**CASE NO. 25-4077**

**UNITED STATES COURT OF APPEALS**
**FOR THE TENTH CIRCUIT**

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| LYNDA GARDNER, et al.,<br><br>Plaintiff – Appellants,<br><br>v.<br><br>UTE TRIBAL COURT OF THE UINTAH AND OURAY RESERVATION, et al.,<br><br>Defendants – Appellees. | No. 25-4077<br>(D.C. No. 2:25-CV-00106-DBB)<br>(D. Utah) |

On Appeal from the United States District Court for the
District of Utah, Central Division
The Honorable Judge David Barlow

# Joint Brief of Defendant-Appellees

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Oral Argument Is Not Requested.

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## PRIOR OR RELATED APPEALS

There are no prior or related appeals.

## STATEMENT OF JURISDICTION

The United States District Court for the District Court of Utah lacked jurisdiction over this matter initially because Appellants ("Gardner") and "(Amboh") attempted to remove a criminal case from the Ute Indian Tribal Court to the federal district court under § 28 U.S.C. § 1441 and 28 U.S.C. § 1446, but neither of those statutes permit removal of a criminal case from a tribal court to a federal district court.[1] Gardner and Amboh did not cite 28 U.S.C. § 1455 as grounds for their removal, which sets forth the proper procedure for removal of a criminal case from a state court. Construing their Complaint liberally because they are proceeding pro se, the District Court still found removal inappropriate under § 1455.[2] Accordingly, the District Court adopted the Magistrate Judge's Report and Recommendation, dismissed the case, and summarily remanded the case back to the Ute Indian Tribal Court.[3]

This Court also lacks jurisdiction over this appeal pursuant to 28 U.S.C. § 1447(d). The August 1, 2025, Order from this Court stated, "the parties may address

[1] Record on Appeal ("ROA"), Vol I, at 224-25.
[2] *Id.*
[3] ROA, Vol. I, at 240.

appellate jurisdiction further in their merits brief, if appropriate."[4] Appellees' brief will elaborate on why this Court lacks appellate jurisdiction in the Argument section below, as appellate jurisdiction is a dispositive threshold issue for this Court to rule on.

## STATEMENT OF THE ISSUES

This appeal presents no issues for this Court, as the entire matter is frivolous and should be dismissed accordingly. This Court lacks appellate jurisdiction, Appellant Gardner and Appellant Amboh both lack standing, and all issues that Appellants raise are moot because Appellant Amboh was found not guilty in the trial from which all her claims arise.

## STATEMENT OF THE CASE

Ms. Amboh was arrested on or about August 30, 2024, for *inter alia*, battery on her son and assault on her elderly mother in the Ute Indian Tribal Court ("UITC"), and she was arraigned on those charges the following week.[5] Appellant Gardner had no relationship to the alleged crime. She was not present, was not a witness, was not arrested, and was not charged.[6] Appellant Gardner is not now, nor has she ever been, a proper party to this case, and it appears she named herself as a party to get around the fact that she is not an attorney (or even a tribal court lay advocate) and

[4] ECF No. 16.
[5] ROA, Vol. I, at 37.
[6] *Id*; ROA, Vol. I, at 42.

cannot represent anyone in any court.[7] Appellant Gardner was permanently disbarred from serving as a tribal court lay advocate years ago after bombarding the UITC with innumerable improper and frivolous filings.[8]

On February 13, 2025, Appellants filed an almost incomprehensible "Complaint" in the District Court, alleging that Ms. Amboh's rights were violated in *Tribe v. Amboh*, Tribal Court Case CR173-24.[9] The crux of that frivolous Complaint was Ms. Amboh's knowingly false assertion that she was denied the right to counsel and a jury trial in the Ute Indian Tribe's Court.[10] In actuality, at the time the Complaint was filed, Ms. Amboh was set for a jury trial in March 2025 within the UITC.[11] Ultimately, that trial was continued and held in May 2025, and Ms. Amboh was found not guilty.[12]

Regarding her allegation that she was denied the right to counsel, Ms. Amboh was initially represented by the Tribe's public defender, then, at her request, she was permitted to relinquish the public defender and appear pro se, but then again requested the services of the public defender (whose assistance she had during her trial).[13] Thus, any claim regarding a denial of the right to counsel is as false as it is

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[7] ROA, Vol. I, at 39.
[8] *Id.*
[9] ROA, Vol. I, at 7.
[10] *Id.*
[11] ROA, Vol. I, at 42.
[12] Appellant's Opening Brief (hereinafter "OB") at 11-12.
[13] ROA, Vol. I, at 35-37.

moot. After she accepted appointment of the public defender for the second time, she filed a second motion seeking to relinquish the public defender and proceed pro se. The Tribal Court denied that motion.[14]

The Complaint also raised a habeas corpus claim pursuant to 25 U.S.C. § 1303 despite the fact Ms. Amboh was released on her own recognizance after arraignment, thus, she was not in custody at the time the Complaint was filed.[15] The complaint contains a conclusory false allegation that Plaintiffs had exhausted tribal court remedies regarding the two alleged civil rights violations, despite the fact that the tribal court criminal case was still ongoing.

