IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. S-1-SC-37034

**ISLETA RESORT AND CASINO,
HUDSON INSURANCE, AND
TRIBAL FIRST,**

Employer/Insurer-Appellant

v.

GLORIA MENDOZA,

Employee-Appellee,

and

**STATE OF NEW MEXICO UNINSURED
EMPLOYERS' FUND,**

Statutory Third Party.

APPELLANT'S SUR-SUR-REPLY BRIEF

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STATEMENT OF COMPLIANCE

This brief complies with Rule 12-305(D)(1)-(2) as it was prepared using a proportionally-spaced type style or typeface in a 14 font size and Times New Roman type style. This brief contains 4,327 words in the body as defined in Rule 12-318(F)(1) NMRA and complies with the limitation in Rule 12-318(F)(3). The word-processing program used for this brief was Microsoft Office Word, version 2016.

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ARGUMENT

I. Tribal immunity and jurisdiction as a matter of federal law cannot be diminished by states.

Generally, a state court is bound by its state Court of Appeals, its state Supreme Court and the United States Supreme Court. *Lockhart v. Fretwell*, 506 U.S. 364, 376 (1993), (Thomas, J., concurring) ("[An Arkansas trial court] follows the Eighth Circuit's interpretation of federal law, it does so only because it chooses to and not because it must.") Appellee notes this general rule, but in citing *State v. Cardenas-Alvarez*, 2001-NMSC-017, 130 N.M. 386 in support, fails to note that the New Mexico Supreme Court found Tenth Circuit caselaw substantively authoritative. "Tenth Circuit case law on the subject is merely persuasive, *albeit substantially persuasive*, authority." *Id.* at ¶58 (emphasis added). Importantly in the *Dalley* case, certiorari was sought from the United States Supreme Court, but the United States Supreme Court declined review of the Tenth Circuit decision. *Navajo Nation v. Dalley*, 896 F.3d 1196 (10th Cir. 2018), cert. denied, 139 S.Ct. 160 (2019).

Also, when faced with an issue that requires the application of federal law, like the Indian Gaming Regulatory Act ("IGRA") and tribal sovereignty, New Mexico courts routinely follow precedent established by the federal courts. See *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶¶ 8-9, 132 N.M. 207 (applying federal precedent in interpreting IGRA.) See also *State v. Snyder*, 1998-NMCA-

166, ¶ 9, 126 N.M. 168 ("In applying federal law, [the New Mexico] Court of Appeals follows the precedent established by the federal courts, particularly the United States Court of Appeals for the Tenth Circuit."); *Navajo Nation v. Dalley*, 896 F.3d 1196, 1204 (10th Cir. 2018), cert. denied, 139 S.Ct. 160 (2019) (where "federal law precludes state-court jurisdiction over a claim against Indians arising on the reservation – [the issue] presents a federal question that sustains federal jurisdiction.") (internal citations and quotations omitted).

State courts, including the New Mexico Supreme Court, must yield to controlling federal law regarding tribal sovereign immunity as "it is not within the province of the New Mexico Supreme Court's authority to abridge the federal doctrine of tribal sovereign immunity." *Hamaatsa, Inc. v. Pueblo of San Felipe*, 2017-NMSC-007, ¶ 21-22, 41, 388 P.3d 977. In reaching that determination in *Hamaatsa, Inc.*, this court relied on *Kiowa Tribe of Oklahoma v. Manufacturing Technologies*, 523 U.S. 751, 756 (1998) for the proposition that "tribal immunity is a matter of federal law and is not subject to diminution by the States" and . . . [t]hus, we hold firm to existing federal precedent granting the Pueblo, as a sovereign Indian tribe, immunity from Hamaatsa's suit in state court." *Hamaatsa Inc.*, ¶¶ 21-22. See also *Gallegos*, 2002-NMSC-012, ¶ 7 ("…tribal immunity is a matter of federal law and is not subject to diminution by the states . . . .."); *accord*

Antonio v. Inn of the Mountain Gods Resort and Casino, 2010-NMCA-077, ¶¶ 9,12, 148 N.M. 858.

