IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

AARIN NYGAARD, et al., Petitioners, v. TRICIA TAYLOR, et al., Respondents.	Civil No. 3:19-CV-03016-RAL **TRIBAL COURT DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS**

COME NOW Respondents Cheyenne River Sioux Tribal Court, Brenda Claymore, in her official capacity as Chief Judge of the Cheyenne River Sioux Tribal Court, Cheyenne River Sioux Tribal Court of Appeals, and Frank Pommersheim, in his official capacity as Chief Justice of the Cheyenne River Sioux Tribal Court of Appeals (hereafter collectively "Tribal Court Respondents"), and for their Brief in Support of Motion to Dismiss state as follows:

BACKGROUND

This is an action for habeas corpus relief under the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1303, in which Petitioners, Aarin Nygaard and Terrance Stanley, ask this Court to issue a writ of habeas corpus directing Tribal Court Respondents to produce two minor children, C.S.N. and T.R.S. Amend. Pet. [doc. 8] 32 (¶ d). The minor children are enrolled members of the Cheyenne River Sioux Tribe ("Tribe") and are the subjects of a temporary custody proceeding in the Cheyenne River Sioux Tribal Court ("Tribal Court").

The children have been present on the Cheyenne River Indian Reservation ("Reservation") since the at least the summer of 2014. *See* Pet. Exh. 65 [doc. 1-65] 1. In late November 2014, the children were physically separated from their mother, Tricia Taylor, when she was arrested on the

Reservation by the Federal Bureau of Investigation ("FBI") on a misdemeanor bad check warrant. *Id*. 4 & n. 3. At the time of the arrest, the FBI transferred physical custody of the children to the South Dakota Department of Social Services ("DSS") and, in turn, DSS transferred custody of the children to their uncle, Ted Taylor, Jr. *Id*. at 6-7. DSS issued a "Present Danger Plan" in which it noted that the children had no care provider. *Id*. at 7. DSS advised Mr. Taylor to file a petition for temporary custody in Tribal Court, which he did. *Id*. at 7-8. Mr. Taylor asked that temporary custody of the children be granted to his sister, Jessica Ducheneaux, with whom the children were residing. *Id*. The Tribal Court awarded temporary custody to Ms. Ducheneaux in January 2015, Pet. Exh. 65 [doc. 1-65] 8, and the children have remained in Ms. Ducheneaux's actual care and custody since that time.

The procedural history of the case is described in some detail in the Memorandum Opinion and Order of the Tribal Court of Appeals dated February 25, 2019. Pet. Exh. 65 [doc. 1-65] 1-10, and in other orders of the Tribal Court and the Tribal Court of Appeals.

The Tribal Court of Appeals has ordered that temporary custody of the minor children shall remain with Ms. Ducheneaux pending a hearing to determine whether that award of custody is in the best interests of the children. *See*, *e.g.*, Pet. Exh. 55 [doc. 1-55] 7; Pet. Exh. 65 [doc. 1-65] 20. Visitation for the fathers has been authorized by the Tribal Court. *See* Pet. Exh. 68 [doc. 1-68] 4. Mr. Stanley has exercised visitation; Mr. Nygaard has not. *Id.*

Petitioners have resisted the jurisdiction of the Tribal Court. They filed a motion to dismiss the Tribal Court temporary custody proceeding, which was ultimately denied by the Tribal Court of Appeals in its Memorandum Opinion and Order of February 25, 2019. Pet. Exh. 65 [doc. 1-65] 20. In the wake of that decision, Petitioners filed this federal habeas action.

Petitioners now ask this Court to find and declare, among other things, that the Tribe lacks personal and subject matter jurisdiction over Petitioners, the minor children, and the Tribal Court temporary custody proceeding. Amend. Pet. [doc. 8] 33 (¶ g). Petitioners also ask this Court to order that the Tribal Court must give full faith and credit to certain North Dakota custody orders. *Id.* at 3 (¶ 6), 33 (¶ h).

Petitioners also seek injunctive relief, namely an order granting "any and all law enforcement agencies the power to forcibly remove the children" from the Reservation or "wherever the children are currently being held." Amend. Pet. [doc. 8] 33 (¶ i).