Although not alleged in their complaint, Gardner and Amboh subsequently submitted filings making the additional false claim that Ms. Amboh's children were taken from her by the Ute Indian Tribe ("Tribe").[16] However, the UITC never issued an order whatsoever regarding Ms. Amboh's parental rights or her children. The Tribe's understanding is that there is a state court civil custody order giving custody of the children to their father.[17] In any case, Amboh and Gardner's false allegation is unrelated to the alleged civil rights violation in this case.

From the time Appellants filed their Complaint in February 2025, up until

[14] ROA, Vol. I, at 49.
[15] ROA, Vol. I, at 7; 27.
[16] ROA, Vol. I, at 125-26; 132; 143; 206
[17] ROA, Vol. I, at 135-36.

filing their Notice of Appeal in June of 2025, the District Court was shelled with at best, frivolous, and at worst, unintelligible filings.[18] These include, but are not limited to, an "Emergency Motion to Expediate Review", an "Emergency Motion for Immediate Removal, Or For An Order Prohibiting Ute Tribal Court Defendants From Arresting Plaintiff's [sic] And Granting Motion For Stay Of Ute Tribal Court Defendants", a "Notice for Mandamus Relief or Habeas Coerpus [sic] Relief", and a "Notice of Order Show Cause for Writ of Habeas Corpus to Return Children."[19] The Magistrate Judge considered these motions in his Report & Recommendation and found them unmeritorious.[20] The District Court then adopted the Report & Recommendation, remanded the case back to the UITC, and dismissed the case.[21]

Appellants then filed their Notice of Appeal on June 18, 2025.[22] Even after filing their notice of appeal, Amboh and Gardner filed additional objections to the magistrate's report, and on September 8, 20205, they filed a "Reply in Opposition to Defendant's exhaustion of Ute Tribal Court Remedies."[23]

On June 18, 2025, this Court ordered the parties to file responsive memorandum briefs addressing the threshold jurisdiction issue given the dictates of

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[18] ROA, Vol. I, at 2-6.
[19] *Id.*
[20] ROA, Vol. I, at 240.
[21] ROA, Vol. I, at 225; 241.
[22] ROA, Vol I, at 61.
[23] District Court Case No. 2:25-cv-00106, ECF No. 40, 41, 45.

28 U.S.C. § 1447(d).[24] On August 1, 2025, this Court stated in an Order that no final decision on whether the Court has jurisdiction will be made at the present moment or before the merits briefing has concluded. The Court gave permission for the parties to address appellate jurisdiction in their merits briefing, if appropriate.[25] Appellees do so because this Court clearly lacks appellate jurisdiction, and the case should be dismissed accordingly.

## SUMMARY OF THE ARGUMENT

There are a variety of grounds upon which this Court may dismiss this appeal with prejudice. This Court does not have appellate jurisdiction over the District Court's remand order, and neither Appellant Gardner nor Appellant Amboh have Standing to bring this claim. Even if this Court had appellate jurisdiction over the remand order, even if Appellants had Standing, this Court is not faced with any live "case or controversy" under Article III of the United States Constitution. The lack of appellate jurisdiction, the lack of standing, and most importantly, the mootness of every single claim Appellants bring—all provide grounds for this Court to dismiss this appeal. The zeal of Appellants in their quest to obtain relief from a trial that resulted in Appellant Amboh's acquittal is dumbfounding, and this case should be dismissed. Finally, this Court should impose sanctions on Appellant Gardner via

[24] *Id.*
[25] ECF No. 16.

filing restrictions to prohibit and deter any further bad faith, vexatious litigation brought by her, as she habitually engages in this practice.

## ARGUMENT

### I. This Court Lacks Appellate Jurisdiction, and the Matter Should Be Dismissed in Its Entirety.

Appellees' address appellate jurisdiction here given its relevance as a threshold issue. Subject matter jurisdiction is the very power of the court to hear a case. *United States v. Beasley,* 495 F.3d 142 (4th Cir. 2007). Without subject matter jurisdiction, the Court cannot proceed at all except to announce that it is without jurisdiction and dismiss the case. *Id.*

#### A. This Court Lacks Appellate Jurisdiction Because it Does Not Have Jurisdiction Over a Remand Order Pursuant to 28 U.S.C. § 1447(d).

