No. 20-50313

In the United States Court of Appeals
for the Fifth Circuit

YSLETA DEL SUR PUEBLO, a federally recognized sovereign Indian tribe,
Plaintiff-Appellant,

v.

CITY OF EL PASO,
Defendant-Appellee.

On Appeal from the United States District Court for the Western District of Texas,
El Paso Division, Civil Action No. 3:17-CV-00162-DCG

BRIEF OF APPELLEE

Mark C. Walker
Texas State Bar No. 20717320
mwalker@dickinsonwright.com
Dickinson Wright PLLC
221 N. Kansas Street, Suite 2000
El Paso, Texas 79901
Telephone: (915) 541-9322
Facsimile: (844) 670-6009
Attorney for Appellee

Oral Argument Requested

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellee City of El Paso, certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Appellant:

Ysleta del Sur Pueblo, a federally recognized sovereign Indian tribe

Appellees:

City of El Paso

Appellate Counsel for Appellant:
Ms. Kelli J. Keegan
Mr. Randolph H. Barhouse
Barnhouse Keegan Solimon & West LLP
7424 4th Street NW, Los Ranchos de Albuquerque, NM 87107
Tel: (505) 842-6123
Fax: (505) 842-6124
kkeegan@indiancountrylaw.com
dbarnhouse@indiancountrylaw.com

Appellate Counsel for Appellee:
Mr. Mark C. Walker
Texas State Bar No. 20717320
mwalker@dickinsonwright.com
Dickinson Wright PLLC
221 N. Kansas Street, Suite 2000
El Paso, Texas 79901
Telephone: (915) 541-9322
Facsimile: (844) 670-6009

Trial Counsel:
Mr. Thomas E. Luebben
Law Offices of Thomas E. Luebben, PC
21 Star Splash
Santa Fe, NM 87506
Tel: (505) 269-3544
luebbenlaw@msn.com
Mr. Ken Coffman
Ken Coffman, Attorney at Law
221 N. Kansas Street, Suite 503
El Paso, Texas 79901
Tel: (915) 231-1945
Fax: (915) 225-0555
ken@kclawfirm.net

Trial Counsel:
Ms. Karla Nieman, City Attorney
Mr. Oscar G. Gabaldon, Jr.,
Ms. Maria Guadalupe Martinez,
Assistant City Attorneys
City of El Paso
P.O. Box 1890
El Paso, Texas 79950
Tel: (915) 212-0033
martinezmg@elpasotexas.gov
niemankm@elpasotexas.gov

Amicus Curiae

Professor
Manuel Garcia y Griego:
Mr. David S. Coale
Lynn Pinker Hurst &
Schwegmann, LLP
2100 Ross Avenue, Suite 2700
Dallas, Texas 75201
Tel: (214) 981-3800

The Alabama-
Coushatta Tribe of Texas:
Mr. Frederick R. Petti
Petti and Briones PLLC
8160 East Butherus Drive, Suite 1
Scottsdale, Arizona 85260
Tel: (602) 396-4890
fpetti@pettibriones.com

Ms. Lynn H. Slade
Mr. Walker E. Stern
Mr. Nathan T. Nieman
Modrall, Sperling, Roehl,
Harrris & Sisk, P.A.
P.O. Box 2168
Bank of America Centre, Suite 1000
500 Fourth Street, NW
Albuquerque, NM 87103
Tel: (505) 848-1800
lynn.slade@modrall.com
western@modrall.com
nathan.nieman@modrall.com

/s/ Mark C. Walker
Mark C. Walker

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to 5th Cir. R. 28.2.3 and Fed. R. App. P. 34(a)(1), Appellee, the City of El Paso, respectfully requests oral argument. This appeal will require the Court to determine legal issues that are important to the determination of property rights in Texas. Appellee requests oral argument so that the lawyers, who are intimately familiar with the record and authorities, can assist the Court in the analysis of the record, and the application of relevant law to this case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

JURISDICTIONAL STATEMENT

I. District Court's Jurisdiction.

The district court lacked jurisdiction over Appellant's claims because they did not arise under federal law.

II. Court of Appeal's Jurisdiction.

This Court has jurisdiction over this appeal under 28 U.S.C. § 1291.

III. Timeliness of Appeal.

The appeal is timely.