The issue of tribal immunity in general, and the impact of IGRA on the tribal immunity of the Appellants here, are both settled matters of federal law. As such, this court is bound by the Supreme Court and the Tenth Circuit's holdings and opinions concerning the Isleta Resort & Casino's sovereign immunity and IGRA, and the extension of that immunity to the agents of the Isleta Resort & Casino. Thus, not only is *Dalley* persuasive and informative, but it also is binding on this Court under New Mexico case precedent.

II. Because the Compact does not contain an express waiver by the Pueblo of Isleta, this Court need not address *Dalley*.

To protect one of its most critical rights as a sovereign nation, the Pueblo of Isleta has asserted that it has the right to apply its own tribal workers' compensation program to its employees, and it has the right to require employees to seek redress for workplace injuries in Isleta Pueblo's own tribal forums. As established in Isleta Pueblo's initial briefing, the Gaming Compact between the State of New Mexico and the Pueblo of Isleta does not contain an express and unequivocal waiver of the Pueblo's sovereign immunity as to the State's workers' compensation system. The briefing also confirms that a non-contract third-party cannot challenge the Pueblo's compliance under the Gaming Compact in a state administrative proceeding or in state court. Also, a New Mexico workers'

compensation action cannot proceed against the Pueblo's contract partners because the Pueblo's sovereign immunity extends to its agents, and in any event the Pueblo is an indispensable party. The reasoning in *Dalley* only applies *if* this Court agrees with Appellee that Section 4(B)(6) of the Gaming Compact contains an express waiver by Isleta Pueblo to the State's Workers' Compensation system, which it does not.

Dalley concerned Section 8(A) of the State of New Mexico's gaming compact with the Navajo Nation. *Dalley* involved an alleged injury by visitors to a casino. A similar provision is contained in New Mexico's Gaming Compact with Isleta Pueblo. The provisions in both compacts allow visitors to bring tort claims in state district court, including claims arising on tribal land, "unless it is finally determined by a state or federal court that IGRA does not permit the shifting of jurisdiction over visitors' personal injury suits to state court." 2015 Compact, 8(A).

Unlike *Dalley*, this Court need not extend this analysis to the issues here, because Section 4(B)(6) of the compact (regarding workers' compensation) does not contain a jurisdiction shifting provision similar that in Section 8(A) – the section at issue in *Dalley*. However, should the Court believe that Section 4(B)(6) does contain an unambiguous written waiver of immunity by Isleta Pueblo and agreement to shifting jurisdiction to the New Mexico workers' compensation

administrative forum, then *Dalley* would apply, and would confirm that any purported shifting of jurisdiction over employee matters to state administrative forums is prohibited under IGRA[1].

III. If *Dalley* applied, it provides that IGRA does not authorize state jurisdiction over tribal workers' compensation claims.

A. Absent an express grant of jurisdiction by Congress, states have no power to regulate the affairs of Indians on a reservation.

It is firmly established in federal Indian law that tribal courts retain exclusive jurisdiction over lawsuits arising on tribal lands against tribes, tribal members, and tribal entities and their agents. *Williams v. Lee*, 358 U.S. 217, 220 (1950) and *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, (1987) (If state-court jurisdiction over activities on Indian lands would interfere with tribal sovereignty and self-governance, the state courts are generally divested of jurisdiction as a matter of federal Indian law). Absent an express grant of jurisdiction by Congress, states have no power to regulate the affairs of Indians on a reservation. *Williams*, 350 U.S. at 220-221. See also *Worcester v. Georgia*, 31 U.S. 515 (1832) and *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343, (1998); *accord Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 48, (1978). Congress's plenary authority

[1] *Pueblo of Isleta v. Michelle Lujan Grisham*, Civ. No. 17-654, 2019 WL 1429586, at *26 (D.N.M. Mar. 30, 2019) indicates that because the Secretary of Interior did not approve or disprove the 2015 Compacts within 45 days of submission, these Compacts are considered to have been approved by the Secretary, but only to the extent the Compacts are consistent with IGRA.

over Indian affairs and the tradition of tribal autonomy in Indian country combine to preempt the operation of state law. Felix S. Cohen, *Felix Cohen's Handbook of Federal Indian Law* 499 (N. Newton, ed., 2005). IGRA is one of the rare instances in which Congress granted states jurisdiction over a very narrow set of issues involving the conduct of class III Gaming and only upon agreement between tribes and states, and then only with approval or acquiescence by the United States Department of Interior. *Pueblo of Isleta v. Michelle Lujan Grisham*, Civ. No.17-654, 2019 WL 1429586, at *26 (D.N.M. Mar. 30, 2019).

