

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kimberly Watso, individually and on
behalf of C.P., minor child,

Case No. 16-CV-00983

Petitioner,

v.

John E. Jacobson, in his official capacity
as Chief Judge of Shakopee Mdewakanton
Sioux Tribal Court (Children's Court),
Henry M. Buffalo, Jr., in his official
capacity as Judge of Shakopee
Mdewakanton Sioux Tribal Court
(Children Court's), Terry Mason Moore, in
her official capacity as Judge of Shakopee
Mdewakanton Sioux Tribal Court
(Children's Court), Shakopee
Mdewakanton Sioux Community Tribal
Court (Children's Court), Donald Perkins,

**VERIFIED PETITION FOR HABEAS
CORPUS REGARDING C.P. UNDER
25 U.S.C. § 1303, INDIAN CIVIL
RIGHTS ACT AND FOR OTHER
RELIEF**

Respondents.

The Petitioner Kimberly Watso, and on behalf of her minor child C.P., seeks the return of her child, presently in the custody of the Shakopee Mdewakanton (Dakota) Community Tribal Court (Children's Court), through this habeas corpus petition under the Indian Civil Rights Act, 25 U.S.C. § 1303: "The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of the detention by order of an Indian court." Ms. Watso is not an Indian and is not a SMSC member. C.P. is not a SMSC member, but fathered by an Indian of another tribe — Red Lake Nation of Chippewa Indians.

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INTRODUCTION

A mother has been separated from her child. The Petitioner Kimberly Watso is the non-Indian mother of C.P. and another son C.H. She has been caught in Shakopee Mdewakanton Sioux (Dakota) Community Tribal Court (Children’s Court¹) child protection proceedings in which her children, C.P., a non-SMSC member, and C.H., also a non-SMSC member, have not only been taken from her, but the two brothers have been separated from each other for over one year. The Tribal Court’s² actions have severed the Watso family social fabric.

This Petition seeks the immediate return of Ms. Watso’s child, and is so doing, seeks to resolve whether the Tribal Court can exercise custodial control of non-member children whose mother is a non-Indian.

Unlike federal law and Minnesota state law, SMSC ordinances lack the procedural safeguards protecting non-member parent-child rights, for instance, that provide for almost immediate review considering the devastating effects of splitting a family apart.

As non-members, Ms. Watso and her child C.P. have federal and state parent-child rights that have been ignored in Tribal Court – and by the SMSC Domestic Relations

¹ According to the SMSC Domestic Relations Code governing child welfare procedures, it states that “when exercising jurisdiction under this Chapter, the Shakopee Mdewakanton Sioux Community Tribal Court shall be known as the ‘Children’s Court’” Orders issued in this matter refer to both the “Tribal Court” and the “Children’s Court” apparently interchangeably or inadvertently. Regardless, for convenience of terminology, we refer to the court as the “Tribal Court.” It is to have the same force and effect as if we were to have used the term “Children’s Court” in this Petition.

² In all instances through out this Petition, references to “Tribal Court” refer to individually and collectively each of the Tribal Judges named as Respondents, unless specifically identified otherwise.

Code designed for members, not for non-members -- affecting her maternal relationship with her two minor children C.P. and C.H. who are Indian, but not members of SMSC. The SMSC Tribal Court, located in Scott County, Minnesota, has incorrectly asserted jurisdiction over non-member child protection proceedings because the SMSC Domestic Relations Code is inconsistent with federal and state law governing the same type of proceedings.

In this case, the Tribal Court has not overcome the presumption of invalidity against its jurisdiction over nonmembers. Notably, the Tribal Court did not apply state law under 28 U.S.C. §1360, also known as Public Law 280, because § 1360 requires state law to supersede SMSC ordinances in the first instance, and definitely when inconsistencies exist between the two laws. Instead, the Tribal Court, based on “inherent sovereign immunity,” asserted that tribal law under circumstances involving a non-member, non-Indian parent preempt Ms. Watso’s and C.P.’s federal and state parent-child rights.

Thus, this Petition necessarily poses two legal questions to ensure the return of C.P. to his mother:

- (1) Whether the Shakopee Mdewakanton Sioux Community (SMSC) Tribal Court, in light of the *Montana v. United States*, 450 U.S. 544, 566 (1981) limitations on tribal jurisdiction over non-members and 28 U.S.C. 1360 requiring state law to apply on the SMSC reservation, can assert jurisdiction under the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (ICWA) or otherwise, to apply SMSC’s Domestic Relations Code as *supreme* to preempt parents’ and child’s federal and state parent-child relationship rights (a) when the subject child is a non-member, (b) when both parents are non-members who do not consent to tribal court jurisdiction and (c) when the non-member mother seeking custody has not been adjudicated of child neglect, abuse or exploitation.

- (2) Whether the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (ICWA), as applied in this case, is unconstitutional under the federal Due Process Clause because ICWA renders the tribal court application of SMSC's Domestic Relations Code *supreme* preempting parents' and child's federal Due Process Clause parent-child relationship rights in a tribal court child protection proceeding (a) when the subject child is a non-member, (b) when both parents are non-members who do not consent to tribal court jurisdiction and (c) when the non-member mother seeking custody has not been adjudicated of child neglect, abuse or exploitation.

While it would be beneficial to reunite the entire family, and in particular the brothers, this Petition can only engage the return of C.P. to his mother — immediately — and requests this Court to do so.

PARTIES

Petitioner:

1. Petitioner Kimberly Watso is a citizen of Minnesota and a resident of Scott County, Minnesota. She is the biological mother of her minor children C.H. and C.P. Ms. Watso is not a member of the SMSC. She is not an Indian. Ms. Watso resides in Scott County, Minnesota. She has never been adjudicated of child neglect, abuse or exploitation. Ms. Watso objects to tribal court jurisdiction over C.P.

2. C.P., who is the subject of this petition for writ of habeas corpus, is the minor child of Kimberly Watso and Donald Perkins. C.P. is a member of the Red Lake Nation of Chippewa Indians. C.P. is not a member of SMSC.

3. C.H., who is not the subject of this petition for writ of habeas corpus, is the minor child of Kimberly Watso and Isaac Hall. C.H. is the half-brother of C.P. because

they have the same mother Ms. Watso. C.H. is not a member of SMSC, but may be eligible as an SMSC member because his father Isaac Hall is an SMSC member.

Respondents:

4. Upon information and belief, the Respondent Shakopee Mdewakanton Sioux Community Tribal Court (Children's Court) is part of the Shakopee Mdewakanton Sioux Community, an Indian governmental organization currently recognized under Section 16 of the Indian Reorganization Act of 1934. Since the 1980's, SMSC has severely restricted membership to about two hundred adult members which allows for high per capita payments due to the highly profitable Mystic Lake casino. At some times since the 1980s, annual per capita payments have been about \$1,000,000 per SMSC member. Currently, the annual per capita payments are less than \$1,000,000 per SMSC member. SMSC has a tribal court and child welfare agency. SMSC has enacted and applies a Domestic Relations Code that does not incorporate federal and state law as held to be required in two previous published decisions: *Smith v. Babbitt*, 96 F. Supp. 2d 907 (D. Minn. 2000) and *Zander v. Zander*, 720 N.W.2d 360 (Minn. App. 2006). The respective federal and state courts found the SMSC Domestic Relations Code at issue to be violative of non-members' rights. Based on the same SMSC Domestic Relations Code, SMSC initiated the petition in SMSC tribal court to detain C.P. and C.H.

5. Respondent Judge John E. Jacobson is a judge of the SMSC Tribal Court and Children's Court. Judge Jacobson is not a member of the SMSC.

6. Respondent Judge Henry M. Buffalo, Jr. is a judge of the SMSC Tribal Court and Children's Court. Judge Buffalo is not a member of the SMSC.

7. Respondent Judge Terry Mason Moore is a judge of the SMSC Tribal Court and Children's Court. Judge Moore is not a member of the SMSC.

8. Respondent Donald Perkins is the biological father and parent of C.P. Mr. Perkins is an Indian and member of the Red Lake Nation of Chippewa Indians. The Red Lake Nation is located in northern Minnesota. He has never been adjudicated of child neglect, abuse or exploitation. Mr. Perkins objects to tribal court jurisdiction over C.P.

JURISDICTION

9. The events that gave rise to this action occurred in the State of Minnesota and SMSC reservation also located within Minnesota.

10. This Court has personal jurisdiction over the Respondents SMSC, Judge Jacobson, Judge Buffalo, Judge Moore and Perkins.

11. The Respondent Judges Jacobson, Buffalo, and Moore are sued in their official capacities. As the U.S. Court of Appeals for the Eighth Circuit has held in *N. States Power Co. v. Prairie Island Mdewakanton Sioux Indian Cmty.*, 991 F.2d 458, 460 (8th Cir. 1993), where an exception to sovereign immunity of Indian tribes applies under *Ex parte Young*, 209 U.S. 123, 159–60 (1908), and where, under certain circumstances, tribal officers are not clothed with the tribe's sovereign immunity because the named officers acted outside the authority of the sovereign, as the Eighth Circuit Court of Appeals quoted from *Tenneco Oil Co. v. Sac and Fox Tribe of Indians*, 725 F.2d 572, 574 (10th Cir.1984):

When the complaint alleges that the named officer Respondents have acted outside the amount of authority that the sovereign is capable of bestowing, an exception to the

doctrine of sovereign immunity is invoked.... If the sovereign did not have the power to make a law, then the official by necessity acted outside the scope of his authority in enforcing it, making him liable to suit.

12. This is consistent with other courts' interpretation of the *Ex parte Young* doctrine such as in *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1155 (10th Cir. 2011) where the appellate court wrote that "the alleged unlawful exercise of tribal court jurisdiction in violation of federal common law is an ongoing violation of 'federal law' sufficient to sustain the application of the *Ex parte Young* doctrine. Satisfied that [the plaintiff] seeks prospective relief to enjoin a tribal official from enforcing an order in contravention of controlling federal law, we agree with the district court that this action falls within the *Ex parte Young* exception, and therefore is not barred by the doctrine of sovereign immunity."

13. The Court has jurisdiction over this petition for writ of habeas corpus regarding C.P. under the Indian Civil Rights Act, 25 U.S. §§ 1302-1303 for violations of Petitioner's and C.P.'s rights to not be deprived of "the equal protection of its laws" and of "liberty or property without due process of law." Under 25 U.S.C. § 1303: "The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of the detention by order of an Indian court."