IV. Final Judgment.

This is an appeal from a final judgment of the district court in a civil case that disposes of all of the parties' claims.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW.

1. Since the Pueblo's action was in the nature of a suit to quiet title in certain land in El Paso County, Texas, did the district court err in dismissing the Pueblo's complaint for declaratory judgment, without prejudice, for lack of subject-matter jurisdiction?

2. Did the district court err in denying the Pueblo leave to file its post-judgment motion for leave to amend its complaint to add allegations that did not confer subject-matter jurisdiction?

STATEMENT OF THE CASE

1. Statement of Facts.

This Court is well aware of the history of the Ysleta del Sur Pueblo, its people, and its prior litigation history. It is unnecessary to discuss that history in detail in this brief, as the focus of this appeal is whether the Pueblo could use a federal declaratory judgment action to claim the title to some 111.73 acres of land in El Paso County, Texas, that belongs to someone else (the Property).[1] The City will not address the Pueblo's characterizations of procedural or tribal history.

It is undisputed that the 111.73 acres in question are located in the City of El Paso, El Paso County, Texas. It is also undisputed that the City has title to the Property. And it is also undisputed that the Pueblo seeks to change the recognized title to the Property.

The City acquired the parcels that comprise the Property between 1944 and 1970. ROA.498. The City developed Blackie Chesher Park, which occupies 69.0 acres of the 111.73 acres claimed in this case, to provide recreation facilities for residents of the area, including a commitment to a Texas Department of Parks and Wildlife grant to improve the Park facilities, requiring commitment of the facilities to park purposes and the transfer of lands to the Ysleta Independent School District for El Valle Elementary School. ROA.498. The Pueblo never objected to the City's

[1] Although the Complaint specifically claimed 111.73 acres of land in the lawsuit, the Pueblo alleges that an 1853 Texas survey found 8,148.34 acres within the alleged grant, and the Pueblo's claims would unsettle title to all properties within the alleged "grant" area. ROA.478, n.1.

actions, and City officials were unaware the Pueblo claimed title to the Property, the Park, and the "grant" area until after the Pueblo filed this lawsuit. ROA.498-99.

2. Procedural History.

The Pueblo filed suit in the United States District Court for the Western District of Texas, El Paso Division, on May 22, 2017. ROA.15-29. The Pueblo's suit brought an action only for declaratory judgment seeking confirmation of the Pueblo's title to the Property. *Id.* The suit also asked the district court to enjoin the City from claiming any estate, right, title, or interest in or to the Property. *Id.*

Both sides filed cross-motions for summary judgment on July 29, 2019. ROA.477-1403. On January 15, 2020, the district court issued its Memorandum Opinion and Order (ROA.3582-3601), in which, in part, it construed the City's motion for summary judgment regarding lack of subject-matter jurisdiction as a Rule 12(b)(1) motion to dismiss. ROA.3583-84. Also on January 15, 2020, the district court entered a final judgment dismissing the Pueblo's complaint without prejudice. ROA.3602.

On February 12, 2020, the Pueblo filed a motion to amend the final judgment and for leave to amend the complaint, along with amending the scheduling order to allow yet additional discovery. ROA.3604-3642. The district court denied the Pueblo's motion to amend on March 24, 2020. ROA.3687-95.

After filing its notice of appeal, on July 23, 2020, the Pueblo filed an

unopposed motion to dismiss the appeal without prejudice [9362129-2], and later moved to reopen the case [9490179-2]. The Pueblo neither refiled its lawsuit in federal court, nor did it pursue an action in state court.

SUMMARY OF THE ARGUMENT

Texas law provides that a trespass to try title lawsuit is the exclusive method to determine disputed real property title in Texas. The Pueblo's suit in federal court required federal question jurisdiction, and its action in the nature of one to quiet title arose under Texas state law, and did not meet the "arise under" requirements of 28 U.S.C. §§1331 and 1362. The district court did not abuse its discretion in denying the Pueblo's post-judgment motion to amend its complaint to allege an attempted cause of action that it could have alleged much earlier, and that would still not cure the "arise under" defect in jurisdiction.

ARGUMENT AND AUTHORITIES

I. Standards of Review.

This Court reviews a dismissal for lack of subject-matter jurisdiction under Rule 12(b)(1) de novo. *Flores v. Pompeo,* 936 F.3d 273, 276 (5th Cir. 2019)(affirming dismissal).

