposition to dismissal at para. 36-Addendum G).

Equally unsupported by the record, is the finding that the Onondaga Family Court "transferred the proceeding for foster care placement" "to the tribal court" (2/17/15 Decision and Order at p. 7). There is no evidence that the Onondaga

Family Court “transferred the proceeding.” Rather, the Onondaga Family Court Order entered on August 11, 2013 (see Addendum at I) merely dismissed the Father’s custody petition with prejudice. The order made no reference to ICWA or a transfer.

In any event, even if, as the District Court found, it was proper for the state to transfer jurisdiction to the Onondaga Nation (2/17/15 Decision and Order at p. 9), a transfer of jurisdiction is not tantamount to a transfer of custody. This is especially true, where as in the instant case, the Family Court had dismissed the neglect/abuse petitions, had terminated placement, and had no context in which to transfer custody. Nor did the transfer of jurisdiction authorize the detention of the Children for over one year, over the Parents’ objections, absent any charge or adjudication of parental unfitness and without affording notice or an opportunity to be heard.

In sum, the references to ICWA in the February 17, 2015 Memorandum Decision and Order are not based on or supported by the record, are not relevant or determinative of whether the Parents are entitled to pursue the pro se Complaint and the Complaint should be reinstated.

CONCLUSION

For the reasons set forth herein, the Parents and Children request that the dismissal of the Complaint be reversed and that the Complaint be reinstated and that this Court grant such other, further and different relief as may seem appropriate.

Respectfully submitted,



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Dated: June 25, 2015

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OSWEGO SOCIAL SERVICES DEPARTMENT; and
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Lisa H. Blitman, attorney for appellant, certifies the following:
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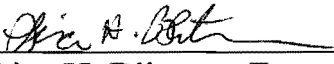
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Point size: 14

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footnotes and exclusive of pages containing the table of contents, table of
citations, proof of service, certificate of compliance or any authorized
addendum containing statutes, rules, regulations, etc. is 4,492.

June 25, 2015



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UNITED STATES COURT OF APPEALS
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Appellees-Defendants

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ADDENDUM TO APPELLANTS' BRIEF ON APPEAL

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Addendum to Appellant's Brief on Appeal

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APPEAL,CLOSED,PRO SE

**U.S. District Court
Northern District of New York – Main Office (Syracuse) [LIVE – Version 6.1]
(Syracuse)
CIVIL DOCKET FOR CASE #: 5:14-cv-00293-DNH-TWD**

Pitre et al v. Shenandoah et al
Assigned to: Judge David N. Hurd
Referred to: Magistrate Judge Therese Wiley Dancks
Demand: \$3,000,000
Cause: 42:1983 Civil Rights Act

Date Filed: 03/18/2014
Date Terminated: 02/17/2015
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Jeffrey Pitre, Sr.
77 State Route 48 – Lot 34
Phoenix, NY 13135
*Individually and on behalf of their
children DP, SK, DP, SP, EP and JP*

represented by **Lisa H. Blitman**
Office of Lisa H. Blitman
225 Broadway, Suite 1203
New York, NY 10007
917-670-4835
Fax: 212-732-6703
Email: lhblitman@aol.com
ATTORNEY TO BE NOTICED

Plaintiff

Awenha Pitre
77 State Route 48 – Lot 34
Phoenix, NY 13135
*Individually and on behalf of their
children DP, SK, DP, SP, EP and JP*

represented by **Lisa H. Blitman**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Lorrie A. Shenandoah

represented by **Joseph J. Heath**
Office of Joseph J. Heath
512 Jamesville Avenue
Syracuse, NY 13210
315-475-2559
Fax: 315-475-2465
Email: jheath@atsny.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

James Dooley

Defendant

Onondaga Social Services Department

represented by **Karen Ann Bleskoski**
Onondaga County Attorney's Office
John H. Mulroy Civic Center
421 Montgomery Street
10th Floor
Syracuse, NY 13202
315-435-2170
Fax: 315-435-5729
Email: karenbleskoski@ongov.net
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Oswego Social Services Department

represented by **Frank W. Miller**
 Office of Frank W. Miller
 6575 Kirkville Road
 East Syracuse, NY 13057
 315-234-9900
 Fax: 315-234-9908
 Email: fmiller@fwmillerlawfirm.com
ATTORNEY TO BE NOTICED

William J. Hathaway
 The Law Firm of Frank W. Miller
 6575 Kirkville Road
 East Syracuse, NY 13057
 315-234-9900
 Fax: 315-234-9908
 Email: wjhathaway@fwmillerlawfirm.com
ATTORNEY TO BE NOTICED

Defendant**Onondaga Nation**

represented by **Joseph J. Heath**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/18/2014	<u>1</u>	COMPLAINT WITH JURY DEMAND: against Lorrie A. Shenandoah, James Dooley, Onondaga Social Services Department, Oswego Social Services Department and Onondaga Nation, filed by Jeffrey Pitre, Sr and Awenha Pitre Pro Se. (jmb) (Main Document 1 replaced on 3/19/2014) (amt). (Entered: 03/19/2014)
03/18/2014	<u>2</u>	MOTION for Leave to Proceed in forma pauperis filed by Jeffrey Pitre, Sr., Pro Se. (Attachments: # <u>1</u> Proposed Summons, # <u>2</u> USM 285 forms) Motion referred to Therese Wiley Dancks. (jmb) (Entered: 03/19/2014)
03/18/2014	<u>3</u>	MOTION for Leave to Proceed in forma pauperis filed by Awenha Pitre, Pro Se. (Attachments: # <u>1</u> Proposed Summons, # <u>2</u> USM 285 Forms) Motion referred to Therese Wiley Dancks. (jmb) (Entered: 03/19/2014)
03/18/2014	<u>4</u>	MOTION to Appoint Counsel filed by Jeffrey Pitre, Sr., and Awenha Pitre Pro Se. Motion referred to Therese Wiley Dancks. (jmb) (Entered: 03/19/2014)
03/18/2014	<u>5</u>	PRO SE HANDBOOK and NOTICE issued and explained to Jeffrey Pitre, Sr., at time complaint was filed. (jmb) (Entered: 03/19/2014)
03/18/2014	<u>6</u>	PRO SE HANDBOOK and NOTICE issued and explained to Awenha Pitre at time complaint was filed. (jmb) (Entered: 03/19/2014)
06/24/2014	<u>7</u>	ORDER granting Plt's <u>2</u> & <u>3</u> Motions for Leave to Proceed in forma pauperis; denying Plt's <u>4</u> Motion to Appoint Counsel. Clerk shall issue summonses and GO 25 to USM for service. Signed by Magistrate Judge Therese Wiley Dancks on 6/24/14. [Served Plt's by mail.] (sfp,) (Entered: 06/24/2014)
06/24/2014	<u>8</u>	Summons Issued as to James Dooley, Onondaga Nation, Onondaga Social Services Department, Oswego Social Services Department, Lorrie A. Shenandoah. (Attachments: # <u>1</u> Summons, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons)(sfp,) (Entered: 06/24/2014)
06/24/2014	<u>9</u>	G.O. 25 FILING ORDER ISSUED: Rule 16 Initial Conference set for 9/24/2014 at 11:30 AM by telephone before Magistrate Judge Therese Wiley Dancks. Civil Case Management Plan must be filed and Mandatory Disclosures are to be exchanged by the parties on or before 9/17/2014. (Pursuant to Local Rule 26.2, mandatory disclosures are to be exchanged among the parties but are NOT to be filed with the Court.) (sfp,) (Entered: 06/24/2014)

07/03/2014	<u>10</u>	ACKNOWLEDGMENT OF SERVICE Executed as to Oswego Social Services Department served on 7/2/2014, answer due 7/23/2014. (nas,) (Entered: 07/03/2014)
07/07/2014	<u>11</u>	ACKNOWLEDGMENT OF SERVICE Executed as to Lorrie A. Shenandoah served on 7/2/2014, answer due 7/23/2014. (nas,) (Entered: 07/07/2014)
07/22/2014	<u>12</u>	MOTION to Dismiss for Lack of Subject Matter Jurisdiction , MOTION to Dismiss for Lack of Personal Jurisdiction Motion Hearing set for 9/12/2014 10:00 AM in Utica before Judge David N. Hurd Response to Motion due by 8/26/2014 Reply to Response to Motion due by 9/2/2014. filed by Onondaga Nation. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit(s), # <u>3</u> Affirmation, # <u>4</u> Exhibit(s), # <u>5</u> Memorandum of Law, # <u>6</u> Certificate of Service) (Heath, Joseph) (Entered: 07/22/2014)
07/22/2014	<u>13</u>	ACKNOWLEDGMENT OF SERVICE Executed as to Onondaga Nation served on 7/2/2014, answer due 7/23/2014.. (sfp,) (Entered: 07/22/2014)
07/22/2014		TEXT NOTICE to Plaintiff's advising their response to Defendant, Onondaga Nation's <u>12</u> MOTION to Dismiss is to be filed on or before 8/26/14. [Served Plaintiff's via reg. mail.](sfp,) (Entered: 07/22/2014)
07/23/2014	<u>14</u>	NOTICE of Appearance by Frank W. Miller on behalf of Oswego Social Services Department (Miller, Frank) (Entered: 07/23/2014)
07/23/2014	<u>15</u>	ANSWER to <u>1</u> Complaint, by Oswego Social Services Department.(Miller, Frank) (Entered: 07/23/2014)
07/23/2014	<u>16</u>	AFFIDAVIT of Service for Affidavit of Service on 7/23/14, filed by Oswego Social Services Department. (Miller, Frank) (Entered: 07/23/2014)
07/23/2014	<u>17</u>	CERTIFICATE OF SERVICE by Oswego Social Services Department (Miller, Frank) (Entered: 07/23/2014)
07/28/2014	<u>18</u>	NOTICE of Appearance by Karen Ann Bleskoski on behalf of Onondaga Social Services Department (Attachments: # <u>1</u> Certificate of Service)(Bleskoski, Karen) (Entered: 07/28/2014)
07/29/2014	<u>19</u>	ACKNOWLEDGMENT OF SERVICE Executed as to Onondaga Social Services Department served on 7/28/2014, answer due 8/18/2014. (alh,) (Entered: 07/29/2014)
08/13/2014	<u>20</u>	MOTION to Dismiss Motion Hearing set for 9/26/2014 10:00 AM in Utica before Judge David N. Hurd Response to Motion due by 9/9/2014 Reply to Response to Motion due by 9/15/2014. filed by Onondaga Social Services Department. (Attachments: # <u>1</u> Affidavit of Karen A. Bleskoski, # <u>2</u> Exhibit(s) A, # <u>3</u> Exhibit(s) B, # <u>4</u> Exhibit(s) C, # <u>5</u> Memorandum of Law, # <u>6</u> Appendix A, # <u>7</u> Certificate of Service) (Bleskoski, Karen) (Entered: 08/13/2014)
08/13/2014		TEXT NOTICE to Plaintiff's advising that their response to Defendant, Onondaga Social Services Department's <u>20</u> MOTION to Dismiss is to be filed on or before 9/9/14. [Served Plaintiff's via reg mail.] (sfp,) (Entered: 08/13/2014)
08/15/2014	<u>21</u>	PROCESS RECEIPT AND RETURN of USM Returned Unexecuted as to James Dooley re Summons, Complaint, GO 25 (sfp,) (Entered: 08/15/2014)
08/15/2014	<u>22</u>	BILL OF COSTS filed by USM. (sfp,) (Entered: 08/15/2014)
08/21/2014	<u>23</u>	Cross Motion for Assignment of Counsel and RESPONSE in Opposition re <u>12</u> MOTION to Dismiss filed by Attorney Lisa Blitman on behalf of Awenha Pitre, Jeffrey Pitre, Sr. (Attachments: # <u>1</u> Certificate of Service, # <u>2</u> Cover Letter of Atty Blitman, # <u>3</u> Envelope)(sfp,) Modified on 8/21/2014 (sfp,). (Entered: 08/21/2014)
08/21/2014	<u>24</u>	NOTICE of Admission Requirement as to Party Jeffrey and Awenha Pitre; Attorney Lisa Blitman, Email address is lhblitman@aol.com. Phone number is 917-670-4835. Admissions due by 9/4/2014. [Served Atty Blitman by mail and email. Served Pro Se Pltfs by mail.](sfp,) (Entered: 08/21/2014)
09/03/2014	<u>25</u>	Envelope provided by US Marshal Service to supplement the filing of the # <u>21</u> Process Receipt and Return Form. (mc) (Entered: 09/03/2014)
09/04/2014	<u>26</u>	Letter to the Court from Atty Lisa Blitman stating she is not counsel of record for the plaintiffs and that she is submitting an application for admission. (sfp,) (Entered: 09/04/2014)