14. The U.S. Court of Appeals for the Eighth Circuit in *DeMent v. Oglala Sioux Tribal Court*, 874 F.2d 510 (8th Cir. 1989) recognized that the Indian Civil Rights Act, 25 U.S. § 1303, provided a non-member parent – and presumably a non-member child -- a cause of action to petition for writ of habeas corpus in federal court to

determine the legality of an Indian tribal court order detaining a child from a non-member parent.

15. The Eighth Circuit in *DeMent v. Oglala Sioux Tribal Court* wrote:

[T]he ICRA does create a cause of action as well as federal habeas jurisdiction under appropriate circumstances. Section 1303 of the ICRA provides: “The privilege of the writ of habeas corpus shall be available to any person in a court of the United States to test the legality of his detention by order of an Indian tribe.” 25 U.S.C. § 1303 (1983). *See also Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 66–67, 98 S.Ct. 1670, 1681, 56 L.Ed.2d 106 (1978). DeMent’s complaint alleged that by refusing to enforce the California decree in 1987, the tribal court violated his right to due process protected by the Indian Civil Rights Act, 25 U.S.C. § 1302(8). Section 1302(8) provides in part:

No Indian tribe in exercising powers of self-government shall— (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law * * *.

We believe the district court had jurisdiction to determine whether DeMent stated a claim under this statutory provision.

DeMent, 874 F.2d at 513 (footnotes omitted).

16. This Court also has subject matter jurisdiction over the claims asserted in the instant complaint under 28 U.S.C. § 1331, 28 U.S.C. § 1360 and under federal common law rights of non-members against tribal court jurisdiction.

17. 28 U.S.C. § 1331 grants the U.S. District Court jurisdiction to interpret federal laws.

18. 28 U.S.C. § 1360, also known as Public Law 280, provides that state law applies on certain Indian reservations such as SMSC.

19. The U.S. Supreme Court in *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985) ruled that determining the extent to which an Indian tribe has the power to compel a non-Indian to submit to the civil jurisdiction of a tribal court is a question of federal common law for federal district courts to determine.

20. The instant Petition regarding tribal court jurisdiction is not about the resolution of internal tribal disputes, the interpretation of tribal constitutions and laws, or about tribal membership determinations because as the U.S. Court of Appeals for the Eighth Circuit in *In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749, 763 (8th Cir. 2003) opined, under such circumstances “jurisdiction lies with Indian tribes and not in the district courts.” As stated, this is *not* that type of case.

21. The Petitioner Ms. Watso has standing because she is the mother of C.P. and because the SMSC tribal court has issued orders detaining C.P. from Petitioner.

22. Thus, because of the tribal court’s detention of C.P., Ms. Watso complains of actual and continuing injuries which are concrete and particularized, and actual and imminent, not conjectural or hypothetical.

23. The SMSC Tribal Court has exercised its purported jurisdiction over C.P. and applied the SMSC Domestic Relations Code as *supreme* preempting federal and state parent-child relationship rights of Ms. Watso, a non-SMSC member and her minor child, also non-SMSC member C.P.

24. Ms. Watso has exhausted all available tribal remedies before bringing this suit.

25. Specifically, under Rule 25 of the Tribal Court's Rules of Civil Procedure, the Tribal Court assembled a three-judge panel to hear Ms. Watso's motion to dismiss the tribal court child protection proceeding for lack of jurisdiction.

26. The Tribal Court denied Ms. Watso's motion to dismiss.

27. No appeal is available from that tribal court decision under Rule 31 of the Tribal Court Rules of Civil Procedure (see Exhibit F, *Mem. Decision and Order, In re C.M.H. and C.D.P.*, at * 4-5 & n.2 (SMSC Tribal -Children's Court, Mar. 3, 2016)).

28. Nor is an appeal of the tribal court decision available to state court.

29. The Tribal Court's proceedings and orders based on SMSC's Domestic Relations Code being *supreme* preempting federal and state law -- regarding parent-child relationship rights, child protection and sharing of foster care costs -- violate federal and state legal protections of the non-member Petitioner and her non-member minor child C.P., including violations of equal protection and due process guaranteed by 25 U.S.C. § 1302(8).

30. Despite these continuing violations of Ms. Watso's and C.P.'s federal and state parent-child relationship rights, the Tribal Court wrongfully continues to exercise its jurisdiction over the non-member minor child C.P. and wrongfully continues to withhold custody of C.P. from his mother, Ms. Watso.

31. Finally, Ms. Watso does not seek monetary damages, but prospective relief, in the form of a writ of habeas corpus and/or injunction or otherwise, to order the relinquishment of SMSC's present custody of C.P. to his mother Ms. Watso and to order

the relinquishment of the SMSC tribal court's jurisdiction over C.P. to apply tribal law as *supreme* preempting federal and state law protecting the parent-child relationship.

VENUE

32. Venue is proper in this action under 28 U.S.C. § 1391(b).

FACTS

I. SMSC asserts jurisdiction over non-member mother and her non-member minor child.

33. SMSC has adopted an eighty page Domestic Relations Code which contains provisions regarding child protection matters. (See Exhibit G, SMSC Domestic Relations Code).

34. SMSC's Domestic Relations Code does not incorporate federal and state law regarding parental rights in child protection proceedings. Exhibit G, SMSC Domestic Relations Code at 69-80.

35. C.P. does not reside and is not domiciled within the SMSC boundaries in Minnesota.

36. C.P. is not an SMSC member.

37. C.P. is a member of the Red Lake Nation Tribe of Chippewa Indians in northern Minnesota. But, C.P. has never resided or been domiciled at Red Lake Nation reservation.

38. Petitioner Ms. Watso, the biological mother of both C.P. and C.H., does not reside and is not domiciled within the SMSC boundaries in Minnesota.

39. Ms. Watso is not an SMSC member.

40. Ms. Watso is not an Indian.

41. Respondent Donald Perkins, is the biological father of C.P. and does not reside within the SMSC boundaries in Minnesota.

42. Mr. Perkins is not an SMSC community member.

43. Mr. Perkins is a member of Red Lake Nation Tribe, State of Minnesota.

44. The Tribal Court is not a court of general jurisdiction regarding inherent adjudicative jurisdiction over non-members as the U.S. Supreme Court in *Nevada v. Hicks*, 533 U.S. 353, 367(2001) wrote: “tribal courts ... cannot be courts of general jurisdiction...for a tribe’s inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction.”

45. The SMSC has no legislative jurisdiction to regulate the parent –child relationship of non-member C.P. and his non-member parents Ms. Watso and Mr. Perkins.

46. Accordingly, SMSC tribal court’s inherent adjudicative jurisdiction, limited by its narrow legislative jurisdiction over non-members, does not extend to non-member C.P. and C.P.’s non-member parents Ms. Watso and Mr. Perkins.

47. Thus, the SMSC tribal court has no jurisdiction over a child who is not a tribal member when both parents are not tribal members and object to the jurisdiction and when the parents have not been adjudicated of child neglect, abuse or exploitation.

48. Additionally, under such a situation, the ICWA does not apply because custody of C.P. should be with one or both of the parents Ms. Watso and Mr. Perkins – and, if not, that is not for the SMSC tribal court in the first instance to determine.

49. Ms. Watso and Mr. Perkins have federal and state parental rights which SMSC cannot diminish regarding their non-member child C.P. because SMSC has no legislative jurisdiction nor adjudicative jurisdiction over a non-member child who has two non-member parents.

50. The SMSC Domestic Relations Code fails to incorporate federal or state law protecting parent-child rights when addressing child protection proceedings over non-member children and their non-member parents.

51. The SMSC Domestic Relations Code cannot preempt the federal and state parental rights of Petitioner and C.P. as non-SMSC members who do not reside and are not domiciled within the SMSC.

II. The underlying matter starts with a petition for the protective custody of minor children by SMSC Child Welfare Office.

52. On January 22, 2015, Patricia Foley of the Shakopee Mdewakanton Sioux Community Family and Children Services Department filed a Petition in the Tribal Court of the Shakopee Mdewakanton Sioux Community (Tribal Court), seeking a determination that non-SMSC members C.P. and C.H., who are half-brothers through a common mother, were children in need of assistance and to transfer custody to the SMSC Child Welfare Office. Exhibit A (*Emergency Ex Parte Petition for Children in Need of Assistance*, Jan. 22, 2015). The Tribal Court case number is CC-083-15.

53. On January 26, 2015, the Tribal Court ordered that the Community Child Welfare Office's Petition should not be heard ex parte, and the court set a hearing date for January 28, 2015.

54. At the January 28, 2015 hearing Petitioner Kimberly Watso appeared pro se. Ms. Watso disputed jurisdiction by stating that neither she nor the minor children were domiciled or resided within SMSC's boundaries.

III. Thirty days pass before the Tribal Court issues conflicting orders regarding the protective custody of minor children.

55. Nearly 30 days later, on February 25, 2015, the Tribal Court issued two conflicting orders. In the first order, the court found that C.H. and C.P. were children in need of assistance and neglected. However, the court also stated that there was no need to transfer custody of the children to SMSC's Child Welfare Office. Exhibit B (*Order for Children in Need of Assistance*, Feb. 25, 2015). In the second order, making no findings of fact and proceeding ex parte, the Tribal Court found that the children would be transferred to the custody of SMSC's Child Welfare Office. Exhibit A (*Emergency Ex Parte Order Transferring Legal and Physical Custody*, Feb. 25, 2015).

56. Under Minnesota statutory law within 3 days after an emergency protective care hearing, a Minnesota court must issue a written order with findings as to whether the child shall continue in protective care or return home as found under Rule 30.10(a) of the Minnesota Rules of Juvenile Protection Procedure:

Within three (3) days of the conclusion of the emergency protective care hearing the court shall issue a written order which shall include findings pursuant to Rules 30.08 and 30.09 and which shall order:

(a) that the child:

- (1) continue in protective care;
- (2) return home with conditions to ensure the safety of the child or others;

- (3) return home with reasonable conditions of release;
- or
- (4) return home with no conditions;
- (b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;
- (c) services, if any, to be provided to the child and the child's family;
- (d) terms of parental and sibling visitation pending further proceedings;
- (e) the parent's responsibility for costs of care pursuant to Minnesota Statutes, section 260C.331, subdivision 1;
- (f) if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe consistent with 25 U.S.C. section 1912(a); Minnesota Statutes, section 260.761, subdivision 3; and Rule 32.06; and
- (f) if the child is determined to be an Indian child and is proposed to be placed in foster care, testimony, pursuant to Rule 49, of a qualified expert witness.

