IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BURREL JONES, *Plaintiff*, v. ALABAMA-COUSHATTA TRIBE OF TEXAS AND NASKILA GAMING, *Defendants.*	§ § § § § § § § § § §	No. 9:20-CV-63

THE TRIBE'S MOTION TO DISMISS

Indian tribes like the Alabama-Coushatta Tribe of Texas (the "Tribe") are "domestic dependent nations" that exercise "inherent sovereign authority." *Okla. Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991) (citation omitted). That includes "the 'common-law immunity from suit traditionally enjoyed by sovereign powers.'" *Mich. v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (citation omitted). Thus "[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998).

Because no such abrogation or waiver exists here, there is no jurisdiction for Plaintiff's claims related to a slip and fall at the bingo facility operated by the Tribe on its Indian lands. The suit against the Tribe—a sovereign, self-governing Indian nation with immunity like any other government entity—is foreclosed and must be dismissed for lack of subject-matter jurisdiction.

BACKGROUND

The Tribe has a trust relationship with the United States, through which it receives limited funding from the Bureau of Indian Affairs and other benefits. But for a time in the mid-20th century, the State of Texas had trust responsibility for the Tribe. In 1983, however, the Texas

Attorney General called into doubt the validity of the trust relationship between the Tribe and the State. That development set off a years-long effort in Congress to "restore" the Tribe's federal trust status, culminating in passage of The Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. No. 100–89, 101 Stat. 666 (Aug. 18, 1987) (the "Restoration Act") (Ex. A.). The Restoration Act reestablished the trust relationship between the Tribe and the federal government, restored various federal legal rights that the Tribe previously had enjoyed, and recognized the Tribe's Constitution and governing Council.[1] *Id.* §§ 203–04, 206.

Regarding the issue of gaming on the Tribe's lands, the Restoration Act provides that "[a]ll gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe." *Id*. § 207(a). At the same time, it prohibits Texas from asserting either criminal or civil regulatory control over gaming occurring on the Tribe's lands. *Id.* § 207(b). The Restoration Act vests federal courts with exclusive jurisdiction over cases involving alleged violations of its gaming provisions, granting the State—and only the State—standing to seek an injunction against such violations. *Id*. § 207(c).

In 2015, the Tribe sought and received permission from the National Indian Gaming Commission, the federal agency that administers the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701–2721, to conduct bingo gaming on its reservation under IGRA. The Tribe then opened Naskila Gaming, an electronic bingo facility located on its tribal lands.[2] The State and the

[1] The Restoration Act also reestablished the trust relationship between the United States and the Ysleta del Sur Pueblo tribe (the "Pueblo") near El Paso, Texas. *See* §§ 101–08

[2] For immunity purposes, there is no difference between the Tribe and Naskila, and Plaintiff does not attempt to show otherwise. That is because the Supreme Court does not "draw[] a distinction between governmental and commercial activities of a tribe" when deciding whether there is tribal immunity from suit. *Kiowa*, 523 U.S. at 754–55. A tribe-created entity that functions as an arm of a tribe shares in the tribe's immunity. *See, e.g.*, *Alabama v. PCI Gaming Authority,* 801 F.3d 1278, 1287–88 (11th Cir. 2015) (collecting cases). Naskila indisputably is an arm of the Tribe. *See* Briones Dec. ¶ 8 (Ex. D).

Tribe also jointly reopened a dormant case about tribal gaming, which was assigned to Magistrate Judge Keith Giblin, *Texas v. Alabama-Coushatta Tribe of Tex.*, No. 9:01-CV-299.

In the proceedings that followed, Judge Giblin decided to first rule on whether the Tribe's current gaming is governed by § 207 of the Restoration Act or the "Class II" gaming provisions of IGRA. The Fifth Circuit, affirming a 2018 ruling by Judge Giblin, decided last year that IGRA does not apply to the Tribe's gaming. *Texas v. Alabama-Coushatta Tribe of Tex.*, 918 F.3d 440, 449 (5th Cir. 2019).