		09/04/2014)
09/08/2014		TEXT NOTICE ON MOTIONS: Pursuant to the verbal Order of Judge David N. Hurd: <u>20</u> MOTION to Dismiss , <u>12</u> MOTION to Dismiss for Lack of Subject Matter Jurisdiction, MOTION to Dismiss for Lack of Personal Jurisdiction, and <u>23</u> Cross Motion to Appoint Counsel are hereby made returnable on September 26, 2014, ON SUBMITTED PAPERS ONLY, NO PERSONAL APPEARANCES BY PARTIES ARE REQUIRED OR ALLOWED. (Motion Hearing set for 9/26/2014 10:00 AM before Judge David N. Hurd) (ptm) (Copy served on pro se plaintiffs and Attorney Lisa Blitman by regular mail) (Entered: 09/08/2014)
09/09/2014	<u>27</u>	NOTICE of Appearance by William J. Hathaway on behalf of Oswego Social Services Department (Hathaway, William) (Entered: 09/09/2014)
09/09/2014	<u>28</u>	RESPONSE to Motion notifying Judge Hurd that Oswego Social Services Department does not oppose the <u>20</u> MOTION to Dismiss , <u>12</u> MOTION to Dismiss for Lack of Subject Matter Jurisdiction MOTION to Dismiss for Lack of Personal Jurisdiction filed by Oswego Social Services Department. (Hathaway, William) (Entered: 09/09/2014)
09/18/2014	<u>29</u>	Letter Motion for Awenha Pitre requesting appointment pro bono for plaintiff and adjournment . (Blitman, Lisa) (Entered: 09/18/2014)
09/18/2014	<u>30</u>	TEXT ORDER : Court has reviewed Letter Motion (Dkt. No. 29) requesting adjournment of Rule 16 conference. Letter Motion granted. Rule 16 conference is adjourned without new date and will be rescheduled after the pending motions to dismiss (Dkts. 12 & 20) are resolved. The Court appreciates Attorney Blitman's willingness to represent both Plaintiffs on a Pro Bono basis. Attorney Blitman should file a formal notice of appearance by 9/30/2014. SO ORDERED by Magistrate Judge Therese Wiley Dancks on 9/18/2014. (sg) (Entered: 09/18/2014)
09/25/2014	<u>31</u>	Letter Motion from Lisa H. Blitman for Awenha Pitre requesting extension of time submitted to Judge Hurd . (Blitman, Lisa) (Entered: 09/25/2014)
09/30/2014	<u>32</u>	TEXT ORDER: Granting <u>31</u> Letter Motion from Lisa H. Blitman, Esq. for Awenha Pitre requesting extension of time to respond to <u>20</u> MOTION to Dismiss, <u>12</u> and MOTION to Dismiss for Lack of Subject Matter Jurisdiction, and for Lack of Personal Jurisdiction. Plaintiffs' response is now due by October 14, 2014 and replies, if any, shall be filed no later than October 28, 2014. These motions are NOW hereby made returnable on November 14, 2014, ON SUBMITTED PAPERS ONLY, NO PERSONAL APPEARANCES BY PARTIES ARE REQUIRED OR ALLOWED. (Motions Hearing set for 11/14/2014 on submit before Judge David N. Hurd. Response to Motion due by 10/14/2014, Reply to Response to Motion due by 10/28/2014) So Ordered by Judge David N. Hurd on 9/30/2014. (ptm) (Entered: 09/30/2014)
10/01/2014	<u>33</u>	NOTICE of Appearance by Lisa H. Blitman on behalf of All Plaintiffs (Blitman, Lisa) (Entered: 10/01/2014)
10/09/2014	<u>34</u>	MOTION to Dismiss for Failure to State a Claim Motion Hearing set for 11/14/2014 10:00 AM in Utica before Judge David N. Hurd Response to Motion due by 10/28/2014 Reply to Response to Motion due by 11/3/2014. filed by Oswego Social Services Department. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Memorandum of Law, # <u>3</u> Certificate of Service) (Hathaway, William) (Entered: 10/09/2014)
10/09/2014	<u>35</u>	AMENDED DOCUMENT by Oswego Social Services Department. <i>Certificate of Service</i> . (Hathaway, William) (Entered: 10/09/2014)
10/14/2014	<u>36</u>	SEALED RESPONSE to Motion re <u>20</u> MOTION to Dismiss , <u>12</u> MOTION to Dismiss for Lack of Subject Matter Jurisdiction MOTION to Dismiss for Lack of Personal Jurisdiction filed by Jeffrey Pitre, Sr. (Blitman, Lisa) Modified on 2/17/2015, document sealed pursuant to the 44 Text Order. (see) (Entered: 10/14/2014)
10/14/2014	<u>37</u>	SEALED Cross-Motion and MEMORANDUM OF LAW in Opposition to Motion to Dismiss filed by Onondaga Nation and the Onondaga Department of Social Services filed by Awenha Pitre. (Blitman, Lisa) Modified on 2/17/2015, sealed pursuant to the 44 Text Order. (see) (Entered: 10/14/2014)

10/27/2014	<u>38</u>	REPLY to Response to Motion re <u>37</u> MOTION to Amend/Correct filed by Onondaga Nation. (Attachments: # <u>1</u> Exhibit(s), # <u>2</u> Affidavit, # <u>3</u> Exhibit(s), # <u>4</u> Memorandum of Law, # <u>5</u> Certificate of Service)(Heath, Joseph) (Attachment 1 replaced on 10/28/2014) (sfp,). (Entered: 10/27/2014)
10/28/2014	<u>39</u>	REPLY to Response to Motion re <u>37</u> MOTION to Amend/Correct filed by Onondaga Social Services Department. (Attachments: # <u>1</u> Memorandum of Law, # <u>2</u> Certificate of Service)(Bleskoski, Karen) (Entered: 10/28/2014)
11/03/2014	<u>40</u>	MEMORANDUM OF LAW <i>Oppose dismissal</i> filed by Jeffrey Pitre, Sr. (Blitman, Lisa) (Entered: 11/03/2014)
11/13/2014	<u>41</u>	Letter Motion from William J. Hathaway, Esq. for Oswego Social Services Department requesting That if the Court accepts the Plaintiffs' Memorandum of Law in Opposition to Motion to Dismiss the Defendant Oswego County requests the Court's permission to submit a reply. submitted to Judge Hurd . (Hathaway, William) (Entered: 11/13/2014)
11/17/2014	<u>42</u>	TEXT ORDER that Defendant Oswego Social Services Department's letter request (ECF No. 41) is GRANTED in part. Plaintiff's late response will be considered. Defendant Oswego Social Services Department may submit a reply on or before December 1, 2014. All pending motions will be considered on submit and a written decision will be issued in due course. Signed by Judge David N. Hurd on 11/17/2014. (see) (Entered: 11/17/2014)
11/26/2014	<u>43</u>	RESPONSE in Support re <u>34</u> MOTION to Dismiss for Failure to State a Claim filed by Oswego Social Services Department. (Attachments: # <u>1</u> Affidavit)(Hathaway, William) (Entered: 11/26/2014)
02/17/2015	<u>44</u>	TEXT ORDER sealing the <u>37</u> MOTION to Amend/Correct and <u>36</u> Response to Motion because both documents contain personal identifiers. Pursuant to the Oral Order of Judge David N. Hurd on 2/17/2015. (see) (Entered: 02/17/2015)
02/17/2015	<u>45</u>	MEMORANDUM-DECISION AND ORDER granting Defts' <u>12</u> , <u>20</u> , <u>34</u> Motions to Dismiss. Denying Pltf's <u>37</u> Cross Motion. The complaint is dismissed in its entirety. Signed by Judge David N. Hurd on 2/17/15. [Served by cert. mail.] (sfp,) (Entered: 02/17/2015)
02/17/2015	<u>46</u>	JUDGMENT in favor of defendants. [Served by cert. mail.] (sfp,) (Entered: 02/17/2015)
02/24/2015	<u>47</u>	RETURN RECEIPT received as to served on Awenha Pitre re <u>45</u> Order & <u>46</u> Judgment (sfp,) (Entered: 02/24/2015)
03/09/2015	<u>48</u>	NOTICE OF APPEAL as to <u>45</u> Order on Motion to Dismiss for Failure to State a Claim, Order on Motion to Amend/Correct, Order on Motion to Dismiss/Lack of Subject Matter Jurisdiction, Order on Motion to Dismiss/Lack of Personal Jurisdiction,, Order on Motion to Appoint Counsel, <u>46</u> Judgment 2/17/2015 by Awenha Pitre, Jeffrey Pitre, Sr. No fee paid. (Blitman, Lisa) (Entered: 03/09/2015)
03/09/2015	<u>49</u>	ELECTRONIC NOTICE AND CERTIFICATION sent to US Court of Appeals re <u>48</u> Notice of Appeal, (sfp,) (Entered: 03/09/2015)
03/14/2015	<u>50</u>	MOTION to Amend/Correct Motion Hearing set for 4/14/2015 09:30 AM in Utica before Judge David N. Hurd Response to Motion due by 3/30/2015 filed by Awenha Pitre, Jeffrey Pitre, Sr. Motions referred to Therese Wiley Dancks. (Blitman, Lisa) (Entered: 03/14/2015)
03/17/2015	<u>51</u>	RESPONSE to Motion does not object to <u>50</u> MOTION to Amend/Correct filed by Onondaga Social Services Department. (Attachments: # <u>1</u> Certificate of Service)(Bleskoski, Karen) (Entered: 03/17/2015)
03/18/2015	<u>52</u>	RESPONSE to Motion does not object to <u>50</u> MOTION to Amend/Correct filed by Oswego Social Services Department. (Attachments: # <u>1</u> Declaration Certificate of Service) (Hathaway, William) Modified on 3/18/2015 (sfp,). (Entered: 03/18/2015)
03/18/2015		CLERK'S CORRECTION OF DOCKET ENTRY – Clerk edited text of document <u>52</u> to reflect it is a response to motion. Attorney incorrectly filed it as a motion. (sfp,) (Entered: 03/18/2015)

03/18/2015	<u>53</u>	NOTICE of Appearance by Joseph J. Heath on behalf of Onondaga Nation and Lorrie Shenandoah (Heath, Joseph) Modified on 3/18/2015 (sfp,). (Entered: 03/18/2015)
03/18/2015	<u>54</u>	LETTER BRIEF, re: no objection to pltfs' <u>50</u> Motion to Correct by Onondaga Nation. (Attachments: # <u>1</u> Certificate of Service)(Heath, Joseph) (Entered: 03/18/2015)
03/24/2015	<u>55</u>	ORDER granting Pltf's <u>50</u> Motion to Amend/Correct the 2/17/15 Memorandum–Decision and Order. The second footnote in the 2/17/15 MDO is hereby amended to reflect as stated within. Signed by Judge David N. Hurd on 3/24/15. (sfp,) (Entered: 03/24/2015)
03/30/2015	<u>56</u>	Mail Returned as Undeliverable. re: <u>45</u> Order and <u>46</u> Judgment sent to Jeffrey Pitre, Sr. Address sent to 77 State Route 48 – Lot 34, Phoenix, NY 13135 (sfp,) (Entered: 03/30/2015)

Addendum B-Complaint [redacted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
JEFFREY PITRE, SR.
AWENHA PITRE

COMPLAINT

On their own behalf and on behalf of their children:

5:14-CV-293

- D. P.
- S. P.
- D. P.
- S. P.
- E. P.
- J. P.

Plaintiffs

ACTION FOR
DECLARATORY
RELIEF, ORDER
DIRECTING
DEFENDANTS
TO IMMEDIATELY
RETURN THE
CHILDREN TO
PARENTS AND
FOR MONEY
DAMAGES

-against-

LORRIE A. SHENANDOAH,
JAMES DOOLEY,
ONONDAGA SOCIAL SERVICES DEPARTMENT,
OSWEGO SOCIAL SERVICES DEPARTMENT
ONONDAGA NATION,

Defendants

-----X

Plaintiffs, Jeffrey Pitre, Sr. and AwenHa Pitre, being duly sworn, depose and say:

The Plaintiffs

(1) Plaintiffs in this action are Awenha Pitre, the mother (the "Mother") of the above-captioned children (collectively the "Children") and Jeffrey Pitre, the father (the "Father") of the Children.

(2) The Mother and the Father reside at 77 State Route 48, lot 34, Phoenix, New York 13135.

(3) The Father and the Mother were married on June 6, 1998, and have been married and have lived together for a period of close to sixteen years.

(4) Neither the Father or the Mother are in active military service.