57. The Tribal Court subsequently determined that custody lies with SMSC almost 30 days after the initial hearing involving non-members Ms. Watso and her children.

IV. Almost 60 days pass before the Tribal Court adjudicates transferring of custody.

58. About two months — almost 60 days — after the Tribal Court transferred custody of C.H. and C.P. to the SMSC Child Welfare Office, on April 21, 2015, the court issued two orders memorializing the custody status of C.H. and C.P.

59. The court stated that both C.H. and C.P. were to be placed with the children's maternal grandmother, Kaleen Dietrich, Petitioner Watso's mother. Exhibit C (*Truncated Order for Placement Re: C.D.P.*, April 21, 2015); Exhibit D (*Truncated Order for Placement Re: C.M.H.*, April 21, 2015). This tribal court order kept the two boys together.

60. However, the same day, the SMSC Court stated in an amended order that C.H. was actually to be put in foster care instead of with Allene Ross who is an SMSC member residing on SMSC reservation and is paternal aunt of C.H., thus splitting the two boys apart. Exhibit E (*Amended Truncated Order for Placement Re: C.M.H.*, April 21, 2015).

61. Minnesota statutory law, as found under Rule 39.02 of the Minnesota Rules of Juvenile Protection Procedure states that:

A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.

62. Under Rule 47 of the Minnesota Rules of Juvenile Protection Procedure, "an appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including but not limited to an order adjudicating a child to be in need of protection or services, neglected and in foster care."

63. A parent or a child of a parent subject to the Minnesota Rules of Juvenile Protection Procedure is an "aggrieved person" under Rule 47.02. A parent is an aggrieved

person because of the parental rights at stake as a result of court orders affecting the relationship between the parent and child.

64. The U.S. Supreme Court has recognized that the fundamental rights protected by the federal Due Process Clause include the liberty interest of parents in the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

65. In *Mitchell v. Smith*, 817 N.W.2d 742, 748 (Minn. App. 2012) the Minnesota appellate court outlined parental rights citing *SooHoo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007) and further wrote that “[T]he custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder,” quoting *Troxel*, 530 U.S. at 65–66 and further citing *SooHoo*, 731 N.W.2d at 820 (acknowledging “protected fundamental right” of parent to make decisions about child).

66. The *Mitchell* also wrote that “These parental rights include the right to direct the education and upbringing of one's child, *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35, 45 S.Ct. 571, 573, 69 L.Ed. 1070 (1925); to conceive and raise one's child, *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972); to direct the religious upbringing of one's child, *Wisconsin v. Yoder*, 406 U.S. 205, 213–14, 92 S.Ct. 1526, 1532, 32 L.Ed.2d 15 (1972); and to make decisions regarding the care, custody, and control of one's child, *Troxel*, 530 U.S. at 66, 120 S.Ct. at 2060. Above all, constitutionally protected parental rights encompass the relationship between parent and child. See *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S.Ct. 549, 555, 54 L.Ed.2d 511 (1978) (observing that substantive due-process rights of parent “would be offended if a

State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness” (quotation omitted)); *Stanley*, 405 U.S. at 651, 92 S.Ct. at 1212 (recognizing protection afforded a parent's private interest in his or her children, including “the interest of a parent in the companionship, care, custody, and management of his or her children”); *In re Scott Cnty. Master Docket*, 672 F.Supp. 1152, 1165 (D.Minn.1987) (recognizing the protected constitutional interest “in the development of parental and filial bonds free from government interference ... manifested in the reciprocal rights of parent and child to one another's companionship” (quotation omitted)), *aff'd sub nom. Myers v. Scott Cnty.*, 868 F.2d 1017 (8th Cir.1989).”

67. The Minnesota Supreme Court in *Matter of Welfare of HGB*, 306 N.W.2d 821, 825 (Minn. 1981) wrote: “the substantial and fundamental rights of parents to the custody and companionship of their children should not be taken from them except for grave and weighty reasons.” And courts since then have recognized the same as the Minnesota Court of Appeals has written: “Parents have a substantial and fundamental right to care and companionship with their children” citing *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978) and *In re Welfare of H.G.B.*, 306 N.W.2d 821, 825 (Minn. 1981).

68. The Tribal Court failed to hold an evidentiary trial terminating Ms. Watso's custody rights under federal and state legal standards when it made its initial determination of the need for child protection and the subsequent temporary foster placement of C.H. and C.P.

69. Notably, the SMSC Domestic Relations Code states that it does not incorporate federal and state law for non-members:

Inclusion of language, definitions, procedures, or other statutory or administrative provisions of other Tribal jurisdictions, the State of Minnesota or other states or federal entities in the Shakopee Mdewakanton Sioux Community Domestic Relations Code shall not be deemed an adoption of that law by the Shakopee Mdewakanton Sioux Community or its Tribal Court and shall not be deemed an action *deferring to state or federal jurisdiction* by the Shakopee Sioux Community where such state or federal jurisdiction is concurrent *or does not otherwise exist*. This limitation on the use of language from other laws shall apply equally to any action by the Tribal Court to promulgate rules.

(Emphasis added).

70. The Indian Civil Rights Act of 1968 is codified under 25 U.S.C. § 1301-1304 (ICRA). Under § 1302, the ICRA establishes the right for Ms. Watso to seek a writ of habeas corpus, in this case, against SMSC for Tribal Court orders detaining C.P.

71. Under 25 U.S.C. § 1302(a)(8) it states that “no Indian tribe in exercising powers of self government shall — ... deny to *any person* within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law....”

72. C.P. has been detained by the Tribal Court by the orders of the Tribal Court wherein it has made C.P. a ward of the court and refuses to give C.P. back to his mother Ms. Watso, out from under the Tribal Court’s jurisdiction. The Tribal Court refuses to recognize the rights of C.P. for due process and equal protection.

73. SMSC violates ICRA's equal protection of its laws and deprives liberty and property without due process of law when it does not apply federal law and state law regarding parent-child rights of non-member children and non-member parents.

74. The U.S. Supreme Court in *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) wrote that "this primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition."

75. The removal of a minor child from the care of parents and placement with others does significantly affect the social family fabric and disrupts the primary role of parents in the upbringing of their children as an enduring American tradition.

76. In *State v. Andersen*, No. A15-0315, 2015 WL 5312255, at *1 (Minn. App. Sept. 14, 2015), the appellate court wrote citing *Minn. Agric. Aircraft Ass'n v. Twp. of Mantrap*, 498 N.W.2d 40, 42 (Minn.App.1993):

Minnesota recognizes two separate doctrines that determine preemption questions. The first, referred to specifically as "preemption," is based on the "occupying the field" concept. A state law may fully occupy a particular field of legislation so that there is no room for local regulation. Under this doctrine it does not matter whether the regulation coincides with, is complementary to, or opposes the state law. The second doctrine, referred to as "conflict," provides that a local ordinance is invalid only if the terms of the ordinance and a state statute are irreconcilable.

V. The SMSC Domestic Relations Code conflicts with both federal and Minnesota state law, including the Minnesota Rules of Juvenile Protection Procedure.

77. The SMSC Domestic Relations Code is inconsistent with federal and state parental rights, including those under the Minnesota Rules of Juvenile Protection Procedure.

A. Minnesota law has no geographic or associative placement preferences for a child, unlike SMSC.

78. SMSC Domestic Relations Code, Chapter VIII governing child welfare states in Section 1(c) the “the following *placement preferences* if a child must be placed outside the home:

- (1) to the care of the parent, with or without supervision;
- (2) to a member of the child’s family or other relative on the Reservation;
- (3) to a member of the child’s family or other relative off the reservation;
- (4) to a responsible and reputable Tribal member of good standing known to the Tribal Court...”

(Emphasis added).

79. Under Minnesota’s Juvenile Safety and Placement Act, Minnesota Statute § 260C.176, subd. 1, it states “that the child’s health or welfare would [not] be immediately endangered, the child shall be released to the custody of a parent, guardian, or other suitable relative.” Minnesota Statute § 260C.181, subd. 2, least restrictive setting it states that, “the child shall be detained in the least restrictive setting consistent with the child’s health and welfare and in closest proximity to the child’s family as possible. Placement with a child’s relative, a designated caregiver ... or in a shelter care facility.”

80. Minnesota Statute §§ 260C.176, subd. 1 and 260C.181, subd 2 do not have geographic placement preferences, here, a preference to a tribe or SMSC.

81. Governing Minnesota Statutes do not reflect a placement preference based on race or ethnic association.

82. Governing Minnesota Statutes do not reflect a placement preference with regard to an association of a particular group within a particular locale.

83. The Tribal Court separated the two brothers C.H. and C.P.

84. The Tribal Court gave no rationale for separating the brothers apart.

85. Under Minnesota Statute Minnesota Statute xyz, siblings are not to be separated without cause.

86. C.H., a non-SMSC member, was placed with an aunt of the Respondent Isaac Hall — not an immediate family member — within the SMSC boundaries.

87. C.P., a non-SMSC member, was placed with Kaleen Dietrich, the maternal grandmother of C.H. and C.P., outside the SMSC boundaries.

88. Both C.H. and C.P. should have been placed with their maternal grandmother to ensure family continuity under federal and state law.

89. Ms. Watso objected to separating the brothers C.H. and C.P.

90. Ms. Watso objected to the placement of C.H., away from C.P., with a member of SMSC within the SMSC boundaries.

91. Petitioner has no relatives who reside within the SMSC boundaries.

92. The Tribal Court, with the separation of the brothers C.H. and C.P., exercised a codified preferred placement of one child within SMSC boundaries that is contrary to federal and state law.

B. The SMSC Domestic Code is counter to federal and state law regarding the placement of children in the least restrictive settings possible and in close proximity to a family.

