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**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

ANGELITA M. CHEGUP, et. al,

Plaintiffs

v.

UTE INDIAN TRIBE OF THE UINTAH
AND OURAY RESERVATION, et al.,

Defendants.

**MEMORANDUM IN OPPOSITION
TO MOTION FOR
IMMEDIATE RELEASE**

Civil Case No. 2:19-cv-00286-DAK-PMW

Judge Dale A. Kimball
Magistrate Judge Paul M. Warner

Defendants Ute Indian Tribe of the Uintah and Ouray Reservation; Tribal Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation; Luke Duncan; Tony Small; Shaun Chapoose; Edred Secakuku; Ronald Wopsock; and Sal Wopsock (collectively "Defendants") submit this *Memorandum in Opposition to Motion for Immediate Release*. In support of their opposition Defendants state as follows:

INTRODUCTION

In this action the Plaintiffs seek habeas corpus relief under the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303, based upon their banishment by the Ute Indian Tribe of the Uintah and Ouray Reservation. (*Compl.* at 1.) (Dkt. 2). By their *Motion for Immediate*

Release (Dkt. 20) (“Motion”), Plaintiffs ask to be released from their alleged custody pending resolution of their petition for writ of habeas corpus. The Plaintiffs are enrolled members of the Ute Indian Tribe. Defendant Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe”) is a federally recognized Indian tribe. Defendant Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation (“Business Committee”) is the supreme governing body of the Tribe. Defendants Luke Duncan, Tony Small, Shaun Chapoose, Edred Secakuku, Ronald Wopsock, and Sal Wopsock are the members of the Business Committee.

In accordance with Tribal law and following notice, on November 27, 2018 the Business Committee held a hearing to decide whether the Plaintiffs were to be banished. (*Compl.* ¶ 35; Motion at 2-3.) The Plaintiffs walked out of the hearing before it ended. (*Compl.* ¶ 36; Motion at 3.) Following the hearing, the Business Committee issued Orders of Banishment for each of the Plaintiffs, temporarily banishing them from the Uintah and Ouray Reservation for five years. (*Compl.* ¶¶ 37-38; Motion at 4-5.) The provisions of the Orders of Banishment with which Plaintiffs take issue are set forth in their Complaint and their Motion. (*Compl.* ¶ 38; Motion at 4-5.)

The Court should deny the Motion for numerous reasons. Above all, the Court does not have subject matter jurisdiction over the case. Plaintiffs allege jurisdiction under § 1303 of the Indian Civil Rights Act. Plaintiffs do not, however, satisfy either of the threshold requirements for habeas corpus relief under § 1303 because they are not “detained” within the meaning of the statute and they have not exhausted their tribal remedies. Further, each of the Defendants is protected by sovereign immunity unless the

Plaintiffs can support a claim under § 1303. Additionally, the Court lacks personal jurisdiction over the Defendants because none of them has been properly served. Finally, the Defendants have failed to state a claim on which relief can be granted. Because the Complaint cannot stand, the Motion cannot be granted. Neither the undisputed facts nor applicable law supports Plaintiffs' position and the Motion should be denied.

ARGUMENT

I. Plaintiffs' Motion Should Be Denied Because the Court Lacks Subject Matter Jurisdiction.

Plaintiffs contend that this Court has subject matter jurisdiction under the Indian Civil Rights Act, 25 U.S.C. § 1303. (Motion at 5-6). To establish jurisdiction under § 1303, they must prove that they (1) are in custody and (2) have exhausted all tribal remedies. *Poulson v. Tribal Court for the Ute Indian Tribe of the Uintah & Ouray Reservation*, No. 2:12-CV-497 BSJ, 2013 U.S. Dist. LEXIS 49175, at *6 (D. Utah Apr. 4, 2013) ("A federal court has no jurisdiction to hear a petitioner's petition for habeas corpus relief under § 1303 unless the petitioner is (1) in custody and (2) has exhausted all tribal remedies."); *Jeffredo v. Macarro*, 599 F.3d 913, 918 (9th Cir. 2010) ("[A]ll federal courts addressing the issue mandate that two prerequisites be satisfied before they will hear a habeas petition filed under the IRCA: [(1)] The petitioner must be in custody, and [(2)] the petitioner must first exhaust tribal remedies." (quoting Cohen, *Handbook of Federal Indian Law* § 9.09 & 9.09 n.280)). Plaintiffs' embellished and inaccurate statement of the requirements (Motion at 5) is not supported by either of the cases they cite, *Dry v. CFR Court of Indian Offenses for the Choctaw Nation*, 168 F.3d 1207, 1208 n.1 (10th Cir. 1999)