It is well settled that "the authority of appellate courts to review district-court orders remanding removed cases to state court is substantially limited by statute." *Powerex Corp. v. Reliant Energy Servs., Inc.,* 551 U.S. 224, 229 (2007). As this Court explained regarding its jurisdiction to review remand orders, "we have jurisdiction to review a remand order only if (1) the remand was for a reason other than lack of subject matter jurisdiction or a defect in the removal procedure or (2) the "except" clause of § 1447(d) gives us jurisdiction because the case was removed under 28 U.S.C. § 1443 (governing certain civil rights cases)." *Miller v. Lambeth*, 443 F.3d 757, 759 (10th Cir. 2006). *But cf. Thermtron Prods., Inc. v. Hermansdorfer*,

423 U.S. 336, 340 (1976) (holding that the appellate court had jurisdiction to review a remand order when the basis of the remand was due to the district court's crowded docket); *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996) (appellate court had jurisdiction over an abstention-based remand order). Thus, "[t]he two categories of remand within § 1447(c), and therefore within this prohibition on appellate review, are remands for lack of subject matter jurisdiction and for defects in removal procedure." *Miller*, 443 F.3d at 759.

Congress intentionally and purposefully chose to limit appellate jurisdiction over remand orders.

> [T]he congressional purpose [in enacting § 1447(d) was] to prevent the additional delay which a removing party may achieve by seeking appellate reconsideration of an order of remand and to prevent federal removal from becoming a device affording litigants a means of substantially delaying justice.

*Ohio v. Wright*, 992 F.2d 616, 619 (6th Cir. 1993) (en banc) (internal quotation marks omitted).

> It is well-established that statutes conferring jurisdiction upon the federal courts, and particularly removal statutes, are to be narrowly construed in light of our constitutional role as limited tribunals.

*Pritchett v. Office Depot, Inc.*, 420 F.3d 1090, 1094–95 (10th Cir. 2005).

This Court can turn to the case of *Pennsylvania v. Brown-Bey* from the Third Circuit as persuasive authority given the similar facts.[26] *See Pennsylvania v. Brown-*

[26] Except that the removing party in *Brown-Bey* as an initial matter properly removed his case procedurally, unlike Appellants in this case.

*Bey*, 637 F. App'x 686, 688 (3d Cir. 2016). In *Brown-Bey*, the removing party appealed the order remanding his criminal case back to state court.[27] The Third Circuit summarily affirmed the district court's remand, noting "to the extent that Brown–Bey challenges the District Court's remand order with respect to any bases for removal other than § 1442 or § 1443, we will dismiss the appeal for lack of jurisdiction." *Id.*

Under prevailing legal standards, appellate review is barred in this case. First, the case was not removed under §§ 1442 or 1443, which prohibits appellate review via the "except" clause found in the latter half of § 1447(d). Second, the remand was based on a myriad of defects in the removal procedure, thus, within the prohibition on appellate review per instruction from *Miller.* To note, "procedural defects go solely to the process by which a case is removed." *Hackworth v. Guyan Heavy Equip., Inc*., 613 F. Supp. 2d 908, 912 (E.D. Ky. 2009).

Appellants attempted to remove a criminal case from the UITC.[28] As grounds, Appellants cited 28 U.S.C. § 1441 and 28 U.S.C. § 1446, which provide for removal of *civil* cases.[29] 28 U.S.C. § 1455 provides for removal of some criminal cases from state courts, but this statute went uncited by Appellants in their Notice of Removal.[30]

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[27] *Id.*
[28] ROA, Vol. I, at 224.
[29] *Id.*
[30] ROA, Vol. I, at 54.

Construing Appellants' pleadings liberally because they are proceeding pro se, even if they had cited and attempted to remove the case pursuant to § 1455, it still would be infirm procedurally because a notice of removal pursuant to § 1455 must be filed within 30 days of arraignment in the underlying case unless good cause is shown, and does not provide for removal from tribal court in any case.[31]

Appellant Amboh was arraigned in tribal court more than 6 months before she filed her notice of removal.[32] Appellant Gardner cannot be removed because she was never arraigned on any charges.[33] Therefore, Appellants failed to file a timely notice of removal and failed to show any good cause for an exception. Accordingly, the Magistrate Judge recommended (with the district court adopting the Magistrate's recommendation) that the matter be summarily remanded to the UITC pursuant to 28 U.S.C. § 1455(b)(4).[34]

Appellants also waived any claimed errors in the Magistrate's recommended order of the District Court's order because Appellants did not file any objections to the Magistrate's recommended order.[35] Appellants filed a document in the District Court, which they captioned as objections, but the body of that document was a motion for preliminary injunction based upon issues and allegations that were not

[31] 28 U.S.C. § 1455(b).
[32] ROA, Vol. I, at 37.
[33] *Id;* ROA, Vol. I, at 39; 42.
[34] ROA, Vol. I, at 225; 240.
[35] ROA, Vol. I, at 228-32.

pled in the complaint.[36] The document did not contain any discussion of any alleged error by the Magistrate.[37] *See United States v. 2121 E. 30th Str.*, 73 F.3d 1057, 1060 (10th Cir. 1996); *see also* F.R.C.P. 72 (requiring specific objections to a Magistrate's report). Thus, the case was not remanded under § 1442 or § 1443, nor was it remanded for a reason other than a lack of subject matter jurisdiction or defects in the removal procedure—putting the remand in this case squarely within § 1447's prohibition on appellate review.

