

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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NICOLE JOHNS, individually and as Trustee for the  
Next-of-Kin of JOSEPH FAIRBANKS, JR., Deceased,

Plaintiff,

v.

UNITED STATES OF AMERICA, UNITED STATES  
DEPARTMENT OF INTERIOR, BUREAU OF  
INDIAN AFFAIRS, BRENT PEMBERTON, JR.,  
DELWYN ENGLISH, JOSHUA GUTIERREZ, BRYANT SIEKAS,  
ANTHONY BEAULIEU, TYLER NEADEAU, SIERRAJEN ESSERT,  
JON SCHOENBORN, JIMMY FINEDAY, WILLIAM STRONG,  
BRADLEY BARRETT, CHARLES MARTIN, JUSTICE  
DESJARLAIT, DANELLE NELSON, DORIAN PRENTICE, and  
JOHN DOES 1–5,

Defendants.

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Case No.: 24-cv-1892 (JMB/LIB)

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF HER  
MOTION TO STAY PROCEEDINGS PENDING HER EXHAUSTION OF  
TRIBAL REMEDIES**

Plaintiff Nicole Johns, individually and as Trustee for the Next-of-Kin of Joseph Fairbanks, Jr., moves the Court for an order staying all proceedings in this matter pending exhaustion of tribal remedies. In support of this motion, Plaintiff submits the following Memorandum of Law and a Proposed Order.

## **INTRODUCTION**

This action was filed in federal court while the United States was a defendant under the Federal Tort Claims Act (FTCA). On March 5, 2025, the Court granted the United States' motion to dismiss for lack of subject-matter jurisdiction for failure to satisfy the FTCA's presentment requirements. What remains are Plaintiff's claims against Red Lake corrections officers in their individual capacities for negligence, and for violating the deceased's Eighth Amendment rights. Defendants have indicated that they intend to seek adjudication in Red Lake Tribal Court. Plaintiff agrees that the law favors tribal-court consideration in the first instance and therefore respectfully asks this Court to stay these proceedings to allow exhaustion of available tribal remedies.

## **FACTUAL BACKGROUND**

Joseph Fairbanks, Jr. was taken into custody and incarcerated at the Red Lake Detention Center (RLDC). Plaintiff's Compl., ECF. No. 1, ("Compl.") at ¶ 18-20. Upon intake around May 27, 2022, he informed RLDC staff that he suffered from hereditary angioedema and was experiencing abdominal pain and vomiting. *Id.* His mother, Plaintiff Nicole Johns, was permitted to administer Firazyr at the facility and advised staff that if vomiting persisted, immediate hospital care would be necessary. *Id.* at ¶ 20. By the morning of May 29, 2022, Mr. Fairbanks's condition had worsened with persistent vomiting; a nearby hospital recommended immediate medical attention. *Id.* at ¶¶ 21-22.

Approximately forty minutes elapsed before EMS was called; when EMS arrived, Mr. Fairbanks was on the cell floor surrounded by vomit. *Id.* at ¶¶ 21-24. He was transported to the hospital and pronounced dead at 12:02 p.m. on May 29, 2022. *Id.* Although an initial autopsy listed mixed drug toxicity, a medical expert later concluded that the cause of death was volume loss from prolonged vomiting and diarrhea consistent with angioedema. *Id.* at ¶ 25. On November 9, 2022, a Minnesota state district court appointed Ms. Johns as trustee for the next-of-kin of Mr. Fairbanks. Plaintiff filed this action on May 21, 2024. *Id.* at ¶ 1. On March 5, 2025, the Court dismissed the United States for failure to satisfy FTCA presentment requirements.

## **ARGUMENT**

### **I. Federal Courts Should Stay Their Hand to Permit Tribal Courts to Determine Jurisdiction in the First Instance For Disputes Involving Tribal Members that Occur on Tribal Lands.**

As a matter of comity and respect for tribal self-government, the U.S. Supreme Court has held that federal courts must first allow tribal courts a full opportunity to determine their own jurisdiction in cases involving activities on tribal lands. See *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856–57 (1985); *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 16–20 (1987). In deciding the issue of tribal court exhaustion, the Eighth Circuit has consistently adhered to this precedent:

Tribal Authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively

limited by a specific treaty provision or federal statute.