or *Bourdon v. Tsosie*, No. 08-579, 2011 WL 13291088, at *2 (D.N.M. Jan. 27, 2011). In fact, neither of those cases discussed the tribal exhaustion requirement.

This Court therefore lacks jurisdiction to hear the Plaintiffs' claim for habeas corpus or to grant their motion for immediate release unless they prove both that they are in custody and have exhausted their tribal remedies. As shown below, Plaintiffs have met neither of these conditions.

II. Plaintiffs Fail to Meet the “In Custody” Requirement of § 1303.

In Defendants' *Motion to Dismiss Complaint and Memorandum in Support*, filed July 12, 2019 (Dkt. 45), Defendants discussed cases from the Tenth Circuit, this Court, and courts from other jurisdictions which demonstrate that Plaintiffs have failed to meet the “in custody” requirement of § 1303 because they have not been *permanently* banished and have therefore not suffered severe restraints on individual liberty. In the interest of economy, Defendants will not repeat their arguments here but refer the Court to them and incorporate them herein by this reference. (*Mot to Dismiss Compl. and Mem. in Supp.* at 10-12).

All the cases cited by Plaintiffs are distinguishable from the present case in a critical respect. Plaintiffs rely on the Second Circuit case of *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir. 1996), and its progeny. Every case on which Plaintiffs rely has cited and relied on the reasoning in *Poodry*. The Tenth Circuit has held, however, that *Poodry* does *not apply* in cases like the present one in which a plaintiff's banishment is not permanent. . In *Oviatt v. Reynolds*, No. 17-4124, 733 F. App'x 929, 932, 2018 U.S. App. LEXIS 11849, 2018 WL 2094505 (10th Cir. May 7, 2018)

(unpublished), the plaintiffs, one of whom was Lynda Kozlowicz, who is also a plaintiff in this case, sought habeas corpus relief based upon their alleged banishment. The plaintiffs relied upon *Poodry*. The *Oviatt* court held that even if it were to follow *Poodry*, the plaintiffs would not satisfy the detention requirement of § 1303 because they had alleged only temporary banishment and under Second Circuit law “a tribal member is considered ‘detained’ only when *permanently* banished from the tribe.” *Oviatt*, 733 F. App’x at 932, 2018 U.S. App. LEXIS 11849, **5 (citing *Shenandoah v. U.S. Dep’t of Interior*, 159 F.3d 708, 714 (2d Cir 1998)) (emphasis added). The *Oviatt* court also relied upon *Taveres v. Whitehouse*, 851 F.3d 863, 875 (9th Cir 2017), where the court held that “we do not need to decide whether to adopt *Poodry*’s conclusion that tribal banishment orders amount to ‘detention’ under § 1303, because even under *Poodry*’s logic, the Second Circuit limited habeas jurisdiction only to permanent banishment orders, not temporary exclusion orders like those in this case.”

In the present case the Plaintiffs have been temporarily banished for five years. (*Compl.* ¶ 38; Motion at 4.) As in *Oviatt*, therefore, the Plaintiffs do not satisfy the “in custody” requirement where they have not “presented evidence of a permanent prohibition from entering the Ute Tribe’s land”. *Oviatt*, 733 F. App’x at 932, 2018 U.S. App. LEXIS 11849, **5. Plaintiffs’ exclusive reliance on *Poodry* is misplaced.