This Court reviews the denial of a motion for leave to amend the complaint for abuse of discretion. *Rosenzweig v. Azurix Corp.,* 332 F.3d 854, 864 (5th Cir. 2003)(affirming denial of motion for leave to amend complaint after entry of judgment); *Allen v. Walmart Stores, L.L.C.*, 907 F.3d 170, 186 (5th Cir. 2018)(affirming denial of motion for leave to amend complaint).

II. The district court correctly determined that it lacked subject-matter jurisdiction because the Pueblo's action was one to quiet title, and a trespass to try title claim is the exclusive method in Texas for adjudicating disputed claims of title to real property, and does not "arise under" federal law or treaty to confer federal question jurisdiction.

A. A trespass to try title claim is the exclusive method in Texas for adjudicating disputed property title claims.

It is well settled that "a trespass to try title claim is the exclusive method in Texas for adjudicating disputed claims of title to real property." *Texas Parks & Wildlife Dept. v. Sawyer Trust,* 354 S.W.3d 384, 389 (Tex. 2011), citing Tex. Prop. Code §22.001(a)("A trespass to try title action is the method of determining title to lands, tenements, or other real property."). In *Sawyer Trust,* the Texas Supreme

Court rejected a declaratory judgment action that only sought declaratory and injunctive relief to effectively determine ownership and right to possession of the Salt Fork River, which should have been brought as a trespass to try title case. *Sawyer Trust,* 354 S.W.3d at 391-92. Chapter 22 of the Texas Civil Practice and Remedies Code describes the scope and remedies of the action. Tex. Civ. Prac. & Rem. Code §§21.001-22.045. Section 8 of the Texas Rules of Civil Procedure provides twenty-six rules to govern trespass to try title actions. *See* Tex. R. Civ. P. 783-809.

Similarly, in *M&M Resources, Inc. v. DSTJ, LLP,* 564 S.W.3d 446, 454-55 (Tex. App. – Beaumont 2018, no pet.), the court of appeals affirmed dismissal of pleadings in a declaratory judgment action that sought to declare which party held rightful title to certain mineral interests. The court of appeals held that a claimant must seek relief related to property interests through a trespass to try title action, rather than a suit under the Declaratory Judgments Act. *Id.* "If a dispute involves a claim of superior title and the determination of possessory interests in property, it must be brought as a trespass to try title action." *Id.,* quoting *Jinkins v. Jinkins,* 522 S.W.3d 771, 786 (Tex. App. – Houston [1st Dist.] 2017, no pet.); "Moreover, when the 'trespass to try title statute governs the parties' substantive claims … [a party] may not proceed alternatively under the Declaratory Judgment Act to recover their

attorney's fees." *M&M Resources,* 564 S.W.3d at 454, quoting *Martin v. Amerman,* 133 F.3d 262, 267 (Tex. 2004).

The Pueblo is well aware of this rule. In this Court the Pueblo lost in a suit to eject the Texas Department of Transportation from a piece of real property in El Paso, Texas. This Court held that an action to put a plaintiff in possession of real property held by the defendant is a quiet title action, and that a federal court does not have the power to adjudicate that interest in property. *Ysleta del Sur Pueblo v. Laney,* 199 F.3d 281, 288-289 (5th Cir. 2000).

B. The Pueblo's predicate action to declare title in the Property arose under state, not federal, law, and deprived the district court of subject-matter jurisdiction.

The Pueblo's suit only sought a declaratory judgment "(a) [c]onfirming that Plaintiff is and has been the rightful holder of title to the Property since 1751 and that the defendants are declared to have no estate, right, title or interest in or to the Property; (b) [e]njoining the defendants from claiming any estate, right, title or interest in or to the Property…." ROA.20.

As in *Laney,* the Pueblo's suit is one to adjudicate title and put them in possession of the Property. That claim arises under Texas state law and is not preempted by any competing federal law.

The district court properly noted that both of the Pueblo's asserted grounds for subject-matter jurisdiction required that the civil actions *arise under* the

Constitution, laws, or treaties of the United States. 28 U.S.C. §§1331, 1362; *Ysleta del Sur Pueblo v. City of El Paso*, 433 F.Supp.3d 1020, 1024 (W.D. Tex. 2020).