Plaintiffs' Pro Se Appearance and Request for Appointment of Counsel

(5) The Mother and the Father are filing this complaint pro se because they lack the financial means to retain a lawyer. A lawyer has helped them prepare this complaint.

(6) The Mother and the Father request that if possible, this Court appoint a lawyer to advise and represent them.

The Defendants

(7) Lorrie Shenandoah resides at 325 Pacific Avenue, Syracuse, New York 13207.

(8) Against the will of the Mother and the Father and without lawful authority, Lorrie Shenandoah maintains physical custody of D.P., S.P. D.P. and S.P. S.P. at 325 Pacific Avenue, Syracuse, New York 13207, children of the Mother and the Father.

(9) Lorrie Shenandoah is the Mother's aunt.

(10) Upon information and belief, the last known address that the parents had for James Dooley is 156 Dorwin Avenue, Nedrow, New York 13120.

(11) Against the will of the Mother and the Father and without lawful authority, James Dooley maintains physical custody of E.P.

(12) James Dooley is married to the Mother's sister, Guyyah Dooley, and is not a blood relative of the Mother or the Father or the Children.

(13) The Oswego County Department of Social Services, 100 Spring Street, Mexico, New York, acting through its employees and agents, took custody of the Children and without authority or permission from the Mother and the Father, upon information and belief, permitted and allowed the Onondaga Nation to take custody of the Children and permitted the transfer of the children to Lorrie Shanendoah and James Dooley.

(14) The Onondaga County Department of Social Services, 401 Montgomery Street, Syracuse, New York 13202, acting through its employees and agents, upon information and belief, took custody of the Children and/or without authority or permission of the Mother and the Father, permitted and allowed the Onondaga Nation to take custody of the Children and permitted or allowed and/or funded the physical transfer of the Children to Lorrie Shenandoah and James Dooley.

Cause of Action

(15) The Mother and the Father assert that the Defendants, individually and collectively, wrongfully hold custody of the Children in violation of the Mother and the Father's state and federal constitutional rights and in violation of New York State law and that the Defendants, individually and collectively hold the Children in violation of the Children's statutory and constitutional rights to live and be raised by the Mother and the Father and their right to maintain the integrity of their family.

Relief Requested

(16) The Father and the Mother file the within complaint in order to obtain a declaratory judgment from this Court declaring:

(a) that the defendants—Lorrie Shenandoah; James Dooley, the Onondaga Nation, the Oswego County Social Services Department, the Onondaga County Social Services Department (collectively the "Defendants") have detained and held custody of the Children in violation on the rights of the Mother and the Father and the Children as guaranteed by the Federal and New York State Constitutions and by the laws of the State of New York;

(b) that the Defendants, individually and collectively, shall immediately return custody of the Children to the Mother and the Father;

(c) that because, by their wrongful and illegal conduct, the Defendants, individually and collectively, have caused irreparable harm and emotional distress to the Plaintiffs, they shall pay damages to the Mother and the Father and the Children in the amount of \$1,000,000;

(d) that because, by their wrongful and illegal conduct, the Defendants, individually and collectively, have caused irreparable harm and emotional distress to the Plaintiffs, they shall pay punitive damages to the Mother and the Father and the Children in the amount of \$1,000,000;

(e) that such other further and different relief as the Court may deem just shall be granted the Mother and the Father and the Children..

(17) In the within complaint, the Mother and the Father and the Children also assert that the Defendants, acting collectively and individually, have unlawfully and without authority deprived the Children of their rights to be cared for and to live with and be raised by the Mother and the Father and their rights to be raised together and to share their companionship with each other —rights that are guaranteed by the federal and state constitutions and the laws of New York State.

(18) The Mother and the Father and the Children have been irreparably harmed by Defendants' individual and collective wrongful and illegal conduct, and by the fact that the Defendants have deprived the Mother and the Father and the Children of the right to live together as a family and the rights of the Children to be in the company of and to have knowledge of their parents and parenting time with the Mother and the Father and time with each other and the rights of the Mother and the Father to have parenting time with the Children.

Venue and Jurisdiction

(19) Upon information and belief, this Court has jurisdiction over plaintiffs' claims because all parties reside within the jurisdiction of this Court; because the Onondaga Nation maintains that it is a sovereign nation and not subject to the laws and

courts of the State of New York and because plaintiff's claims alleged violations of rights guaranteed by the United States Constitution; and request injunctive relief.

Plaintiffs Pro Se Status

(20) The Mother and the Father appear and proceed pro se because they lack money and the financial resources to retain an attorney, and because they face a dire emergency in terms of the Children being wrongfully withheld from them for a period in excess of one year, and because they move for relief in this Court in order to attempt to end the damage and harm that has occurred and continues to occur from the Defendants' illegal conduct of retaining custody of the Children in opposition to the wishes of the Mother and the Father and the Children.

(21) The Mother and the Father are desperate for court assistance and intervention and are desperate to have the Children returned to their custody and care. The Children have been absent from the care and custody of the Mother and the Father since September 2012, a period of approximately 18 months.

Factual Background

(22) Upon information and belief, there is no court order or other lawful authority permitting the Defendants, either collectively or separately, to hold custody of the Children against the will of the Mother and the Father and against the will of the Children. There is no legal authority permitting the Defendants to deprive the Mother and the Father of their fundamental and constitutionally-guaranteed right to the care and custody of the Children.

Prior New York State Court Proceedings Against the Mother and the Father

(23) In or about June 25, 2012, our daughter, S. alleged that the Mother and the Father had subjected her to sexual abuse. Subsequently, S. advised authorities that such allegations were not true and that in fact, the Mother and the Father had not subjected her to sexual abuse.

(24) On or about June 27, 2012, prior to S. acknowledging that her assertions were untrue, the Mother, who at that time was approximately seven months pregnant, and the Father were arrested and incarcerated on criminal charges.

(25) On or about July 10, 2012, while the Mother and the Father were incarcerated on criminal charges and based on the later retracted assertions by S., the Oswego County Department of Social Services commenced a neglect proceeding against the Mother and the Father in Family Court, Oswego County ” [Docket Nos. NA-1874-1879-12].

(26) The above-mentioned charges in Criminal Court, Oswego County and Family Court, Oswego County were dismissed. In early January 2013, the criminal charges were dismissed and following a January 25, 2013 appearance in Family Court, Oswego County, the Family Court dismissed the neglect/abuse charges and terminated the placement of the Children and provided for “the transfer of the proceedings to the jurisdiction of the Onondaga Nation” [Family Court Order issued February 6, 2013 at p. 3].

(27) In 2013, the Father and the Mother participated in a Family Court, Oswego County neglect proceeding regarding the Children” [Docket Nos. NA-1874-1879-12].

(28) On or about January 25, 2013, the Oswego County Family Court dismissed those proceedings against the Mother and the Father and .

(29) In an order dated February 6, 2013, the Family Court, Oswego County set forth “Findings and Orders” in which the Family Court ordered that that “placement or temporary removal is terminated on January 25, 2013.”

(30) In 2013, James Dooley instituted a family-offense proceeding against the Mother and the Father in Onondaga County Family Court [Docket No. O-952/12] and on or about June 11, 2013, the Onondaga County Family Court dismissed such proceeding.

(31) In 2013, Lorrie A. Shenandoah instituted a family-offense proceeding against the Mother and the Father in Onondaga County Family Court [Docket No. O-959-13] and on or about December 11, 2013, Lorrie Shenandoah advised the Family Court that she was withdrawing such allegations and the Onondaga County Family Court dismissed such proceeding against the Mother and the Father.

(32) On or about August 5, 2013, after Defendants had held the Children for about eight months without exerting any effort to reunite the family and having barred any connection and communication amongst the parents and the Children, the Father filed a custody petition in Family Court, Onondaga County [Docket Nos. V-08705-8710-13, File # 43961].

(33) On or about February 21, 2014, approximately seven months after the Father filed his custody petition, the Family Court, Onondaga County issued a summons for an appearance on March 18, 2014 for the custody petition.

(34) On or about March 13, 2014, the Onondaga Nation filed a motion to dismiss the custody proceeding and alleged, among other things, that it was a sovereign nation

and was not subject to the jurisdiction of the New York State Family Court and that based on the Indian Child Welfare Act [25 U.S.C. 1901 et. al.] the Family Court lacked jurisdiction over the Onondaga Nation.

(35) On March 17, 2014, the Mother and the Father filed opposition to the motion to dismiss.

(36) On March 17, 2014, the Family Court advised the Mother and the Father that the custody matter scheduled for March 18, 2014 was being adjourned and that it would be rescheduled for another date that had not yet been determined.

(37) There is no current court order allowing the Defendants or any non-parent to have custody of the Children and to deprive the Children and the Mother and the Father of their constitutionally guaranteed right to enjoy and maintain the integrity of their family.

(38) There is no current court order allowing the Defendants or any non-parent to hold custody of the Children over the objection of the Mother and the Father or to refuse to permit the Mother and the Father and the Children to see each other and to visit with each other and to communicate with each other.

(39) The Mother and the Father are good and appropriate custodians and care givers of the Children. As the parents of the Children, their right to custody and to maintain the integrity of the family, guaranteed by state law and the New York and Federal Constitutions, is superior to all others. There has been no finding of unfitness against the Mother or the Father that would interfere with their right to the care and custody of their Children. Accordingly, it is in the Children's best interest to be in the care and custody of the Mother and the Father and to obtain an order of this Court

directing that the Defendant's custody of the Children is unlawful and constitutes a violation of the rights of the Mother and the Father and the Children.

(40) The Father is not a native American.

(41) The Mother is a Native American, but is not a member of/participant an Indian tribe or the Onondaga Nation.

(42) Since the age of 16 years, the Mother has lived physically and culturally separate and apart from any Indian tribe or the Onondaga Nation.

(43) The Children part Native-American, but are not members of an Indian tribe or the Onondaga Nation.

(44) Upon information and belief, the Children and are not subject to the Indian Child Welfare Act (25 U.S.C. 1901-1963).

(45) The Father opposes any attempt by the Onondaga Nation to govern the custody of the Children or interfere with his right to custody of the Children.

(46) The Mother opposes any attempt by the Onondaga Nation to govern the custody of the Children or interfere with her right to custody of the Children.

(47) A child protective proceeding is not pending in any court of this State regarding the Children, nor is such pending in the Onondaga Nation.

(48) A destitute child proceeding is not pending in any court regarding the Children.

(49) Upon information and belief, the Onondaga and Oswego Department of Social Services have not consented to custody being awarded to the Mother and the Father and has supported custody of the Children being with the non-relative respondents James Dooley and Lorrie A. Shenandoah.

The Indian Child Welfare Act Does Not Justify or Authorize the Onondaga Nation to Hold the Children Against the Will and Over the Objection of the Parents

(50) The Mother, Awenha Pitre, is a Native American. Although the Mother resided on the Onondaga Nation reservation until the age of 16 years, when she began her relationship with the Father, she left the reservation and never returned to such residence and ceased participating in the Onondaga Nation.

(51) The Father is not a Native American and never resided on the reservation of the Onondaga Nation.

(52) At no time have the Mother and Father or their Children resided on a Native American reservation.

(53) The Onondaga Nation has no jurisdiction or legal authority over the Father, a non-Native American, and has no jurisdiction over the Father's Children and has no legal justification or authority for overriding the Father's wishes by holding custody of the Children against the will of the Father and the Mother and there is no provision in the Indian Child Welfare Act that permits such conduct by the Onondaga Nation or its agents.

(54) The Father and the Mother oppose and reject the authority and the act of the Onondaga Nation exercising any jurisdiction over their Children. In particular, in accordance with such legislation, where the Father is not a Native American and objects to the Onondaga Nation taking custody or jurisdiction over his children, the Onondaga Nation lacks legal or moral authority to override such parental decision and is not authorized to forcefully and over parental objection take custody of the children.

Parenting Time Has been Denied to the Father, the Mother and to the Children

(55) At the current time and for in excess of one year, the Father has not been permitted to have parenting time with the Children. Similarly, during that period of time the Mother has not been permitted to have parenting time with the Children.

(56) In or about the Fall 2012, the Father and the Mother had some parenting time with the Children at the Salvation Army program, but that parenting time was stopped in or about January 2013.

Plaintiffs' Request for Injunctive Relief

(57) Plaintiffs request that this Court direct and mandate the Defendants, both individually and collectively, to immediately return the children to their Mother and their Father. They have held my daughter S. P. since she was a newborn, have interrupted my breast feeding of her and have blocked any parent-child relationship with her and the other children.

Request for Award of Compensatory and Punitive Damages Flowing From Defendant's Unlawful Conduct That Has Caused Irreparable Harm to the Mother, the Father and the Children

(58) By holding the Children against the will of the parents and without legal authority, the Defendants, collectively and individually have caused severe and continuing and irreparable damage and emotional harm and distress to the parents and the Children.