### B. This Court Lacks Jurisdiction Because Appellants Failed to Exhaust Tribal Court Remedies.

Appellants' Opening Brief does not cite 25 U.S.C. § 1302-03 as grounds for this Court's jurisdiction, but it was cited in the original Complaint giving rise to this action.[38] Nonetheless, in addition to the commands of 28 U.S.C. § 1447(d), this Court also lacks jurisdiction because Appellant Amboh failed to exhaust tribal court remedies before bringing this action in federal court.

25 U.S.C. § 1302 lists the rights that Congress stated Tribes must provide to individuals in their courts. Generally, the only court that can review whether a Tribe has violated any right is the Tribe's Court. *See e.g., Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978). 25 U.S.C. § 1303 defines the sole narrow instance where a

[36] *Id.*
[37] *Id*.
[38] ROA, Vol I, at 7.

federal court has jurisdiction to review whether the Tribe has violated a right listed in § 1302. It only provides federal jurisdiction for a habeas petition when the petition seeks to test the legality of a tribal order of detention. *Santa Clara Pueblo* 436 U.S. at 49; *Kaw Nation ex rel. McCauley v. Lujan*, 378 F.3d 1139 (10th Cir. 2004). Neither Appellant Garnder nor Appellant Amboh were ever detained because of any tribal court order, and therefore, there is no federal court jurisdiction.

Aside from the fact that there would be no possible relief available to Appellant Amboh if she brought her habeas claim in tribal court (because she was acquitted in her trial, never was detained, and consequently the entire matter is moot), as a matter of procedure, Appellant Amboh should have brought her habeas claim in tribal court before bringing it to federal court. *See Valenzuela v. Silversmith*, 699 F.3d 1199, 1206 (10th Cir. 2012) ("Despite § 1303's lack of an express exhaustion requirement, this court has suggested that § 1303 petitioners must exhaust tribal court remedies… Other federal courts have held the tribal exhaustion rule requires tribal members to exhaust claims in tribal court before asserting them in § 1303 petitions.") (Citations omitted).

Contrary to Appellants' knowingly false assertion, the Tribe has an appellate court. Ute Law and Order Code §13-1(1). Plaintiffs have not filed any appeal and/or motion for post-conviction relief with that Court. To attempt to evade their requirement to do so, they falsely assert that the Tribe does not have an appellate

court.[39] The Tribe's laws also provide for habeas corpus petitions. *E.g.,* Ute Tribal Court Civil Rule 35 (defining procedures governing petitions for writ of habeas corpus). Plaintiffs have not brought a tribal court petition for writ of habeas corpus. Both an appeal and a tribal court habeas petition are prerequisites to any suit under 25 U.S.C. § 1303. *Valenzuela*, 699 F.3d at 1205. Thus, this Court lacks appellate jurisdiction to entertain any habeas claims from Appellants, given the lack of tribal court exhaustion. *See Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 17 (1987) ("[E]xhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts… Until [tribal] appellate review is complete… federal courts should not intervene.")

### C. This Court Lacks Appellate Jurisdiction Because All of Appellants' Claims Are Moot.

Appellants' point to a dizzying myriad of alleged reversible errors stemming from the tribal court criminal case.[40] Significantly though, even if every allegation set forth by Appellants was true—there would be nothing for this Court to reverse because Appellant Amboh was acquitted in that trial. Consequently, this case does not "present a real and substantial controversy with respect to which specific relief may be fashioned" by this Court, given Ms. Amboh's acquittal. *Bacote v. Fed. Bureau of Prisons*, 119 F.4th 808, 812 (10th Cir. 2024).

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[39] ROA, Vol I, at 9.
[40] OB at 4-5.

The Supreme Court provided an apt high-level definition of mootness in *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021), noting:

> At all stages of litigation, a plaintiff must maintain a personal interest in the dispute. The doctrine of standing generally assesses whether that interest exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings… And if in the course of litigation a court finds that it can no longer provide a plaintiff with any effectual relief, the case generally is moot.

This Court also provided its own succinct definition of mootness in *Bacote*, explaining how "[t]he doctrine of mootness rests on a simple principle: the controversy that existed at litigation's commencement may dissipate before its conclusion." *Bacote* 119 F.4th at 812. The Court recognizes "two types of mootness: constitutional and prudential." *Id.* The first category of constitutional mootness "stems from Article III's requirement that federal courts only adjudicate 'Cases' or 'Controversies.'" *Id.* (citations omitted.) Further expounding upon constitutional mootness in *Bacote*, the Tenth Circuit stated, "A case becomes constitutionally moot if it ceases to 'present a real and substantial controversy with respect to which specific relief may be fashioned.'" *Id.* (citations omitted).