The predicate cause of action for the claimed declaratory relief was based on a state law right to bring a trespass to try title action, grounded both in common law and Texas statutes. The district court properly held that "[s]ince the Declaratory Judgment Act is only a procedural device that creates no substantive rights, the plaintiff's declaratory relief must be premised on an independent cause of action." *Ysleta del Sur Pueblo*, 433 F. Supp.3d at 1026-27. The district court also properly construed the predicate cause of action for the Pueblo's declaratory relief to be an action to quiet title. *Id.* Accordingly, the district court properly held that "[a]ctions to quiet title are causes of action only rooted in state law because 'there is no general federal cause of action for quieting title to land.'" *Id.*, quoting *Vigil v. Hughes*, 509 F. App'x 796, 797 (10th Cir. 2013).

The Pueblo's brief in this appeal is entirely silent about the propriety of bringing a declaratory judgment action to quiet title to land in Texas. Nor does the Pueblo address the district court's proper determination that an action to quiet title is a state law action that the district court could not adjudicate. The Pueblo's brief does not discuss the declaratory judgment action, nor even cite to the Declaratory Judgment Act, 28 U.S.C. §§2201-2202. The Pueblo's brief does not address the requirement of a predicate action, and does not even mention trespass to try title

actions as the exclusive method of adjudicating disputed claims of title to real property. The Pueblo's brief does not address any Texas case, or any of the federal cases on which the district court relied. Instead, the Pueblo seeks to litigate the merits of its title claim to this Court, rather than addressing the fatal procedural defects in the lawsuit.

C. The Pueblo stated no private right of action arising under federal law or treaty.

The Pueblo also stated no other predicate cause of action for declaratory relief under other law or treaty. Although the Pueblo often refers to the Treaty of Guadalupe Hidalgo in its suit and briefing, the district court correctly held that this Court and other circuits long ago found that the Treaty "does not provide for a private action, and plaintiffs cannot transform their state law property claims into federal questions simply by referring to the Treaty." *See Huckins v. Duval Cty., Fla.*, 286 F.2d 46, 49 (5th Cir. 1960)(noting that '[i]t is not enough for the plaintiffs to show that their claim is dependent upon a treaty' to create federal question jurisdiction over a land ownership dispute); *Vigil*, 509 F. App'x at 798(affirming district court's holding that the Treaty of Guadalupe Hidalgo did not create federal jurisdiction for plaintiff's claims about disputed ownership of the land);" (additional citations omitted). *Ysleta del Sur Pueblo*, 433 F. Supp.3d at 1026-27.

The district court also correctly held that "courts have … held consistently that only [United States] treaties with a specific provision permitting a private action, or one to be clearly inferred, may suffice as the basis for federal jurisdiction. Otherwise, no cause of action is stated and no federal law applicable in the claim presented." *Id.*, quoting *El Paso Cty. Water Imp. Dist. No. 1 v. Intl. Boundary and Water Comm'n, U.S. Sec.*, 701 F. Supp. 121, 123 (W.D. Tx. 1988).

Accordingly, the district court correctly held that "the Pueblo's state-law claim to quiet title does not 'arise under' federal law because it is not a cause of action provided by the Treaty of Guadalupe Hidalgo or created by other federal law. Nor does the Pueblo's claim necessarily depend on the resolution of a substantial question of federal law merely because it refers to the Treaty of Guadalupe Hidalgo." *Ysleta del Sur Pueblo,* 433 F. Supp.3d at 1026-27.

III. The district court correctly dismissed the complaint for lack of subject-matter jurisdiction because its complaint is not rooted in federal law.

The district court properly rejected the Pueblo's argument that its special status as an Indian tribe, along with asserted rights to land based on the Treaty of Guadalupe Hidalgo, because the Pueblo had no claim for possession on an aboriginal right of occupancy, which was never guaranteed by a U.S. treaty or law. *Ysleta del Sur Pueblo,* 433 F. Supp.3d at 1027-33. The district court correctly

distinguished the Pueblo's reliance on *Oneida Indian Nation of N.Y. Stte v. Oneida Cty., New York*, 414 U.S. 661, 663 (1974)(*Oneida I*).