93. ICWA, 25 U.S.C. § 1915 provides an order of preference regarding the placement of children. Specifically, the statute states that “any child accepted for foster care ... shall be placed in the least restrictive setting which most approximates a family”

94. C.H. and C.P. are presently in temporary foster care per Tribal Court orders.

95. Under 25 U.S.C. § 1915, subd. (b), the foster care placement must be “in the least restrictive setting.”

96. The SMSC Domestic Relations Code does not have a provision for a foster care placement “in the least restrictive setting.”

97. The SMSC Domestic Relations Code does not have a provision that makes it mandatory that the foster care placement be “in the least restrictive setting” similar to that found in the federal code under 25 U.S.C. § 1915, subd. (b).

98. Under Minnesota Statute § 260.181, subd. 2, Minnesota also requires the placement of a child “in the least restrictive setting.”

99. The SMSC Domestic Relations Code does not have a provision that requires the placement of a child “in the least restrictive setting” as found under Minnesota Statute § 260.181, subd. 2.

100. C.H. and C.P. are presently separated in foster care and outside the control or care of their non-Indian mother Ms. Watso. Further, C.H. is in a foster care setting within the SMSC boundaries. C.P. is in a foster care setting outside the SMSC boundaries.

101. Ms. Watso, a non-Indian and mother of C.H. and C.P., does not reside within the SMSC boundaries and continues to be subject to the Tribal Court orders regarding the control or care of her children. The Tribal Court has restricted her being with either child.

102. ICWA, 25 U.S.C. § 1915, subd. (c), states that “[i]n the case of a placement under subsection (a) or (b) of this section, if the Indian child’s tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child....”

103. The SMSC Domestic Relations Code has established a different order of preference of child placement § 1915, subd. (c).

104. However, the SMSC Domestic Relations Code does not have a provision which follows the federal statute wherein “the [tribal] court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child....”

105. The Tribal Court, regarding the placement of C.H. and C.P. did not consider the separation of the brothers or establish that the separation was the least restrictive setting appropriate to the particular needs of the child as required under federal and state law.

106. The Tribal Court, in placing C.H. in foster care within the SMSC boundaries, did not consider or establish that the separation from his brother was the least restrictive setting appropriate to the particular needs of the child.

107. The Tribal Court in placing C.P. in foster care outside the SMSC boundaries, separated from his brother, and placing restrictions on his non-Indian mother's visitation, did not establish the decision as least restrictive setting appropriate to the particular needs of the child.

108. Under Minnesota Statute § 260C.181, subd. 2, the court is to place a child in the least restrictive setting consistent with the child's health and welfare and in closest proximity to the child's family as possible.

109. The SMSC Domestic Relations Code does not have a similar provision as Minnesota Statute § 260C.181, subd. 2 or 25 U.S.C. § 1915(b) for the Respondent Tribal Court to apply.

110. C.H. is not in a setting in closest proximity to his family — his non-Indian and biological mother Ms. Watso — as the child is not outside the SMSC boundaries and wherein Ms. Watso is further restricted from visiting because of a SMSC Council no trespass command placed upon her.

111. It is not the least restrictive as would be required under state or federal law or both.

112. The SMSC Council no trespass command occurred after Ms. Watso sought a harassment order against Isaac Hall, a SMSC member and biological father of C.H.

113. C.P. is not in a setting in closest proximity to his family — his non-Indian biological mother Ms. Watso — as the Tribal Court has placed visitation restrictions on Ms. Watso outside the SMSC boundaries interfering with the relationship between mother and child.

114. Additionally, SMSC's Domestic Code does not provide for similar appeals found under Rule 47 of the Minnesota Rules of Juvenile Protection Procedure.

115. Likewise, the Minnesota Rules of Juvenile Protection Procedure, Rule 47.01 provides that "Except as provided in Rule 47.02 and Rule 47.07, appeals of juvenile protection matters shall be in accordance with the [Minnesota] Rules of Civil Appellate Procedure."

116. SMSC's Domestic Code does not provide for similar adherence to the Minnesota Rules of Civil Appellate Procedure for appeals of Tribal Court decisions affecting non-members to allow review by Minnesota appellate courts of tribal court interpretations of state law.

117. Rule 47.02 of the Minnesota Rules of Juvenile Protection Procedure provides for the timing of the filing of a notice of appeal, with references to the Minnesota Rules of Civil Appellate Procedure:

Any appeal shall be taken within twenty (20) days of the service of notice by the court administrator of the filing of the court's order. In the event of the filing and service of a timely and proper post-trial motion under Rule 45, or motion for relief under Rule 46 if the motion is filed within the time specified in Rule 45.01, subdivision 1, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subdivisions 2 and 3, apply, except that the time for appeal runs for all parties from the service of notice by the court administrator of the filing of the order disposing of the last post-trial motion.

118. SMSC's Domestic Code does not provide for a similar adherence to the Minnesota Rules of Civil Appellate Procedure for appeals of Tribal Court decisions affecting the state parental rights of non-members to Minnesota's appellate courts.

119. SMSC's Domestic Code does not provide for an appeal to the Minnesota Court of Appeals for review of a Tribal Court's decision under Minnesota state law involving non-members.

120. Under Rule 47.07, after adjudication of the court of appeals decision, the underlying adjudicated matter can be petitioned for review with the Minnesota Supreme Court:

Rule 117 of the Rules of Civil Appellate Procedure applies to petitions for review of decisions of the court of appeals in juvenile protection matters, except that any petition for further review shall be filed with the clerk of the appellate courts and served upon the parties within fifteen (15) days of the filing of the court of appeals' decision, and any response to such petition shall be filed with the clerk of appellate courts and served upon the parties within ten (10) days of service of the petition.

121. SMSC's Domestic Code does not provide for a similar adherence to the Minnesota Rules of Civil Appellate Procedure allowing for the petitioning for review to the Minnesota Supreme Court for review of a Tribal Court's decision under Minnesota state law which involves non-members.

122. In July of 2015, Ms. Watso requested visits separate from the biological father of C.H., Mr. Hall; in apparent response, the SMSC Child Welfare Office cut the duration of her visits from one hour to 45 minutes each.

123. Because of Mr. Hall's constant verbal abuse via text message, phone call, and social media, Ms. Watso became concerned about her safety and well-being. As a result of Mr. Hall's aggressive and unwanted pursuit of her, Ms. Watso sought a harassment restraining order (HRO) against Mr. Hall.

124. After obtaining a HRO against Mr. Hall, the SMSC Council, without justification, banned Ms. Watso from SMSC property. The ban was based on "trespass" by a non-community member. The ban made Ms. Watso fearful of visiting her children at the SMSC supervised visiting center located on SMSC property and the clinic for her urinalysis tests, also located on SMSC property.

125. As a non-community member and now banned from SMSC, Ms. Watso has no access to witnesses on the SMSC reservation and has no access to Tribal Court trial or appellate decisions applicable to her defense in Tribal Court proceedings.

126. Ms. Watso was not given an opportunity for a hearing to object to the SMSC ban before it was unilaterally imposed.

VI. 28 U.S.C. §1360 (Public Law 280) provides that state law and federal law preempt tribal law as to non-members.

127. “Public Law 280,” Pub.L. No. 83–280, 67 Stat. 589 (1953) 28 U.S.C. § 1360 (2000), provides:

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State 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 within the State:*
 Minnesota All Indian country within the State, except the Red Lake Reservation.

....

(c) *Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.*

(Emphasis added).

128. In *Smith v. Babbitt*, 96 F. Supp. 2d 907 (D. Minn. 2000), the federal court held pursuant to 28 U.S.C. § 1360 that state laws defining marriage and providing for intestate distribution to the children of married parents were applicable to Indian children and prevailed over SMSC’s “inconsistent” tribal customs.

129. In *Smith v. Babbitt*, 96 F. Supp. 2d at 918, the federal district court wrote that “Public Law 280,” Pub.L. No. 83–280, 67 Stat. 589 (1953) (codified as amended at 28 U.S.C. § 1360) “provides Minnesota [state] courts with civil jurisdiction to consider

claims arising on Indian lands located within the state. *See id.* Importantly, §1360 further provides that ‘those civil laws of [Minnesota] 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 in the State.’ *Id.* Although the statute expressly provides that existing tribal laws and customs must be given full force and effect in the determination of civil claims arising on Indian lands, such laws and customs are applicable only to the extent that they are ‘not inconsistent with any applicable civil law of the State.’ *Id.*”

130. The *Smith v. Babbitt* court also wrote that “under Public Law 280, the state's jurisdiction over civil matters involving Indians is concurrent with that of the tribe. While this may be true, the issue in this case is not jurisdictional, but rather, a question of whether Indian custom or state law controls. Public Law 280 plainly provides that when the two are in conflict ... state law is applicable.” *Smith v. Babbitt*, 96 F. Supp. 2d 907, 918 n.14 (D. Minn. 2000).

131. In *Zander v. Zander*, 720 N.W.2d 360 (Minn. App. 2006), the state courts under 28 U.S.C. § 1360 held state law regarding treatment of per capita payments as marital property preempted SMSC’s inconsistent Domestic Relations Code. In *Zander v. Zander*, 720 N.W.2d at 370, the appellate court wrote that “[b]ecause Minnesota law governs this dissolution and because the Mdewakanton Sioux Tribal Domestic Relations Code is inconsistent with Minnesota law, the tribal-code provision relied on by wife does not apply.”

VII. A Chart summarizes the conflicts between SMSC Domestic Relations Code regarding child protection proceedings and federal and state law protecting the non-member parent-child relationship.

132. To aid the Court, the Petitioner has created a chart summarizing certain additional conflicts between SMSC Domestic Relations Code regarding child protection proceedings and federal and state law protecting the non-member parent-child relationship.

133. The difference between tribal court proceedings and state court proceedings for a non-member child and non-member parent are substantial and material as shown in the chart.