The gravamen of Petitioners' complaint is that the Tribal Court has violated Petitioner's rights by declining to recognize and enforce the North Dakota custody orders and by awarding temporary custody of the minor children to their aunt, Jessica Ducheneaux, who resides on the Reservation. Petitioners assert that the state court orders are entitled to full faith and credit in the Tribal Court pursuant to the Parental Kidnapping Prevention Act ("PKPA"), 28 U.S.C. § 1738A.

In its Memorandum Opinion and Order of February 25, 2019, the Tribal Court of Appeals held that the PKPA does not apply to the Tribe. Pet. Exh. 65 [doc. 1-65] 10-17. The court noted that the PKPA does not mention Indian tribes and the "relevant caselaw is virtually unanimous in holding that the PKPA does *not* apply to tribes." *Id*. at 11 (emphasis in original). *See also id*. at 11-13 (collecting cases). The court also noted that, even if the PKPA did apply to the Tribe, there are exceptions to its full faith and credit mandate that would likely allow the Tribal Court to exercise jurisdiction. For example, under the PKPA, even if there is an existing state court custody order, another state can exercise jurisdiction in cases involving an "abandoned" child or an "emergency" in which a child or parent has been "subjected to or threatened with mistreatment or abuse." *Id*. at 13-14 & n.9 (*quoting* 28 U.S.C. § 1738A(c)(2)(C)). The Tribal Court of Appeals

noted that, in this case, "there are allegations of abuse against one father," the mother was subject to apparent "mistreatment" when she was physically separated her from her children by outside authorities, without explanation or an appropriate court order, and the children were arguably "abandoned" on the Reservation by those authorities. *Id.* at 14.[1]

The Tribal Court of Appeals explained that, "there is a mechanism under Cheyenne River Sioux Tribal Law for the (potential) enforcement of 'foreign' judgments whether they be from state or other tribal courts." *Id.* at 16-17. These laws adhere to the "well-known principle of comity." *Id.* at 17 (*citing* C.R.S.T. Res. No. E-233-97-CR (1997); C.R.S.T. Res. No. 323-05-CR (2005); C.R.S.T. Res. No. 171-2018-CR (2018), Pet. Exh. 63 [doc. 1-63]).

With one exception, Petitioners have not availed themselves of these tribal laws by filing appropriate petitions to domesticate the North Dakota state court orders in Tribal Court. *Id.* at 3. The single order presented for domestication was an *ex parte* order entered in favor of Mr. Nygaard in September 2014 and, in respect to that order, the Tribal Court determined after an evidentiary hearing that the order was not entitled to recognition or enforcement in Tribal Court because the respondent, Tricia Taylor, the mother of C.S.N. and T.R.S., did not have notice or an opportunity to be heard before issuance of the *ex parte* order. Pet. Exh. 62 [doc. 1-62] 12.

Neither Mr. Nygaard nor Mr. Stanley has filed a petition to have any other state court order recognized or enforced by the Tribal Court. *See* Pet. Exh. 65 [doc. 1-65] 3. Further, neither Mr. Nygaard nor Mr. Stanley has filed a petition for a writ of habeas corpus or any other original action in the Tribal Court to secure custody of the children. *See id*. at 4. Without exhausting their tribal court remedies, Petitioners filed this federal habeas action and now ask this Court to intervene,

[1] *See also* Pet. Exh. 71 [doc. 1-71] 2 (Tribal Court Order of March 10, 2017, appointing guardian ad litem for the minor children and noting that this case involves "serious allegations of abuse" and "it is not clear that the parents are best situated to prioritize the interest of the children"); Pet. Exh. 68 [doc. 1-68] 2 (Tribal Court Findings of Fact of December 20, 2018, noting reported abuse of T.R.S. by Aarin Nygaard).

deny the jurisdiction of the Tribal Court, and order that custody of the minor children be returned to them.

This is the second time Petitioners have filed a federal habeas action. The first action, filed in the U.S. District Court for the District of North Dakota, Pet. Exh. 57[doc. 1-57], was dismissed for failure to exhaust tribal court remedies. Pet. Exh. 59 [doc. 1-59]. The district court specifically noted that tribal law allowed Petitioners to ask "the tribal court to grant comity to an order from another jurisdiction." *Id*. at 15. The court also noted that Petitioners must seek habeas relief in Tribal Court before seeking such relief in federal court. *Id.* at 20.