The Pueblo's pleadings established that the source of its alleged rights derived from a treaty by a prior sovereign, not from historical evidence of the Pueblo's long-standing physical possession of the Property "from time immemorial" to the time the colonists arrived. *Ysleta del Sur Pueblo,* 433 F. Supp.3d at 1029. An Indian tribe may establish aboriginal title by showing that it has inhabited the land "from time immemorial." *Cty. Of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 234 (1985)(*Oneida* II). Put another way, a tribe can establish aboriginal title by "immemorial occupancy … to the exclusion of other Indians." *N.W. Bands of Shoshone Indians v. United States*, 324 U.S. 335, 338 (1945).

The record showed that the tribe "[was] relocated by the Spanish from the Pueblo of Isleta, New Mexico, to [its] current location between 1680 and 1682," and that "[i]n 1751, Spain granted the [Property] to its members as communal property." ROA.17-18.

Similarly, the Pueblo has no federally derived property right of occupancy. No United States treaty or statute guaranteed any such right for the Pueblo. The district court appropriately relied upon *Tameling v. U.S. Freehold & Emigration Co.*, 93 U.S. 644, 661 (1876), and *Astizaran v. Santa Rita Land & Mining Co.*, 148 U.S. 80, 81-82 (1893) to describe the scope of governmental obligations under the

Treaty of Guadalupe Hidalgo. *Ysleta del Sur Pueblo,* 433 F. Supp.3d at 1031. Importantly, the district court noted that the U.S. Supreme Court held that "the duty of providing the mode of securing these rights and of fulfilling the obligations imposed upon the United States by the treaties belonged to the political department of the government; and congress might either itself discharge that duty, or delegate it to the judicial department." *Astizaran,* 148 U.S. at 81-82.

The district court properly concluded that "the Treaty of Guadalupe Hidalgo did not extend the same guarantees to Mexican citizens – allegedly including the Pueblo - as the treaties discussed in *Oneida I* extended to the Indian tribes." *Ysleta del Sur Pueblo,* 433 F. Supp.3d at 1030-31. The district court quoted from *Tamerling*:

> We have repeatedly held that individual rights of property, in the territory acquired by the United States from Mexico, were not affected by the change of sovereignty and jurisdiction. They were entitled to protection, whether the party had the full and absolute ownership of the land, or merely an equitable interest therein, which required some further act of the government to vest in him a perfect title. The duty of providing the mode of securing them and fulfilling the obligations which the [Treat of Guadalupe Hidalgo] imposed, was within the appropriate province of the department of the government.

Tamerling, 93 U.S. at 661.

The Pueblo does not allege any independent treaty with it to establish occupancy rights, nor that any act of Congress fulfilled any obligations to secure any property rights in El Paso. The Pueblo does not identify any acts of Congress

that provide for "the mode of securing these rights," which the Supreme Court identified as missing from the Treaty of Guadalupe Hidalgo. *See Astizaran,* 148 U.S. at 81-82. The Pueblo does not provide any authority to prove any independent, federal right of action to determine property rights. As a result, the district court properly found that it "lacks authority to determine the validity of Pueblo's claim to the land." *Ysleta del Sur Pueblo*, 433 F. Supp.3d at 1033.

The district court also correctly relied on *Burat's Heirs v. Board of Levee Commissioners,* 496 F.2d 1336, 1341 (5th Cir. 1974), in which this Court "affirmed a district court's dismissal for lack of federal question jurisdiction of the plaintiff's declaratory judgment action seeking to establish title to land settled by their ancestors before the Louisiana Purchase." *Ysleta del Sur Pueblo,* 433 F. Supp.3d at 1029. Nothing in the district court's opinion suggested any ambiguity in the Treaty of Guadalupe Hidalgo, and the district court's reliance on U.S. Supreme Court opinions on the scope of the treaty, along with this Court's opinion in *Burat,* do not imply any sort of violation of the Indian canons of construction.

