

FEDERAL APPELLATE COURT HOLDS THAT BANISHED MEMBERS OF THE UTE INDIAN TRIBE MUST EXHAUST TRIBAL REMEDIES BEFORE PURSUING CLAIMS IN FEDERAL COURT

On March 18, 2022, the United States Court of Appeals for the Tenth Circuit ruled that four banished members of the Ute Indian Tribe of the Uintah and Ouray Reservation must prove they were excused from exhausting their remedies in Tribal court before their case can proceed in federal court. The banished members, Angelita Chegup, Tara Amboh, Mary Carol Jenkins, and Lynda Kozlowicz, filed a case in the United States District Court for the District of Utah in 2019 following their five-year banishment by the Tribe the previous year. The suit named the Tribe, its Business Committee, and the individual members of the Business Committee as defendants. The banished members claimed their temporary banishment amounted to unlawful detention and that they were therefore entitled to habeas corpus relief under the Indian Civil Rights Act. The district court rejected that claim and ruled that the ICRA did not apply. The district court held that it therefore lacked jurisdiction to hear the case and dismissed the case on that basis in late 2019. The banished members appealed the dismissal to the Tenth Circuit.

In *Chegup, et al. v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al.*, Nos. 19-4178 & 20-4015, a majority of the Tenth Circuit panel ruled that before the district court considered the issue of whether it had jurisdiction under the ICRA, the district court should first have asked whether the banished members were excused from exhausting their tribal court remedies. “Out of respect for comity and the tribal sovereignty interests that undergird ICRA, we conclude that the district court should have started its analysis at exhaustion.” The majority explained that “Tribal exhaustion doctrine exists to preserve tribal sovereignty and prevent the federal courts from running roughshod over tribal legal systems.” The majority also found that it was undisputed that the banished members had not filed an action in Tribal court. On that basis, the Tenth Circuit reversed the lower court decision and sent the case back to district court for a determination of whether the plaintiffs were excused from exhausting tribal remedies. Because the appellate majority held that the district court should have decided the tribal exhaustion issue before deciding the ICRA issue, it did not decide the ICRA issue. The case will therefore return to Utah federal district court for consideration of the tribal exhaustion question.

The dissenting opinion of the Tenth Circuit panel strongly disagreed with the majority and opposed the majority decision to remand the case to district court. The dissent stated that, “the district court ruled that it did not have jurisdiction. On that determination, the court was unequivocally correct in dismissing the case.” The dissent therefore believed that rather than remanding the case for a decision on the tribal exhaustion issue, the appellate court should have considered the underlying ICRA issue at this time.

According to Shaun Chapoose, Chairman of the Tribe’s Business Committee, the Tribe believes the Tenth Circuit’s decision properly recognizes the Tribe’s sovereign immunity and supports the Tribe’s position that challenges to temporary banishment must be pursued in Ute Tribal Court.

About the Ute Indian Tribe - The Ute Indian Tribe resides on the Uintah and Ouray Reservation in northeastern Utah. Three bands of Utes comprise the Ute Indian Tribe: the Whiteriver Band, the Uncompahgre Band and the Uintah Band. The Tribe has a membership of more than three thousand individuals, with over half living on the Uintah and Ouray Reservation. The Ute Indian Tribe operates its own Tribal government and oversees approximately 1.3 million acres of trust land which contains significant oil and gas deposits. The Ute Tribal Business Committee is the governing council of the Tribe. The Ute Indian Tribe is still engaged in legal battles with the state of Utah and local counties to protect the Tribe’s jurisdiction over lands that were specifically set-aside and reserved by the federal government for the benefit of the Tribe.