Tribal Court Respondents submit that this federal habeas action, like the first, should be dismissed failure to exhaust available tribal court remedies and for lack of jurisdiction.

ARGUMENT

I. THIS ACTION SHOULD BE DISMISSED FOR LACK OF JURISDICTION BECAUSE A TEMPORARY CUSTODY ORDER OF THE TRIBAL COURT DOES NOT CONSTITUTE "DETENTION" WITHIN THE MEANING OF THE INDIAN CIVIL RIGHTS ACT.

In general, "federal courts have no jurisdiction in habeas corpus to determine parents' rights to custody of their minor children, even if it is alleged that custody was obtained by means that violate the Federal Constitution." *Ex rel Meuller v. Missiouri Div. of Family Services,* 123 F.3d 1021, 1023 (8th Cir. 1997) (citing *Lehman v. Lycoming County Children's Services Agency,* 458 U.S. 502, 512 (1982)). *Accord*, *Cochrun v. Young*, No. CIV 14-5066, 2015 WL 3544851, at *14 (D.S.D. June 4, 2015). In *Lehman,* the United States Supreme Court explained "[a]lthough a federal habeas corpus statute has existed ever since 1867, federal habeas has never been available to challenge parental rights or child custody." *Lehman,* 458 U.S. at 511. "[E]xtending the federal writ to challenges to state child custody decisions—challenges based on alleged constitutional defects collateral to the actual custody decision—would be an unprecedented

expansion of the jurisdiction of the lower federal courts." *Id.* at 512. *Accord, Ankenbrandt v. Richards*, 504 U.S. 689, 702 (1992) (citing *Ex parte Burrus*, 136 U.S. 586, 593-94 (1890)).

In *Lehman*, the Supreme Court "explained that habeas is not a 'generally available remedy for every violation of federal rights,' but has been limited in the past to challenges to state-court judgments that place 'substantial restraints' on a petitioner's liberty following criminal convictions." *Amerson v. Iowa, Dep't of Human Servs. by Palmer*, 59 F.3d 92, 93 (8th Cir. 1995) (quoting *Lehman*, 458 U.S. at 508-510). *Lehman* concerned minor children who had been placed in foster homes pursuant to state court orders, and the Supreme Court "concluded that state-ordered foster custody is not 'custody' for habeas purposes." *Amerson*, 59 F.3d at 94 (citing *Lehman*, 458 U.S. at 510-11). The *Lehman* Court described the foster children as "being at liberty in the custody of a foster parent pursuant to a court order," and distinguished them from children who are "actually confined in a state institution." *Lehman*, 458 U.S. at 511 n.12. The Court expressed no view as to the availability of federal habeas for children actually confined in state institutions, *id*., but in *Amerson*, the Eighth Circuit held that even state-ordered placement of a child in an institution, rather than a private foster home, was not "custody" within meaning of the federal habeas corpus statute. 59 F.3d at 94.

Although *Lehman* and *Amerson* involved actions for habeas corpus relief under 28 U.S.C. § 2254, the courts generally have found the law that has developed with respect to actions for habeas relief under 28 U.S.C. § 2254 and other federal habeas statutes to be applicable by analogy to actions founded upon 25 U.S.C. § 1303. *See*, *e.g.*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59 (1978); *Weatherwax ex rel. Carlson v. Fairbanks*, 619 F.Supp. 294 (D. Mont. 1985).[2]

[2] 28 U.S.C. § 2254 authorizes any person who is "in custody pursuant to the judgment of a State court," to test the legality of his or her custody. Similarly, 25 U.S.C. § 1303 allows any person to test the legality of his or her "detention by order of an Indian tribe." "The 'detention' language in

Most courts that have addressed the issue have determined that held that a federal writ of habeas corpus is not available to test the validity of a child custody decree issued by a tribal court. *See*, *e.g.*, *Sandman v. Dakota*, 7 F.3d 234 (6th Cir. 1993) (holding that "habeas review pursuant to 25 U.S.C. § 1303 is not available to challenge the propriety and wisdom of a tribal judge's decision in a custody matter"); *Azure-Lone Fight v. Cain*, 317 F.Supp.2d 1148, 1150 (D.N.D. 2004) (same); *Weatherwax,* 619 F. Supp. at 296 (same). *See also*, *Wells v. Philbrick*, 486 F.Supp. 807, 809 n.2 (D.S.D. 1980) (holding that father could not challenge validity of tribal court's custody determination in federal habeas proceeding when children were admittedly not in the custody of the tribe but, instead, were in custody of the mother, and noting generally that "the Court has its doubts as to whether habeas corpus is properly available in federal court as a remedy in child custody disputes") (citing *Sylvander v. New England Home for Little Wanderers*, 584 F.2d 1103 (1st Cir. 1978)).