Similarly, the Pueblo makes several claims and assumptions that it has "perfect" title to the Property, but does not define the term, whether the Pueblo meets the definition, or how that argument cures the lack of subject-matter jurisdiction. "'Perfect title' means fee simple title, or 'a title that does not disclose a patent defect that may require a lawsuit to defend it … title that is good both at

law and in equity.'" *Longoria v. Lasater,* 292 S.W.3d 156, 165 (Tex. App. – San Antonio 2009, pet. denied), quoting BLACK'S LAW DICTIONARY at 1523 (8th ed. 2004)(in a trespass to try title action, the court of appeals also defined "record title," "equitable interest," and "equitable title," in holding that "[a] suit to resolve a dispute over title to land is, in effect, a trespass to try title action regardless of the form the actions takes and whether legal or equitable relief is sought."); *Izen v. Ryals*, No. 14-17-00431-CV, 2019 WL 1716253, at * (Tex. App. – Houston [14th] April 18, 2019, remanded by agmt.). The Pueblo's briefing on its claim to "perfect title" is simply an attempted argument on the merits of its claim, not a resolution to the lack of subject-matter jurisdiction, and can be brought in a trespass to try title action in state court.

Without some other predicate cause of action to support the declaratory judgment action, the district court lacked subject-matter jurisdiction over the Pueblo's Texas land title dispute, and properly dismissed the suit.

IV. The district court properly denied the Pueblo's post-final judgment motion for leave to amend its complaint.

Under any analysis, the district court's denial of the Pueblo's attempt to alter its complaint to respond to the opinion and judgment was proper and not an abuse of discretion. The Pueblo's proposed amended complaint sought to add some 47 paragraphs, including briefing, a claim for alleged federal common law trespass, a

claim for alleged violation of the Indian Non-Intercourse Act (NIA), a claim for civil rights violation under 42 U.S.C. §1983, a claim for alleged violation of the Treaty of Guadalupe Hidalgo, plus compensatory damages and attorney's fees. ROA.3615-3636. The Pueblo did not explain why it waited until February 12, 2020, some two years and almost nine months after filing suit, and after entry of judgment, to attempt to dramatically change the character, nature, and relief sought in its lawsuit.

To be clear, the Pueblo made no request prior to judgment to amend its pleading. In their appeal, the Pueblo makes no complaint about an attempt to amend its complaint during discovery, within or without the deadline to amend pleadings, prior to filing its motion for summary judgment, or during the over five-month pendency of the cross-motions for summary judgment. The Pueblo's complaint is that that the district court abused its discretion in refusing to allow the Pueblo to attempt to significantly change the nature of the claims and relief sought, even though they still could not manufacture subject-matter jurisdiction.

Although the Pueblo claims that the proposed amended complaint would cure defective subject-matter jurisdiction by pleading aboriginal title, despite the continuing pleading claiming title by act of a sovereign, the Pueblo failed to explain why it failed to raise the claim earlier. If the Pueblo really felt that making a claim of aboriginal title was necessary or proper in its claim, it certainly knew

how to do so long before the entry of judgment. The district court noted, among other issues, that the Pueblo's counsel in this case also represented the Pueblo of Jemez in its aboriginal title claim against the United States in *Pueblo de Jemez v. United States*, CIV 12-0800 RB/RHS, 2013 WL 11325229 (D.N.M. Sept. 24, 2013), *rev'd and remanded*, 790 F.3d 1143 (10th Cir. 2015), ROA.3691, n.7.

The Pueblo was also well aware of how to assert an alleged violation of the Non-Intercourse Act. The district court properly described several examples of the Pueblo's pleadings and briefing that highlight its knowledge of whether aboriginal title was an issue, including conducting discovery on aboriginal Indian title, and admitting in briefing that "both parties understood restrictions on alienation to be a critical aspect of the case, and specifically[,] application of the Indian Non-Intercourse Act." ROA.3691-93.

By the time the Pueblo proffered its post-judgment amended complaint for filing, discovery was long closed, and both sides had already spent a significant amount of time and resources, including hiring competing experts, in litigating the lawsuit for a declaratory judgment. Among the factors to consider when reviewing a party's motion for leave to amend include "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment[.]" *Allen v. Walmart*