*Stanko v. Oglala Sioux Tribe*, 916 F.3d 694, 699 (8<sup>TH</sup> Cir. 2019)(quoting *Iowa Mut. Ins.*, 480 U.S. at 18); *see also* *Duncan Energy Co. v. Three Affiliated Tribes of the Fort Berthold Reservation*, 27 F.3d 1294, 1298–1300 (8th Cir. 1994) (exhaustion applies to both federal-question and diversity cases); *Davis v. Mille Lacs Band of Chippewa Indians*, 193 F.3d 990, 992–93 (8th Cir. 1999) (reaffirming tribal exhaustion).

For their part, district courts in this circuit have followed the same rule, with courts in more recent decisions making clear that to be faithful to U.S. Supreme Court and Eighth Circuit precedent, suits involving claims tribal member claims for activities occurring on tribal land must be fully exhausted first in tribal court. *See e.g.* *Archambault v. U.S.*, 641 F.Supp. 3d 636, 651-652 (D.S.D. 2022); *Armstrong v. Mille Lacs Cnty. Sheriff's Dep't*, 112 F. Supp. 2d 840, 843–46 (D. Minn. 2000).

Hence, in this Circuit, the guidance is clear: a federal district court must stay its hand in cases where the parties are tribal members and the incident in question occurred on tribal land, until the tribal court has had a full opportunity to determine its own jurisdiction and adjudicate the case. *See Gaming World Int'l, Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 849 (8th Cir. 2003); *see also* *Bruce H. Lien Co. v. Three Affiliated Tribes of the Fort Berthold Reservation*, 93 F.3d 1412, 1420 (8th Cir. 1996).

The tribal-exhaustion doctrine serves three interrelated purposes: (1) supporting tribal self-government and self-determination; (2) promoting the orderly administration of justice on a full and developed record; and (3) allowing

federal courts to benefit from the tribal courts' expertise. See *National Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856–57 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16–20 (1987). And exhaustion is required so long as there is at least a colorable claim of tribal-court jurisdiction even if that question is ultimately resolved against tribal jurisdiction. See *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 31 (1st Cir. 2000).

Finally, the Minnesota jurisdictional backdrop reinforces comity here: Public Law 280's civil grant to Minnesota expressly excludes the Red Lake Reservation. See 28 U.S.C. § 1360(a) (Minnesota—"except the Red Lake Reservation").

Because of this precedent, it is necessary here for this Court to stay the current proceedings to allow Plaintiff to exhaust her remedies in Red Lake Tribal court. The reasons why, based on Eighth Circuit precedent, are simple: the United States is no longer a party to this action, all of the remaining parties are tribal members, and Plaintiff's claims involve the lack of medical treatment that her son received on tribal land, namely, the RLDC.

## **II. No Exception to the Tribal-Exhaustion Doctrine Applies Here.**

Exhaustion is not required only in narrow circumstances: where tribal proceedings are motivated by bad faith or harassment, where tribal jurisdiction is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile. *National Farmers*, 471 U.S. at 856 n.21. None of those exceptions apply here. The events at issue occurred at RLDC on the Red Lake Reservation

and implicate the Tribe's health and welfare, core concerns of tribal self-government. See, e.g., *Stanko v. Oglala Sioux Tribe*, 916 F.3d 694, 699–700 (8th Cir. 2019) (recognizing federal policy to stay hand so tribal court can determine jurisdiction). There is also no allegation, much less evidence, of bad faith, harassment, an express jurisdictional bar, or futility. See *Archambault v. United States*, 641 F. Supp. 3d 636, 650–51 (D.S.D. 2022).

### **III. A Stay, Rather Than Dismissal, Best Serves Comity and Preserves the Parties' Rights.**

A stay here, rather than dismissal, also best serves comity and preserves the parties' rights. See *Duncan Energy Co. v. Three Affiliated Tribes of the Fort Berthold Reservation*, 27 F.3d 1294, 1296, 1301–03 (8th Cir. 1994) (reversing and directing the district court to dismiss without prejudice or stay proceedings pending exhaustion of tribal remedies); see also *Archambault*, 641 F.Supp.3d at 652.

When abstaining for tribal-exhaustion purposes, courts generally stay proceedings so the parties may return after exhaustion. See e.g., *Archambault v. United States*, 641 F. Supp. 3d at 650–5; *Armstrong*, 112 F.Supp.2d at 849-850. Staying this case will avoid duplicative litigation, conserve judicial resources, and promote orderly administration of justice, while respecting tribal self-determination.

## **CONCLUSION**

For these reasons, Plaintiff respectfully requests that the Court enter an order staying all proceedings in this matter pending exhaustion of Plaintiff's remedies in Red Lake Tribal Court and directing the parties to notify the Court upon final resolution in the tribal forum.

Respectfully submitted,

**Magna Law Firm LLC**

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