Those rulings did not address whether the Tribe's gaming constitutes "gaming activities which are prohibited by the laws of the State of Texas" under § 207(a) of the Restoration Act. Proceedings to address that issue, among others, recently resumed in Judge Giblin's court. In April, Judge Giblin entered a scheduling order for this second phase of the case; the State and the Tribe currently are in discovery, with trial set for March 1, 2021. *See* Sched. & Disc. Order (Post Appeal) [DE 152], *Alabama-Coushatta*, No. 9:01-CV-299 (E.D. Tex. filed April 13, 2020).

Plaintiff relies on this history in his lawsuit against the Tribe. Compl. ¶¶ 6–12. He alleges that he visited Naskila Gaming in October 2019 and was injured in a fall from the staircase at the facility's entrance. *Id.* ¶¶ 13–17. Plaintiff alleges that he communicated with various individuals about filing a lawsuit in tribal court and looked online for information about the Tribe's court and Constitution, but ultimately concluded that the Tribe's "court was either dysfunctional or non-existent." *Id.* ¶¶ 18–24.

Plaintiff seeks damages for his injuries and declarations that (1) the Tribe's bingo violates "Texas gaming laws under the [Restoration Act] and the Court's permanent injunction" entered in 2001 in the case before Judge Giblin; (2) the Tribe "waived sovereign immunity against Plaintiff's premises liability claim" and "does not possess jurisdiction over that claim"; and (3) the Tribe

"forfeited [its federally-recognized] tribal status" and sovereign immunity "because it/they repeatedly violated the [Restoration Act]." *Id.* ¶ 50. The Complaint nowhere explains how the Tribe's gaming violates the Restoration Act or Texas law; nor does it identify how a court can override the Tribe's federal recognition. Plaintiff acknowledges that Indian tribes generally are immune from suit, *id.* ¶ 36, but asserts that the Tribe's immunity is abrogated here by virtue of its allegedly illegal gaming activities and its purported "failure to establish a functioning tribal court" or "to provide for tort remedies" under tribal law. *Id.* ¶ 50(b)(i)–(ii).

LEGAL STANDARD

The party invoking federal jurisdiction bears the burden to show standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). If a court cannot remedy a party's alleged injuries, there is no Article III case or controversy to support federal jurisdiction. *Id.* at 568–71. A federal court must dismiss a case for lack of subject-matter jurisdiction if it lacks statutory or constitutional power to adjudicate the case. *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). To that end, "sovereign immunity is not merely a defense on the merits—it is jurisdictional in nature. If sovereign immunity exists, then the court lacks both personal and subject-matter jurisdiction to hear the case and must enter an order of dismissal." *de Sanchez v. Banco Cent. de Nicaragua*, 770 F.2d 1385, 1389 (5th Cir. 1985). Absent an independent basis of federal subject-matter jurisdiction, a court cannot exercise supplemental jurisdiction over state-law claims. *Arena v. Graybar Elec. Co.*, 669 F.3d 214, 221–22 (5th Cir. 2012).

ARGUMENT

Absent express congressional authorization, "Indian Nations are exempt from suit." *Santa Clara v. Martinez*, 426 U.S. 49, 58 (1978) (quoting *United States v. U.S. Fid. & Guar. Co.*, 309

U.S. 506, 512 (1940)). Because Plaintiff cannot point to any such authorization or waiver here, tribal immunity bars this action. The Court accordingly lacks subject-matter jurisdiction over Plaintiff's declaratory-relief claims and supplemental jurisdiction over Plaintiff's tort claim.

Plaintiff attempts to fashion jurisdiction by haling the Tribe into court on a declaratory-judgment action that belongs to the State of Texas (alleged illegal gaming), and then bootstrapping his tort claims (alleged premises liability) to the suit through supplemental jurisdiction. This novel approach is doubly wrong. First, the proposed declaratory action is not available to Plaintiff. The Declaratory Judgment Act (the "DJA") overcomes sovereign immunity only in limited circumstances where, among other requirements, the declaration sought involves the plaintiff's rights. But Plaintiff's Complaint involves the legality of the Tribe's gaming activities. Those activities are not alleged to have caused Plaintiff's injuries and are the subject of the litigation before Judge Giblin. Second, declaratory actions against Indian tribes do not allow for damages—Plaintiff's ultimate goal here—and his underlying cause of action for tort injuries is barred anyway. Plaintiff's requests that the Court make declarations about the legality of the Tribe's gaming and strip the Tribe of its sovereign status are fundamentally misguided.