There is no reason to except this case from the general prohibition against exercising federal habeas jurisdiction in child custody disputes. Petitioners argue that *DeMent v. Oglala Sioux Tribal Court*, 874 F.2d 510 (8th Cir. 1989), permits them to seek federal habeas relief from a tribal court custody order. However, the holding in *DeMent* was expressly limited to its unique facts and it does not govern the case at bar.

The *DeMent* court began its analysis by acknowledging that, as a general rule, "[f]ederal habeas corpus … has … not been available to challenge a state decree on parental rights or child custody." *Id*. (citing *Lehman*, 458 U.S. at 511). The court also acknowledged that, even under the

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§ 1303 is analogous to the 'in custody' requirement contained in the [other] federal habeas statute[s]." *Valenzuela v. Silversmith,* 699 F.3d 1199, 1203 (10th Cir. 2012). In all cases, the real party in in interest is the person in "custody" or "detention" and the rights of that person are the proper subject of the habeas petition. *See Amerson v. Iowa, Dep't of Human Servs. by Palmer*, 59 F.3d 92, 93 (8th Cir. 1995) (citing *Whitmore v. Arkansas*, 495 U.S. 149, 163 (1990)).

ICRA, federal jurisdiction is limited to "habeas corpus jurisdiction on behalf of persons in tribal custody." *Id*. (citing *Santa Clara Pueblo*, 436 U.S. at 66-67). As a general rule, minor children who subject to custody orders are not considered to be in "custody" or "detention" within the meaning of federal habeas statutes. *See,* e.g., *Lehman*, 458 U.S. at 510-11 (state-ordered foster custody is not "custody" for habeas purposes); *Amerson*, 59 F.3d at 94 (state-ordered placement of a child in an institution was not "custody" for habeas purposes).

With these principles in mind, the *DeMent* court noted that, "under the facts of this case," federal habeas relief was appropriate. 874 F.2d at 515. What made *DeMent* unique was the father's allegation that, "the tribal court illegally took 'custody' of the children on the reservation by making them wards of the tribal court," and the court's own findings that the "tribal court made the girls wards of the court," and the tribal council enacted tribal legislation "declaring that the Tribe has sole jurisdiction over the ... children." *Id*. 874 F.2d at 515. There are no such allegations or facts in this case. Further, *DeMent* involved a custody dispute between divorced parents, whereas this case involves an application for temporary custody of children present on the Reservation by non-parent relatives of the minor children. Finally, the *DeMent* court did not reach the merits of the claim before it, but instead required petitioner to exhaust his tribal court remedies.

Tribal Court respondents respectfully submit that the Court should dismiss this habeas action for lack of jurisdiction under 25 U.S.C. § 1303 because the minor children are not in the "custody" or "detention" of the Tribe or the Tribal Court. Instead, they are "at liberty" in the custody of non-parent guardian pursuant to a court order. *See Lehman*, 458 U.S. at 511 n.12.

II. THIS ACTION SHOULD BE DISMISSED BECAUSE PETITIONERS HAVE NOT EXHAUSED AVAILABLE TRIBAL COURT REMEDIES.

Even if this Court finds that the Tribal Court custody order amounts to "detention," within the meaning of 25 U.S.C. § 1303—a point Tribal Court Respondents do not concede—this action should be dismissed because Petitioners have not exhausted their available remedies in Tribal Court. Specifically, Petitioners have not filed petitions in the Tribal Court to domesticate the state court orders they claim the Tribal Court must recognize and enforce, and Petitioners have not petition for a writ of habeas corpus in Tribal Court.

A. Tribal Court Petition to Recognize and Enforce State Court Orders.

Petitioners claim that the Tribal Court has violated their rights by failing to recognize and enforce certain custody orders issued by the North Dakota state court. However, with one exception, discussed below, Petitioners have not filed petitions to domesticate those state court orders or to seek recognition and enforcement of those orders in the Tribal Court.

