

U.S. COURT OF APPEALS
TENTH CIRCUIT
2025 JUL 10 10:53 AM

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July *7th* 2025.

United States Court of Appeals
for Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257

Re: Gardner, et al., v. Ute Tribal
Court, et al., 10th Cir. Case No. 25-4077

Dear Clerk:

Filed: **PLAINTIFF'S RESPONSE MEMORANDUM ON**
REMAND, this is submitted for filing for federal Court
review.

Respectfully submitted


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IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Gardner, et al.,
Plaintiff(s),

Case No. 25-4077
(D.C. No. 2:25-CV-106-
DBB) (D. Utah)

v.

PLAINTIFFS RESPONSE TO
MEMORANDUM ON REMAND

Ute Tribal Court, et al.,
Defendant(s),

Plaintiff Lynda Gardner, on following;

The Removal action from Ute Tribal Court, the Defendants are, Hon. Jeffrey Kurts, Judge, and Tribal Attorney, Jeff S. Rasmussen, acting Prosecutor, and Hon. Mary Cardoza Judge Pro Temp, NW Inter-Tribal Court System from Washington State, in Asserting federal court of Utah has subject matter jurisdiction on the basis of diversity of citizenship. The 10th Circuit moved to remand this action to State court, and there are federal questions. For the reasons set forth below, the remand should be denied.

1. The Tenth Circuit reached as in climate change

appeal in Board of County Commission v. Suncor Energy (U.S.A) Inc., that held it could review only whether removal was proper under the federal officer removal statute and not any other ground for removal. The court walked through 28 U.S.C. 1447(d)'s text and context similar statutes. Cases interpreting those statutes. The presumption against jurisdiction. Practical considerations, and 28 U.S.C. 1447(d)'s underlying purpose. But like the other recent decisions on the scope of remand appeal, the court should for rehearing en banc or court (or both).

2. The exercising jurisdiction under 28 U.S.C. 1291, pursuant to the collateral order doctrine, under the collateral order doctrine established in Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949), an order is immediately appealable if the order (1) conclusively determine the disputed question, (2) resolves an important issue completely separate from the merits of the case, and (3) is effectively unreviewable on appeal from the final judgment. United States v. Leon, 132 F. 3d 583, 587 (10th Cir. 1997). It has recognized that the denial of tribal immunity is an immediately appealable collateral order. Osage Tribal Council ex rel. Osage Tribe v. U.S. Dep't of Labor, 189 F. 3d 1174, 1179 (10th Cir. 1999)

In Osage, it held an order denying tribal immunity meets the

Conhen requirements for an immediately appealable collateral order because, (1) the order conclusively determines the disputed question of tribal immunity; (2) tribal immunity is an important issue completely separate from the merits of the case, and most importantly, (3) the denial of tribal immunity is effectively undervieable on appeal from the final judgment because tribal immunity is an immunity from suit rather than merely the defense to liability, which is effectively lost if the case is to proceed. Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

3. By comparison, in Dietrich Corp. v. King Resource Co., 596 F. 2d 422, 424 (10th Cir. 1979), it held the law professor who provided consulting services to two law firms in the particular case could appeal it trial court order limiting the compensation agreement with the firms event through it was neither the party not an attorney of record in the case. Dietrich, 596 F. 2d at 424. Without much reasoning or reference, it stated that this order was the final order. It allowed the non-party professor to appeal because his interest in the consulting contract made him an aggrieved party whose property interest can be protected only by recognizing this as one of the extraordinary case where the nonparty may be allowed to appeal. Commercial Sec. Bank v. Walker Bank & Trust Co., 456 F. 1352, 1354 (9th Cir. 1972).

4. The Motion to remand based on any defect in removal other than the lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal, 28 U.S.C. 1447(c). Any non-jurisdictional objection not raised within 30 days of the filing of the notice of removal is waived. Shapiro v. Longistec USA Inc., 412 F. 3d 307, 315 (2n Cir. 2005).

5. Filing and entry are, distinct events. As one court explained,

Entry and filing are words of art. Entry has a well defined meaning . . . ; it occurs only when . . . an appropriate notation on the docket sheet is assigned to the action in the district court. Filing, on the other hand, means the delivery of the things filed into the actual custody of the proper officer keeping the records of the court. It connotes a deposit for permanent presentation.

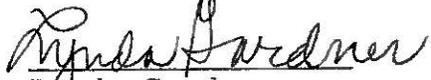
Herrera v. First N. Sav. & Loan Ass'n, 805 F. 2d 896, 899 (10th Cir. 1996).

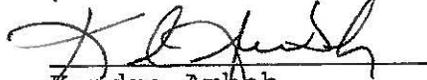
6. Improper venue does not affect the federal court's subject matter jurisdiction. Moreno-Bravo v. Golzales, 463 F. 3d 253, 258 (2nd Cir. 2006), Nothing in 1441(a) would have deprived this Court of subject matter jurisdiction if Plaintiffs had commenced this action here and, improper venue pursuant to 1441(a) does not deprive this Court of jurisdiction on removal. Orange Cnty. Water Dist. v. Unocal Corp., 584 F. 3d 43, 49-50 (2d Cir. 2009).

CONCLUSION

WHEREFORE, Accordingly, the court denial of Plaintiffs
Appeal should be reversed.

Respectfully submitted this 7th day of July, 2025.


Lynda Gardner


Kandra Ambph

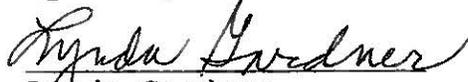
CERTIFICATE OF SERVICE

I, hereby filed Copy of: **PLAINTIFFS RESPONSE ON MEMORANDUM REMAND**, dated on July 7th 2025, which caused party of record to be served to:

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