

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

NAVAJO NATION and CURTIS BITSUI,

Plaintiffs,

v.

No. 1:16-cv-00888

HONORABLE PEDRO G. RAEL, Judge,
New Mexico Thirteenth Judicial District, and
LEMUEL L. MARTINEZ, District Attorney,
New Mexico Thirteenth Judicial District,

Defendants.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs Navajo Nation and Curtis Bitsui, for their complaint against Defendants Pedro G. Rael and Lemuel L. Martinez, allege as follows:

NATURE OF THE CASE

This is an action for injunctive and declaratory relief by which Plaintiffs Navajo Nation and Curtis Bitsui seek, pursuant to 18 U.S.C. §§ 1151 and 1152, an order (1) declaring that the Indian allotment at issue in this case is Indian Country and that New Mexico state courts do not have jurisdiction over actions arising an Indian allotment, (2) prohibiting Defendant Judge Rael from exercising jurisdiction over the case captioned *State of New Mexico v. Curtis Bitsui*, No: D133 CV 2015 00228 (13th Judicial District, Cibola County), and (3) prohibiting Defendant District Attorney Martinez from prosecuting the *State of New Mexico v. Curtis Bitsui* case or taking any other legal action in state court against Plaintiff Bitsui arising from an Indian allotment.

JURISDICTION AND VENUE

1. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§1331 (federal question) and 1362 (action brought by Indian tribe).

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the alleged acts occurred in the State of New Mexico.

PARTIES

3. Plaintiff Navajo Nation is a sovereign Indian tribe, recognized by the United States, with lands located in New Mexico, as well as the states of Arizona and Utah.

4. Plaintiff Curtis Bitsui is an enrolled member of the Navajo Nation, who resides upon an Indian allotment, in which he holds a beneficial interest, near San Fidel, New Mexico (the “Allotment”).

5. Defendant Judge Pedro G. Rael is a District Court Judge within the Cibola County Thirteenth Judicial District Court of New Mexico, sitting at Grants, NM, who is currently presiding over a civil lawsuit captioned *State of New Mexico v. Curtis Bitsui*, No: D133 CV 2015 00228 (13th Judicial District, Cibola County).

6. Defendant Lemuel L. Martinez is the District Attorney for the Counties of Cibola, Sandoval and Valencia Counties within the Thirteenth Judicial District Court of New Mexico.

STATEMENT OF FACTS

7. Plaintiff Bitsui is a beneficial owner of the Allotment, which is located in Cibola County, New Mexico.

8. On January 21, 1953, the Director of the Bureau of Land Management issued Patent 1137489 to the widow and heirs of Francisco Pieseto, an Indian, and the land in question

is an Indian Allotment. The Allotment is more fully described as New Mexico Principal Meridian, New Mexico, T. 10 N., R. 7 W., Section 4, Lots 10, 11, 12, 13, 14. Patent 1137489, attached as Exhibit A.

9. Plaintiff Bitsui, is a successor interest to the original allottees, together with approximately 97 additional land owners all identified by the Bureau of Indian Affairs in its Title Status Report issued January 29, 2016. Title Status Report (Jan. 29, 2016); attached as Exhibit B, at 5.

10. The original patent states that the Allotment is held in trust by the United States, and would remain in trust status for a period of twenty five years; however, the twenty five year holding period for Indian allotments was extended indefinitely by the passage of the Indian Reorganization Act, 25 U.S.C. § 462. *Begay v. Albers*, 721 F.2d 1274, 1279-80 (10th Cir. 1983). The Title Status Report confirms that the Allotment continues to be held by the United States of America in trust for the land owners.

11. The Allotment is “Indian Country” pursuant to 18 U.S.C. §1151(c) (Indian Country includes “all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”).

12. Plaintiff Navajo Nation asserts territorial jurisdiction over all Navajo Indian Country, including all land within the exterior boundaries of the Navajo Indian Reservation and all Navajo Indian allotments. *See* 7 Navajo Nation Code § 254(A).