But even if jurisdiction existed for Plaintiff to challenge the Tribe's gaming activities and tribal court, his damages claim for premises liability still must be dismissed. *TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 680–81 (5th Cir. 1999) ("[T]he district court correctly dismissed the damages claim based on sovereign immunity[.]"). Although the Fifth Circuit has acknowledged a narrow band of cases to which tribal sovereign immunity does not extend, those declaratory actions involve only prospective equitable relief. *See id.* at 680. Here, Plaintiff seeks tort damages that cannot be brought against the Tribe. *See id.* at 680–81. Federal law is settled on this point, and the Complaint must be dismissed.

I. Plaintiff Cannot Challenge the Tribe's Gaming Practices or Tribal Court.

Plaintiff primarily attempts to circumvent tribal immunity through the DJA. Compl. ¶ 3. Although Indian tribes may in limited circumstances be subject to declaratory suits, the "declaratory judgment statute offers no independent ground for jurisdiction. The statute permits the award of declaratory relief only when other bases for jurisdiction are present." *TTEA*, 181 F.3d at 681 (emphasis added). Plaintiff cannot simply allege that "the Tribe and/or the Casino is not entitled to tribal sovereign immunity against claims for declaratory or equitable relief." Compl. ¶ 26. He must identify an underlying statute and cause of action on which to invoke the DJA.

Aside from the declaratory claim, Plaintiff offers three potential bases for jurisdiction: (1) alleged and unspecified violations of the Restoration Act; (2) the "federal question" of whether a non-Indian may be compelled to submit to the jurisdiction of the Tribe's court for an alleged tort occurring on the Tribe's lands; and (3) the alleged "dysfunctional or non-existent" nature of the Tribe's court, which supposedly leaves Plaintiff without a mechanism for obtaining relief. Compl. ¶ 3. None of these arguments gives rise to federal-court jurisdiction.

A. Only the State Has Standing to Assert Claims Under the Restoration Act.

First, Plaintiff lacks standing to assert claims for violations of the Restoration Act and thus cannot use that as his federal-question vehicle. The Restoration Act provides a limited abrogation of tribal immunity in § 207(c)—for the State, not Plaintiff. The Restoration Act contains no private right of action for gaming-related claims against the Tribe.

Section 207(c) contains precisely the type of language that the Supreme Court has identified as an "unequivocal expression" of Congress's intent to abrogate tribal immunity. *Santa Clara*, 436 U.S. at 59. Under the heading "Jurisdiction Over Enforcement Against Members," that subsection allows "the State of Texas" to "bring[] an action in the courts of the United States to enjoin violations of the provisions of this section." Notably absent from that abrogation of

immunity is any reference to a private individual bringing claims about the Tribe's gaming activities. The Restoration Act thus supplies a mechanism for the State to enforce the prohibitions on gaming noted in § 207(a), and then only through injunctive relief.

This underscores that Plaintiff lacks standing to complain about alleged violations of the Restoration Act. The "irreducible constitutional minimum of standing contains three elements": (1) injury in fact (an invasion of a legally protected interest which is concrete and particularized); (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560–61.

Plaintiff lacks each element. The injury of a Restoration Act violation—differentiated here, as it must be, from Plaintiff's tort injury—is not particularized to Plaintiff. It is a generalized grievance of the type that does not confer standing. *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Likewise, the Complaint identifies no causal nexus between the Tribe's alleged violations of the Restoration Act and Plaintiff's injury. Gaming may have attracted Plaintiff to Naskila, but gaming did not proximately cause his injuries. His allegation is that a set of stairs did. That injury could have happened if he were on tribal grounds for any reason. Furthermore, shuttering Naskila—the relief Plaintiff proposes for the Tribe's alleged violations of the Restoration Act—provides Plaintiff no remedy for his personal injuries, the only harm to Plaintiff alleged in the Complaint.