In *Dalley*, the Tenth Circuit analyzed provisions of IGRA and determined that jurisdiction can only be shifted from the tribe to the state when the issue is directly related to the licensing and regulation of class III gaming. *Dalley*, 896 F.3d at 1205-1217. A compact *may* include limited provisions relating to some state regulatory authority, such as "(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are *directly related to, and necessary for,* the licensing and regulation of *such activity*" and (ii) "the allocation of criminal and civil jurisdiction between the state and the Indian tribe necessary for the enforcement of such laws and regulations. § 2710(d)(3)(C)(i)-(ii) (emphasis added). But that is the extent jurisdiction is addressed by IGRA and does not include administrative programs for the benefit of employees, such as a workers' compensation system.

B. Workers' compensation benefits are not directly related to the licensing and regulation of class III gaming.

In *Dalley*, the Tenth Circuit held that IGRA does not authorize New Mexico state court jurisdiction over a casino visitor's tort claims because the claim had no connection to a class III gaming activity. *Dalley*, 896 F.3d 1196 (10th Cir. 2018) (The plaintiff in *Dalley* alleged he was injured after slipping on water on the casino restroom floor). The United States Supreme Court in *Bay Mills* defined what "class III gaming activity" means:

> 'class III gaming' activity means just what it sounds like—the stuff involved *in playing* class III games. For example, § 2710(d)(3)(C)(i) refers to the 'licensing and regulation of [a class III gaming] activity' and § 2710(d)(9) concerns the operation of a 'class III gaming activity.' Those phrases make perfect sense if 'class III gaming activity' is what goes on in a casino—*each roll of the dice and spin of the wheel*. But they lose all meaning if, as Michigan argues, 'class III gaming activity' refers equally to the off-site licensing or operation of the games. …the gaming activity is *the gambling* in the poker hall, not the proceedings of the off-site administrative authority. …the 'gaming activit[y]' is (once again) *the gambling*.

Michigan v Bay Mills Indian Cmty., 572 U.S. 782, 792 (2014) (emphasis added).

Following the Supreme Court, the Tenth Circuit more specifically held that:

> The Court's analysis in *Bay Mills* leads us to the clear conclusion that Class III gaming activity relates only to activities actually involved in the playing of the game, and not activities occurring in proximity to, but not inextricably intertwined with, the betting of chips, the folding of a hand, or suchlike. *See Harris v. Lake of Torches Resort & Casino*, 363 Wis.2d 656, 862 N.W.2d 903, 2015 WL 1014778, at *5 (Wis. Ct. App. Mar. 10, 2015) (per curiam) (unpublished) ("Applying th[e] *Bay Mills*] definition, Harris—who was injured while working as a cook at

> a restaurant located in the casino—was not injured in connection with a class III gaming activity.").[2]

Dalley, 896 F.3d at 1207. The Tenth Circuit also held that in the slip-and-fall bathroom case at issue in *Dalley*, the harm could not "plausibly be said to have resulted from gaming activity, within the meaning of *Bay Mills*—that is from the playing of dice, the pulling of a slot machine…" *Id.* at n.7. Additionally, licensing and regulation of class III gaming activities does not relate to "claims arising out of occurrences that happen in proximity to—but not as a result of—the hypothetical card being dealt or chip being bet." *Id.* at 1209. In other words, "if individuals are not participating in class III gaming activities on Indian land" when they are allegedly harmed by a tortfeasor, the court is "hard-pressed to see how tort claims" could be directly related to and necessary for, the licensing and regulation of class III gaming activities. *Id.* at 1207-08. "Whether a casino employee is negligent in cleaning up spilled water on the floor which results in a patron falling has nothing to do with the actual regulation or licensing of class III gaming," and as such, IGRA does not authorize the shifting of jurisdiction to the state. *Id.* at 1209.

