Published on *The National Law Review* https://natlawreview.com

Indian Nations Law Update - February 2020

Article By:

John L. Clancy

Brian L. Pierson

Selected Court Decisions

In *United States v. Uintah Valley Shoshone Tribe*, 946 F.3d 1216 (10th Cir. 2020), the Uintah Valley Shoshone Tribe (UVST), an organization not recognized by the federal government as a tribe but composed of mixed blood Utes whose membership in the Ute Tribe was terminated by the **Ute Partition and Termination Act** of 1954, claimed hunting and fishing rights on the Uintah and Ouray Reservation. When the UVST began issuing hunting licenses to its members, the federal government sued to enjoin these activities. The district court held the UVST had no authority to issue licenses but declined to issue a permanent injunction. The Tenth Circuit affirmed: "[M]ixed-blood Utes maintained their individual hunting and fishing rights even after their membership was terminated under the Termination Act…. First, our case law establishes that hunting and fishing rights are personal to the mixed-blood Utes included on the initial roll sheet and as such are neither alienable, assignable, transferable nor descendible. … Thus, only the original 490 mixed-blood members listed on the final rolls in 1956 had hunting and fishing rights on the Uintah and Ouray Reservation—these rights could not be passed down to their descendants. … The Uintah Valley Shoshone Tribe, even if it maintains some organizational identity, has no formal, separate existence outside the Ute Tribe. Thus, any tribal right—like hunting and fishing—belongs to the Ute Tribe alone. Only the Ute Tribe can issue hunting and fishing licenses, and Uintah Valley Shoshone Tribe members not included on the original roll sheet of mixed-blood members have no right of user in hunting and fishing rights originally granted to the Uintah Tribe. … In sum, we hold the Uintah Valley Shoshone Tribe lacks the authority to issue hunting and fishing licenses on the Uintah and Ouray Reservation to its members. … The district court declined to order a permanent injunction. The government contends the court erred and that an injunction is necessary to stop the Uintah Valley Shoshone Tribe from issuing licenses. It claims the organization violated the federal wire fraud statute. … Here, the district court concluded that no scheme existed—the Uintah Valley Shoshone Tribe was simply purporting to exercise authority it did not actually have. This is a reasonable conclusion. Even though the Uintah Valley Shoshone Tribe stated it was a federally recognized tribe and was doing business as the Ute Indian Tribe, it did not make these statements to obtain money through a scheme." (Internal quotations and citations omitted.)

In *Thurmond v. Forest County Potawatomi Community*, 2020 WL 488864 (E.D. Wis. 2020), Thurmond, an employee of Potawatomi Bingo Casino (PBC), an enterprise of the Forest County

Potawatomi Community (Tribe), sued the Tribe and several employees of PBC, alleging that the defendants **discriminated against him based on his race** and his verbal tic. The district court granted the Tribe's motion to dismiss. Reviewing the standards for various potential legal discrimination theories, the Court determined that none applied: "The defendants speculated that the plaintiff may be trying to allege a violation of his civil rights under 42 U.S.C. § 1983, a violation of Title VII (42 U.S.C. § 2000e-2(a) (which prohibits employers from discriminating based on protected classes such as race) or a violation of the Americans with Disabilities Act. … The defendants assert that regardless of which of these causes of action the plaintiff may have intended to pursue, they are immune from suit under the doctrine of tribal sovereign immunity. … The court agrees. … The court concludes that the plaintiff has not stated a claim against the Forest County Potawatomi Community under § 1983, Title VII or the ADA, because the tribe is not subject to suit under those statutes. Nor has the plaintiff stated a claim against the individual defendants under those statutes. The court will not allow the plaintiff to proceed on this complaint."

In *Chinook Indian Nation v. U.S. Department of Interior*, 2020 WL 363410 (W.D. Wash. 2020), the Indian Claims Commission in 1971 had awarded $48,692.05 to "the Lower Band of Chinook and Clatsop Indians" for land they lost in the 1800's. That money was then held in trust by DOI for several decades, with statements and other communications about the account periodically being sent to the Chinook Indian Nation, a non-recognized tribe, at a post office box in Chinook, Washington. The Department of Interior later discontinued sending the statements to the CIN, explaining that, as a non-recognized tribe, the CIN was not eligible to receive the funds. The CIN sued, alleging violations of the Administrative Procedure Act and the Due Process Clause of the Fifth Amendment, and seeking a declaratory judgment naming CIN as a beneficiary of the funds. Citing provisions in the Indian Tribal Fund Use or Distribution Act, the Court rejected the government's argument that only recognized tribes can benefit from judgment funds and remanded to the DOI to reconsider its decision to stop sending statements. At the same time, the Court acknowledged that the issue whether the CIN was the appropriate beneficiary of the judgment fund was undecided.