(59) Such damaged suffered by the parents and the Children results from the conduct of Defendants, individually and collectively, by which they interrupted and severed the integrity of the family unit and deprived plaintiffs and their children of their

constitutional and fundamental right as parents to raise their children and the children's right to be raised by their parents.

(60) The Defendants have caused further harm to the parents and the children by denying the parents and the children parenting time with each other for in excess of one year and thereby, have interrupted the children's knowledge of and association with their parents and with each other and with their family unit. This was especially harmful because Defendants denied the Mother the right to continue breast feeding her youngest child and forced an abrupt stop to such breast feeding.

(61) For the irreparable harm caused by the Defendants individually and collectively the Father and the Mother request that this Court order the Defendants collectively and individually to pay compensatory damages in the amount of one million dollars to the parents and the amount of one million dollars to each of the children.

(62) As punitive damages for the Defendants' willful violation of the rights of the parents and the children, as set forth above, plaintiffs request that this Court award punitive damages to the parents and the children in the amount of two million dollars.

(63) No prior application for the relief requested herein has been made to any court except, as noted above, the Father filed a custody petition with Onondaga County Family Court.

(64) Upon information and belief, the Onondaga Nation may have conducted an adjudication regarding the custody of the Children, however, the Mother and the Father were not afforded notice or other due process rights.

Demand for Jury Trial

(65) Plaintiffs request that this cause of action be tried by a jury.

Request for Leave to Proceed In Forma Pauperis

(66) The Father is disabled and receives Social Security Disability in the amount of \$669.00 per month. He is not able to afford to retain a lawyer to represent him.

(67) The Mother is employed at Rescue Mission Warehouse and receives a salary of approximately \$357.00 per week [\$8/hours] and she is not able to afford to retain a lawyer to represent him.

WHEREFORE, the Father and the Mother request that the relief requested herein be granted in all respects, that this Court order the Defendants to return the Children to the care and custody of the Mother and the Father; that money damages be awarded to the Children and the Mother and the Father and that this Court grant such other, further and different relief as it may deem appropriate.

/s/
Jeffrey Pitre, Plaintiff, individually and on behalf of
his children

/s/
Awenha Pitre, Plaintiff, individually and on behalf
of her children

VERIFICATION-Jeffrey Pitre

STATE OF NEW YORK)
) ss:
COUNTY OF ONONDAGA)

Jeffrey Pitre, being duly sworn, deposes and says, I am the Plaintiff in the above-captioned complaint and the foregoing complaint is true to my own knowledge, except to matters alleged upon information and belief, and as to those, I believe them to be true.

/s/
Jeffrey Pitre

Sworn to before me this
18th day of March 2014

/s/
Lisa H. Blitman
Notary Public State of New York
No. 02BL6086232
Qualified New York County
Commission Expires April 25, 2015

Addendum C-District Court June 24, 2014 Granting Leave to
Proceed In forma Pauperis

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JEFFREY PITRE, SR. and AWENHA PITRE,
On their own behalf and on behalf of their children:
DP, SR, DP, SP, LP, and JP,

Plaintiffs,

5:14-CV-00293
(DNH/TWD)

v.

LORRIE SHENANDOAH, JAMES DOOLEY,
ONONDAGA SOCIAL SERVICES
DEPARTMENT, OSWEGO SOCIAL SERVICES
DEPARTMENT, and ONONDAGA NATION,

Defendants.

APPEARANCES:

JEFFREY PITRE, SR.
Plaintiff *pro se*
77 State Route 48 - Lot 34
Phoenix, NY 13135

AWENHA PITRE
Plaintiff *pro se*
77 State Route 48 - Lot 34
Phoenix, NY 13135

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

ORDER

The Clerk has sent to the Court a complaint, applications to proceed *in forma pauperis*, and a motion for the appointment of counsel submitted by Plaintiffs Jeffrey Pitre, Sr. and Awenha Pitre, on their own behalf and on behalf of their six minor children. (Dkt. Nos. 1-4.) The complaint alleges the unconstitutional refusal of Defendants Lorrie A. Shenandoah, James

Dooley, Onondaga Social Services Department, Oswego Social Services Department, and the Onondaga Nation to return custody of the six minor children to Plaintiffs, in that there is no outstanding state court order allowing Defendants or any non-parent to hold custody of the children. (Dkt. No. 1.) After reviewing the complaint and Plaintiffs' *in forma pauperis* applications, the Court finds that the complaint sufficiently states a claim to survive initial review under 28 U.S.C. § 1915(e) (2006) and that Plaintiffs may properly proceed with this matter *in forma pauperis*. Plaintiffs' motion for the appointment of counsel is denied at this time without prejudice as premature since a more fully developed record will be necessary before the Court can determine whether Plaintiffs' claims warrant the appointment of counsel.

WHEREFORE, it is hereby

ORDERED that Plaintiffs' *in forma pauperis* applications (Dkt. Nos. 2-3) are **GRANTED**,¹ and Plaintiffs' motion for appointment of counsel is **DENIED WITHOUT PREJUDICE**. The Clerk shall issue summonses and forward them, along with copies of the complaint and packets containing General Order 25, which sets forth the Civil Case Management Plan used by the Northern District of New York, to the United States Marshal for service upon Defendants; and it is further

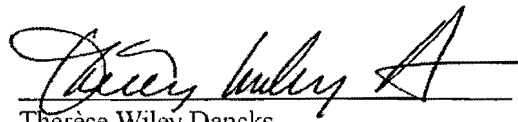
ORDERED that a formal response to Plaintiffs' complaint be filed by Defendants as provided for in the Federal Rules of Civil Procedure subsequent to service of process on Defendants; and it is further

¹ Plaintiffs should note that although the applications to proceed *in forma pauperis* have been granted, Plaintiffs will still be required to pay fees that they may incur in this action, including copying and/or witness fees.

ORDERED that any paper sent by a party to the Court or the Clerk shall be accompanied by a certificate setting forth the date a true and correct copy of it was mailed to all opposing parties or their counsel. Any letter or other document received by the Clerk or the Court which does not include a certificate of service which clearly states that an identical copy was served upon all opposing parties or their attorneys is to be returned, without processing, by the Clerk. Plaintiffs shall also comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All motions shall comply with the Local Rules of Practice of the Northern District; and it is further

ORDERED that the Clerk serve copies of this Order and General Order 25 on Plaintiffs.

Dated: June 24, 2014
Syracuse, New York


Therèse Wiley Dancks
United States Magistrate Judge

Addendum D-District Court February 17, 2015 Memorandum
Decision and Order Dismissing Pro Se Complaint

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JEFFREY PITRE, SR. and AWENHA PITRE,
Individually and on behalf of their children
DP, SK, DP, SP, EP and JP,

Plaintiffs,

-v-

5:14-CV-293

LORRIE A. SHENANDOAH; JAMES
DOOLEY; ONONDAGA SOCIAL SERVICES
DEPARTMENT; OSWEGO SOCIAL
SERVICES DEPARTMENT; and
ONONDAGA NATION,

Defendants.

APPEARANCES:

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GORDON J. CUFFY
Onondaga County Attorney
Attorneys for Defendant Onondaga Social
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John H. Mulroy Civic Center
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Syracuse, NY 13202

THE LAW FIRM OF FRANK W. MILLER
Attorneys for Defendant Oswego Social
Services Department
6575 Kirkville Road
East Syracuse, NY 13057

OF COUNSEL:

LISA H. BLITMAN, ESQ.

KAREN ANN BLESKOSKI, ESQ.
Deputy County Attorney

FRANK W. MILLER, ESQ.
WILLIAM J. HATHAWAY, ESQ.

OFFICE OF JOSEPH J. HEATH
Attorneys for Defendants Onondaga Nation
and Shenandoah¹
716 East Washington Street, Suite 104
Syracuse, NY 13202

JOSEPH J. HEATH, ESQ.

DAVID N. HURD
United States District Judge

MEMORANDUM–DECISION and ORDER

I. INTRODUCTION

On March 18, 2014, plaintiffs Jeffrey and Awenha Pitre ("Jeffrey" and "Awenha"), proceeding *pro se*, initiated this action on their own behalf and on behalf of their six minor children, "D.P.," "S.K.," "D.P.," "S.P.," "E.P.," and "J.P."² This action stems from the June 2012 removal of the minor children by defendants Oswego Social Services Department ("Oswego SSD") and Onondaga Social Services Department ("Onondaga SSD"), the later transfer of custody proceedings to defendant Onondaga Nation, and the placement of the children with defendants Lorrie A. Shenandoah ("Shenandoah") and James Dooley ("Dooley").³

Although they do not delineate any specific causes of action, plaintiffs appear to

¹ In his motion papers, attorney Joseph J. Heath indicates that he represents both the Onondaga Nation and Lorrie A. Shenandoah. However, attorney Heath has not filed a formal Notice of Appearance.

² In their complaint, plaintiffs indicated that they were proceeding *pro se* but noted that "[a] lawyer helped them prepare this complaint." Compl. ¶ 5. On the same day they filed the complaint, plaintiffs filed a motion to appoint attorney Lisa H. Blitman as their counsel. This motion was denied as premature. Nonetheless, attorney Blitman filed and served plaintiffs' opposition to the Onondaga Nation's motion to dismiss. This response included a renewed request for the appointment of attorney Blitman as counsel. Attorney Blitman has since filed an appearance as plaintiffs' counsel on a *pro bono* basis. Thus, any remaining request to appoint counsel is denied as moot.

³ Dooley was not served with a copy of the summons and complaint in this action, and no motion or appearance has been filed on his behalf.

assert a federal substantive due process claim, brought pursuant to 42 U.S.C. § 1983, alleging that defendants "wrongfully hold custody of the Children in violation of the Mother and the Father's state and federal constitutional rights and in violation of New York State law." Compl. ¶ 15. Plaintiffs seek compensatory and punitive damages as well as declaratory and injunctive relief, including an order directing the immediate return of the children to their care and custody.

On July 22, 2014, the Onondaga Nation and Shenandoah filed a motion to dismiss the complaint. Onondaga SSD and Oswego SSD have each filed a motion to dismiss as well. Plaintiffs oppose all three motions and have filed a cross-motion seeking leave to file an amended complaint.⁴ The motions are all fully-briefed and were considered on submit, without oral argument.

II. FACTUAL BACKGROUND

The following facts, taken from the complaint and documents incorporated by reference therein, are assumed true for purposes of the motions to dismiss. See Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002).

Jeffrey and Awenha were married in June 1998 and reside in Phoenix, New York. They have six biological children together. Jeffrey is not a Native American. Awenha is a Native American but left the Onondaga Nation reservation at age sixteen and has not been a part of that tribe since. The children are part-Native American but are not part of the Onondaga Nation or any other recognized tribe. The family residence is not on Indian land.

⁴ In their opposition, plaintiffs also requested that this motion be made returnable in Syracuse, New York, instead of Utica. This request is denied as moot as the motions were considered on submit, with no appearances required.

The Pitre family became the subject of a child abuse/neglect investigation on June 25, 2012, when one of the minor daughters alleged that Jeffrey and Awenha sexually abused her. As a result, Jeffrey and Awenha—who was seven-months pregnant at the time—were arrested, criminally charged, and jailed. The children were removed from Jeffrey and Awenha's custody by Oswego SSD. Four of the children—D.P., S.K., D.P., and S.P.—were placed with Shenandoah, Awenha's aunt. E.P. was placed with Dooley, the husband of Awenha's sister.⁵ Shenandoah and Dooley are Onondaga Nation foster parents. Onondaga SSD helped facilitate these placements. Oswego SSD commenced a child abuse/neglect proceeding in Oswego County Family Court on July 10, 2012.

The allegedly victimized daughter subsequently recanted her allegations of sexual abuse. The criminal charges against both parents were dismissed in January 2013. The child abuse/neglect case with Oswego SSD was similarly closed on January 25, 2013. The Oswego County Family Court issued an order on February 6, 2013, terminating the placement of the children as the proceedings were transferred to the jurisdiction of the Onondaga Nation. See Heath Affirmation, Ex. A, ECF No. 12-4.

In 2013, Dooley and Shenandoah initiated separate "family-offense" proceedings seeking orders of protection against Jeffrey and Awenha in Onondaga County Family Court. The Family Court dismissed Dooley's action on June 11, 2013, and Shenandoah withdrew her proceeding on December 11, 2013. In August 2013, Jeffrey filed a petition for custody of the children in Onondaga County Family Court. In March 2014, the Onondaga Nation filed a motion to dismiss Jeffrey's petition. The parties report that the Onondaga County Family

⁵ This accounts for five of the six children. The current custody arrangement of J.P. is unclear.

