

## **Ute Indian Tribe Victory in Federal Court Dismissal of Banished Members' Challenge Continues to Stand**

**FORT DUCHESNE, UT (June 22, 2020)** — On Dec. 3, 2019, in a victory for the Ute Indian Tribe, the U.S. Federal District Court for the District of Utah dismissed the case of four tribal members who were banished in 2018. The plaintiffs — Angelita M. Chegup, Tara J. Amboh, Mary Carol Jenkins, and Lynda M. Kozlowicz (“plaintiffs”) — had sought a writ of habeas corpus under the Indian Civil Rights Act (“ICRA”) and asked the court to set aside the banishments.

Although the plaintiffs appealed to the U.S. Court of Appeals for the Tenth Circuit, that appeal is still pending, and the federal court decision and order in favor of the Ute Indian Tribe remains in place today. The Ute Indian Tribe has requested oral argument in the appeal, but the plaintiffs have not.

“We will have to wait to hear what the Tenth Circuit decides about that,” said Luke Duncan, Chairman of the Ute Indian Tribe Business Committee. “If it wants oral argument, it will give us a date. If it does not believe oral argument would be necessary or helpful, it will issue its decision based upon the briefs. Until then, the federal district court decision in favor of the Ute Indian Tribe stands.”

The Business Committee passed a resolution banishing the plaintiffs after their continued disruption of ongoing federal court litigation between the Tribe and the State of Utah to protect the Tribe’s Uintah and Ouray Reservation from diminishment. As part of that litigation, the plaintiffs had sought to intervene in the case, arguing that the Tribe’s reservation should be set aside and preserved for the Uinta Utes of Utah, not the Ute Indian Tribe. The Tribe opposed their request to intervene, and the court eventually denied the plaintiffs’ motion. The reservation boundaries were eventually upheld in a sweeping victory in favor of the Ute Indian Tribe that occurred in spite of, not because of, the plaintiffs’ attempted interference in the case.

In October 2018, the Business Committee received a complaint from 70 members of the Tribe requesting the banishment of the plaintiffs due to this attempted intervention into the Tribe’s jurisdiction case, which seriously threatened the peace, health, safety, morals, and general welfare of the Tribe.

More specifically, the complaint from tribal members alleged that the plaintiffs had (1) repeatedly interfered in the Tribe’s ongoing litigation; (2) caused repeated delays and confusion in cases impacting the well-being of the Tribe; (3) engaged in vexatious litigation with the purpose of delaying legal proceedings and confusing legal issues; (4) sought to destabilize the tribal government and waste its resources; and (5) cost the Tribe unnecessary legal fees by imprudently intervening into cases involving the Tribe.

Following an official hearing on the banishment, the plaintiffs were fined and lost certain tribal rights for five years as part of their banishment. Without any action to exercise their due process rights under the tribal banishment ordinance to appeal the decision of the Business Committee to the designated tribal forums vested with exclusive authority to review the banishment order under the ordinance, the Ute Indian Tribal Court and Ute Indian Tribal Appellate Court, the plaintiffs proceeded to file a federal court lawsuit against the Ute Indian Tribe, claiming they had been banished without due process and seeking to have their banishments ended. They requested relief under the habeas corpus provision of the ICRA, a federal law that allows parties to seek relief in federal court when they believe they have been illegally detained by an Indian tribe.

The court granted the Ute Indian Tribe's motion to dismiss their lawsuit against the Tribe on the grounds, among others, that there was no federal jurisdiction under the ICRA because the plaintiffs had not shown they were "detained," as that term has been interpreted under the ICRA. In reaching that decision, the court relied upon cases decided by the Tenth Circuit Court of Appeals and other federal appellate and district courts.

The court concluded that, because the plaintiffs had not satisfied the prerequisites for relief under the ICRA, their claims had to be dismissed based on the Ute Indian Tribe's sovereign immunity. In addition, the tribe moved for dismissal because the petitioners had not exhausted their tribal remedies before filing the action.

"The Business Committee believes the court's dismissal of the case properly recognizes the tribe's sovereign immunity, and supports the tribe's position that the banishment of the tribal members was carried out in full recognition of their due process rights and that they are not entitled to have this decision reviewed by the federal courts," Chairman Duncan said.

Chairman Duncan also emphasized that the Ute Indian Tribe has taken appropriate action and carefully followed tribal and federal law at every stage of this process to ensure the actions of the Business Committee were carried out in a lawful, transparent process that afforded due process to the plaintiffs at each and every stage of the banishment proceedings.

"Banishment is a strong and traditional measure for justice, and we don't take it lightly," he said. "We gave them notice, and we offered them a hearing. They chose to file in federal court instead of tribal court, in violation of tribal law, and had their claims dismissed. This was an internal tribal matter, and throughout, it has been a fair process. The U.S district court properly dismissed the case."