In *JW Gaming Development v. James*, 2020 WL 353536 (N.D. Cal. 2020), JW Gaming Development (JW) sued the Pinoleville Pomo Nation, the Pinoleville Gaming Commission, the Pinoleville Business Board, and Pinoleville Economic Development, LLC (Tribe) and certain tribal officials (Individual Tribal Defendants) for fraud, breach of contract and violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) after the Tribe allegedly breached a $5.38 million note for construction of a casino that was never built. The note included a waiver of sovereign immunity, a provision that the note be immediately due and payable if no casino was built and a provision that collection could be only against casino revenues. JW contended that the Individual Tribal Defendants employed misrepresentations to induce the plaintiff to make the loan. Rejecting sovereign immunity arguments, the district court granted JW judgment on its breach of contract claim and denied the defendants' motion for summary judgment on the fraud and RICO claims: "[T]he Tribe concedes that the Note is currently 'immediately due and payable' but characterizes the decision of whether or not to make repayment as entirely within its own discretion. Indeed, the Tribe essentially asserts that it cannot be liable for declining to return the money voluntarily even though the Note is 'immediately due and payable.' This interpretation would strip all meaning from 'immediately due and payable' and lead to an absurd result. … I conclude that the parties intended for the Tribe to be obligated to make payment. … the Tribe argues that I lack jurisdiction to award damages from anything beyond casino revenues because it did not unequivocally waive sovereign immunity for anything beyond such revenues. … The Tribe's argument that the waiver was *not* unequivocal relies on the distinct Limitation of Recourse provision. But as the cases above state, that provision need not provide a second waiver, nor must it meet the strict rules of interpretation that are applied to waiver provisions themselves. The Tribe clearly and unequivocally waived its **sovereign immunity** with respect to the

instant action."

In *Little Dog v. Cooper*, 2020 WL 339217 (D. Mont. 2020), Little Dog, an inmate at the Flathead County Detention Center (FCDC), sued FCDC officials alleging violations under the First Amendment's Free Exercise clause, Religious Land Use and Institutionalized Persons Act (RLUIPA) and the American Indian Religious Freedom Act of 1978 (AIRFA), 42 U.S.C. § 1996, arising out of the defendants' restrictions on his right to possess a medicine bag and engage in outdoor smudging. The court granted the defendants summary judgment on the RLUIPA and AIRFA claims but denied their motion to dismiss Little Dog's First Amendment claim: "RLUIPA does not authorize money damages against state officials, regardless of whether they are sued in their official or individual capacities. … The only relief Mr. Little Dog may obtain under RLUIPA is injunctive relief but since his [sic] is now incarcerated at Montana State Prison, his claims for injunctive relief are moot. … The Supreme Court has held that the AIRFA is simply a policy statement that is judicially unenforceable … Defendants submitted only argument and no evidence in support of their contentions regarding both the **medicine bag and smudge** and therefore fail to meet their burden as to the third prong of the *Turner* analysis. The Court can foresee that allowing unknown substances into the jail could have a significant impact on guards and the allocation of prison resources. … [T]here is no explanation regarding why allowing Mr. Little Dog to have a medicine bag acceptable by the Forensic Mental Health Unit in Galen would significantly impact guards or other inmates or the allocation of prison resources. Similarly, there is insufficient evidence to establish that an outdoor smudge would have a significant impact on the guards, other inmates, and on the allocation of prison resources. Defendants presented evidence that allowing inmates within the facility to have flammable materials indoors would have a significant impact on guards and other inmates but that is not what Mr. Little Dog was asking for. He requested an outdoor smudge."

In *Landreth v. United States*, 2020 WL 114521, Fed. Appx. (Fed. Cir. 2020), Landreth sued the United States in the Court of Federal Claims under the Tucker Act, Indian Tucker Act and an 1891 statute, alleging that the Quinault Indian Nation (Tribe), relying on its 1855 treaty with the United States, had improperly asserted jurisdiction over his property within Olympic National Park that abuts Lake Quinault, which is also located on the Olympic Peninsula. The court dismissed and the Federal Circuit Court of Appeals affirmed: "The Claims Court … properly determined that it lacks jurisdiction over Landreth's other claims. First, to the extent that Landreth characterizes the Treaty of 1855 as a contract between the United States and the Tribe, it cannot provide a basis for the Tucker Act's contract-based jurisdiction at least because Landreth has not alleged that he was a party to the alleged contract or in privity with a party that was. Second, Landreth argues that the Indian Civil Rights Act, 25 U.S.C. § 1302, confers the Claims Court **jurisdiction** over his constitutional claims against the Tribe. However, the Indian Civil Rights Act 'does not import duties on the federal government or its employees' and cannot be interpreted as money-mandating for purposes of Tucker Act jurisdiction. *Wopsock v. Natchees*, 454 F.3d 1327, 1333 (Fed. Cir. 2006). Finally, we agree with the government that the Claims Court correctly determined that the 1891 Act prohibits claims based on depredations occurring after passage of the Act."