134. The following chart lists at least sixteen differences between the SMSC Domestic Relations Code and the conflicting federal or state law equivalent relating to child protection proceedings involving a non-member child and non-member parents:

**SMSC Domestic Relations Code, Chapter VIII, Conflicting
Federal or State Law Equivalent Child Welfare**

SMSC Domestic Relations Code does not incorporate the Federal Due Process Clause protections, Indian Civil Rights Act and Minnesota state law protections of the non-member child's and non-member parents' parent-child relationship.	Federal and state law require that the non-member child's and non-member parents' rights to a parent child relationship are protected by federal and state law preempting tribal law. 28 U.S.C. § 1360 means state law preempts tribal law. The federal Supremacy Clause means that federal law preempts tribal law.
Section 1(c) provides "the following placement preferences if a child must be placed outside the home: (1) to the care of the parent, with or without supervision; (2) to a member of the child's family or other	28 U.S.C. § 1360 states that state law preempts conflicting tribal law on the reservation. Minnesota's Juvenile Safety and Placement Act, Minnesota Statute § 260C, does not provide for placement

relative on the Reservation; (3) to a member of the child’s family or other relative off the reservation; (4) to a responsible and reputable Tribal member of good standing known to the Tribal Court...”	preferences to family members and relatives who are SMSC Tribal members and/or live on the SMSC reservation. 25 U.S.C. § 1915 and Minnesota Statute § 160.181, subd. 2 require the placement of a child in the “least restrictive setting.” Section 1(c) does not include this federal and state legal requirement. So, Section 1(c) is preempted.
Section 3 provides “The Children’s Court shall have original jurisdiction in all proceedings coming within the terms of this Chapter and all inherent jurisdiction not preempted by federal law.”	28 U.S.C. § 1360 states that state law preempts all conflicting tribal law on the reservation. Minnesota Statute § 260C.007, subd. 6 defines “child in need of protection or services” in a different way than SMSC Domestic Relations Code, section 2(d) does for “child in need of assistance.” So, Section 3 is preempted.
Section 3 provides “The Children’s Court shall have original jurisdiction in all proceedings coming within the terms of this Chapter and all inherent jurisdiction not preempted by federal law.”	U.S. Constitution, Article VI, Supremacy Clause provides that federal law is supreme law of land and that the “judges in every state shall be bound thereby.” State judges and tribal judges are bound by federal law. 28 U.S.C. § 1360 states that state law preempts all conflicting tribal law on the reservation. So, the SMSC Domestic Relations Code is completely preempted by state law according to 28 U.S.C. § 1360. Also, parents have parental rights under the federal Due Process Clause which are not incorporated into the SMSC Domestic Relations Code. To the extent that the Indian Child Welfare Act grants tribal court jurisdiction where federal Due Process Clause parental rights do not apply, the Indian Child Welfare Act violates non-member parent’s and non-member child’s federal Due Process Clause parental rights.
Section 4 provides “Proceedings in child welfare cases shall be regarded as civil proceedings, with the Children’s Court exercising equitable powers. The fact that	28 U.S.C. § 1360 states that state law preempts all conflicting tribal law on the reservation. For the tribal court to exercise jurisdiction over non-members, it would

the proceedings are of a civil nature may not be construed to deprive the child of her or his rights to counsel, to confront accusers or cross-examine witnesses against her or him. ”	have to apply state law including Minnesota’s Juvenile Safety and Placement Act, Minnesota Statute § 260C – which it does not. Instead of applying state law, the tribal court applies “equitable powers” in the first sentence of Section 4. So, the tribal court does not have jurisdiction over non-members.
Section 4 provides “Proceedings in child welfare cases shall be regarded as civil proceedings, with the Children’s Court exercising equitable powers. The fact that the proceedings are of a civil nature may not be construed to deprive the child of her or his rights to counsel, to confront accusers or cross-examine witnesses against her or him. ”	28 U.S.C. § 1360 states that state law preempts all conflicting tribal law on the reservation. For the tribal court to exercise jurisdiction over non-members, it would have to apply state law including for non-members the right to counsel, to confront accusers and to cross-examine witnesses. Instead of applying state law, the tribal court provides those state rights only for the non-member child, but not for non-member parents. So, the tribal court does not have jurisdiction over non-member parents.
Section 5 creates different standards for initiating a petition based on whether the “Tribal-member child” is on on or off the SMSC reservation. Section 5 does not provide for a petition to be filed for non-member children such as C.P.	The tribal court has asserted jurisdiction over C.P. when there is no provision in section 5 for initiating a petition against a non-member child. SMSC has failed to follow its own Domestic Relations Code which limits petitions to SMSC member children. SMSC has no jurisdiction per its own Domestic Relations Code over petitions regarding non-member children.
Section 5 creates different standards for initiating a petition based on whether the “Tribal-member child” is on on or off the SMSC reservation. Section 5 does not address non-member children such as C.P. Section 5 states, “b. Residing On the Reservation. For a tribal-member child residing on the reservation, a petition may be filed by the Community, a family member, or another Tribal member residing on the reservation. c. Residing off the Reservation. For Tribal-member child residing off the reservation, a petition may	28 U.S.C. § 1360 states that state law preempts all conflicting tribal law on the reservation. For the tribal court to exercise jurisdiction over non-members, it would have to apply state law. Minn. Minnesota Statute § 260C.141 allows any “reputable person” to file a petition. Instead of allowing any reputable person to file a petition in tribal court, the tribal court for tribal member children limits petitions to the Community, family members and Tribal Members residing on the reservation. For SMSC-member children

be filed by the Community, a family member, another Tribal member, or a mandatory reporter under State law.	residing off the reservation only, Tribal Members residing off the reservation and State law mandatory reporters may file a petition too – but not any “reputable person.”
Section 6 provides as “grounds for a petition” as follows, “ A petition may be filed when a child is known or believed to be neglected, dependent, in violation of the law, or subject to physical, emotional or sexual abuse. The petition shall state the facts concerning the condition of the child, including the name, age and residence of the child and identification of her or his parents, guardian, custodian, caregiver or others who have responsibility for the child.”	28 U.S.C. § 1360 states that state law preempts all conflicting tribal law on the reservation. For the tribal court to exercise jurisdiction over non-members, it would have to apply state law. Minn. Minnesota Statute § 260C.141 requires that the petition contain a statement of facts that there is a need for protection and services. This state law requirements is not incorporated in the SMSC Domestic Relations Code.
Section 6 provides as “grounds for a petition” as follows, “A petition may be filed when a child is known or believed to be neglected, dependent, in violation of the law, or subject to physical, emotional or sexual abuse. The petition shall state the facts concerning the condition of the child, including the name, age and residence of the child and identification of her or his parents, guardian, custodian, caregiver or others who have responsibility for the child. ”	28 U.S.C. § 1360 states that state law preempts all conflicting tribal law on the reservation. For the tribal court to exercise jurisdiction over non-members, it would have to apply state law. Minn. Minnesota Statute § 260C.141 requires that the petitioner has reported the circumstances underlying the petition to the responsible Minnesota county social services agency and that protection or services were not provided to the child. This state law requirements is not incorporated in the SMSC Domestic Relations Code.
Section 7 provides “Any person served with notice who fails to appear without reasonable cause shall be subject to contempt of Children’s Court.”	Under <i>Montana</i> , the tribal court does not jurisdiction over non-members unless it falls within an exception. Section 7 completely fails to distinguish between persons who are SMSC members where tribal court jurisdiction exists and persons who are non-SMSC members where tribal court jurisdiction does not exist.
Section 9 (a) provides that the tribal court “authority shall not include the termination of parental rights.”	28 U.S.C. § 1360 states that state law preempts all conflicting tribal law on the reservation. For the tribal court to exercise jurisdiction over non-members, it would have to apply state law. Minn. Minnesota

	Statute § 260C.301, et seq., provides for termination of parental rights. Instead of Section 9(a) authorizing termination of parental rights, Section 9(a) withholds from tribal court authority to terminate parental rights. Thus, the tribal court can not terminate the parental rights of an SMSC member – as a state court could do.
Section 9 (e) provides the following placement preferences: “(1) to the care of the parent, with or without supervision; (2) to a member of the child’s family or other relative on the Reservation; (3) to a member of the child’s family or other relative off the reservation; (4) to a responsible and reputable Tribal member of good standing known to the Tribal Court...”	28 U.S.C. § 1360 states that state law preempts conflicting tribal law on the reservation. Minnesota’s Juvenile Safety and Placement Act, Minnesota Statute § 260C, does not provide for placement preferences to family members and relatives who are SMSC Tribal members and/or live on the SMSC reservation. 25 U.S.C. § 1915 and Minnesota Statute § 160.181, subd. 2 require the placement of a child in the “least restrictive setting.” Section 9(e) does not include this federal and state legal requirement. So, Section 9(e) is preempted.
Section 9(f) provides for “Judgment for Support” that “[t]he Children’s Court may, by order, direct the person or persons required by law to support the child to pay for the support of the child in such amount as the Children’s Court may determine to be fair and reasonable, including the cost of the temporary placement of the child pending hearing.”	28 U.S.C. § 1360 states that state law preempts conflicting tribal law on the reservation. Minnesota’s Juvenile Safety and Placement Act, Minnesota Statute § 260C.331 addresses, in a detailed way, when parents are to pay costs of foster care. Minnesota Statute § 260C.331 is very detailed requiring that non-parental income attributable to the child be fully considered before court orders requiring parental contributions for foster care are considered. No equivalent provision exists in section 9(f) or anywhere else in the SMSC Domestic Relations Code.
Section 14 (d)(5) on case plans provides a Tribal Child Welfare Officer is only required to make “specific recommendations regarding the permanent placement of a child in need of assistance” within <i>24 months</i> of the Tribal Court’s	Under Minnesota Rules of Juvenile Protection Procedure Rule 29.01, the Rule states that a “child is taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than seventy-two (72) hours