In the case at hand, the lack of appellate jurisdiction pursuant to 28 U.S.C. § 1447(d) and the tribal court exhaustion doctrine aside, Appellants' case is completely moot. The District Court remanded Appellant Amboh's criminal case back to the

UITC pursuant to 28 U.S.C. § 1455(b)(4).[41] The fatal flaw for Appellants is the reality that Appellant Amboh was found not guilty in her criminal case, and Appellant Gardner was never charged in that (or any) criminal case.[42] Accordingly, neither this Court nor the UITC is faced with "a real and substantial controversy with respect to which specific relief may be fashioned." *Fletcher v. United States*, 116 F.3d 1315, 1321 (10th Cir. 1997). Appellants have essentially created a mountain out of a non-existent molehill, and in doing so have offended every principle of judicial economy and candor before a tribunal.

Even assuming *arguendo* that Appellants' case could survive constitutional mootness, it would still be dismissed under the doctrine of prudential mootness. *See Bacote*, 119 F.4th at 813. Under the doctrine of prudential mootness, "the movant must persuade the court that 'a cognizable danger of recurrent violation' exists beyond a 'mere possibility.'" *Id*. (Internal citations omitted). Further, the Tenth Circuit "will hold a suit prudentially moot if the 'circumstances [have] changed since the beginning of the litigation that forestall any occasion for meaningful relief.'" *Id.* (Internal citations omitted.)

Here, there is no danger of recurrent violation. Aside from the fact Appellant Gardner was never subjected to a violation of her constitutional rights since she has

[41]ROA, Vol I, at 240.
[42]ROA, Vol I, at 57.

never been a proper party to this litigation, and that Ms. Amboh never had the right to counsel or a jury trial violated, nor is she in custody, there is no danger of recurrent violation because Ms. Amboh was found not guilty in her jury trial.[43] This necessarily means the doctrine of double jeopardy applies, thus, precluding any possibility of a recurrent violation. *See United States v. Wampler,* 624 F.3d 1330, 1341 (10th Cir. 2010) ("Jeopardy attaches in a jury trial "when the jury is empaneled and sworn.")), For these reasons, this Court may summarily dispose of this appeal given the mootness of Appellant's case.

**D. This Court lacks appellate jurisdiction because Appellants lack Standing.**

Under Article III of the United States Constitution, "The case or controversy requirement 'is satisfied only where a plaintiff has standing." *Protocols, LLC v. Leavitt*, 549 F.3d 1294, 1298 (10th Cir. 2008) (quoting *Sprint Commc'n v. APCC Servs., Inc.,* 554 U.S. 269, 273 (2008). "This inquiry seeks to determine 'whether [the plaintiff has] such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.'" *Wyoming ex rel. Crank v. United States,* 539 F.3d 1236, 1241 (10th Cir. 2008) (quoting *Massachusetts v. EPA*, 549 U.S. 497 (2007). Moreover, "the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues" and it is a "threshold

[43]ROA, Vol 1, at 57.

question in every federal case." *Warth v. Seldin* 422 U.S. 490, 498 (1975).

For a Plaintiff to have standing, there must be "(i) an injury in fact that is both concrete and particularized as well as actual or imminent; (ii) an injury that is traceable to the conduct complained of; and (iii) an injury that is redressable by a decision of the court." *Wyoming ex. rel. Crank*, 539 F.3d at 1241. Here, neither Appellant Gardner nor Appellant Amboh has Standing to bring this case. Appellant Gardner cannot satisfy any of the three prongs because she never had criminal charges brought against her whatsoever. Appellant Amboh also cannot satisfy any of the three prongs because she was acquitted in her criminal case—the most favorable outcome for any defendant in a criminal case, and no defendant could ever be injured when acquitted in a criminal case. Critically, her acquittal means there are no injuries that could ever be considered redressable. For these reasons, this Court should hold that neither Appellant Gardner nor Appellant Amboh has Standing under Article III of the Constitution to bring any claims.

## II. This Court Should Impose Sanctions on Appellant Gardner for Her Patently Frivolous and Vexatious Behavior.

"A Court may sanction bad faith conduct through its inherent authority." *Tom v. S.B., Inc*., 280 F.R.D. 603, 612-13 (D.N.M.) The purpose of sanctioning a party is to "deter frivolous and abusive litigation and promote justice and judicial efficiency." *Braley v. Campbell*, 832 F.2d 1504, 1510 (10th Cir. 1987). "An appeal is frivolous when the result is obvious, or the appellant's arguments of error are

wholly without merit." *Gardner v. Wilkins*, 593 F. App'x 800, 802 (10th Cir. 2014) (quoting *Braley*, 832 F.2d at 1510.)