13. State courts cannot exercise civil jurisdiction over lands that are “Indian Country.” *See: Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 (1998); *DeCoteau v. District County Court for Tenth Judicial Dist.*, 420 U.S. 425, 427, n. 2 (1975).

14. On September 14, 2015, Defendant Martinez, on behalf of the State of New Mexico, initiated a criminal action in the case of *State of New Mexico v. Curtis Bitsui*, No. M-61-MR-2015-00447, filed in the Magistrate Court in Cibola County, charging Mr. Bitsui with Criminal Damage to Property (under \$1000); Interference with Ditch / Illegal Use of Water; and Interference with Irrigation Ditch Easement.

15. The criminal action was subsequently dismissed; on its face, 18 U.S.C. §1152 prohibits a state court from asserting criminal jurisdiction over offenses committed in Indian Country, including Indian allotments.

16. On December 16, 2015, Defendant Martinez, on behalf of the State of New Mexico, filed a complaint for injunctive relief, alleging that Mr. Bitsui was interfering with the rights of the San Jose de la Cienega Community Association to use a ditch that traverses the Allotment. The complaint is attached as Exhibit C.

17. On February 2, 2016, Plaintiff Curtis Bitsui filed a motion to dismiss, alleging that the 13th Judicial District Court of New Mexico has no subject matter jurisdiction over the claims made by the State because the Allotment is Indian Country.

18. Following a hearing held on March 4, 2016 before Judge Rael, in the Cibola County 13th Judicial District Court of New Mexico, Judge Rael denied Plaintiff Bitsui's motion to dismiss. Judge Rael's decision of March 4, 2016 is attached as Exhibit D.

19. New Mexico state courts do not have subject matter jurisdiction over lawsuits arising on allotments held in trust by the United States: the United States and the Navajo Nation have concurrent jurisdiction over Indian allotments.

20. Judge Rael has scheduled a trial on the merits in the *State v. Bitsui* lawsuit for September 7, 2016.

COUNT I: VIOLATION OF CIVIL RIGHTS
(Claim by Plaintiff Bitsui)

21. Judge Rael, in presiding over *State v. Bitsui*, and District Attorney Martinez, in prosecuting *State v. Bitsui*, are acting under color of state law, and without jurisdiction over the subject matter of the lawsuit.

22. Judge Rael, in presiding over *State v. Bitsui*, and District Attorney Martinez, in prosecuting *State v. Bitsui*, have deprived Plaintiff Bitsui of his liberty interest secured by the due process clause of the 14th Amendment to the U.S. Constitution to have the matters arising out of the *State v. Bitsui* lawsuit tried in a court that has jurisdiction over the subject matter.

23. The deprivation of Plaintiff Bitsui's right to have its case heard in a court that has subject matter jurisdiction constitutes an injury for which injunctive relief is the only suitable remedy.

COUNT II: DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(Claim by Plaintiff Navajo Nation and Plaintiff Bitsui)

24. Count I is re-alleged in its entirety as though set forth herein.

25. Judge Rael, in presiding over the *State v. Bitsui* lawsuit, and District Attorney Martinez, in prosecuting *State v. Bitsui* are infringing on the territorial jurisdiction of the Navajo Nation and its right to exercise jurisdiction over Navajo Indian Country.

26. Therefore, an actual and justiciable controversy exists for which equitable relief is the only suitable remedy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue an order:

A. Declaring that the Allotment is Indian Country and that New Mexico state courts do not have jurisdiction over actions arising on the Allotment;

- B. Enjoining Defendant Rael from exercising jurisdiction over the *State v. Bitsui* lawsuit, or any other action arising on the Allotment;
- C. Enjoining Defendant Martinez from prosecuting the *State v. Bitsui* lawsuit, or taking any other legal action against Plaintiff Bitsui arising on the Allotment; and
- D. Granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted this 3rd day of August, 2016.

NAVAJO NATION DEPARTMENT OF JUSTICE

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