The laws of the Tribe allow for the domestication, recognition, and enforcement of foreign judgments. Specifically, tribal law provides that:

> Before the Courts of the Cheyenne River Sioux Tribe recognize the order or judgment of and/or grant comity to the order or judgment of another jurisdiction, the party or entity seeking such recognition or comity must establish in the Tribal Courts by clear and convincing evidence that:
>
> (1) The court had both subject matter and personal jurisdiction over the parties; and
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> (2) The order or judgment was not fraudulently obtained; and
>
> (3) The process by which the said order or judgment was obtained fully complied with the prerequisites to impartial administration of justice and fairness, including due notice and a hearing; and
>
> (4) The order or judgment does not contravene the public policy of the Cheyenne River Sioux Tribe; and

(5) The order of judgment complies with the laws, ordinances, and regulations of the jurisdiction from which it was obtained; and

(6) The jurisdiction issuing the order or judgment also grants comity to the orders and judgments of the Cheyenne River Sioux Tribal Court.

C.R.S.T. Res. No. E-233-97-CR (approved by Executive Committee on Aug. 20, 1997, and by Tribal Council on Sept. 4, 1997), *as amended by* C.R.S.T. Res. No. 323-05-CR (Aug. 4, 2005).

These requirements, which were recited in the opinions of the Tribal Court of Appeals and the U.S. District Court of the District of North Dakota, *see In re C.S.N. and T.R.S.*, Case No. 14FC391, Memorandum Opinion and Order 5-8 (C.R.S.T.C.A Sep. 1, 2016); *Nygaard v. Taylor*, Case No. 3:16-cv-00393-RRE-ARS, Order at 15 (D.N.D. May 24, 2017), are reasonable. They are similar to the requirements in the laws of North Dakota and South Dakota for the recognition and enforcement of tribal court orders. *See* N.D.C.C. § 27-01-09 (Reciprocal Recognition of Certain State and Tribal Court Judgments, Decrees, and Orders—Conditions); N.D. R. Ct. Rule 7.2 (Recognition of Tribal Court Orders and Judgments); S.D.C.L. § 1-1-25 (When Order or Judgment of Tribal Court May Be Recognized in State Courts).

Mr. Nygaard filed a Petition to Enforce Foreign Judgment of Custody and Visitation in the Tribal Court in September 2014. *See Nygaard v. Taylor*, Case No. 14C117 (C.R.S.T.C. Sep. 26, 2014). His petition sought recognition and enforcement of an *ex parte* order issued by the Cas County District Court on September 12, 2014. The Tribal Court held an evidentiary hearing on the petition and determined that, "the process by which the *ex parte* order was obtained did not fully comply with the prerequisites of due process." *In re C.S.N. and T.R.S.*, Case No. 14FC391/14C117, Slip Op. at 12 (C.R.S.T.C. Apr. 18, 2018). The Tribal Court noted that, "Ms. Taylor testified under oath that she did not receive any notice of the petition for the [*ex parte*] order or the [*ex parte*] order itself and did not have an opportunity to respond or participate in any hearing specifically in

regard to the ex parte order. *Id*. Accordingly, the Tribal Court refused to domesticate, recognize, or enforce the *ex parte* order. *Id*.

Neither Mr. Nygaard nor Mr. Stanley has sought to domesticate any other state custody order in the Tribal Court. These other state court orders have not been placed in evidence in the Tribal Court proceedings, and Petitioners have not participated in an evidentiary hearing regarding those orders. *See*, *e.g.*, Pet. Exh. 55 [doc. 1-55] 3 (Tribal Court of Appeals order noting that "none of the relevant decisions made by Cass County courts in North Dakota were placed ion *evidence* in this case) (emphasis in original); Pet. Exh. 61 [doc. 1-61] 2 (Tribal Court order noting Petitioners "have yet to put evidence with regard [to] Notice and Due Process that the North Dakota Courts provided to Tricia Taylor. Without presentation of this evidence the trial Court cannot grant the requested comity.")

Petitioners cannot escape exhaustion of available tribal court remedies by claiming futility when they have not filed petitions for domestication, recognition, and enforcement of their state court orders.