Court granted the Nation's motion to dismiss on August 11, 2014. The Family Court noted that it lacked jurisdiction over the child custody proceeding.

D.P., S.K., D.P., and S.P. currently reside with Shenandoah. E.P. currently resides with Dooley. Custody of the children was formally transferred to the foster parents through proceedings before the Onondaga Nation and pursuant to ICWA. Plaintiffs dispute the applicability of ICWA. They allege that there is no valid court order or other legal justification permitting the continued placement of the children outside of their custody.

III. DISCUSSION

There are three separate motions to dismiss pending. Plaintiffs oppose the motions and request leave to file an amended complaint. Specifically, they seek to add a cause of action pursuant to the Indian Civil Rights Act of 1968. However, plaintiffs' request to file an amended pleading is not accompanied by a proposed amended complaint, as required by Local Rule 7.1(a)(4). Therefore, it is impossible to evaluate the sufficiency of said proposed amended complaint, and plaintiffs' cross-motion for leave to file an amended complaint will therefore be denied.

The Onondaga Nation and Shenandoah put forth two primary arguments in support of their motion to dismiss for lack of subject matter jurisdiction: (1) the Nation has exclusive jurisdiction over the custody of the children, pursuant to ICWA; and (2) any review of the orders of the Onondaga County and Oswego County Family Courts, which transferred the proceedings to the Onondaga Nation for lack of jurisdiction, is barred by the Rooker-

Feldman doctrine. Onondaga SSD and Oswego SSD have adopted these arguments.⁶

When considering a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), the complaint is to be construed liberally and all factual allegations must be accepted as true. Ford v. D.C. 37 Union Local 1549, 579 F.3d 187, 188 (2d Cir. 2009) (per curiam). A district court may consider evidence outside the pleadings and properly dismisses a case for lack of subject matter jurisdiction where it "lacks the statutory or constitutional power to adjudicate it." Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). The plaintiffs bear the burden to prove the existence of subject matter jurisdiction by a preponderance of the evidence. Id. If subject matter jurisdiction is lacking, the action must be dismissed in its entirety. FED. R. CIV. P. 12(h)(3).

A. The Indian Child Welfare Act

Defendants maintain that ICWA provides the Onondaga Nation with exclusive jurisdiction over the issue of the children's custody and, therefore, this federal court lacks subject matter jurisdiction. Plaintiffs argue that ICWA does not grant the Onondaga Nation such jurisdiction because Jeffrey is not a Native American, the family did not reside on reservation land at the time of the children's removal, and the parents did not consent to the transfer of custody.

ICWA provides:

An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction,

⁶ As the motions will be resolved on these two grounds, it is unnecessary to reach the defendants' remaining legal arguments in support of dismissal.

notwithstanding the residence or domicile of the child.

25 U.S.C. § 1911(a). Moreover, in the absence of good cause or objection by either parent, ICWA mandates the transfer of "any State court proceeding for the foster care placement of . . . an Indian child not domiciled or residing within the reservation of the Indian child's tribe" to the jurisdiction of said tribe. *Id.* § 1911(b).⁷

The clear language of ICWA supports defendants' position. The Onondaga County and Oswego County Family Courts properly transferred the proceeding for foster care placement of the Pitre children, who were not living on the reservation at the time, to the tribal court of the Onondaga Nation. There is no indication that the parents—who were each reportedly represented by counsel at the time—objected to said transfer or filed an appeal thereafter. Nor have the plaintiffs identified any "good cause" to prevent such a transfer.

Therefore, as the Onondaga County and Oswego County Family Courts determined, ICWA provides the Onondaga Nation with exclusive jurisdiction over the custody proceeding that plaintiffs seek to revive and attack in this action.

B. The Rooker–Feldman Doctrine

Defendants also argue that this federal action is barred by the Rooker–Feldman doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Plaintiffs do not identify any case law in opposition to this argument.

Under the Rooker–Feldman doctrine, federal district courts lack jurisdiction over suits "brought by state-court losers complaining of injuries caused by state-court judgments

⁷ Although plaintiffs point out that Jeffrey is not a Native American and Awenha left the Onondaga Nation at age sixteen, they do not dispute that the children are "Indian children" within the meaning of ICWA.

rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.” Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)).

Plaintiffs complaint is an attempt to review, revive, and reject the orders of the Onondaga County and Oswego County Family Courts. Those courts initially granted Onondaga SSD and Oswego SSD authority to remove the children from plaintiffs' custody and later transferred jurisdiction of the custody matters to the Onondaga Nation pursuant to ICWA. In this federal action, plaintiffs seek the immediate return of the children to their custody and dispute the authority of the Onondaga Nation to handle the ongoing custody matters. They specifically allege that defendants "wrongfully hold custody of the Children in violation of the Mother and the Father's state and federal constitutional rights and in violation of New York State law." Compl. ¶ 15. Such issues are inextricably intertwined with the state courts' judgments.⁸

In short, plaintiffs' claims and requested relief are barred by the Rooker–Feldman doctrine.⁹

⁸ Notably, plaintiffs do not allege procedural defects in the state court proceedings. They simply allege that the state courts wrongly found ICWA applicable and improperly transferred jurisdiction to the Onondaga Nation. Such distinguishes this action from cases that found the Rooker–Feldman doctrine inapplicable to ICWA claims. See, e.g., Oglala Sioux Tribe v. Van Hunnik, 993 F. Supp. 2d 1017, 1026–27 (D.S.D. 2014) (finding Rooker–Feldman inapplicable because "plaintiffs are not seeking review of the state court judgments in their cases or asking this court to review the merits of those cases. Rather, plaintiffs are requesting the court review the alleged inadequacies of the procedures employed during 48-hour hearings").

⁹ Even if the Rooker–Feldman doctrine did not apply, plaintiffs' claims seeking the immediate return of the children are arguably barred by the "domestic relations exception." See Benton v. Sanchez, No. 12-CV-4840, 2012 WL 5334026, at *2 (E.D.N.Y. Oct. 24, 2012) (deference to state law and courts in the area of domestic relations is such that the United States Supreme Court has "recognized a 'domestic relations exception' that 'divests the federal courts of power to issue divorce, alimony, and child custody decrees'" (quoting Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12 (2004))).

IV. CONCLUSION

Pursuant to ICWA, the Onondaga Nation has exclusive jurisdiction over the custody proceedings that form the basis of plaintiffs' complaint. The Onondaga County and Oswego County Family Courts properly transferred jurisdiction of the custody proceedings to the Onondaga Nation pursuant to 25 U.S.C. § 1911(b). Plaintiffs did not object to the transfer at that time, identify good cause to prevent the transfer, or appeal the state court orders thereafter. Further, review of the state court proceedings is barred by the Rooker–Feldman doctrine.

Therefore, it is

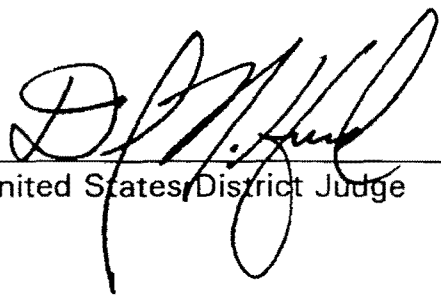
ORDERED that

1. Defendants Onondaga Nation and Lorrie A. Shenandoah's motion to dismiss is GRANTED;
2. Defendant Onondaga Social Services Department's motion to dismiss is GRANTED;
3. Defendant Oswego Social Services Department's motion to dismiss is GRANTED;
4. Plaintiffs' cross-motion for leave to file an amended complaint is DENIED; and
5. The complaint is DISMISSED in its entirety.

IT IS SO ORDERED.

The Clerk of the Court is directed to enter judgment accordingly and close the file.

Dated: February 17, 2015
Utica, New York.


United States District Judge

Addendum E-March 9, 2015 Notice of Appeal

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

X-----X

JEFFREY PITRE, SR. and AWENHA PITRE,

Individually and on behalf of their children

DP, SK, DP, SP, EP and JP

Plaintiffs

NOTICE OF APPEAL

5:14-CV-293

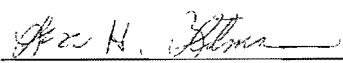
-v-

LORRIE A. SHENANDOAH; JAMES DOOLEY;
ONONDAGA SOCIAL SERVICES DEPARTMENT;
OSWEGO SOCIAL SERVICES DEPARTMENT; and
ONONDAGA NATION

Defendants

X-----X

NOTICE IS HEREBY GIVEN that Plaintiffs, Jeffrey Pitre, Sr. and Awenha Pitre, Individually and on behalf of their children DP, SK, DP, SP, EP and JP, hereby appeal to the United States Court of Appeals for the Second Circuit from the Decision and Order in this action dated February 17, 2015 by which the District Court, Northern District of New York dismissed Plaintiffs' pro se complaint and denied Plaintiffs' application to file an amended complaint and found, inter alia, that defendant, Onondaga Nation, has exclusive jurisdiction pursuant to the Indian Child Welfare Act and on that Plaintiffs' complaint sought a review of state court proceedings and thus, was barred by the Rooker-Feldman doctrine. Plaintiffs appeal from each and every aspect of the Decision and Order.



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Pro Bono Representative of Plaintiffs
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lhblitman@aol.com

Dated: March 7, 2015

Addendum F-Oswego County Family Court Corrected January
25, 2013 Order of Dismissal

GF16 10/2004

ORDER CORRECTED

At a term of the Family Court of the State of New York, held in and for the County of Oswego, at Public Safety Center, 39 Churchill Road, Oswego, NY 13126, on January 25, 2013

OSWEGO CO. FAMILY COURT

PRESENT: Hon. Kimberly M. Seager

In the Matter of

File #: 18158
Docket #: NA-01874-12
NA-01875-12
NA-01876-12
NA-01877-12
NA-01878-12
NA-01879-12
NA-02628-12

Denny E Pitre (DOB: 3/13/2007),
Destin Pitre (DOB: 6/4/2002),
Eden Pitre (DOB: 9/29/2010),
Jeffrey Pitre Jr. (DOB: 3/30/2000),
Sienna T Pitre (DOB: 8/15/1996),
Skyler M Pitre (DOB: 2/21/2005),
Savannah Pitre (DOB: 9/8/2012),

Children under Eighteen Years of Age
Alleged to be Abused by

**CORRECTED
ORDER OF DISMISSAL**

Jeffrey Pitre Sr.,
Awenha Pitre,

Respondents.

Petitions under Article 10 of the Family Court Act, having been filed in this Court on July 10, 2012 and September 12, 2012 for the following: Abuse;

And the matters having duly come on to be heard before this Court and the following having appeared: Annalise Dykas, Esq., with the Oswego County Department of Social Services; Jeffrey Pitre Sr. with Joseph Rodak, Esq.; Awenha Pitre with Michael M. Bryant, Esq.; Courtney Radick, Esq., as attorney for the subject children, Denny, Destin, and Skyler Pitre; John Spring, Jr., Esq., as attorney for the subject children, Eden and Jeffrey Pitre; Edward Izyk, Esq., as attorney for the child, Savannah Pitre; and Maureen Petersen, Esq., as attorney for the subject child, Sienna Pitre, who was present; and Beverly Hill, appearing telephonically, representing the Onondaga Nation as Intervenor;

Page: 2 of 2
Docket No: NA-01874-12
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NA-01878-12
NA-01879-12
NA-02628-12
GF16

NOW, after examination and inquiry into the facts and circumstances of the case, it is hereby

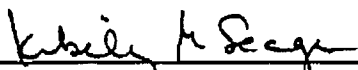
ADJUDGED that the petitions are dismissed due to withdrawal of the petitions; it is therefore

ORDERED that the petitions herein are dismissed without prejudice.

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Dated: January 25, 2013

ENTER



Hon. Kimberly M. Seager

Check applicable box:

Order e-mailed on [specify date(s) and to whom mailed]: 1-25-13 Mary Comerford
Court Analyst

CC: DSS, Bryant, Rodak, Spring, Radick, Petersen, Izyk

Addendum G-Oswego County Family Court February 6, 2013
Order

F.C.A. §§ 1089, 1089-A

ORDER ENTERED

FEB 18 2013

OSWEGO COUNTY FAMILY COURT

Form PH-5
(8/2010)
New York State Family Court
County of Oswego
Hearing Date:
January 11, 2013,
January 14, 2013,
and January 25, 2013

PRESENT: Hon. Kimberly M. Seager
Judge of the Family Court

In the Matter of

Eden and Denny Pitre,
Skyler and Destin Pitre,
Jeffrey Pitre Jr. and Sienna Pitre, and
Savannah Pitre

Docket No.