Relatedly, Plaintiff asks this Court to declare that the gaming at Naskila gives rise to both a waiver of sovereign immunity and a forfeiture of tribal status. Compl. ¶ 50. That is wrong for several reasons. First, because the State and the Tribe are already engaged in litigation over what gaming is permissible at Naskila, a declaration addressing that issue in a separate case filed years later is particularly inappropriate. Second, even if the Tribe were in violation of the Restoration Act, that does not waive its immunity, and Plaintiff does not show how it could. Tribal immunity

is a common-law right of the Tribe that exists independent of the Restoration Act, subject to express modification by Congress or the Tribe itself (which does not exist here). *See Bay Mills*, 572 U.S. at 788. Third, Plaintiff offers no support for the unprecedented claim that the Tribe "forfeited tribal status" by engaging in gaming at Naskila. Compl. ¶¶ 46–48. Not even the State could achieve such a result. The Restoration Act limits the State to an injunctive remedy to enjoin "prohibited gaming activities" under § 207(a). No violation of the Restoration Act could even conceivably give rise to judicial revocation of the Tribe's centuries-old sovereign authority.

A similar argument to Plaintiff's was raised in *TTEA* when the corporation asked the court "for a declaratory judgment that the tribe had violated its status as a tribe by illegally engaging in gaming operations." 181 F.3d at 680. The declaratory plaintiff abandoned this argument on appeal, however, after the district court found the corporation lacked "standing to complain of the Tribe's gaming activities." *Id.* The result should be the same here. Because the declarations Plaintiff seeks as to the Tribe's gaming do not involve Plaintiff's rights, they cannot be used as a vehicle to circumvent tribal sovereignty.

B. The Alleged Status of the Tribe's Court Also Fails as a Jurisdictional Hook.

Plaintiff also lacks standing to complain about "the Tribe's failure to establish a functioning tribal court." Compl. ¶ 50(b)(ii). To be clear, Plaintiff is simply incorrect about the Tribe's court. The Tribe's court has existed for at least two decades and has operated under the direction of a law-trained judge since 2015. *See* 2000 Amendments to Alabama-Coushatta Tribe Const. art. IX (Ex. B); Alabama-Coushatta Tribe Const. art. XIII (2016 ed) (Ex. C); Briones Dec. (Ex. D); Hourigan Dec. (Ex. E). Plaintiff relies on a discussion about the Tribe's court in *Comstock Oil & Gas Inc. v. Alabama & Coushatta Tribes of Tex.*, 261 F.3d 567 (5th Cir. 2001), which in part considered arguments about whether the Tribe's court existed at the time the action was filed and

was improperly constituted thereafter, *id.* at 572–73. The Fifth Circuit concluded that the Tribe's Constitution did not provide for a tribal court system and that the Tribe could not use its Judicial Code to establish one. *Id.* The Tribe has, in the nearly two decades since *Comstock*, remedied that issue by amending its Constitution in 2000 to include a "Judicial Branch" article, now found in Article XIII, which provides for a three-part tribal-court system. *See* Ex. C.

Today, the Tribal Court employs a full-time Court Administrator, a full time Court Clerk, and a part-time security guard. The Court contracts with the following law-trained attorneys, who are all licensed by both the State of Texas and admitted to the Tribal Court: (1) Chief Tribal Court Judge Dana Williams, (2) Prosecutor Jennifer Bergman, (3) Public Defender Farrah Harper, (4) Social Services Attorney Pamela Walker, and (5) Conflict Attorney Allison Trousdale. The Tribe also contracts with Conflict/Associate Judge Margaret Dunham, who is licensed in New York State and admitted to the Tribal Court. The Tribal Court handles over 100 cases per year in accordance with its Comprehensive Codes of Justice in both civil and criminal law. The Tribal Court is also one of the few Tribal Courts in the country currently exercising Special Enhanced Criminal Jurisdiction over non-tribal members pursuant to the Violence Against Women Reauthorization Act of 2013, P.L. 113-4. The Tribe contracts with the San Jacinto County Detention Center for jailing services. Its civil court handles cases matters related to child custody, child support, housing, probate, divorce, performs marriages, and other civil matters. Tribal Court decisions are afforded Full Faith and Credit, and its reputation is well established in the legal community. *See* Hourigan Dec. Plaintiff is simply incorrect that the Alabama-Coushatta Tribal Court is not a functioning Court.