B. <u>Tribal Court Habeas Petition.</u>

Petitioners have failed to exhaust their tribal court remedies because they have not filed a petition for a writ of habeas corpus in Tribal Court. The Cheyenne River Sioux Tribe Rules of Civil Procedure allow for the filing of petitions for writs of habeas corpus. Rule 65(b) provides that, "[a]ppropriate relief by habeas corpus proceedings shall be granted whenever it appears to the court that any person is unjustly imprisoned or otherwise restrained of his liberty."

The tribal exhaustion doctrine requires Petitioners to seek habeas relief in Tribal Court before they may seek such relief in this Court. In *Nygaard v. Taylor*, Case No. 3:16-cv-00393-PRE-ARS, Slip. Op. at 20 (D.N.D. May 24, 2017), the district court held that, "the habeas action

provided by the ICRA must first be brought in tribal court and federal courts will not hear the matter until tribal court remedies have been exhausted." Other federal courts are in agreement. *See Valenzuela v. Silversmith*, 699 F.3d 1199, 1207–08 (10th Cir. 2012) (affirming dismissal of federal habeas petition under 25 U.S.C. § 1303 on ground that petitioner failed to exhaust his tribal court remedies, including the tribe's available habeas relief).

This Court should require Petitioners to exhaust all available Tribal Court remedies before permitting them to proceed with a habeas petition in this Court under 25 U.S.C. § 1303.

III. PETITIONERS' CLAIMS AGAINST THE TRIBAL COURT AND THE TRIBAL COURT OF APPEALS SHOULD BE DISMISSED FOR LACK OF JURISDICTION BASED ON THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY.

The Cheyenne River Sioux Tribe is a federally recognized Indian tribe that reserved its original, inherent right to self-government through the Treaty of 1851, 11 Stat. 749 (Sept. 17, 1851), and the Treaty of 1868, 15 Stat. 635 (Apr. 29, 1868). In *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831), the Supreme Court held that Indian tribes are "domestic dependent nations," with inherent sovereign authority over their members and their territory, and in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), the Supreme Court held that suits against Indian tribes are barred by tribal sovereign immunity. The Supreme Court has "time and again treated the 'doctrine of tribal immunity as settled law' and dismissed any suit against a tribe absent congressional authorization (or a waiver)." *Michigan v. Bay Mills Indian Cmty.*, 134 S.Ct. 2024, 2030-2031 (2014) (quoting *Kiowa Tribe v. Mfg. Technologies, Inc.*, 523 U.S. 751, 756 (1998)).

In this case, Petitioners have sued the Tribal Court and the Tribal Court of Appeals. These courts are part of the tribal judiciary, which is a branch of the tribal government. The Supreme Court made clear in *Santa Clara Pueblo v. Martinez*, that the Indian Civil Rights Act ("ICRA") did not abrogate tribal sovereign immunity or authorize suits against Indian tribal governments for

alleged violations of the Act. 436 U.S. at 58-59 (noting that, "since the respondent in a habeas corpus action is the individual custodian of the prisoner, ... the provisions of § 1303 can hardly be read as a general waiver of the tribe's sovereign immunity. In the absence here of any unequivocal expression of contrary legislative intent, we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit"). *Accord*, *DeMent*, 874 F.2d at 515 (noting that, "the ICRA cannot be directly enforced against Indian tribes because they are shielded from suit by sovereign immunity").

Petitioners' claims against the Tribal Court and the Tribal Court of Appeals are directed against a branch of the tribal government, the tribal judiciary, and should be dismissed for lack of jurisdiction based on the doctrine of tribal sovereign immunity.

IV. PETITIONERS' CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

The sole remedy provided in the ICRA is the petition for writ of habeas corpus. In *Santa Clara Pueblo*, the Supreme Court held that the Act "does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers." 436 U.S. at 72. Accordingly, Petitioners' claims for relief other than habeas corpus relief should be dismissed for lack of jurisdiction.

CONCLUSION

For the foregoing reason, Tribal Court Respondents respectfully move the Court to dismiss this action.

Dated: February 26, 2021

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CERTIFICATE OF SERVICE

I certify that on February 26, 2021, I caused a true and correct copy of the foregoing to be served by operation of the Court's Case Management/Electronic Case Filing System on all parties and counsel of record, including:

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