This conclusion is consistent with that reached by this court in *Poulson v. Tribal Court for the Ute Indian Tribe of the Uintah & Ouray Reservation*, No. 2:12-CV-497 BSJ, 2013 U.S. Dist. LEXIS 49175 (D. Utah Apr. 4, 2013), another case in which the plaintiffs, including again Ms. Kozlowicz, sought habeas corpus relief based upon their alleged

banishment. The court held that “federal court jurisdiction of a § 1303 habeas petition is only proper when the petitioner is somehow held ‘in custody’”. *Id.* at *8 (citing *Shenandoah*, 159 F.3d at 714 (“Habeas relief does address more than actual physical custody, and includes parole, probation, release on one’s own recognizance pending sentencing or trial, and *permanent* banishment.”) (emphasis added)). The *Poulson* court concluded that “the custody required in habeas corpus proceedings is actual, physical custody or a substitute for such custody, such as release on bond.” *Id.* at *9. Because the plaintiffs failed to meet that burden, the court denied their habeas corpus petition for lack of jurisdiction under § 1303. *Id.* at *10.

The Plaintiffs’ arguments likewise fail in this case because they were not permanently banished and therefore do not meet the “in custody” requirement of § 1303.

III. Plaintiffs Have Failed to Exhaust Their Tribal Remedies.

The Tenth Circuit has held that “the purposes underlying the tribal exhaustion rule support applying the rule to § 1303 petitions.” *Valenzuela v. Silversmith*, 699 F.3d 1199, 1206 (10th Cir. 2012). While acknowledging this requirement, Plaintiffs do not claim to have exhausted their tribal remedies. Instead, they argue that there are no tribal remedies to exhaust. (Motion at 9). That is not true. Plaintiffs failed to exhaust the tribal remedies available to them by refusing to participate in the hearing at which their banishment was considered. (*Compl.* ¶ 36; Motion at 3.) Additionally, Plaintiffs were banished pursuant to Tribal Ordinance 14-004 (*Compl.* ¶ 38; Motion at 4), a copy of which is attached hereto as Exhibit A. Section 3-1-11(1) of the Ordinance provides that, “The Tribal Court shall have exclusive authority to hear appeals from orders of exclusion and/or removal after a

hearing has been held thereon before the Ute Tribal Business Committee.” A hearing was held before the Business Committee following which orders of exclusion and removal were made. (*Compl.* ¶¶ 35, 38; Motion at 3-5.) Plaintiffs did not appeal from the orders to the Tribal Court. Plaintiffs therefore failed to exhaust their tribal remedies, and the Motion should be denied. *Harvey ex rel. Chavez v. Star*, No. 95-8223, 1996 U.S. App. LEXIS 23870, * 5 n.2, 1996 WL 511586 (10th Cir. Sept. 10, 1996) (unpublished) (affirming dismissal of § 1303 petition where petitioner had not exhausted tribal remedies) (cited by *Valenzuela*, 699 F.3d at 1206).

In support of their claim that there are no Tribal Court remedies for them to exhaust, Plaintiffs cite *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 311 F. Supp. 3d 1284, 1287 (D. Utah 2018). *Becker* held nothing of the sort. *Becker* is instead a contract case dealing with the issue of whether there had been a waiver of tribal exhaustion, logically implying that there were Tribal Court remedies to be had.

Citing *Nevada v. Hicks*, 533 U.S. 353, 369 (2001), Plaintiffs next contend that they were not required to exhaust their tribal remedies because tribal remedies would be futile. Their only basis for this claim is that “any alleged Tribal remedies would be futile in that Plaintiffs are not aware of any way to challenge their banishment or any process that would allow meaningful review or relief.” (Motion at 9). Futility is, however, a different notion than ignorance of remedies. Furthermore, the Tenth Circuit rejected the same argument in *Valenzuela*. There, the petitioner argued that he “did not know of the existence of any option to file a tribal court petition.” The court rejected this argument because it is well established in the Tenth Circuit that “ignorance of the law is not a valid

excuse for failing to satisfy procedural requirements.” *Valenzuela*, 699 F.3d at 1207. Therefore, Plaintiffs’ argument that they were ignorant of the law and their futility argument both fail.