Appellant Gardner's track record proves she has a penchant for filing nonsensical and frivolous motions, briefs, etc. *See Uintah County's Motion For Sanctions Against Mr. Gardner And Ms. Kozlowicz, Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah, et al*., No. 2:13-cv-00276 & 2:75-cv-00408 (D. Utah. 2015) ("In this litigation alone, Mr. Gardner and Ms. Kozlowicz[44] appear to have made more than thirty-four separate filings, including twelve frivolous filings in just more than the last month [in a case where they] are not parties to this litigation.") *Mr.* Gardner was already sanctioned by this Court, and when doing so, this Court noted how "Mr. Gardner's shenanigans have consequences." *Wilkins*, 2013 WL 2465512, at *1.

*Ms*. Gardner's shenanigans have consequences too, namely, forcing the Tribe to waste valuable resources defending against her frivolity rather than expend those resources serving tribal members. Appellant Gardner also appears to have no problem outright lying to this Court, making demonstrably false statements such as the Ute Indian Tribe not having an appellate court, or her false claim that the

[44]Ms. Gardner's maiden name was Kozlowicz before marrying Edson Gardner, another pro se litigant with a pattern of similar behavior to Lynda (Kozlowicz) Gardner.

documentation of her permanent disbarment as a tribal court lay advocate is a "false document."[45]

These lies desecrate the sanctity of the judicial system, and they show an astonishing level of disrespect and lack of candor towards the Court. This Court should not allow this type of behavior from any party to any litigation.

As discussed above, case law clearly establishes two primary elements for a habeas corpus petition against an Indian Tribe. 1) the defendant must be in custody; and 2) the defendant must have exhausted tribal court remedies.

More significantly for purposes of the current section of this brief, the District Court in Utah and this Court have repeatedly and patiently explained these two requirements to "Plaintiff" Garnder. *Chegup. v. Ute Indian Tribe Indian Tribe of the Uintah and Ouray Reservation*, 28 F.4th 1051, 1060 (10th Cir. 2022) (discussing the two required elements for a habeas petition and affirming dismissal for failure to exhaust tribal court remedies); *Oviatt v. Reynolds*, 733 Fed. Appx. 929 (2018) (affirming dismissal of a habeas corpus petition by Kozlowicz and others because the complaint did not allege facts supporting that Defendants were in custody); *Gardner v. Arrowichis*, 543 Fed Appx. 891 (10th Cir. 2013) (Gardner and Kozlowicz petitioned for habeas corpus relief against a Ute Indian Tribe judge, but did not allege they were in custody. The District Court allowed them to cure that defect. They did

[45] ROA, Vol I, at 10.

not cure it and instead submitted a complaint alleging civil rights violations. The District Court dismissed, and this Court affirmed on appeal; *Gardner v. Jewell*, 538 Fed Appx. 830 (10th Cir. 2013) (Kozlowicz and Gardner initially sought a "section 17" federal charter (something only available to federally recognized tribes) for "Kozlowicz and Gardner Advocates, Inc." They then brought a federal court suit for habeas corpus relief because their request for charter was denied. Without submitting an amended complaint, they later claimed they were seeking mandamus, and then later claimed they were seeking to appeal from an administrative decision. This Court ultimately affirmed dismissal because there was no final agency decision.); *Gardner v. United States*, 1994 WL 170780 (in a suit where Gardner alleged he was unlawfully arrested, this Court affirmed dismissal of Kozlowicz pro se claim because Kozlowicz had no cognizable interest in the case); *Gardner v. Duncan,* 2024 WL 244207 (D. Utah 2024) (explaining, yet again, to Kozlowicz that she cannot file a habeas petition in this Court unless she has exhausted tribal court remedies).

In the cases above, and in the current case, Gardner (Kozlowicz) bombarded the Court with numerous unintelligible filings and referenced issues that were outside the complaint. As the Tribe discussed in the District Court, Gardner frequently cut and pasted legal discussions that she found online, but which were wholly unrelated

to any issue in the case. As this Court politely characterized Gardner's similar actions in a prior case:

The initial and amended pleadings Plaintiffs filed in the district court were vague and variable in focus, and their pro se appellate brief does more to obfuscate than to clarify the matter.

The district court viewed this complaint as an unintelligible jumble of imprecise and poorly worded allegations that did not give notice of the claims Plaintiffs attempted to allege, or the facts that support their claims. Accordingly, the district court ordered Plaintiffs to file a more definite statement of their claims, in the form of an amended complaint, or face dismissal of the action. Plaintiffs responded by filing an amended complaint with allegations no less general but with a different thrust. *See Gardner v. Wyasket*, 197 F. App'x 721, 722-23 (10th Cir. 2005). Despite the repeated holdings in this Court and in the Utah federal court, Gardner continues to file petitions for habeas corpus relief which do not contain any good faith allegation on either of the two elements.