assuming jurisdiction over the child and placing the child out-of-home continuously. Under Chapter VIII, section 14, subdivision (d)(5), within 60 days after receiving such a recommendation, the Tribal Court must then make a permanent decision in or out of home.	unless an emergency protective care hearing has commenced pursuant to Rule 30 and the court has ordered continued protective care.” If a Minnesota court decides that a continuance is necessary for relief from this 72-hour period, it can order a continuance for up to 8 days. As Minnesota Rules of Juvenile Protection Procedure Rule 30.01, subd. 2 states: “The court may, upon its own motion or upon the written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight (8) days....” Also under Minnesota Rules of Juvenile Protection Procedure Rule 30.02, “A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the admit/deny hearing, whichever is earlier, and testimony shall be concluded within thirty (30) days from the date of commencement of the trial and whenever possible should be over consecutive days.” Under Minnesota Rules of Juvenile Protection Procedure Rule 42.01 where reasonable efforts at reunification are required, “The court shall commence permanent placement determination proceedings to determine the permanent status of the child not later than twelve (12) months after the child is placed in foster care or in the home of a noncustodial or nonresident parent.” Likewise, under Minnesota Rules of Juvenile Protection Procedure Rule 42.01 where reasonable reunification efforts are not required, “the court shall order that an admit/deny hearing . . . be conducted within thirty (30) days and a trial be conducted within ninety (90) days of its prima facie finding. . . . the county attorney requesting the prima facie determination shall file a permanency or
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	termination of parental rights petition that permits the completion of service by the court at least ten (10) days prior to the admit/deny hearing.” After the permanent placement hearing within 12 months of the placement of a child in foster care or a home, a Minnesota court must order a permanency disposition, unless the court decides to assign temporary status to the agency under Minnesota Rules of Juvenile Protection Procedure Rule 42.13 and 42.05, subd. 2. If the court assigns temporary status to the agency, the court must review within 12 months of such placement and specify how much further time the child may be in foster care under Minnesota Rules of Juvenile Protection Procedure. Rule 42.13, subd. 3.
Section 14(d)(7) provides “Any permanent placement order pursuant to this Section shall comply with the placement preference stated in Section 1(e) of this Chapter.”	28 U.S.C. § 1360 states that state law preempts conflicting tribal law on the reservation. Minnesota’s Juvenile Safety and Placement Act, Minnesota Statute § 260C, does not provide for permanent placement preferences to family members and relatives who are SMSC Tribal members and/or live on the SMSC reservation. 25 U.S.C. § 1915 and Minnesota Statute § 160.181, subd. 2 require the placement of a child in the “least restrictive setting.” Section 14(d)(7) does not include this federal and state legal requirement. So, Section 14(d)(7) is preempted as it relates to a non-member child and non-member parents.

VIII. The SMSC Tribal Court has not published any court decision since 2014 and has not provided decisions to the public in law libraries, a practice foreign to the Minnesota judiciary.

135. Notably, the SMSC Tribal Court does not publish its decisions outside of SMSC boundaries for the availability of non-members or their counsel.

136. For example, the Hennepin County Law Library retains SMSC trial court and appellate court decisions for public use. However, it has had no update from SMSC regarding any SMSC trial court or appellate court decision since September 2014.

137. For another example, the Ramsey County Law Library retains SMSC trial court and appellate court decisions for public use. However, it has had no update from SMSC regarding any SMSC trial court or appellate court decision since a volume 6, “report of opinions” provided to the Library for the period 2010 to 2014. The Ramsey County Law Library’s efforts to obtain further decisions since then have been futile as a result of SMSC’s failure to communicate well.

138. The SMSC Tribal Court of Appeals does not publish its decisions outside of its boundaries for the availability of non-members or their counsel.

139. Because of the SMSC’s reluctance to publish and thus, make the decisions of the trial or appellate court publically available, pro se parties or counsel find it difficult to obtain prior SMSC tribal court decisions.

140. Decisions of the Minnesota Court of Appeals are published. The decisions can be found in Minnesota law libraries.

141. Decisions of the Minnesota Court of Appeals are publically available for review.

142. Decisions of the Minnesota Supreme Court are published. The decisions can be found in Minnesota law libraries.

143. Decisions of the Minnesota Supreme Court are publically available for review.

144. The failure of publication of SMSC Tribal Court decisions since 2014 in county law libraries and otherwise is a practice foreign to the Minnesota judiciary.

145. SMSC's lack of publication of its decisions puts non-members such as Petitioner and her counsel at a material disadvantage.

146. SMSC's lack of publication of its decisions violates the Petitioner's ICRA equal protection and due process rights, particularly when SMSC has banned Petitioner from SMSC's property and thereby prevented her from accessing SMSC's tribal court opinions.

IX. The Tribal Court rejects Ms. Watso's arguments that it has no jurisdiction over her and her child C.P. as non-members of SMSC to apply tribal law as supreme preempting federal and state law protections of the parent-child relationship.

147. Ms. Watso moved the Tribal Court to dismiss the proceedings related to her and her children in December of 2015 for lack of subject matter jurisdiction.

148. Under Rule 25 of the Tribal Court's Rules of Civil Procedure, the Tribal Court assembled a three-judge panel to hear Petitioner's motion to dismiss for lack of subject matter jurisdiction and denied that motion.

149. The three-judge panel of the Tribal Court denied the motion to dismiss.

150. No appeal to tribal appellate court, nor state court, is available from the Tribal Court's ruling denying Ms. Watso's motion to dismiss for lack of subject matter jurisdiction under Rule 31 of the Tribal Court Rules of Civil Procedure.

151. The Petitioner has exhausted her tribal remedies. Exhibit F, *Mem. Decision and Order, In re C.M.H. and C.D.P.* (SMSC Tribal -Children's Court, Mar. 3, 2016).

152. The SMSC Court has no subject matter jurisdiction over Ms. Watso, Mr. Perkins and C.P., because they are non-members and the SMSC Domestic Relations Code is inconsistent with federal law and state law, rendering it, under *Montana* limitations on tribal jurisdiction over non-members and under 28 U.S.C. § 1360, to have no force or effect over non-members such as Ms. Watso, Mr. Perkins and C.P.

153. Ms. Watso has not seen C.P. or C.H. since October of 2015.

154. The children still remain under SMSC Tribal Court authority and custody.

X. The Tribal Court fails under 25 U.S.C. § 1304(e) to provide notice to Ms. Watso and C.P. of their rights and privileges under the Indian Civil Rights Act, 25 U.S.C. § 1302.

155. 25 U.S.C. § 1304(e)(3) requires:

Notice. An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and under section 203 (25 U.S.C. § 1302).

156. The Tribal Court through the various court orders detained C.P.

157. However, the Tribal Court failed to comply with 25 U.S.C. § 1304(e)(3) because it did not provide notice to Ms. Watso nor C.P. of their rights and privileges under the Indian Civil Rights Act, 25 U.S.C. § 1302.

COUNT I
WRIT OF HABEAS CORPUS

The Petitioner seeks a writ of habeas corpus determining that the Tribal Court does not have jurisdiction over non-member C.P.

157. All paragraphs previously stated are adopted, incorporated, and are used as referenced as if fully restated and, hence, are relied upon to support the claim asserted here.

158. C.P. was born on July 1, 2011. Because neither of C.P.'s parents are SMSC members, C.P. is not eligible to become an SMSC member. The subject C.H. is a Native-American child, but a member of Red Lake Nation, not an SMSC member. C.P. is only subject to the Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901-1963) if C.P.'s custody is not with a parent which it should be because neither Ms. Watso nor Mr. Perkins have been adjudicated to be guilty of child neglect, abuse or exploitation.

159. SMSC filed the petition for child protection services for C.P. and C.H.

160. C.P. is not a SMSC member child. C.P.'s mother is a non-Indian. Ms. Watso is also not a SMSC member. C.P.'s father, Mr. Perkins, is a member of the Red Lake Nation.

161. Under the SMSC Domestic Relations Code, Section 5(a), "proceedings under this Chapter shall be initiated by filing a petition."

162. Under the SMSC Domestic Relations Code, Section 5(b), “For a Tribal-member child residing on the Reservation, a petition may be filed by the Community, a family member, or another Tribal member residing on the Reservation.”

163. C.P. did not reside within SMSC boundaries. Ms. Watso did not reside within SMSC boundaries.

164. Under SMSC Domestic Relations Code, Section 5(c), “For a Tribal-member child residing off the Reservation, a petition may be filed by the Community, a family member, or another Tribal member, or a mandatory reporter under State law.”

165. C.P. is not a child of a “Tribal member,” but resided and resides outside the SMSC boundaries. Ms. Watso is not a “Tribal member,” but resided and resides outside the SMSC boundaries.

166. The SMSC petition for child protection services as to non-members C.P. and C.H. went beyond the authority of the SMSC Domestic Relations Code which only permits such petitions for “Tribal-member children.”

167. In response to the SMSC’s petition, the Respondent Tribal Court and tribal judges detained C.P. and C.H. through a series of tribal court orders which resulted in custody being transferred to SMSC and resulted in a temporary foster care placement against the objections of Petitioner.

168. The Tribal Court’s application of the SMSC Domestic Relations Code to non-member Petitioner and C.P. does not incorporate federal law, such as the federal constitution’s Due Process Clause parental rights, as required by the federal Supremacy Clause and does not incorporate state law as required by 28 U.S.C. § 1360.

169. The Tribal Court wrongfully and unlawfully withhold C.P. from the custody of Ms. Watso because the Tribal Court does not have jurisdiction over a non-member child when both parents are not members, when both parents object to tribal court jurisdiction and neither parent has been adjudicated for child neglect, abuse or exploitation.

170. The Tribal Court wrongfully and unlawfully withhold C.P. from the custody of Ms. Watso because the tribal court does not have jurisdiction over a non-member child when the tribe and tribal court do not incorporate federal and state law to protect non-members' parent-child rights.

171. In order to exhaust tribal remedies, the Petitioner Ms. Watso, through a tribal court motion to dismiss for lack of jurisdiction, requested the return of the custody of her children C.P. and C.H. from the Tribal Court.

172. In response, Respondents' tribal court decision failed and refused to return the children to the custody of Ms. Watso. Exhibit F, *Mem. Decision and Order, In re C.M.H. and C.D.P.* (SMSC Tribal -Children's Court, Mar. 3, 2016)).

173. No further appeals are available from the tribal court order.

174. Since C.P.'s and C.H.'s birth, C.P. and C.H. have been domiciled and resided with Ms. Watso or their maternal grandmother Kaleen Dietrich.

175. The Petitioner Ms. Watso has not participated as a party in any state court litigation concerning the custody of C.P.

176. The Petitioner Ms. Watso knows of no other persons or any other parties to any proceedings who claims to have custody or visitation rights with respect to the children affected by this proceeding.

177. A custody or visitation proceeding concerning C.P. or C.H. or both is not pending in Minnesota or any other state court.

178. Holding aside the tribal court orders, the children C.P. or C.H. or both are not the subject(s) of any order, mandate, judgment or decree of any court of competent jurisdiction.