Defendants have also discussed the tribal exhaustion requirement in their *Motion to Dismiss Complaint and Memorandum in Support* (Dkt. 45) and incorporate that discussion by reference. (*Mot to Dismiss Compl. and Mem. in Supp.* at 12-14).

Because Plaintiffs have failed to satisfy either the “in custody” or the tribal exhaustion prerequisites to § 1303 jurisdiction, their Motion must be denied.

IV. The Court Need Not and Should Not Address Plaintiffs’ Claims Regarding Alleged Defects in the Process Leading to Their Banishment Because the Court Lacks Jurisdiction to Do So.

As shown above, the Court does not have jurisdiction to consider Plaintiffs’ claims regarding alleged shortcomings in the process by which Plaintiffs were banished by the Tribe. Plaintiffs are not being detained within the meaning of the Indian Civil Rights Act, nor have they exhausted their tribal remedies. Having not met those jurisdictional prerequisites, Plaintiffs are not entitled invoke the Act to seek relief. Therefore, even if Plaintiffs’ allegations of deprivation of due process were true, which Defendants deny, they would not be entitled to habeas corpus relief because they are not detained and have not exhausted tribal remedies.

V. The Motion Should Be Denied Because Plaintiffs’ Claims Are Barred by Sovereign Immunity, Defendants Were Not Properly Served, and Plaintiffs’ Complaint Fails to State a Claim.

In their *Motion to Dismiss Complaint and Memorandum in Support* (Dkt. 45), Defendants show the Complaint should be dismissed for reasons in addition to those

discussed above. The Motion should be denied for the same reasons, and Defendants incorporate their previous arguments by this reference. Specifically, Defendants have shown that claims against the Tribe and all the other Defendants are barred by sovereign immunity unless Plaintiffs prove jurisdiction under § 1303 of the Indian Civil Rights Act. (*Mot to Dismiss Compl. and Mem. in Supp.* at 7-9). As demonstrated above, Plaintiffs fail to support a claim under that section because they cannot satisfy the “in custody” or tribal exhaustion requirements for jurisdiction under it. (*Id.* at 9-15). The Motion must also be denied, and the case dismissed, pursuant to Fed. R. Civ. P. 12 (b)(2) and 12(b)(5) because none of the Defendants was adequately served. (*Id.* at 3-6) Finally, Plaintiffs fail to state a claim upon which relief may be granted, and their claims must be dismissed, and their Motion denied, pursuant to Fed. R. Civ. P. 12(b)(6). (*Id.* at 14-15).

CONCLUSION

The Motion for Immediate Release should be denied for a number of reasons the foremost of which is that the Court lacks subject matter jurisdiction under the statute upon which Plaintiffs base the Motion, the Indian Civil Rights Act, 25 U.S.C. §1303. The Plaintiffs fail to meet either of the §1303 requirements of being detained and having exhausted tribal remedies. Without §1303 jurisdiction, the Motion must be denied because the Defendants are immune from suit under the doctrine of sovereign immunity. Additionally, the Motion should be denied for all the same reasons the Complaint should be dismissed including lack of personal jurisdiction, inadequate service of process, and failure to state a claim.

For all these reasons, Defendants request that the Motion be denied.

Respectfully submitted this 23rd day of July, 2019.

J. PRESTON STIEFF LAW OFFICES, LLC

/s/ J. Preston Stieff

J. Preston Stieff

Attorney for Defendants

CERTIFICATE OF SERVICE

I certify that on the 23rd day of July, 2019, I caused a true and correct copy of the foregoing **MEMORANDUM IN OPPOSITION TO MOTION FOR IMMEDIATE RELEASE** to be filed electronically with the Court which will send notification of such filing to all parties of record.