Store, L.L.C., 907 F.3d 170, 184 (5th Cir. 2018). The district court believed that the Pueblo was "attempting to 'relitigate old matters, or raise arguments or present evidence that could have been raised prior to the entry of judgment.'" ROA.3693, quoting *Exxon Ship. Co. v. Baker*, 554 U.S. 471, 486 n. 5 (2008)(quoting 11 C. Wright & A. Miller, Federal Practice and Procedure §2810.1, pp. 127-28 (2d ed. 1995)). The district court noted that "a Rule 59(e) motion is not a vehicle for parties to correct poor strategic choices." ROA.3690, citing *EEOC v. St. Joseph's Hosp., Inc.*, 842 F.3d 1333, 1349 (11th Cir. 2016). The district court found that the Pueblo's allegations in its proposed amended complaint "could have been offered well before the Court's entry of judgment." ROA.3691. The district court concluded that "the Pueblo 'chose to stand by its … Complaint and risk an adverse ruling from the [Court]." ROA.3693, quoting *Schiller v. Physicians Res. Grp. Inc*, 342 F.3d 563, 567 (5th Cir. 2003).

Additionally, the grounds for the district court's ruling are apparent. *See Allen*, 907 F.3d at 185. The district court clearly took into consideration the undue delay in filing the request, possible dilatory motive in waiting until after judgment to try to change the nature of the lawsuit, undue prejudice to the City by having to conduct more discovery, file more pleadings and motions, even though dispositive motions were before the district court and ripe for decision. Even if allowed to amend, and with entry of another scheduling order, the Pueblo's attempt to

manufacture subject-matter jurisdiction would be futile and not change the facts, that the Pueblo's claim to title was from a Spanish land grant, not aboriginal title, which the Pueblo admitted. *See* ROA.3693 (quoting from the Pueblo's "Response in Opposition to [the City's] Motion for Leave to Amend Its Answer," filed February 5, 2019).

The Pueblo's appeal concerning leave to amend under 28 U.S.C. §1653 is not well taken, because they do not seek to correct technical errors in allegations of jurisdiction. Instead, the Pueblo seeks to add or substitute new causes of action in an attempt to create subject-matter jurisdiction where none exists. As the district court noted, "even if liberally construed, [§1653] does not allow a plaintiff to amend its complaint to substitute a new cause of action over which there is subject-matter jurisdiction for one in which there is not." ROA.3694, quoting *Advani Enterprises, Inc. v. Underwriters at Lloyds,* 140 F.3d 157, 161 (2d Cir. 1998).

The district court did not abuse its discretion in denying the Pueblo's motion to amend the judgment, enter a new scheduling order, and allow the Pueblo to file its significantly amended complaint. *See Allen,* 907 F.3d at 185-87 (affirming denial of leave to file amended complaint).

CONCLUSION AND PRAYER FOR RELIEF

In its very well-reasoned opinions and orders, the district court properly dismissed the Pueblo's suit, without prejudice, and denied its motion for leave to

amend its complaint. The issues before the Court are fairly straightforward, and do not require the Court to reinterpret any treaties or engage in a lengthy examination of Indian laws as the Pueblo suggests. Rather, based on the facts and procedural history, this Court would be justified in issuing a *per curiam* opinion affirming the district court's opinion and judgment. The City respectfully requests that this Court affirm the judgment of the district court, which will allow the Pueblo to file another suit in federal court, if it can find subject-matter jurisdiction, or to proceed in state court with a trespass to try title suit if the Pueblo wishes to pursue the matter any further.

Respectfully submitted,

Dickinson Wright PLLC
221 North Kansas Street, Suite 2000
El Paso, Texas 79901
Tel: (915) 541-9322
Fax: (844) 670-6009

By: */s/ Mark C. Walker*
Mark C. Walker
Texas State Bar No. 20717320
Email: mwalker@dickinsonwright.com
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit through the appellate CM/ECF system on June 15, 2021. All participants in the case are registered CM/ECF users and will be served through the appellate CM/ECF system, including to the following:

Ms. Kelli J. Keegan
Mr. Randolph H. Barnhouse
Mr. Aldo R. Lopez
Barnhouse Keegan Solimon & West LLP
Los Ranchos de Albuquerque,
New Mexico 87107
dbarnhouse@indiancountrylaw.com
kkeegan@indiancountrylaw.com
Attorneys for Appellant

/s/ Mark C. Walker
Mark C. Walker

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE

1. This brief complies with the type-volume limitation of Fed. R. App. P.32(a)(7)(B) because:

   [x] this brief contains 4,399 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

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/s/ Mark C. Walker
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