Here, Ms. Gardner was never a party in the underlying criminal case against Plaintiff Amboh. Gardner had no connection whatsoever to that alleged crime. She was not a witness to any of the events that led to the charges. She was not cited, charged, or arrested. She was never in custody. She signed a complaint as a pro se party in which she alleged two substantive violations of the Indian Civil Rights

Act—that Amboh had been denied a jury trial and that Amboh had been denied a right to an attorney. The allegations in the complaint that anyone's right to counsel or jury trial were factually false and frivolous.

Gardner also, of course, did not exhaust tribal court remedies regarding the alleged violations. At the time she filed the complaint, Amboh was set for a jury trial, and Amboh had chosen to exercise her right to proceed pro se. Gardner, as a non-party, could not and did not challenge Amboh's decision to proceed pro-se. Finally, as discussed above, Amboh was acquitted when the arresting officer failed to appear for trial. But after that acquittal, Gardner, but Gardner, still claiming to be pro se, filed a notice of appeal to this Court.

Gardner has amply demonstrated to this Court that she will not conform her conduct to the simple legal rules that this Court has patiently explained to her. This Court should therefore impose restrictions. Consequently, Appellees respectfully request that this Court bar Gardner from filing any pleadings or documents of any kind, either in the United States District Court for the District of Utah or in this Court, without advance written permission of a judge in the court in which she seeks to file the document. E.g., *Louisiana v. Carr*, No. 94–30604, 1995 WL 449849, at *1 (5th Cir. June 29, 1995) (imposing a similar limitation on a party with a history of frivolous filings).

## CONCLUSION

This Court undoubtedly lacks appellate jurisdiction given the dictates of 28 U.S.C. § 1447(d). Moreover, it lacks jurisdiction given how neither Appellant has Standing to bring claims. Perhaps most importantly, this Court is not faced with any live "case or controversy" under Article III of the United States Constitution. The lack of appellate jurisdiction, the lack of standing, and most importantly, the mootness of every single claim Appellants bring—all provide grounds for this Court to dismiss this appeal.

## STATEMENT REGARDING ORAL ARGUMENT

Appellees do not request oral argument because counsel believes Appellees' positions are adequately represented in this briefing, and oral argument would not substantially aid this Court in its analytical process.

Respectfully submitted, the 18th day of September, 2025

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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,259 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because: this brief has been prepared in a proportionally spaced typeface using Microsoft Word Version 2508 in Times New Roman Font, Size 14.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2025, I electronically filed the foregoing using the court's CM/ECF system, which will send notification of such filing, in addition to service by mail to the following:

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Jeffrey Rasmussen

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

| | |
|---|---|
| LYNDA GARDNER and KANDRA L. AMBOH,<br><br>Plaintiffs,<br><br>v.<br><br>UTE TRIBAL COURT OF THE UINTAH AND OURAY RESERVAVTION, JEFFREY KURTZ, and JEFF S. RASMUSSEN.,<br><br>Defendants. | **MEMORANDUM DECISION AND ORDER ADOPTING [33] REPORT AND RECOMMENDATION AND OVERRULING [35] OBJECTION**<br><br>Case No. 2:25-cv-106<br><br>District Judge David Barlow |

Before the court is United States Chief Magistrate Judge Dustin B. Pead's Report and Recommendation to dismiss Lynda Gardner and Kandra L. Amboh's ("Plaintiffs") case.[1] Plaintiffs filed a timely objection.[2] For the reasons stated below, the court overrules Plaintiffs' objection, adopts the Report and Recommendation, and dismisses the action.

## BACKGROUND

Plaintiffs, who are both enrolled members of federally recognized Indian Tribes, have requested a writ of habeas corpus "for relief from tribal right to trial."[3] They allege that their rights have been violated by a criminal trial before the Ute Tribal Indian Court, which they have attempted to remove to this court.[4] Plaintiffs have also requested an injunction to prevent the

[1] Report and Recommendation ("R&R") 4, ECF No. 33, filed May 20, 2025.
[2] Pl. Obj. to Mag. J. R. & R. ("Obj."), ECF No. 35, filed May 27, 2025.
[3] Complaint, ECF No. 1, filed February 13, 2025.
[4] Notice of Removal, ECF No. 11, filed April 15, 2025; Emergency Motion for Immediate Removal, ECF No. 25, filed May 9, 2025; Emergency Motion with Time Deadline for Stay and for Injunction Pending Appeal Relief, ECF No. 32, filed May 19, 2025. This trial was apparently set for May 24, 2025. *See* R&R 3.