/s/ J. Preston Stieff

J. Preston Stieff

Exhibit A

Ordinance 14-004

Ordinance No. 14 - 0 0 4
Uintah and Ouray Agency
Fort Duchesne, Utah

LAW AND ORDER CODE

TITLE III - UTE INDIAN EXCLUSION AND REMOVAL CODE

BE IN ENTACED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE OF THE UTE INDIAN TRIBE by virtue of its inherent authority as a sovereign Indian tribe to regulate the use and disposition of property of the Uintah and Ouray Reservation and to control the conduct of persons thereon, such authority being recognized and confirmed by the Act of Congress of June 18, 1934, 48 Stat. 984, and pursuant to the powers of the Tribal Business Committee, as enumerated in the Constitution of the Ute Indian Tribe at Article VI, Section (1) to safeguard and promote the peace, safety, morals and general welfare of the Tribe by regulating the use and disposition of property of the Reservation; to exclude from the territory of the Uintah and Ouray Reservation persons not legally entitled to reside therein; and to promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Ute Indian Tribe of the Uintah and Ouray Reservation, and providing for the maintenance of law and order and the administration of justice by establishing a Reservation Indian Court and defining its duties and powers, that it hereby amends the Ute Indian Exclusion and Removal Code, said Ute Indian Exclusion and Removal Code being attached hereto and to appear as Title III of the Ute Law and Order Code.

CERTIFICATION

I hereby certify that this Ordinance was adopted by the Uintah and Ouray Tribal Business Committee at a Tribal Business Committee meeting held in Fort Duchesne, Utah, on the 26 day of August, 20 14, by a vote of 6 FOR, 0 AGAINST, 0 ABSENT and 0 ABSTAINING.


Secretary, Uintah and Ouray
Tribal Business Committee

APPROVED:

Lelliah Duncan, Acting Superintendent
Uintah and Ouray Agency

DATE: _____

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TITLE III - UTE INDIAN EXCLUSION AND REMOVAL CODE

§3-1-1. Statement of Legislative Determination and Intent.

The Ute Indian Tribe of the Uintah and Ouray Reservation, by its Business Committee, hereby finds and determines that, pursuant to authority granted in Article VI of the Constitution of said Tribe, it is necessary to provide a means whereby the Tribe can protect itself, its members, and other persons living on the Reservation, from people whose presence on the Reservation is harmful to, or threatens harm to, the peace, health, safety, morals and general welfare of the Reservation. The proliferation of gang activity on the Reservation is detrimental to the peace, health, safety, morals, and general welfare of the citizens and residents of the Reservation. Corrective action is deemed necessary as a result of the Tribe's interest in maintaining the aforementioned threatened interests free from harm, to protect the cultural identity of the Tribe, and to protect those residents of the Reservation who may be imposed upon, harmed or otherwise disadvantaged. The procedures outlined herein are intended to provide procedural fairness to person affected by these provisions while at the same time recognizing the need, in appropriate situations, to act immediately to remedy actual or threatened harms.

§3-1-2. Persons Subject to Exclusion and Removal.

All persons who enter, work, or live on the Reservation are subject to exclusion, banishment and removal. All persons who are not owners of land located within the exterior boundaries of the Reservation may be excluded or removed from all or any portion of the Reservation as provided herein. All persons who are owners of land located within the exterior boundaries of the Reservation may be excluded or removed temporarily in accordance with the schedule set forth below for enrolled members whether the landowners are enrolled members or non-members.

§3-1-3. Grounds for Exclusion and Removal.

A person subject to exclusion and removal as provided herein may be excluded or removed from the territory of the jurisdiction of the Ute Indian Tribe as defined in Article I of the Constitution of said Tribe upon any one or more of the following grounds:

- (1) Hunting, fishing or trapping on the Reservation without authority from the Tribe or contrary to the rules and regulation of the Tribe governing such activities.
- (2) Trading or conducting business upon the Reservation in violation of Tribal regulations or regulations of the Secretary of the Interior.
- (3) Prospecting upon the Reservation without authority from the Tribe or the Secretary of the Interior.
- (4) Mining, cutting timber, grazing or other use, abuse or damage to Tribal property without authority from the Tribe or the Secretary of the Interior.
- (5) Exploring for or excavating upon items, sites or locations of historic, religious or scientific significance without authority from the Tribe or in violation of federal laws or regulations.
- (6) Being or traveling upon the Reservation while afflicted by a communicable or contagious disease.
- (7) Committing frauds, confidence games, or usury against Indian people residing on the Reservation, or inducing them to enter into grossly unfavorable contracts of any kind.
- (8) Doing or threatening to do any act upon the Reservation which seriously threatens the peace, health, safety, morals and general welfare of the tribe, its members, or other persons living on the Reservation including any activity done for the purpose of benefiting, promoting, or furthering the interests of a gang.