To be sure, Plaintiff is correct that "the civil jurisdiction of a tribal court" is a "federal question under § 1331." *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845,

852 (1985). But that consideration is irrelevant here because the Tribe has not sought to compel the Plaintiff, a non-Indian, into tribal court. That makes this case different from *Comstock*, where the Tribe sued companies (with whom it had mineral exploration leases) in federal court and then dismissed that action in favor of a suit brought in tribal court. At that point, the companies sought a declaration as to the status of the Tribe's court. *Id.* at 569. Similarly, in *TTEA*, a Texas corporation's agreement with the Pueblo was determined by the Pueblo tribal court to be void, and the corporation then requested that the federal court take jurisdiction and enjoin the tribal court from taking further action on the Pueblo's complaint. 181 F.3d at 679–80. The federal question in *TTEA* thus arose only because, as in *Comstock*, the Indian tribe—not the non-Indian defendants—sued in tribal court. *Id.* at 683–84.

There is no such procedural mechanism at work in this case. Because the tribal court has not sought to exercise jurisdiction over Plaintiff after an affirmative attempt by the Tribe to sue him there, there is no federal question as to whether or not the tribal court may exercise jurisdiction over him. Plaintiff lacks standing to challenge this aspect of the Tribe's government.

C. The Tribe's Immunity Does Not Depend on Whether Plaintiff Has a Remedy.

Plaintiff's jurisdictional assertions lastly rest on the assumption that federal jurisdiction must exist in some way so that he has a method of redress against the Tribe. Compl. ¶ 24. The Supreme Court has repeatedly rejected this exact argument. In *Kiowa*, the Court acknowledged "reasons to doubt the wisdom of perpetuating the doctrine" of tribal sovereign immunity, but nonetheless went on to uphold the doctrine, even as it expressly recognized that doing so could leave tort victims without remedies against Indian tribes. *See* 523 U.S. at 758–59. As the Court explained, it falls to Congress to repudiate the doctrine, not the courts. *Id*.

After *Kiowa*, Congress considered legislation to modify tribal immunity. *See Bay Mills*, 572 U.S. at 801–02. Congress even considered bills that would have directly waived tribal immunity from tort claims, such as the American Indian Tort Liability Insurance Act, S. 2302, 105th Cong. (1998), and the American Indian Equal Justice Act, S. 1691, 105th Cong. (1998). Neither passed. Instead, Congress passed the much narrower Indian Tribal Economic Development and Contract Encouragement Act, § 2, 114 Stat. 46 (codified at 25 U.S.C. § 81(d)(2)), which mandates only that certain contracts with Indian tribes either disclose or waive immunity if they require federal approval. *See Bay Mills*, 572 U.S. at 802.

The Supreme Court recently reiterated in *Bay Mills* that only Congress has the authority to develop exceptions to tribal sovereign immunity. There, the Court found it important that Congress has considered the doctrine on multiple occasions and generally has opted to preserve it. *Id.* at 802–03. Thus, Plaintiff's argument that jurisdiction must exist in some court so that he has redress for his tort claims defies established federal law. Plaintiff cannot compel the Tribe to provide him an avenue through which to abrogate or waive its sovereign immunity from suit.

II. In All Events, Tribal Sovereign Immunity Forecloses Plaintiff's Tort Claims.

Without original jurisdiction over Plaintiff's claims for declaratory relief, the court cannot exercise supplemental jurisdiction over his premises-liability claims. *Arena*, 669 F.3d at 221–22. But even if original jurisdiction did exist for one of Plaintiff's declaratory claims, tribal sovereign immunity still forecloses the tort claims here. *TTEA*, 181 F.3d at 680–81.

The Fifth Circuit noted in *TTEA* that the *Kiowa* Court extended tribal immunity to a contract action because it was "for damages, not a suit for declaratory or injunctive relief," explaining that "[t]his difference matters." *Id.* at 680. As a result, "the district court correctly dismissed the damages claim based on sovereign immunity" even though the "actions seeking declaratory and injunctive relief" could proceed. *Id.* at 680–81. *Comstock* is not to the contrary.