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[2] In *Harris v. Lake of Torches Resort & Casino*, just as in the case before this Court, Lake of Torches has a Tribal workers' compensation program and utilizes a third-party administrator. The *Harris* Court held that Lake of Torches (Lac Du Flambeau Band of Lake Superior Chippewa Indians) had not waived its sovereign immunity in its compact with the state to be sued in state court, and that the compact "applies only to claims related to class III gaming activities" as defined by *Bay Mills*. 363 Wis.2d 656, 2015 WL 1014778, at *5.

The Tenth Circuit's analysis of IGRA applies here. The Appellee makes the same arguments that failed in *Dalley*. (Sur-reply p. 12). Ms. Mendoza claims that she injured herself during her shift as a custodial porter when she was pushing a chair. Ms. Mendoza's job duties include "cleaning bathrooms, emptying ashtrays, removing trash and generally keeping the casino area clean." (Worker's Answer Br. at 4). Both the plaintiff and the district court in *Dalley* argued that class III gaming activities do not happen in a vacuum and "gaming activity" refers to something that typically takes place in a casino. *Dalley*, 896 F.3d at 1207. Appellee's argument that Ms. Mendoza's job as a janitor would not exist but for gaming activities is nothing more than a vain attempt to tether janitorial work to class III gaming in a manner rejected by the *Dalley* and *Harris* courts.

The correct analysis is whether Ms. Mendoza's workers' compensation claim is directly related to class III gaming activity – the roll of the dice or bet of the chip. It is not. Cleaning ashtrays and bathrooms may take place in *proximity to* the rolling of the dice and the pulling of a slot machine, but the activities are not related to class III gaming as defined by the Supreme Court in *Bay Mills* and the Tenth Circuit in *Dalley*. They can exist independently. Like water spilled on a casino floor that was not cleaned up, pushing a chair "has nothing to do with the actual regulation or licensing of class III gaming." *Id.* at 1209.

Moreover, the Gaming Compact itself establishes that Ms. Mendoza's position as a janitor is not that of a "Gaming Employee." Section 2(H) of the Isleta Pueblo - State of New Mexico Gaming Compact defines "'Gaming Employee'" as 'a person connected directly with the conduct of class III Gaming, handling of proceeds thereof, or handling any Gaming Machine." (Compact 2(H)). The Compact also defines what a Gaming Employee is not: "but 'Gaming Employee' *does not include*: … (2) Secretarial or janitorial personnel …" (emphasis added). Workers' compensation regulation is part of the "off-site administrative authority" of a tribe, not gaming. *Bay Mills*, 572 U.S. at 790-92. Ms. Mendoza's job duties and her injury are not directly related to and necessary for the licensing and regulation of class III gaming as defined by the Compact, by the Supreme Court in *Bay Mills*, and by the Tenth Circuit.

C. Appellee's allegations of tribal injustice are without merit or basis.

Appellee's identifies a parade of horribles that she argues will occur without state jurisdiction. (Sur-reply at 16.) But no state, including New Mexico, has the power to inject itself into tribal affairs just because non-tribal members are afraid of tribal jurisdiction. And these allegations not only are false, they suggest a bias toward and unfamiliarity with Isleta Pueblo's tribal systems. If the tribal system is not what Ms. Mendoza envisions as the Holy Grail of workers' compensation, then

her recourse is to her state and federal elected officials – the judicial system is not the legislative answer to her alleged concerns.

Every employee at the Isleta Resort & Casino has a tribal forum in which to raise his or her claims, and to appeal if not satisfied with a decision by the tribal workers' compensation provider. Her list of claimed wrongs notwithstanding, Ms. Mendoza is still employed with Isleta Resort & Casino. Ms. Mendoza has moved beyond the record and argues facts not in evidence or even alleged.