§3-1-4. Proceedings for Exclusion and Removal.

Upon complaint of any member of the Tribe, the Ute Tribal Business Committee or the Tribal Court may determine

whether a person has committed any of the aforementioned acts constituting grounds for exclusion and removal and whether or not the removal and/or exclusion of such person is to be ordered. Such proceedings shall be conducted as provided herein below. An order of exclusion and/or removal may be entered by the Ute Tribal Business Committee or the Tribal Court.

§3-1-5. Emergency Exclusion and Removal Without Prior Hearing.

(1) Whenever the Ute Tribal Business Committee or the Tribal Court finds that there is an immediate need to order the exclusion and/or removal of a person from the Reservation and that the granting of notice and opportunity to be heard to such persons prior to making such order would cause a delay seriously detrimental to the interests of the Tribe, its members, or the other residents of the Reservation, the Ute Tribal Business Committee or the Tribal Court shall immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision outlined below.

(2) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served with a notice of such action. Such notice shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he has complied with the order, he may file a petition within twenty (20) calendar days from the date of the order to the Ute Tribal Business Committee or the Tribal Court (whichever ordered the exclusion and/or removal without notice) for a hearing to reconsider the order, that he may be represented by counsel at such hearing and present evidence in his own defense, and shall inform him that his compliance with such order may be enforced by Tribal or government police offices. A copy of the order shall be served with the notice and such service may be accomplished by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, at his last known address and if there is no last known address available, service of the notice and order shall be made by constructive notice by posting of the notice and order at the usual public locations and published in the Ute Bulletin by the Executive Secretary.

(3) Upon receipt of a petition for a hearing as provided next above, the Ute Tribal Business Committee or the Tribal Court shall schedule a hearing to allow the person to present evidence. Such hearing shall be held within two weeks of the receipt of the petition, provided, however, that the order of exclusion and/or removal shall remain in force pending hearing and a decision thereon, except for purposes of attending a hearing.

(4) The Ute Tribal Business Committee or the Tribal Court shall, as a result of such hearing, either affirm, modify or rescind its previous order, and shall give the person notice in the same manner as provided for service of the notice above.

§3-1-6. Hearing on Exclusion and Removal in Non-Emergency Situations.

(1) In all other cases of exclusion and/or removal, the Executive Secretary in the case of action by the Business Committee or the Tribal prosecutor in the case of action by the Tribal Court shall cause to be served a copy of the petition and a notice of hearing upon the person involved either by personal service, or if such service is not reasonably possible, by Registered mail return receipt requested to the last known address of such person. If there is no last known address available, service shall be made by constructive notice by posting of the notice and order at the usual public locations and published in the Ute Bulletin by the Executive Secretary. Such notice shall contain the date and time of the hearing, which shall be not less than three days from the date of service, and shall further inform him that he may appear, with counsel if he desires, and present evidence in his own behalf.

(2) The hearing on a proposed exclusion and/or removal may be held at a regular session of the Ute Tribal Business Committee or the Tribal Court.

(3) The Ute Tribal Business Committee or the Tribal Court shall hear the evidence presented and shall, if appropriate, order the exclusion and/or removal of the person. If the person is not present at such hearing, or if a decision thereon is not rendered until after the hearing, appropriate notice shall be served on the person in the manner provided above, informing him of the action of the Ute Tribal Business Committee or Tribal Court and such notice shall include a copy of any order of exclusion and/or removal which affects such person.