**ATTACHMENT 1**

criminal trial.[5] Defendants Ute Tribal Court of the Uintah and Ouray Reservation, Jeffrey Kurtz, and Jeffrey Rasmussen (collectively "Defendants") moved to dismiss the case[6] and to remand the matter to the Ute Indian Tribal Court.[7] On May 20, 2025, the magistrate judge issued a report recommending that the court dismiss this case.[8] Plaintiffs filed a timely objection.[9]

**STANDARD**

The court conducts a de novo review of any part of a report and recommendation for which a plaintiff offers a timely and proper objection. To trigger this de novo review, an objection must adequately specify the factual and legal issues in dispute.[10] "[G]eneral objection[s] [are] insufficient" to preserve the issue for appellate review.[11] This court "reviews unobjected-to portions of a report and recommendation for clear error."[12] To overturn a decision as clearly erroneous, the court must be left with a "definite and firm conviction that a mistake has been committed."[13] The court will "set aside the magistrate judge's order" as contrary to law "if it applied an incorrect legal standard."[14]

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[5] Emergency Motion with Time Deadline for Stay and for Injunctive Pending Appeal, ECF No. 32, filed May 19, 2025.
[6] Motion to Dismiss, ECF No. 7, filed April 9, 2025; Defendants Ute Tribal Court of the Uintah and Ouray Reservation's and Honorable Jeffrey Kurtz's Motion to Dismiss, ECF No. 8, filed April 10, 2025.
[7] Motion for Summary Remand and Related Relief, ECF No. 14, filed April 28, 2025; Defendants Ute Tribal Court of the Uintah and Ouray Reservation's and Honorable Jeffrey Kurtz's Motion for Summary Remand and Related Relief, ECF No. 17, filed May 1, 2025.
[8] R&R 4.
[9] Obj. 1.
[10] *See United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996).
[11] *Moore v. Astrue*, 491 F. App'x 921, 923 (10th Cir. 2012) (unpublished) (citing *2121 E. 30th St.*, 73 F.3d at 1060).
[12] *Johnson v. Progressive Leasing*, No. 2:22-cv-00052, 2023 WL 4044514, at *2 (D. Utah 2023) (citing *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see* Fed. R. Civ. P. 72(b) adv. comm. note to 1983 amend. ("[T]he court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.").
[13] *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948); *see also Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988).
[14] *Vivint, Inc. v. Alarm.com Inc.*, No. 2:15-cv-392, 2020 WL 3871346, at *5 (D. Utah 2020) (cleaned up).



**ATTACHMENT 1**

**DISCUSSION**

The magistrate judge recommends dismissing Plaintiffs' case.[15] The report first points out that the statutes referenced by Plaintiffs to remove their case to this court do not permit the removal of a criminal case from a tribal court and that Plaintiffs have failed to file a timely notice of removal.[16] Next, it recommends granting Defendants' motions to dismiss, as Plaintiffs have not alleged any error in the tribal criminal action.[17] Finally, the magistrate finds that Plaintiffs' motions for injunctive relief should be dismissed, as there is no reason for the court to intervene in a matter properly before the Ute Tribal Court.[18]

Plaintiffs' objection does not address these deficiencies, but instead requests a preliminary injunction to stop Defendants "from enforcing Ute Tribal Order or from otherwise attempting to enforce the tribal court jurisdiction."[19] Plaintiffs do not offer a specific objection to the magistrate judge's analysis on the court's lack of removal jurisdiction, rejection of Plaintiffs' allegations of error, or finding that Plaintiffs' emergency motions are unmeritorious. Therefore, the Report and Recommendation is reviewed for clear error.

The magistrate judge's analysis and conclusion are not clearly erroneous. Accordingly, the court adopts the Report and Recommendation.

[15] R&R 4.
[16] *Id.* at 3.
[17] *Id.* at 4.
[18] *Id.*
[19] Obj. 2.



**ATTACHMENT 1**

**ORDER**

For the reasons stated above, the court OVERRULES Plaintiffs' Objection to the Magistrate Judge's Report and Recommendation.[20] The Report and Recommendation is ADOPTED.[21]

Signed June 4, 2025.

BY THE COURT

David Barlow
United States District Judge

[20] ECF No. 34.
[21] ECF No. 33 (denying ECF Nos. 6, 19, 25, 32 and granting ECF Nos. 7, 8, 14, 17).



**ATTACHMENT 1**

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

| | |
|---|---|
| LYNDA GARDNER and KANDRA L. AMBOH,<br><br>Plaintiffs,<br><br>v.<br><br>UTE TRIBAL COURT OF THE UINTAH AND OURAY RESERVAVTION, JEFFREY KURTZ, and JEFF S. RASMUSSEN.,<br><br>Defendants. | **JUDGMENT IN A CIVIL CASE**<br><br>Case No. 2:25-cv-106-DBB<br><br>District Judge David Barlow |

IT IS HEREBY ORDERED that Plaintiffs' complaint is DISMISSED. The Clerk of Court is directed to close this case.

Signed June 4, 2025.

BY THE COURT

David Barlow
United States District Judge

**ATTACHMENT 2**