Ms. Mendoza's counsel has multiple tribal cases pending before the WCA. In one WCA case brought by opposing counsel, the WCA asked this Court to clarify paragraph 30 of the NMCA decision to explain how a WCA judge, serving in an administrative forum with limited jurisdiction, should hear evidence and make findings on questions of tribal immunity.[3] The WCA court also requested clarification of how to proceed in a WCA administrative proceeding without the employer being involved, who in all WCA cases is an indispensable party with most of the necessary information needed to decide the case.[4] In another case in which the WCA administrative judge has declined to rule on the subject matter

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[3] WCA Order Denying Worker's Motion to Reconsider and Order of Administrative Closure in *Gallegos v. Isleta Resort & Casino*, WCA No. 17-53811 (Sep. 4, 2018) is attached hereto as Exhibit B.

[4] See also *Lewis v. Clarke*, 137 S.Ct. 1285, 1293 (2017) ("fiscal intermediaries are essentially state instrumentalities . . . It is well established in our precedent that a suit against an arm or instrumentality of the State is treated as one against the State itself").

jurisdiction but nevertheless ordered discovery and a hearing, the Appellants here have been forced to file a complaint in federal district court for declaratory relief like the relief sought in *Dalley*. See complaint, attached hereto as Exhibit A.[5]

IV. Appellee fails to distinguish between what can be the *subject* of a compact and when IGRA allows *allocation of jurisdiction* to a state.

A. IGRA limits the ability of tribes to agree to state regulatory jurisdiction.

In *Dalley*, the Tenth Circuit thoroughly analyzes IGRA and differentiates between what can be the *subject* of a compact and the narrow circumstances in which states and tribes can agree to *allocate jurisdiction* to a state. After making this statutory distinction, the Tenth Circuit in *Dalley* declined to substantively address the first issue, but directly addressed the second. The substantive areas that can be subject to a compact are broader than the limited circumstance when a tribe can agree to allow state jurisdiction. Appellee's arguments in Section II and III in the sur-reply fail because Appellee ignores or fails to recognize this congressional distinction in IGRA, which was addressed by the Tenth Circuit in *Dalley*.

The Tenth Circuit thoroughly analyzed 25 U.S.C. § 2710(d)(3)(C) (emphasis added), which states:

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[5] Before filing in federal court, the Appellants sought, but were denied, a special writ from this court to protect themselves from the Hobson's choice of being in contempt of the administrative judge's orders or waiving immunity through discovery.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to--

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

The Tenth Circuit held that only clauses (i) and (ii) concern and permit shifting of jurisdiction, and then only for those activities that are "necessary for the enforcement" of laws and regulations that are "directly related to and necessary for the licensing and regulation of class III gaming activities." *Dalley*, 896 F.3d at 1206. The Tenth Circuit held that clause (vii) does not apply to allocation of jurisdiction, but only concerns the substantive topics of a compact. The Tenth Circuit held that "catch-all" activities described in clause (vii) cannot be the subject of shifting tribal jurisdiction to the state.

B. Appellee's argument in Section II wrongly relies on clause (vii), which the *Dalley* court confirmed does not demonstrate a Congressional intent to allow shifting of jurisdiction from a tribe to the state.

Section II of Appellee's sur-reply brief (p. 2-10) argues that *Dalley* does not apply to the present case, but only because it concerned a tort case brought by a casino visitor. Section II of the Sur-Reply primarily provides a recitation of the history of IGRA and provides very little argument to explain why *Dalley's* analysis of jurisdiction allocation would not apply here. Although Appellee admits that the Tenth Circuit "held that subclause (vii) of IGRA does not authorize tribes to allocate jurisdiction to state courts over tort claims" (Sur-Reply at 7), Appellee in the next breath argues that, "[i]n the present case and pursuant to subclause (vii) of the IGRA, New Mexico and Isleta Pueblo included labor law compact provisions specifically permitting an adverse workers' compensation determination to be brought in any 'impartial forum' including the Workers' Compensation Administration. (Sur-Reply at 8-9). Appellee is implicitly arguing that because labor relations can be a *subject* of a compact[6], *jurisdiction can be allocated* to the state, which is in direct contradiction to the Tenth Circuit's ruling in *Dalley*. Notably, the Tenth Circuit found that clause (vii) does not "explicitly raise the

[6] *Dalley* does not address this issue. By not presently raising this argument, Appellants are not conceding that labor relations are properly addressed in the Compact.

topic of jurisdiction allocation" and found that to be a "significant clue that Congress *did not intend for this provision to relate to tribal-state compacting regarding the allocation of jurisdiction*." *Id.* at 1212. (emphasis added).