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§3-1-7. Orders of Exclusion and Removal

- (1) Enrolled members of the Ute Indian Tribe are subject to the following scale of exclusion and/or removal which shall include loss of all membership privileges during the period of time they are subject to exclusion and/or removal:
 - a. Temporary exclusion and/or removal for a period not to exceed 5 years shall be imposed on the first exclusion and/or removal order;
 - b. Temporary exclusion and/or removal for a period not to exceed 10 years shall be imposed on the second exclusion and/or removal order;
 - c. Temporary exclusion and/or removal for a period not to exceed 20 years shall be imposed on the third exclusion and/or removal order; and
 - d. Permanent exclusion and/or removal shall be imposed on the fourth exclusion and/or removal order.
- (2) Non-members of the Ute Indian Tribe may be temporarily excluded and/or removed or permanently excluded and/or removed upon the first exclusion and/or removal order.
- (3) Enrolled members, including those individuals harboring excluded/banished individuals in violation of this Ordinance, may be subject to the following civil penalties: (a) revocation of the land assignment for this property, (b) termination of rights to occupy tribal housing, (c) assessment of a monetary fine, (d) banishment in accordance with this Ordinance; or such other civil remedies as are available to the Business Committee or the Tribal Court under tribal law.

§3-1-8. Fines for Gang Activity

- (1) If an enrolled member is found in violation of the gang provisions of this Ordinance, the Business Committee reserves the right to impose the following fines which may be imposed in conjunction with any exclusion and/or removal order:
 - a. For the first offense, a fine in the amount equivalent to the monthly membership distribution for 5 years.
 - b. In the event the enrolled member is order banished and/or excluded, a fine shall be ordered in the amount equivalent to the monthly membership distribution for the period of time of the exclusion and/or removal.

§3-1-9. Remedies for Violation of Orders of Exclusion and Removal related to Drug and/or Gang Activity.

- (1) All profits, proceeds, and instrumentalities of gang activity and all property used or intended or attempted to be used to facilitate the criminal activity of any gang or of any gang member; and all profits, proceeds, and instrumentalities of gang recruitment and all property used or intended or attempted to be used to facilitate gang recruitment are subject to seizure and forfeiture as outlined herein.
- (2) Any property in the actual or constructive possession of an individual cited for violation of an Order of exclusion and removal related to drug and/or gang activity may be seized and held to secure payment of any fine and/or damage assessment or to be forfeited as provided in Section 3-1-10. Unless a forfeiture proceeding is initiated as provided in Section 3-1-10, property seized as security shall be released to its owner upon payment of any fine and/or damage assessment imposed by the Business Committee or the Tribal Court and applicable impoundment fees or upon a finding by the Business Committee or the Tribal Court that the person in possession of the seized property at the time of the seizure did not violate this Ordinance.
 - a. Persons Authorized to Seize Property. Property subject to seizure under this Section may be seized by any UTERO Compliance Officer, Energy and Minerals Compliance Officer, by any Fish and Game law or Police Officer of the Tribe, by any law enforcement officer of the Bureau of Indian Affairs or upon an order by the Business Committee or the Tribal Court or without an order of the Business Committee or the Tribal Court if the seizure is incident to a sanction under this Ordinance.
 - b. Custody of Seized Property. Property seized under this Section shall be held in the custody of the Tribe's Fish and Game Department, subject only to the Orders of the Business Committee or the Tribal Court, which may include orders for the sale of the seized property at public auction to collect fines and damages imposed under this Ordinance, and orders issued in a forfeiture proceeding.