179. The custody of C.P. should be returned to his mother Ms. Watso for the following reasons: The Tribal Court wrongfully and unlawfully withholds C.P. from the custody of his mother, the Petitioner Ms. Watso

(1) because the tribal court does not have jurisdiction over a petition brought by its tribal child welfare agency over the non-member child C.P. when both parents Ms. Watso and Mr. Perkins are not members who object to tribal court jurisdiction and have not been adjudicated for child neglect, abuse or exploitation and

(2) because the SMSC Tribal Court do not apply federal and state law to protect federal and state parental rights of non-member parents Ms. Watso and Mr. Perkins and their minor child C.P.

180. The Tribal Court does not have jurisdiction over C.P. and the Petitioner because they are non-members. C.P. is not a member and will never be a member of SMSC. The Petitioner Ms. Watso is the mother of C.P. and C.H., is not a member of

SMSC member, objects to SMSC jurisdiction and has never been found to be guilty of child neglect, abuse or exploitation. Mr. Perkins is the father of C.P., is not a member of SMSC, objects to SMSC jurisdiction and has never been found to be guilty of child neglect, abuse or exploitation.

181. The Respondents' actions have violated Ms. Watso's and C.P.'s federal common law rights, recognized in *Montana*, against tribal court jurisdiction over non-members.

182. The Respondents' actions have violated Ms. Watso's and C.P.'s ICRA rights to not be deprived of "the equal protection of its laws" and to not be deprived of "liberty or property without due process of law."

183. The Respondents violated ICRA's notice requirements, 25 U.S.C. § 1304(e)(3), because it did not provide notice to Ms. Watso nor C.P. of their rights and privileges under the Indian Civil Rights Act, 25 U.S.C. § 1302 upon the Tribal Court's order detaining C.P.

184. The Respondents' actions have violated Ms. Watso's and C.P.'s federal Due Process Clause parent-child rights and state law rights as guaranteed under 28 U.S.C. § 1360 and the federal constitution's Supremacy Clause.

185. The Petitioner Ms. Watso requests this Court issue a writ of habeas corpus, including an immediate stay under 25 U.S.C. § 1304(3), against the Respondents' continuing tribal court actions and returning custody of C.P. to the Petitioner Kimberly Watso.

186. The U.S. District Court should issue the writ of habeas corpus, with the immediate stay under 25 U.S.C. § 1304(3) against Respondents' continuing tribal court actions in order to immediately restore custody of C.P. to Petitioner.

**COUNT II
CLAIMS FOR OTHER RELIEF**

The Petitioners seeks declaratory relief and related injunctive relief determining that the Tribal Court does not have subject matter jurisdiction over Ms. Watso and C.P. to apply tribal law as *supreme* preempting federal and state law protecting the parent-child relationship.

187. All paragraphs previously stated are adopted, incorporated, and are used as referenced as if fully restated and, hence, are relied upon to support the claim asserted here.

188. The Petitioner Ms. Watso seeks an injunction and declaratory judgment, under 28 U.S.C. § 2201 (the Federal Declaratory Judgment Act), that the SMSC Tribal Court and the Respondent Judges lack subject matter jurisdiction to adjudicate the SMSC Domestic Code, preempting federal and state law, over non-members Ms. Watso and C.P.

189. The Tribal Court has in the underlying proceeding exercised its subject matter jurisdiction over Ms. Watso and C.P. who are not members of SMSC.

190. As previously stated, the Tribal Court is not a court of general jurisdiction over non-members. The SMSC tribal court's adjudicative jurisdiction over non-members is no broader than SMSC's legislative jurisdiction over non-members. SMSC has no legislative nor adjudicative jurisdiction regarding the relationship between a non-member child and non-member parents.

191. The SMSC tribal court in its decisions has applied SMSC law as *supreme* to preempt federal law and state law protecting the parent-child relationship of Ms. Watso with her minor child C.P.

192. As a parent, Ms. Watso has federal and state parental rights which apply to her relationship with her non-member child C.P.

193. ICWA, 25 U.S.C. §§ 1901-1963, does not repeal, nor preempt, those federal and state parental rights guaranteed under the federal Constitution and 28 U.S.C. § 1360 regarding non-member parents and their non-member children in tribal court.

194. The U.S. Supreme Court has recognized that the fundamental rights protected by the federal Due Process Clause include the liberty interest of parents in the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000).

195. The Tribal Court orders have restricted Ms. Watso's federally-guaranteed rights to care, custody and control of her child C.P. on the basis of SMSC Domestic Relations Code being supreme and preempting federal and state parental rights of Ms. Watso.

196. The Tribal Court orders have placed certain requirements upon Ms. Watso as "conditions" including but not limited to weekly urinary analysis testing, complete outpatient programs, psychological assessments, parenting assessments, and domestic abuse assessments.

197. Under the SMSC Domestic Code, Ms. Watso and C.P. have been unable to timely defend or appeal tribal court determinations related to the underlying petition for child protection based on federal and state law because the SMSC Domestic Relations

Code, according to the SMSC tribal court, does not incorporate, but preempts, federal and state law.

198. Under Tribal Court jurisdiction, Ms. Watso and C.P. have been unable to seek relief regarding protections afforded them under federal and state law because the SMSC Domestic Relations Code, according to the Tribal Court, does not incorporate, but preempts, federal and state law.

199. Under Tribal Court jurisdiction, Ms. Watso and C.P. have been unable to appeal to Minnesota's courts because the SMSC Domestic Relations Code does not provide for such appeals.

200. The SMSC Domestic Code regarding child protection is inconsistent and is in conflict with federal and state law.

201. SMSC based on "inherent sovereign immunity" incorrectly assert that tribal law -- the SMSC Domestic Relations Code -- is *supreme* preempting federal and state parental rights.

202. Federal and Minnesota law regarding child protection, as detailed above, is more protective of non-members' parent-child rights than the SMSC Domestic Code.

203. Disregarding both federal and state parental rights, the SMSC errs that SMSC tribal law preempts federal and state parental rights of a non-member parent and non-member child in a tribal child protection proceeding. As the Tribal Court stated, "[W]e conclude the mother's status as a non-Indian does not deprive the community or this Court of jurisdiction in these proceedings."

204. 28 U.S.C. § 1360 (Public Law 280), provides:

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State 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 within the State:*

Minnesota All Indian country within the State, except the Red Lake Reservation.

....

(c) *Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.*

(Emphasis added).

205. Thus, under 28 U.S.C. § 1360, SMSC cannot assert that tribal law is *supreme* and preempts federal and state law; to the contrary, the Supremacy Clause and 28 U.S.C. § 1360 requires that federal law and state law, respectively, are supreme preempting tribal law.

206. In an earlier case, the Tribal Court was even more clear that, in its mind, tribal law preempts state law notwithstanding the clear text of 28 U.S.C. §1360:

[T]he Shakopee Community has the power under its Constitution to adopt a domestic relations code; the Community has exercised that power by enacting the Code; and the Community properly has given this Court the authority to interpret and apply the Code.

As will be discussed below, the Code which the Respondent asks this Court to nullify may dictate that this matter must be dismissed. But if that proves to be true, the dismissal will result because the Code requires it, not because *any artificial reading of Public Law 280 vitiates the Community's power to regulate domestic relations in a manner different than is done by the State of Minnesota.*

Thomas v. Lightfoot, SMSC Tribal Court Case No. 778-13, p. 12 (Dec. 23, 2013)

(emphasis added).

207. The Tribal Court by interpreting 28 U.S.C. § 1360 not to protect federal and state parental rights of non-member parent and non-member child impermissibly acted as a court of general jurisdiction negating federal statutory and state legal protections for non-member Ms. Watso and non-member C.P.

208. The history of SMSC improperly acting as a court of general jurisdiction for non-members contradicts the U.S. Supreme Court in *Nevada v. Hicks*, 533 U.S. 353, 367(2001), which wrote “tribal courts ... cannot be courts of general jurisdiction...for a tribe’s inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction.”

209. Indeed, SMSC’s continuing claims of “inherent tribal sovereignty” over non-members, stated in *Thomas v. Lightfoot* and repeated here, contradicts two previous cases where sections of its Domestic Relations Code were struck down by federal and state courts.

210. In *Smith v. Babbitt*, 96 F. Supp. 2d 907 (D. Minn. 2000), the federal court held pursuant to 28 U.S.C. § 1360 that state laws defining marriage and providing for

intestate distribution to the children of married parents were applicable to Indian children and prevailed over SMSC's "inconsistent" tribal customs.

211. In *Zander v. Zander*, 720 N.W.2d 360 (Minn. App. 2006), the state courts under 28 U.S.C. § 1360 held state law regarding treatment of per capita payments as marital property preempted SMSC's inconsistent Domestic Relations Code).³

212. So, it is clear precedent from two cases – one from a federal court and one from a state court -- that 28 U.S.C. §1360 prohibits SMSC from enforcing tribal ordinances in subject areas where Minnesota state laws, similar to federal laws, preempt tribal ordinances.

213. Of course, in the area of child protection proceedings, Minnesota has child protection statutes and rules; and, because it does, SMSC's Domestic Relations Code regarding child protection proceeding is preempted for the purposes of non-member parents and non-member children.

214. Additionally, SMSC's "inherent tribal sovereignty" argument contradicts the U.S. Supreme Court's holding in *Montana* that tribes presumptively have no inherent sovereign authority that applies to non-members.

215. Finally, since the Indian Child Welfare Act does not purport to repeal or amend 28 U.S.C. § 1360, any SMSC tribal child protection proceeding authorized by ICWA over non-member children and their non-member parents must apply federal and

³ See also *In Re Marriage of Jacobsen*, 121 Cal. App. 4th 1187, 18 Cal Rptr. 3d 162 (2nd Dist. 2004) (Under 28 U.S.C. § 1360, family law court to apply state law spousal support guidelines over tribal resolution that incorporated the tribal custom that per capita payments did not go to ex-spouses.)

state law regarding parental rights – not tribal law -- and allow for appeals to state court. Neither criteria has been met here. The SMSC tribal court proceeding lacks jurisdiction because the proceeding violates the tribal jurisdictional limitations of *Montana*, 28 U.S.C. § 1360, the Indian Child Welfare Act and the general prohibition that tribal courts do not act as courts of general jurisdiction.