There, the Fifth Circuit focused on whether the oil companies sought declaratory or injunctive relief rather than damages. 261 F.3d at 571–72.

This aligns with at least the First, Second, Fourth, Sixth, Eighth, and Tenth Circuit Courts of Appeals, which have unanimously applied tribal sovereign immunity to claims sounding in tort. *See Buchwald Capital Advisors, LLC v. Sault Ste. Marie Tribe of Chippewa Indians*, 917 F.3d 451, 453 (6th Cir. 2019) (affirming sovereign-immunity dismissal of fraudulent-transfer claims); *Santana v. Muscogee (Creek) Nation*, 508 F. App'x 821, 822–24 (10th Cir. 2013) (same; tort claims); *Bassett v. Mashantucket Pequot Tribe*, 204 F.3d 343, 356–58 (2d. Cir. 2000) (same; copyright-infringement claims); *Rosebud Sioux v. Val-U Constr. Co.*, 50 F.3d 560, 561 (8th Cir. 1995) (same; tort counterclaims); *Maynard v. Narragansett Indian Tribe*, 984 F.2d 14 (1st Cir. 1993) (same; off-reservation trespass claims); *Haile v. Saunooke*, 246 F.2d 293, 297 (4th Cir. 1957) (same; tort claims). As the Fourth Circuit long ago observed, the "rule that a tribe of Indians under the tutelage of the United States is not subject to suit without the consent of Congress is too well settled to admit of argument." *Haile*, 246 F.3d at 297.

As his sole support to the contrary, Plaintiff relies on the Alabama Supreme Court's decision in *Wilkes v. PCI Gaming Authority*, 287 So. 3d 330, 335 (Ala. 2017), *cert. denied*, *Poarch Band of Creek Indians v. Wilkes*, 139 S. Ct. 2739 (2019), which allowed tort claims to proceed against an Indian tribe in Alabama state courts. Compl. ¶¶ 37–43. Aside from the fact that *Wilkes* is not binding on this Court, it also is distinguishable and incorrect. To begin, although *Wilkes* concerned tort claims and a non-Indian, the underlying conduct took place outside of tribal lands. 287 So. 3d at 335. This fact—not present here—played a key role in the Alabama Supreme Court's expansion of *Kiowa*'s concern for those who "have no choice in the matter" when it comes to tribal

sovereignty. *Id.* at 334 (quoting *Kiowa*, 523 U.S. at 758–60). Plaintiff here pleads that he was injured on the Tribe's land, which he knowingly and voluntarily entered.

Just as importantly, *Wilkes*'s flawed reasoning and refusal to apply binding precedent makes it unpersuasive authority. Rather than beginning with the governing presumption that sovereign immunity applies unless Congress has authorized suit or the Tribe has waived immunity, the *Wilkes* court searched for a case applying sovereign immunity to the exact fact pattern at issue. *See id.* at 333–35. Finding no Supreme Court case expressly addressing Wilkes's claims, the Alabama Supreme Court determined that it was free to chart its own course and judicially craft its own exception to tribal sovereign immunity. *Id.*

The Complaint provides no justification for applying that mistaken approach here. *Wilkes* is an outlier that addresses off-Indian-lands conduct and fails to apply tribal sovereign immunity jurisprudence. To hold otherwise would run afoul of *Kiowa*'s recognition that sovereign immunity can—and often does—foreclose alleged tort victims from obtaining relief against Indian tribes. *See Kiowa*, 523 U.S. at 758. That result is common; sovereign immunity frequently bars claims against federal, state, and local governments except as expressly allowed by tort-claims, *qui-tam*, and other immunity-abrogating statutes. And as the Supreme Court has explained, Congress—not courts—should create any such vehicles for circumventing tribal immunity. *Id.* at 758–59. Congress has not done so as to Plaintiff's claims.

CONCLUSION

The Tribe respectfully asks the Court to dismiss this case in its entirety for lack of subject-matter jurisdiction.

Dated: June 26, 2020

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing *Motion to Dismiss* was served upon the counsel listed below through the Court's CM/ECF system on June 26, 2020:

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