C. *In re Indian Gaming Related Cases*[7] is inapplicable because in that case the tribe held jurisdiction over employment matters.

Appellee's reliance on *In re Indian Gaming* is misplaced for several reasons. First, as noted in *Dalley*, the Tenth Circuit is not bound by rulings in the Ninth Circuit. *Dalley*, 896 F.3d at 1216. *In re Indian Gaming* is distinctive because it concerned whether, after long and convoluted negotiations between California as a PL 280 state (which New Mexico is not) and the tribe, IGRA allowed the revenue sharing agreement and whether California acted in good faith when it required the tribe to adopt the special distribution fund. *Id.* The California compact did not address workers compensation issues; rather, it required the tribe to meet with labor unions to negotiate a *tribal* labor ordinance for casino employees, and the compact "did not demand that tribes adopt a specific set of legal rules governing general employment practices on tribal lands." *Id* at 1116. The tribal labor union ordinance adopted by the tribe requires exhaustion of tribal remedies, with federal court as a last resort. *Gaming Sovereignty? A Plea for Protecting Worker's Rights While Preserving Tribal Sovereignty*, 102 Calif. L. Rev. 1623 (2014) n. 61.

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[7] *In re Indian Gaming Related Cases,* 331 F.3d 1094 (9th Cir. 2003).

The Ninth Circuit's decision in *In re Indian Gaming* relies on clause (vii), not clauses (i) and (ii), because the Court was only concerned with what could be *the subject of* a compact. That Court was not called upon to address whether Congress had allowed shifting of jurisdiction to the state. *Id.* at 1115-1116.

D. Section III in Appellee's sur-reply only addresses what substantive areas can be contained in a gaming compact, which *Dalley* did not address and which Appellants are not arguing.

Contrary to Appellee's assumption in Section III of the sur-reply, Appellants are NOT questioning whether IGRA's clause (vii) allows labor laws to be the subject of a gaming compact. Although this significant issue is debated in Indian country, Appellants agree that the Tenth Circuit in *Dalley* declined to address this issue, and Appellants continue to assert that the substantive claims about compact issues must include the parties to the compact: the State of New Mexico and the Pueblo of Isleta. Neither contract party is before this Court in this case. See *Dalley*, 896 F.2d at 1218.

Again, the importance of *Dalley* to the present matter is not what substantive provisions IGRA permits in a compact under clause (vii), but instead is the issue of what limited instances Congress has carved out in IGRA as exceptions to general principles of Federal Indian law. In other words, it is not what may be addressed in a compact, but instead what limited situations did Congress allow in IGRA for states and tribes to allocate jurisdiction to the state. It is irrelevant in the present

case whether personal injury claims and workers' compensation claims could both be considered "other subjects" related to general gaming activities under clause (vii). What is relevant here is whether workers' compensation claims are directly related to the licensing of Class III gaming for the sake of shifting jurisdiction under clauses (i) and (ii). Like the personal injury claim in *Dalley*, workers compensation claims of janitors are not "gaming activities" subject to shifting jurisdiction to the state.

CONCLUSION

The Tenth Circuit decision in *Dalley* concerns tribal immunity and tribal sovereignty which is a matter of federal law that cannot be diminished by states. The Pueblo of Isleta never expressly waived its immunity over workers' compensation claims or agreed to state jurisdiction in the Gaming Compact, therefore the Court need not address the allowable shifting of jurisdiction issue addressed in *Dalley*. If it did, the Tenth Circuit in *Dalley* found that IGRA does not permit jurisdiction to be shifted to states over matters not directly related to the licensing or regulation of class III gaming, which workers' compensation matters for janitors are not. Therefore, the New Mexico Workers' Compensation Administrations lacks jurisdiction over the claims of Ms. Mendoza as a tribal employee.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2019, I caused the foregoing *Sur-Sur-Reply Brief* to be electronically filed through the Court's Odyssey E-File system and served by U.S. Mail on the following counsel of record:

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