NA-1874-1875-12

NA-1876-1877-12

NA-1878-1879-12

NA-2583-12

26 28-12

(2)

File No. 18158

CIN #: EQ43340V and EA78768X,
DT97318C and DH58492V,
DC67005T and CV97010W and
EX57213U

PERMANENCY HEARING
ORDER

Children Under 21 Years of Age
Alleged to be Abused by

Awenha and Jeffrey S. Pitre,

Respondent(s).

NOTICE: IF YOUR CHILD STAYS IN FOSTER CARE FOR 15 OF THE MOST RECENT 22 MONTHS, THE AGENCY MAY BE REQUIRED BY LAW TO FILE A PETITION TO TERMINATE YOUR PARENTAL RIGHTS AND MAY FILE BEFORE THE END OF THE 15-MONTH PERIOD.

IF THE PETITION IS GRANTED, YOU MAY LOSE YOUR RIGHTS TO YOUR CHILD AND YOUR CHILD MAY BE ADOPTED WITHOUT YOUR CONSENT.

An order having been issued directing that the child(ren) be placed or removed from the parent or person legally responsible for the child(ren); and

The position and information provided by the local department of social services, as well as that of the child and others appearing before the Court, having been considered by the Court;
children

The following parties having appeared as follows on January 11, 2013:

Respondent: Awenha Pitre, given notice, appeared with Michael Bryant, Esq.

Docket Nos.: NA-1874-1875-12, NA-1876-1877-12, NA-1878-1879-12 and NA-2583-12

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- Respondent: **Jeffrey S. Pitre**, given notice, appeared with **Joseph Rodak, Esq.**
- Attorney for child, **Eden Pitre**: **John Spring Jr. Esq.**, given notice, appeared
- Attorney for child, **Jeffrey Pitre Jr.**: **John Spring Jr. Esq.**, given notice, appeared with the subject child
- Attorney for children, **Destin and Skyler Pitre**: **Courtney Radick, Esq.**, given notice, appeared with the subject children
- Attorney for child, **Denny Pitre**: **Courtney Radick, Esq.**, given notice, appeared
- Attorney for child, **Savannah Pitre**: **Edward Izyk, Esq.**, given notice, appeared
- Attorney for child, **Sienna Pitre**: **Maureen Petersen, Esq.**, given notice, appeared
- Foster parent(s) caring for child, **Sienna Pitre**: **Deborah Jenne**, given notice, did not appear
- Foster parent(s) caring for children, **Jeffrey Pitre Jr. and Eden Pitre**: **Guyyuh Dooley**, given notice, appeared
- Foster parent(s) caring for children, **Destin, Skyler and Savannah Pitre**: **Lorrie Shenandoah and Patricia Gabriel**, given notice, appeared
- Authorized agency caring for child: **Shana Taylor, DSS caseworker** appeared with **Annalise Dykas Esq.**, of **Nelson Law Firm**
- Authorized agency caring for child, **Sienna Pitre**: **Kristin Sherburne, from the Children's Home of Jefferson County**, given notice, did not appear
- Other: **Loree Schader, from the Onondaga County Department of Social Services**, given notice, did not appear
- Other: **Cheryl and Jeddie Pitre, paternal grandparents** appeared
- Other: **Laverne Lyons, from the Onondaga Nation**, given notice, appeared
- Other: **Kennard Kelly, family friend** appeared

The following parties having appeared as follows on January 14, 2013 for an in camera interview with the Judge:

- Child, if of suitable age and maturity: **Sienna Pitre** having appeared with her attorney **Maureen Petersen Esq.**

The following parties having appeared as follows on January 25, 2013:

- Respondent: **Awenha Pitre** appeared with **Michael Bryant, Esq.**
- Respondent: **Jeffrey S. Pitre** appeared with **Joseph Rodak, Esq.**

Docket Nos.: NA-1874-1875-12, NA-1876-1877-12, NA-1878-1879-12 and NA-2583-12

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- Attorney for children, **Eden and Jeffrey Pitre Jr.: John Spring Jr. Esq.,** given notice, appeared
- Attorney for children: **Destin, Denny and Skyler Pitre, Courtney Radick, Esq.,** given notice, appeared
- Attorney for child, **Savannah Pitre: Edward Izyk, Esq.,** given notice, appeared
- Attorney for child, **Sienna Pitre: Maureen Petersen, Esq.,** given notice, appeared with the subject child
- Authorized agency caring for child: **Shana Taylor and Paul LaBarge, DSS caseworkers** appeared with **Annalise Dykas Esq., of Nelson Law Firm**
- Other: **Cheryl and Jeddie Pitre, paternal grandparents** appeared
- Other: **Beverly Hill, from the Onondaga Nation** appeared, by phone
- Other: **William Lazore, maternal grandfather** appeared
- Other: **Kennard Kelly** appeared

Reasonable Efforts Determination

The Court makes the following findings regarding reasonable efforts to implement the permanency hearing goal in place at the commencement of this hearing:

Reasonable efforts to make and finalize the permanency planning goal of: **Return to Parent**

- were made as follows: **casework contacts, invitation to a Service Plan Review, weekly visitation for Awenha and the children, referral for substance abuse evaluation for Awenha, encouraged Jeffrey to undergo a substance abuse evaluation, weekly clinical services and parenting coach services to Awenha during visitation at the Onondaga County visitation center, referral for Jeffrey to complete his evaluation at the Onondaga County visitation center, encouraged Jeffrey to enroll in BMEN, encouraged Awenha to participate in SAF services, CAC counseling for Destin, Skyler and Denny; therapeutic foster care services for Sienna, notification and coordination with the Onondaga Nation, secondary services by Onondaga County Department of Social Services, provided Awenha with a breast pump, and transported and delivered ^{breast} ~~break~~ milk to Savannah.**

(KMS)

Docket Nos.: NA-1874-1875-12, NA-1876-1877-12, NA-1878-1879-12 and NA-2583-12

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This determination is based upon the following information:

Permanency report, sworn to on: December 28, 2012 and marked as Pet. Exh. #1
and entered into evidence without objection by the parties. (EW)

Testimony of Skylor, Destin and Jeffrey Pitre Jr., subject children (on January 11, 2013)
after consent of the parties (EW)

Findings and Orders

THE COURT ORDERS that:

THE CHILD(REN) CONTINUE TO BE PLACED from January 11, 2013 through January 25, 2013
in the custody of the Commissioner of Social Services. The Court finds that continued placement or temporary removal of the child during that time period was required due to best interests and safety needs of the children and that the children would be at risk of further abuse or neglect if returned to the parent/respondent because the permanency hearing was not completed until January 25, 2013.

PLACEMENT OR TEMPORARY REMOVAL IS TERMINATED ON JANUARY 25, 2013:

Due to the transfer of the proceedings to the jurisdiction of the Onondaga Nation.

ENTER

Emily A. Sage

Judge of the Family Court

Dated: 2/6/2013

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD(REN) UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Check applicable box:

Order mailed on [specify date(s) and to whom mailed]: Emailed 2-6-13
 Order received in court on [specify date(s) and to whom given]: May Conroy
Court Analyst

DSS
Bryant
Podak
Spring
Petersen
Radick
Izyk

Addendum H-August 18, 2014 Affidavit in Opposition to
Motion to Dismiss [redacted for privacy]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

-----X

In the Matter of a Custody/Visitation Proceeding for

D.P.
S.P.

D. P.
S. P.
E. P.
J. P.

PLAINTIFF'S
OPPOSITION TO MOTION
TO DISMISS AND CROSS-
MOTION FOR ASSIGN-
MENT OF COUNSEL
Docket 5:14-cv-293
DNH/TWD

x-----x
Jeffrey Pitre,
 Petitioner
 -against-

Returnable: September 12, 2014
Hon. David N. Hurd
Alexander Pirnie Courthouse
10 Broad Street
Utica, New York

James Dooley
Lorrie A. Shenandoah,
Onondaga Social Services Department
The Onondaga Nation
 Respondents

-----X

Jeffrey Pitre being duly sworn, deposes and says:

(1) We are the plaintiffs in the within action and the matters set forth herein are based on our actual knowledge except for those alleged on information and belief, and as to those, we believe them to be true.

(2) We submit this affidavit (a) in support of plaintiff's request to have this motion heard in the District Court in Syracuse rather than in Utica; (b) in support of plaintiffs' renewed request and motion for the assignment of counsel in this in forma pauperis proceeding; and (c) in opposition to the pending motion to dismiss filed by defendants, the Onondaga Nation (the "Nation") and Lorie A. Shenandoah ("Shenandoah").

(3) The plaintiffs in this case are Jeffrey Pitre, Sr., the husband of Awenha Pitre and Awenha Pitre, individually and on behalf of their six above-captioned children.

Jeffrey Pitre is the father (the “Father”) of the above-captioned children (the “Children”) and Awenha Pitre is the mother of the Children (the “Mother”).

Filing of the Complaint

(4) Plaintiffs commenced the within action on March 18, 2014 by filing the complaint (the “Complaint”) in the District Court for the Northern District of New York in Syracuse.

(5) When the Complaint was filed, the Mother and the Father also applied for leave to proceed as poor people and for the assignment of counsel.

June 24, 2014 Order of Therese Wiley Dancks, Magistrate Judge

(6) Plaintiffs’ Complaint was referred to Therese Wiley Danck, Magistrate Judge, District Court in Syracuse

(7) In an order dated June 24, 2014, Therese Wiley Dancks, Magistrate Judge, directed in relevant part:

(a) that the within Complaint “alleges the unconstitutional refusal of Defendants Lorrie A. Shenandoah, James Dooley, Onondaga Social Services Department, Oswego Social Services Department and the Onondaga Nation to return custody of the six minor children to Plaintiffs in that there is no outstanding state court order allowing Defendants or any non-parent to hold custody of the children” [Order at p. 2];

(b) that with the within Complaint “sufficiently states a claim to survive initial review under 28 U.S.C. 1915(e)” and “Plaintiffs may properly proceed with this matter in forma pauperis” [Order at p. 2]; and

(c) that “Plaintiff’s motion for the appointment of counsel is denied at this time without prejudice as premature since a more fully developed record will be necessary before the Court can determine whether Plaintiffs’ claims warrant the appointment of counsel” [Order at p. 2].

(8) That a conference among the parties and the Court has been scheduled for September 24, 2014.

Plaintiffs request that this Motion be Heard and Determined by the District Court in Syracuse That Has Reviewed the Complaint and Issued a Preliminary June 24, 2014 Order

(9) It is appropriate for the within motion to dismiss to be referred back to the District Court in Syracuse where the Complaint was initially reviewed and where a conference has been scheduled for September 24, 2014.

(10) Upon information and belief, the Children reside in Onondaga County.

(11) The Mother and the Father do not have a car and do not have the ability or funds to travel to Utica, New York. It is more possible that the Mother and Father can receive transportation to Syracuse than to Utica. Thus, to have this motion heard in the District Court in Utica is a hardship to the Mother and the Father.

(12) No prejudice will result if the within motion is transferred to the District Court in Syracuse.

Plaintiffs' Renewed Application For the Appointment of Counsel

(13) The Mother and the Father lack money to retain counsel to represent them in this proceeding.

(14) The Mother has only completed the eighth grade and the Father has completed the twelfth grade.

(15) At the present time, neither the Mother or the Father is employed.

(16) The Father receives a monthly disability benefit.

(17) The Mother and the Father believe that the legal issues and arguments in this action are complex and the Mother and the Father are not in a position and do not have the ability to prosecute these legal issues and arguments without the advice of counsel.

(18) In order to file the Complaint and submit these papers, the Mother and the Father had the assistance of the lawyer who represented them in the State Family Offense proceedings. That lawyer donated her time and work without cost, however, that arrangement cannot continue.

(19) For all of these reasons, the Mother and the Father believe that they desperately need the assistance of counsel and ask this Court to appoint one for them.

(20) Without the assistance of assigned counsel the Mother and the Father cannot prosecute their legal claims.

The Nation's Motion to Dismiss

(21) On or about July 22, 2014, the Nation and Shenandoah filed a motion to dismiss and a supporting memorandum.

Claims Advanced By the Nation in Its Pending Motion To Dismiss

(22) In its motion to dismiss and the supporting Memorandum, the Nation and Shenandoah claim that: (a) this Court lacks jurisdiction; (b) that the Complaint constitutes a custody proceeding; (c) that the Mother and Father are unfit parents, to whom the Nation has offered services that the Mother and Father have refused; (d) that dismissal of the Complaint is warranted under the provisions of the Indian Child Welfare Act (the "ICWA").

Plaintiffs Request That Defendants' Motion to Dismiss Be Denied

(23) Plaintiffs urge this Court to deny defendants' motion to dismiss.