216. Alternatively, if SMSC’s interpretation of the Indian Child Welfare Act creating an exception from *Montana* and 28 U.S.C. § 1360 for cases involving non-member children is accepted, so that in ICWA-authorized proceedings in tribal court, tribal law is *supreme* and preempts federal and state parental rights, then the ICWA is unconstitutional, as applied in this case, because it violates non-Indian’s parental rights under the Due Process Clause of the U.S. Constitution.

217. In other words, the ICWA as applied to transfer exclusive jurisdiction to SMSC tribal court rendering tribal law *supreme* to preempt non-member parents’ and children’s federal and state parental rights is unconstitutional as a deprivation of federal Due Process Clause parent-child rights.

218. Moreover, in *Attorney’s Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 935 (8th Cir. 2010), the U.S. Court of Appeals for the Eighth Circuit quoted the U.S. Supreme Court in *United States v. Wheeler*, 435 U.S. 313, 323 (1978) which wrote that “implicit divestiture of sovereignty ... are those involving the relations between an Indian tribe and nonmembers of the tribe.”

219. In the *Sac & Fox*, the Eighth Circuit wrote “[b]ecause ‘efforts by a tribe to regulate nonmembers ... are presumptively invalid,’ the Tribe bears the burden of

showing that its assertion of jurisdiction falls within one of the *Montana* exceptions” quoting *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 330 (2008).

220. The two exceptions as quoted from *Montana v. United States*, 450 U.S. 544, 566 (1981) are: (1) “[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements” and (2) a tribe may exercise “civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.”

221. The Tribal Court did not adjudicate its jurisdiction fell within one of the *Montana* exceptions to assert subject matter jurisdiction over the non-members Ms. Watso and C.P.

222. The Tribal Court has no subject matter jurisdiction over non-members Ms. Watso and C.P. under either its retained or inherent sovereignty.

223. Ms. Watso and C.P. have not entered into any consensual commercial activity within SMSC, nor has Mr. Perkins, to allow the Tribal Court to retain jurisdiction over them in relation to the custody status of C.P.

224. Likewise, the Tribal Court cannot exercise authority over the conduct of Ms. Watso and C.P. because the conduct does not threaten or have some direct effect on the political integrity, the economic security, or the health or welfare of SMSC.

225. The SMSC Domestic Relations Code is inconsistent with federal and state law. The Tribal Court cannot use “tribal jurisdiction” under the ICWA as a legal basis for SMSC’s Domestic Relations Code preempting federal and state law when 28 U.S.C. § 1360 clearly states otherwise and the case involves a non-member child and non-member parents.

226. Likewise, because the SMSC Domestic Relations Code is inconsistent with federal and Minnesota law, the Tribal Court cannot assert any of the *Montana* exceptions to attain jurisdiction over non-members for purposes of child custody decisions.

227. The SMSC Court has no subject matter jurisdiction over the subject matter of the case in the SMSC Court or over Ms. Watso or C.P. because no statute or treaty confers such jurisdiction to apply tribal law preempting federal and state parental rights.

228. No exception to the *Montana* rule applies to Petitioner, C.P. or their activities.

229. The interference with the Petitioner’s parental rights is actual and continuing which is concrete and particularized injury because it affects them, their finances and their minor child C.P. directly.

230. The interference with the rights of C.P. is actual and continuing which is concrete and particularized injury because it affects him directly.

231. The Petitioner Ms. Watso does not seek monetary damages, but prospective injunctive relief to relinquish the Tribal Court’s present assertion of its jurisdiction over non-members Ms. Watso and C.P.

232. The Respondents' actions have violated Ms. Watso's and C.P.'s federal common law rights, recognized in *Montana*, against tribal court jurisdiction over non-members.

233. The Respondents' actions have violated Ms. Watso's and C.P.'s ICRA rights to not be deprived of "the equal protection of its laws" and to not be deprived of "liberty or property without due process of law."

234. The Respondents' actions have violated Ms. Watso's and C.P.'s federal Due Process Clause parent-child rights and state law rights as guaranteed under 28 U.S.C. § 1360 and the federal constitution's Supremacy Clause.

235. The Petitioner Ms. Watso seeks a declaration pursuant to 28 U.S.C. § 2201 and related injunction that Respondent Tribal Court and tribal judges, in light of *Montana*, 28 U.S.C. 1360 and the Indian Child Welfare Act (ICWA), are powerless to assert jurisdiction to apply tribal ordinances to preempt non-member parents' federal and state parental rights when the child and parents are non-members, both non-member parents do not consent to tribal court jurisdiction and the non-member parents have not been adjudicated of child neglect, abuse or exploitation.

236. Alternatively, the Petitioner Ms. Watso further seeks a declaration pursuant to 28 U.S.C. § 2201 and related injunction that ICWA is unconstitutional under the federal Due Process Clause because ICWA, as applied here, renders the tribal court application of tribal ordinances *supreme* preempting non-member parents' and non-member child's federal Due Process Clause parental rights in a tribal court child protection proceeding regarding a non-member child where both parents are non-

members and do not consent to tribal court jurisdiction and where the non-member parents have not been adjudicated of child neglect, abuse or exploitation.

237. The Petitioner Ms. Watso further seeks a declaration pursuant to 28 U.S.C. § 2201 and related injunction that the tribal case should be transferred to Scott County District Court, Minnesota if necessary.

238. Absent injunctive relief, the Petitioner Ms. Watso faces irreparable harm because the Tribal Court has continually and unfairly prejudiced Ms. Watso and C.P., not acted in the best interests of the minor child C.P., and is enforcing the SMSC Domestic Relations Code which is inconsistent with federal and state rights protecting the parent-child relationship between C.P. and C.P.'s parents Ms. Watso and Mr. Perkins.

239. Granting this injunction will not injure any party; rather, the Scott County District Court can adjudicate the underlying proceedings and will have the jurisdiction to determine any issue relating to the rights of the parents or the minor child C.P. or both under both federal and state law. The state court also has jurisdiction under 28 U.S.C. § 1360 – as seen in *Zander v. Zander* -- to enforce the SMSC Domestic Relations Code – but only where it is not inconsistent with federal and state law.

240. The Petitioner Ms. Watso will succeed on the merits of this case because there is no tribal court jurisdiction over Ms. Watso or C.P. who are not members of the SMSC.

241. The public interest favors the Petitioner Ms. Watso since she and C.P. are not members of the SMSC -- the SMSC imposing jurisdiction over them as non-members violates federal and state law.

242. Therefore, the Court should grant declaratory judgment and a related injunction prohibiting the Tribal Court from exercising jurisdiction over the Petitioner Ms. Watso and her minor child C.P. and directing the removal of the underlying child protection tribal court proceeding regarding C.P. to be transferred to Scott County District Court.

RELIEF REQUESTED

WHEREFORE, the Petitioner Kimberly Watso seeks judgment, on behalf of herself and C.P., be entered against the Respondents Tribal Court of the Shakopee Mdewakanton Sioux Community, Judge John E. Jacobson, in his official capacity, Judge Henry M. Buffalo, Jr., in his official capacity, Judge Terry Mason Moore, in her official capacity, and Donald Perkins for an order:

1. Issuing a writ of habeas corpus, including an immediate stay under 25 U.S.C. § 1304(3), against Respondents' continuing tribal court actions and returning custody of C.P. to the Petitioner Kimberly Watso;
2. Declaring that Respondent the Shakopee Mdewakanton Sioux Community Tribal Court (Children's Court) does not have subject matter jurisdiction to adjudicate any action under the SMSC Domestic Relations Code involving non-members Kimberly Watso or C.P.;
3. Declaring that the Respondents Judge John E. Jacobson, Judge Henry M. Buffalo, Jr., and Judge Terry Mason Moore of the SMSC Tribal Court (Children's Court), or any other judge of the SMSC Tribal Court (or Children's Court), because the court has no subject matter jurisdiction, may not issue any

- further court order over the Petitioner Kimberly Watso or C.P. except to transfer the matter immediately to Scott County District Court;
4. Declaring that the SMSC Domestic Relations Code is inconsistent with federal and state law regarding child protection matters, and as such, federal and Minnesota state law govern the underlying child protection matter referred to in the Tribal Court (Children's Court) case number CC-083-15;
 5. Declaring that the Tribal Court (Children's Court) is not a court of general jurisdiction and cannot adjudicate the federal and state rights of Petitioner Kimberly Watso and C.P. because they are not members of SMSC, and the exceptions under *Montana v. United States*, 450 U.S. 544, 566 (1981) do not apply;
 6. Declaring that the Tribal Court (Children's Court) is not a court of general jurisdiction and cannot adjudicate the federal and state rights afforded to minor child C.P. as a non-member of SMSC and that the exceptions under *Montana v. United States*, 450 U.S. 544, 566 (1981) do not apply;
 7. Alternatively, declaring, if the Tribal Court's interpretation of the Indian Child Welfare Act creating an exception from 28 U.S.C. § 1360 is accepted, so that in ICWA-authorized proceedings in tribal court, tribal law is supreme and preempts federal and state parental rights, then the ICWA is unconstitutional, as applied in this case, because the ICWA violates non-Indian's and non-members' parental rights under the Due Process Clause of the U.S. Constitution;

8. Ordering the Tribal Court (Children's Court), by preliminary injunction and then permanent injunction, to immediately transfer the jurisdiction of its case number CC-083-15 to Scott County District Court within seven days of the issuance of this order;
9. Granting attorney fees and costs under any applicable law to the Petitioner's attorneys; and
10. Granting all other relief this Court deems just and equitable to the Petitioner.

Dated: April 14, 2016.

MOHRMAN, KAARDAL & ERICKSON, P.A.

/s/Erick G. Kaardal

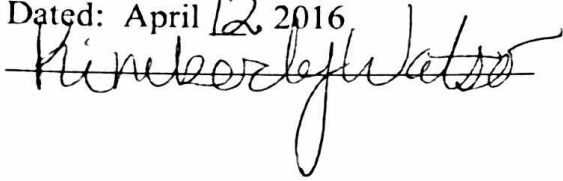
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ATTORNEYS FOR PETITIONER

VERIFICATION OF PETITION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 12, 2016

A handwritten signature in black ink, appearing to read "Kimberly Watso", written over a horizontal line.

Kimberly Watso, Petitioner