§3-1-10. Forfeiture of Property

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- (1) Property Subject to Forfeiture. Property seized under Section 3-1-9 of this Ordinance, including any liens or other interests in such property, shall be subject to forfeiture when the property is used to facilitate the commission of the actions in violation of this Ordinance, whether or not the owner of the property or holder of an interest in the property participated in, had knowledge of or consented to the use of such property on Tribal land in violation of this Ordinance.
- (2) Innocent Owners of Interests In Forfeited Property. The Business Committee or the Tribal Court may deny forfeiture of an interest in seized property held by a person who did not participate in, or have knowledge of or consent to the prohibited use of the property if the person demonstrates to the Business Committee or the Tribal Court that he/she took all reasonable measures to prevent the prohibited use of the seized property, or demonstrates to the Business Committee or the Tribal Court that the person performing the prohibited action obtained possession of the property without his/her consent.
- (3) Civil Forfeiture Proceedings.
 - a. Complaint. Forfeiture proceedings shall be initiated by the Tribal Prosecutor filing a civil complaint with the Tribal Court in an in rem proceeding against the property. The complaint shall describe with reasonable specificity the property at issue and the basis for forfeiture, and must be filed within thirty (30) days after the property is seized.
 - b. Notice to Owners of Interests in Property. The Tribal Prosecutor shall give written notice of the forfeiture proceeding to all persons known to have an interest in the property, including a lien interest, and all persons whose interest is reasonably ascertainable. All such persons shall be required to answer the complaint and file any claim to the property within twenty (20) days after notice is given. Notice under this Subsection shall also be given by:
 - i. Publication in a newspaper of general circulation within the State of Utah for a period of not less than three (3) days; or
 - ii. In the event the person cited for violation of this Ordinance is a non-resident of the State of Utah, in a newspaper of general circulation within the area of such person's residence for a period of not less than three (3) days.
 - c. Hearing and Judgment. Upon notice as required under this Subsection, the Court shall conduct a hearing to determine whether the property and any known interests in the property should be forfeited to the Tribe, and shall enter an appropriate Judgment.
 - d. Disposition of Forfeited Property. Property forfeited to the Tribe, or the proceeds from the sale of forfeited property, shall be retained by the Tribe and deposited into a special fund to prevent gang activities.

§3-1-11. Review of Orders of Exclusion and Removal.

- (1) The Tribal Court shall have exclusive authority to hear appeals from orders of exclusion and/or removal after a hearing has been held thereon before the Ute Tribal Business Committee.
- (2) The Appellate Court shall have exclusive authority to hear appeals from orders of exclusion and/or removal after a hearing has been held thereon before the Tribal Court.
- (3) The Tribal Appellate Court shall have authority to stay an order of exclusion and removal upon such conditions of security as it deems just only if all prior hearing remedies have been exhausted, and only if no substantial interest of the Tribe, its members, of other residents of the Reservation will be harmed thereby.
- (4) All orders of exclusion and removal shall remain in full force and effect during periods of hearing or review unless stayed as provided herein.

§3-1-12. Enforcement of Orders of Exclusion and Removal.


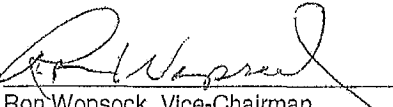
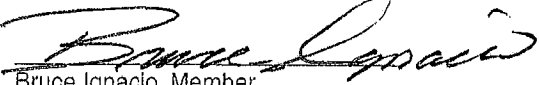

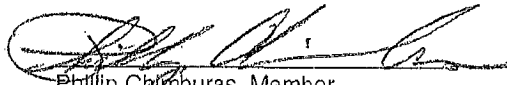

All law enforcement officers of the Ute Indian Tribe and the U.S. Government are hereby empowered to carry into effect any exclusion and/or removal order of the Ute Tribal Business Committee or the Tribal Court according to the terms of such order.

§3-1-13. Prior Inconsistent Ordinances Superseded.

Any and all ordinances, including but not limited to Ordinance 04-001, Ordinance 13-001 and Ordinance 14-002, of the Tribal Business Committee which conflict in any way with the provisions of this Law and Order Code are hereby

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repealed to the extent that they are inconsistent with or conflict with, or are contrary to the spirit and/or purpose of this Law and Order Code.

 Gordon Howell, Chairman	 Ron Wopsock, Vice-Chairman
 Bruce Ignacio, Member	 Stewart Pike, Member
 Phillip Chimburas, Member	 Tony Small, Member

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING Ordinance was adopted by the Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation pursuant to the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation at a duly called meeting in FT Duchesne, Utah, on the 26 day of August, 2014, at which time a quorum was present and votes 6 for, 0 against, 0 abstaining and 0 absent.


Tribal Business Committee - Secretary
Ute Indian Tribe, Uintah & Ouray Reservation