This Court Has Jurisdiction to Hear and Determine Plaintiffs' Complaint

(24) The Nation asserted in its Motion to Dismiss that it is a sovereign nation [Memorandum at pp. 10-11, 17, Notice of Motion] and as such cannot be sued in federal

court. However, upon information and belief, the United States District Court may hear a complaint filed by a citizen against a non-citizen and against another nation.

(25) The Mother and Father assert that defendants' motion to dismiss should be denied; that this Court has jurisdiction to hear and determine this Complaint; that the Complaint is not a child custody proceeding, but rather is an action for relief from defendants' violation of plaintiffs' substantial and fundamental rights as United States citizens and rights that are protected by the United States and New York Constitution. Plaintiffs maintain that defendants' improper and wrongful conduct--holding the custody of the Children against plaintiffs' wishes and without providing the Mother and Father with notice of any charges and an opportunity to be heard and without permitting visitation amongst the parents and the Children--has irreparably damaged and injured the plaintiffs and the Children and for which defendants should compensate the plaintiffs in money damages.

(26) Plaintiffs assert that defendants have wrongfully attempted to use ICWA to justify their unlawful conduct and that such is a misinterpretation and misapplication of ICWA.

(27) Accordingly, in this action, plaintiffs raise claims and seek redress that is not a child custody case. This Court has jurisdiction over claims of wrong doing raised by a United States citizen against a sovereign entity.

(28) If plaintiffs cannot sue the Nation in either state or federal court, then the Nation is free to commit any wrong against United States citizens and the injured citizen has no recourse to seek the protection of the courts.

This Is Not An Action For Child Custody

(29) Defendants have improperly characterized plaintiffs' complaint as one for custody of the Children and as one challenging a state court finding [Memorandum at pp. 5, 7]. This is not a child custody proceeding. Rather it is an action to declare that defendants acted improperly and harmed plaintiffs and must pay money damages to plaintiffs for such harm. Plaintiffs seek a declaration from this Court and a finding that the provisions of ICWA do not authorize defendants holding the Children against the will of the parents and without affording the parents and the Children notice of charges, an opportunity to be heard and an opportunity to see and communicate with each other and to maintain the integrity of the family unit.

(30) In August 2013, the Mother and Father commenced a custody proceeding in New York State Family Court, Onondaga Nation [Docket Nos. V-8705-8710-13].

(31) In March 2014, while the state court custody proceeding was pending, the within Complaint was filed seeking damages for defendants' wrongful and illegal conduct with respect to plaintiffs.

(32) In the state court custody proceeding, the Nation asserted that it was not subject to state court jurisdiction because it is a sovereign nation.

(33) On August 11, 2014, the New York State Family Court, Onondaga County entered an Order on Motion And Order of Dismissal in which the Family Court found that it lacked jurisdiction over the child custody proceeding and ordered that the petition for custody was "dismissed with prejudice."

Defendants' Unsupported Claims That The Parents Are Unfit Do Not Warrant Dismissal of Plaintiffs' Complaint

(34) In its motion, defendants attempt to besmirch the Mother and Father by repeatedly labeling them as unfit and abusive [Supporting Affidavit paras. 9, 18, 21, 22, 29, 30; Memorandum at pp. 2, 3, 10, 16, 18].

(35) All charges filed in Family Court and Criminal Court have been dismissed. Defendants fail to apprise this Court or acknowledge that all charges against the Mother and the Father were dismissed.

(36) The Nation and defendants have never apprised the Mother and the Father of any charges of neglect or unfitness and have never afforded them the opportunity to appear and defend.

(37) There are not current charges against the parents and no finding of unfitness and no adjudication or finding of parental unfitness or wrong doing.

(38) Defendants' unsupported belief that the parents are not fit does not justify their holding the Children against the will of the children and the parents without authority and without affording the parents due process and the right to be heard.

Defendants Have Not Repeatedly Offered to Provide Services and Have Not Permitted Visitation.

(39) With the exception of a 2014 letter to the parents' attorney, during the period of years that defendants have held the Children against the wishes of the parents, they have not offered the parents services and the parents have not declined services.

(40) From approximately October 2012 to January 25, 2013, the parents engaged in services at the Salvation Army in Syracuse where they and the Children visited.

(41) Sometime around January 25, 2013, the Salvation Army advised the parents that their visitation with the children and services were discontinued because the proceeding in Oswego County Family Court had been dismissed and the Oswego County would no longer pay the Salvation Army to provide services to the parents.

(42) Defendants' claim that they have extended services to the parents are unsupported and vague. It was only after the parents sued for custody and appeared in Family Court, that defendants' attorney wrote to the Father's attorney and advised that the parents could not visit the children unless they engaged in services provided by the Nation. At that point, given the pending state court litigation and the defendants stated belief and conclusion that the parents were unfit and the adversarial nature of the plaintiffs and defendants, the parents were unwilling to subject themselves to defendants' service-providing agents. Defendants only once offered services and that was after June 2014 and after the parents sued in state court. Such is not a good faith offer by defendants.

(43) During the years that Defendants have held the Children, they have not permitted or facilitated visitation and communication between the parents and the Children.

(44) Upon information and belief, defendants have not facilitated visitation and communication amongst the Children.

(45) Although defendants assert that they have offered visitation, such assertions are unsupported by specifics and are merely bare self-serving conclusions.

ICWA Does Not Justify Defendants' Detention of the Children

(46) ICWA does not address the custody rights that a biological non-Native American father, such as the Father in this action, has where his children were born of a marriage between a non-Native American father and a mother, who at one point in her early life, may have been domiciled with her parents on a Native American reservation.

(47) The provisions of the ICWA do not address or preclude a Father from having custody of his children when he lives in an intact marriage with a mother and wife who has renounced any association with an Indian tribe.

(48) Applying ICWA to the case at hand is not consistent with the purpose of that statute. The ICWA was enacted in 1978 to protect Indian families and to promote the stability of the tribe given the fact that in the past, state courts had too frequently removed Indian children and separated Indian families by the placement of Indian children in non-Indian foster care. 25 U.S.C. 1902; Adoptive Couple v. Baby Girl, 33 S. Ct. 2552 (2013); Mississippi Band Chotaw v. Holyfield, 490 U.S. 30, 45, n. 1; In Re Antoinette, 129 Cal. Repr.2d 15 (2003), Matter of Welfare of SNR, 617 N.W.2d 77 (2000); DV v. PC, 36 P.3d 663 (2001, Alaska Sup. Ct.).

(49) This action is not covered by ICWA since it does not involve removal of children from an Indian family and placement of children in a non-Native American home. Defendants' claim that the Mother is a Native American and that defendants have held the children in a Native American setting. ICWA covers the situation where children go from a Native American home to a non-Native American living situation, this is not the situation in this case.

WHEREFORE, plaintiffs individually and on behalf of their children, request that this Court deny defendant's motion to dismiss, transfer this proceeding to the District Court in Syracuse and grant such other further and different relief as to the Court may seem just.

/s/
Jeffrey Pitre

Sworn to before me this
18th day of August 2014

/s/
Lisa H. Blitman
Notary Public State of New York
No. 02BL6086232
Qualified New York County
Commission Expires April 25, 2015

/s/
Awenha Pitre

Sworn to before me this
18th day of August 2014

/s/
Lisa H. Blitman
Notary Public State of New York
No. 02BL6086232
Qualified New York County
Commission Expires April 25, 2015

Addendum I-Onondaga County Family Court Order Entered
August 11, 2014 Dismissing Custody Petition

FILED & ENTERED
Family Court State of New York
County of Onondaga
DATE: 8/11/14

At a term of the Family Court of the
State of New York, held in and for
the County of Onondaga, at
Onondaga County Courthouse, 401
Montgomery St., Syracuse, NY
13202, on July 14, 2014

PRESENT: Salvatore Pavone, Referee

In the Matter of a **Custody/Visitation** Proceeding

Jeffrey Scott Pitre,

Petitioner,

- against -

James Dooley,

Lorrie Shenandoah,

Awenha Pitre,

Onondaga County Department of Social Services,

Onondaga Nation,

Respondent.

File #: 43961

Docket #: V-08705-13

V-08706-13

V-08707-13

V-08708-13

V-08709-13

V-08710-13

**ORDER ON MOTION AND
ORDER OF DISMISSAL**

A petition under Article 6 of the Family Court Act, having been filed in this Court on August 6, 2013 for the following: Visitation and Custody;

And a Motion having been filed on March 13, 2014 by the Onondaga Nation seeking dismissal of the petition;

And the matter having duly come on to be heard before this Court and the following having appeared: Jeffrey Scott Pitre and Lisa Harton Blitman; Onondaga County Department of Social Services and Onondaga County Attorney; James Dooley; Lorrie Shenandoah; Onondaga Nation and Joseph J. Heath; Awenha Pitre and William Lawrence Balduf; Martin Charles Collins;

NOW, after examination and inquiry into the facts and circumstances of the case, it is hereby

ADJUDGED that the Motion is granted and the petition is dismissed due to lack of jurisdiction; it is therefore

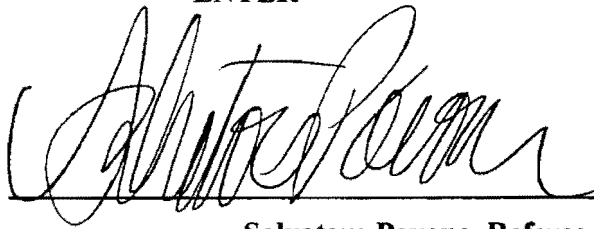
Page: 2 of 2
Docket No: V-08705-13
V-08706-13
V-08707-13
V-08708-13
V-08709-13
V-08710-13
GF16

ORDERED that the petition herein is dismissed with prejudice.

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

Dated: July 17, 2014

ENTER



Salvatore Pavone, Referee

Order emailed on 8/11/14 to:
Lisa Blitman, Esq at lhblitman@aol.com
Joanna Gozzi, Esq at JoannaGozzi@ongov.net
Joseph Heath, Esq at jheath@atsny.com
William Balduf, Esq at williambalduf@gmail.com
Martin Collins at mcollinslaw@verizon.net
By Michele Cefaliello, Court Assistant

Addendum J-July 22, 2014 Onondaga Nation Notice of Motion
to Dismiss and Supporting Affidavit [wihout exhibits]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JEFFREY PITRE, SR., and
AWENHA PITRE
On their own behalf and on behalf of their
children

Plaintiffs,

-against-

**NOTICE OF MOTION
TO DISMISS**

LORRIE A. SHENANDOAH,
JAMES DOOLEY,
ONONDAGA SOCIAL SERVICES DEPARTMENT,
OSWEGO SOCIAL SERVICES DEPARTMENT, and
THE ONONDAGA NATION,

Docket #: 5:14-cv-293
DNH/TWD

PLEASE TAKE NOTICE, that upon the annexed Affidavit of Deer Clan Representative Laverne Lyons and the exhibits attached thereto, dated July 22, 2014; the annexed Affirmation of Joseph J. Heath, Esq., dated July 22, 2014; and the annexed Memorandum of Law dated July 22, 2014; the Onondaga Nation and Lorrie A. Shenandoah will move this Court, pursuant to Northern District Local Rule 7.1 (b) (1), at a Motion Term at 10:00 am., on September 12, 2014, before Hon. David N. Hurd, United States District Court Judge, at the Alexander Pirnie Court House, 10 Broad Street, Utica, New York, or as soon thereafter as counsel may be heard, for an Order and Judgment, pursuant to Rules 12 (b) (1), and 12 (b) (2) of the Federal Rules of Civil Procedure, dismissing the Plaintiffs' entire March 18, 2014 Complaint in the above action based upon the following grounds:

1. Pursuant to Rule 12 (b) (1), this Court lacks subject matter jurisdiction over the subject children because exclusive jurisdiction was awarded to the Onondaga Nation, pursuant to the Indian Child Welfare Act (25 USC §§ 1901 *et seq.*), by the Oswego County Family Court on February 6, 2013;

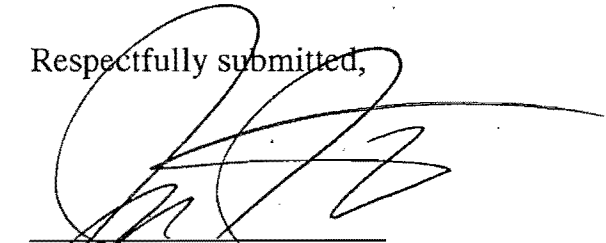
2. Pursuant to Rule 12 (b) (2), this Court lacks personal jurisdiction over the Onondaga Nation, due to its inherent sovereign immunity as a sovereign Indian nation, as recognized in the 1794 Treaty of Canandaigua, the Nation is immune from being summoned into a court;
3. Pursuant to Rule 12 (b) (2), this Court lacks personal jurisdiction over Lorrie A. Shenandoah, because she is an authorized Onondaga Nation foster parent, protected by the Nation's inherent sovereign immunity; and
4. Pursuant to Rule 19 (a) and (b), this matter can not proceed in the absence of the Onondaga Nation, as it is a necessary and indispensable party, which would be inequitably affected by any decision by this Court relative to the protection of these Indian children, as defined in 25 USC § 1903.

PLEASE BE ADVISED, that the Onondaga Nation is not waiving any of its sovereign immunity and is appearing, via this Motion, on a limited basis, in order to inform the Court of its lack of personal jurisdiction; and that by making this limited appearance, the Nation is not waiving its sovereign immunity and is not subjecting itself to the jurisdiction of this Court.

And for such other and further relief as to this court may seem just and proper.

Dated: July 22, 2014

Respectfully submitted,



JOSEPH J. HEATH, ESQ. 505660
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and Lorrie A. Shenandoah
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JEFFREY PITRE, SR., and
AWENHA PITRE
On their own behalf and on behalf of their
children

Plaintiffs,

-against-

**AFFIDAVIT OF LAVERNE
LYONS**

LORRIE A. SHENANDOAH,
JAMES DOOLEY,
ONONDAGA SOCIAL SERVICES DEPARTMENT,
OSWEGO SOCIAL SERVICES DEPARTMENT, and
THE ONONDAGA NATION,

Docket #: 5:14-CV-293
DNH/TWD

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

LAVERNE LYONS, being duly sworn, deposes and says that:

1. I am one of the members of the Council of Chiefs of the Onondaga Nation, and sit as the Deer Clan Representative on the Council. I am submitting this Affidavit in support of the Nation's Motion to Dismiss this custody Complaint, due to the lack of subject matter jurisdiction, as the Nation has retained exclusive jurisdiction over these children, under the Indian Child Welfare Act, (ICWA), 25 USC § 1901 *et. seq.*; and upon the Nation's sovereign immunity.

2. I am also the Director of the Nation's Family Services Office (ONFS), which is a service agency of the Nation, created and authorized by the Council, to handle matters involving, and provide services, to our children and families as the need arises. I have been the Director of ONFS since 2009, and I have overseen the handling of the severe abuse allegations against these Petitioner parents since the summer of 2012, as well as

their placement in Nation Indian foster homes and the services which these children have required since they have been under the Nation's exclusive jurisdiction.

3. The Nation is still governed by the Gayanashagowa, the Haudenosaunee Great Law of Peace, that was given to us by the Peacemaker over 1000 years ago. The Great Law of Peace is the central legal authority for the member nations of the Haudenosaunee, and the Nation is a member nation of the Haudenosaunee. Although our law is not written, it is binding and enforceable, and has been preserved and handed down through ceremonies that require the Nation's leaders to commit it to memory and to recite and interpret its provisions. While there is no authoritative written version of the Great Law, the Nation and its Council of Chiefs are well-versed in it and regularly apply its provisions as circumstances require.

4. The Nation is governed by a Council of Chiefs, who are selected by the Clan Mothers, according to the Great Law and associated customs established over many centuries. The Council makes decisions by consensus. The Nation also has a clan system, where clan membership is determined by the mother's clan. These clans are a fundamentally important part of our system and our culture.

5. One of the principle mandates of the Great Law is that our decisions should be made with concern for how they will impact the future generations yet to be born. The protection of our children and our grandchildren is one of the primary responsibilities of the Nation leaders.

6. In order to better serve and protect our families and our children, the Council has established and has maintained my office, the Onondaga Family Service Center, and the Council has authorized the ONFS to interact with outside governmental agencies and courts to carry out this responsibility. The staff at ONFS works with families to identify needs and offer services to fill those needs, including but not limited to the Nation's Health Clinic and the Nation's Healing Center.

7. One of my responsibilities as Director of the ONFS is to exercise the Nation's

authority and jurisdiction under the Indian Child Welfare Act. We become especially concerned when there is a risk that Indian children will be removed from an Indian home and placed in a non-Indian home or institution. We have established a system of Indian foster homes, with Onondaga citizens as foster parents. When possible, we attempt to place foster children with relatives and we try to place them with members of their Clans.

8. One of the primary concerns when an Indian child is removed from their Indian homes and placed in non-Indian homes or institutions, is that they will lose their exposure to our Onondaga language, our culture and our ceremonies. Growing up with and taking part in the language, culture and ceremonies are important components of preserving our way of life.

9. I first became aware of the extreme parenting problems of these Petitioners, Jeffrey Pitre, Sr. and Awenha Pitre, in the summer of 2012, when my office was contacted by the Oswego County Department of Social Services, which provided us with a copy of the Severe Abuse Petition that had been filed against them, due to the father's rape of then 14 year old SP-DOB: 1998, the oldest of these siblings. We have also been provided with a copy of the entire DSS file, with many police reports; and its contents cause us great concern for the safety of these children.

10. Because both Petitioner parents had been arrested and jailed in 2012 as a result of these alarming allegations, the children were removed from their home. At that point, DSS contacted my office and eventually, we were asked if we would accept jurisdiction over their care and protection under ICWA. We agreed that we would accept this exclusive jurisdiction, which was memorialized in the Oswego County Family Court's Permanency Hearing Order of February 6, 2013. We have maintained that exclusive jurisdiction and supervised the protection of these children continuously until the present.

11. Even before we accepted full responsibility for these children, I had arranged to have them placed with relatives, in Indian foster homes, under my office's and the Nation's supervision. Custody of JP-DOB: 2000. was awarded to James and Guyuh

Dooley, and not to the parents. Guyyuh Dooley is the maternal aunt of JP-DOB 2000, and the sister of the children's mother, Awenha Pitre. Custody of DP-DOB: 2002, SP-DOB: 2005, DP-DOB: 2007, SP-DOB: 2012 and EP-DOB: 2010 was awarded to Lorrie Shenandoah and these children were placed in her Indian foster home in Syracuse, which is also supervised by the Nation. Ms. Shenandoah is also a maternal relative of the children and Awenha Pitre. These placements in our foster homes were made in 2012, while Oswego County still had authority over these children. For example, attached hereto, as Exhibit "AA" is a copy of a September 21, 2012 letter from Oswego County DSS to foster mother Lorrie Shenandoah, confirming that the children had been placed in this Indian foster home.

12. We have maintained our exclusive jurisdiction over these children and do not wish to relinquish it now, as the children have been in stable environments and are doing well.

CUSTODY OF JP-DOB: 2000:

13. As noted above, JP-DOB: 2000 was placed in the Dooley foster home, while he was still under the jurisdiction of the Oswego County Family Court and DSS. After his initial placement, we accepted the exclusive jurisdiction over him and his siblings.

14. While he was in our care and under our supervision, we also arranged for him to have counseling, which was provided by the Nation.

15. On or about January 6, 2014, my office was informed by the foster home that JP-DOB: 2000 had not returned to their home, after he had been out playing with friends; and a missing person report was filed.

16. Eventually, we learned that JP-DOB: 2000 had been enrolled in the Phoenix Central School system and that he had returned to live with these Petitioner parents. This move was not approved by the Nation or my office and was done secretly. We have attempted to have the Petitioner parents and the school return JP-DOB: 2000 to our jurisdiction and to the Dooley foster home, but these efforts have not been successful.

17. We remain very concerned for JP-DOB: 2000's safety, given the history of the abusive conditions in the home of the Petitioner parents.

18. Throughout the period that these children have been under our supervision, we have repeatedly offered services to the Petitioner parents, along the same lines as the services which had been suggested by the Oswego County DSS. The parents have consistently refused to avail themselves of the services which are necessary to address their severe parenting failures, which include sexual abuse, controlled substance abuse, domestic violence and anger management.

ON-GOING PROBLEMS OF THREATENING BEHAVIOR, HARASSMENT and ANGER MANAGEMENT ISSUES FOR THE PETITIONER PARENTS:

19. Both the Dooley and Shenandoah foster homes have experienced repeated incidents of harassment and threats from these Petitioner parents, and both foster homes have had to obtain Orders of Protection against both parents, in order to protect their safety and that of these children. For instance, attached hereto, as Exhibit "BB", please find the June 20, 2013 Amended Family Offense Petition filed by Lorrie Shenandoah against the Petitioner father; the September 24, 2013 Orders of Protection against the Petitioner father on behalf of both Lorrie Shenandoah and James Dooley.

20. These Orders of Protection were necessary to control the threatening and harassing behavior of these Petitioner parents, which consisted of repeated phone calls in which threats of violence were conveyed, while laced with profanities. See particularly ¶ 6 (b) of the June 20, 2013 Amended Family Offense Petition.

21. It is the position of the Nation that this custody Complaint by these abusive parents should be dismissed, as against the Nation and its officials because it violates the Nation's sovereign immunity. Further, we firmly believe that the custody Complaint should be dismissed in its entirety, as any custodial decision made therein would violate the Nation's exclusive jurisdiction and the full faith and credit mandate of ICWA.

22. It is also the position of the Nation the these Petitioner parents are not fit custodians; and that they will not be fit until they engage in extensive services that are needed to correct their severe parenting failures. We also believe that any visitation must be strictly supervised and strictly contingent upon the acceptance of, and progress in, the needed services.

23. I also want to inform the Court of how these children have been integrated into the Onondaga Nation and Haudenosaunee culture, language and ceremonies; and how these children have been integrated into their extended maternal family within the Nation.

24. The three oldest children in our care, DP-DOB: 2002, SP-DOB: 2005 and DP-DOB: 2007 all attend the school on the Nation, where the Onondaga language is taught. Additionally, all five children are enrolled in our summer language program because the Nation is committed to keeping our language alive and assisting our children in learning about it, as an important aspect of preserving our culture and our ways.

25. Each of the four older children has been given an Onondaga name, at various ceremonies; and the youngest, SP-DOB: 2012 is scheduled to receive her Onondaga name at the next ceremony. This is another important part of maintaining our culture and our peoples' ties to it.

26. All five of the children have been able to attend our ceremonies in our Longhouse. Our ceremonies are and integral part of our culture, and are extremely important. These ceremonies are scheduled through out the year, to observe and to celebrate the changing cycles of the natural world.

27. Because all of the children are in foster homes of maternal relatives, they have been able to attend extended family gatherings which have included numerous aunts, uncles, cousins, great aunts and great uncles; as extended families are another important part of the community of our Nation. Additionally, many relatives visit the foster homes on a regular basis to share time with these children.

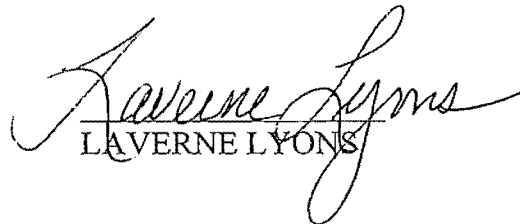
28. Finally, all of the children are receiving individual counseling and family counseling.

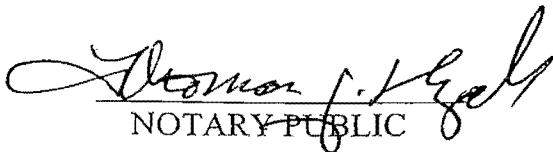
29. The Nation and my Family Services Offices have not denied visitation to these Petitioner parents; and in fact, the Nation has consistently encouraged visitation, under the proper conditions and supervision. However, we have been firm in our position, which is the same as that taken earlier by the Oswego County Department of Social Services, that these parents' visits must be carefully supervised, at least at the beginning; and that the parents are in need of significant services. See: January 25, 2013 letter from Oswego County Department of Social Services to the Plaintiff mother, which specifies the services needed by these Plaintiff parents, which is attached hereto, as Exhibit "CC". Given the clear history of drug abuse by these parents, some of which has involved their children, we have insisted on drug testing as part of any visitation plan. We have also informed the parents that they will need evaluation, treatment and counseling for sexual abuse, domestic violence and other parents needs.

30. It is also the position of the Nation the these Petitioner parents are not fit custodians; and that they will not be fit until they engage in extensive services that are needed to correct their severe parenting failures. We also believe that any visitation must be strictly supervised and strictly contingent upon the acceptance of, and progress in, the needed services.

I have read this statement and swear that it is true and accurate.

Sworn to before me this
22nd day of July, 2014.


LAVERNE LYONS


NOTARY PUBLIC

THOMAS J. HERCZAK
Notary Public, State of New York
No. 01HE4504761
Qualified in Onondaga County
Commission Expires Sept. 30, 2017