In *Bear v. United States*, 2020 WL 253023 (Fed. Cl. 2020), the United States House of Representatives in 2012 had passed House Resolution 668, referring a bill, H.R. 5862, entitled "A Bill relating to members of the Quapaw Tribe of Oklahoma (O-Gah-Pah)" to the chief judge of the Court of Federal Claims, instructing the Court to "report back to the House of Representatives" findings of fact and conclusions of law sufficient "to inform the Congress of the nature, extent, and character of the Indian trust-related claims of the Quapaw Tribe of Oklahoma and its tribal members for compensation as legal or equitable claims against the United States" for purposes of 28 U.S.C. §§ 1492, 2509. The claims at issue all relate to the federal government's alleged historical

mismanagement of the Tribe's **trust assets**. Pursuant to an eventual agreement between the parties, an appointed hearing officer reported that "[i]t would be fair, just, and equitable to pay Claimants a total sum of $137,500,000" for all claims actually asserted or those that could have been asserted under the terms of H.R. 5862. In the instant decision, a panel of the Court of Claims "adopts the findings and conclusions of the hearing officer and recommends to the House of Representatives that the claimants be awarded and paid a total sum of $137,500,000 for the extinguishment of all claims actually or potentially included within the terms of H.R. 5862."

In *Ysleta Del Sur Pueblo v. City of El Paso*, 2020 WL 230888 (W.D. Tex. 2020), Ysleta Del Sur Pueblo brought this declaratory judgment action seeking judicial confirmation of the Pueblo's title to 111.73 acres of real property (Property) encompassed by an alleged 1751 Spanish Land Grant. On cross motions for summary judgment, the district court determined that it lacked subject matter jurisdiction because the Pueblo's claim was based on state law and did not arise from aboriginal title, the Indian Non-intercourse Act or other federal law: "[T]he Pueblo's claim does not raise a **federal question** because of two reasons: (1) the predicate cause of action for the Pueblo's declaratory judgment suit is based on state law, not federal law; and (2) the Pueblo's asserted right to the Property is not a federally derived right and does not involve a substantial federal issue."

In *Cherokee Nation v. Department of Interior*, 2020 WL 224486 (D.D.C. 2020), the Cherokee Nation brought a **breach of trust claim** against the Department of Interior (DOI) for a declaratory judgment and injunctive relief under common law, statute, and the Administrative Procedure Act (APA), seeking an order that the DOI owes "an accounting of Trust Funds that are held or have been held by the United States *qua* trustee for the Nation … [and] an injunction to ensure it receives an accurate accounting of past and future assets, regular statement balances, and to restore the Trust Funds to their full entitlement." The district court denied the DOI's motion to dismiss: "this is far from the first lawsuit by an Indian tribe seeking a trust accounting from the United States. Indeed, the D.C. Circuit has found that the United States has mismanaged Indian trusts for nearly as long as it has been trustee. *Cobell v. Norton* … Finding earlier precedent forecloses dismissal, the Court is satisfied that it has jurisdiction and that the Nation has met its burden at this early stage. As a result, the Government's motion will be denied."

In *Native Village of Nuiqsut v. Bureau of Land Management*, 2020 WL 113495 (Alaska 2020), the Alaska Native Village of Nuiqsut and environmental protection organizations sued the U.S. Bureau of Land Management (BLM), claiming that the BLM violated the **National Environmental Policy Act** (NEPA) and Alaska National Interest Lands Conservation Act (ANILCA) by approving exploration activity undertaken by ConocoPhillips Alaska, Inc. in the National Petroleum Reserve on Alaska's North Slope. Nuiqsut Village, an Alaska Native community of nearly 500 people located on the eastern border of the area, asserted that BLM had not adequately taken into account the adverse impact of the exploration on the Village's traditional subsistence activities and had not adequately considered alternatives to ConocoPhillips' application. The federal district court denied the Plaintiffs' motion for declaratory relief: "BLM fulfilled its obligation under that provision to evaluate 'alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.' … As explained in the previous section of this decision, the 2018 EA's consideration of only the preferred alternative and a no-action alternative was permissible under NEPA, and Federal Defendants' decision to eliminate Plaintiffs' proposed alternatives from consideration was neither arbitrary nor capricious. For the same reasons, the Court finds that the EA complied with ANILCA
§ 810(a)."

In *Chinook Indian Nation v. Bernhardt*, 2020 WL 128563 (W.D. Wash. 2020), Chinook Indian Nation

(CIN), a group claiming tribal status whose petition for **federal acknowledgement** had been rejected in 2002, sued to challenge Department of Interior (DOI) regulations barring rejected tribes from re-petitioning. CIN argued that the prohibition exceeded DOI's statutory authority, is arbitrary and capricious contrary to the requirements of the Administrative Procedure Act (APA), and violated the Fifth Amendment's Equal Protection Clause. The district court granted CIN summary judgment based on the APA: "First, DOI argues that the re-petition ban promotes consistency in the same manner as the doctrine of res judicata: by ensuring that the agency's decisions have finality. Second, DOI insists that 'time that would have been spent by agency personnel on re-petitions would be time taken away from first-time petitioners.' … Third, DOI argues that adding re-petitioners to the numerous tribes that may seek recognition would overburden the agency. … The Court agrees with CIN—DOI's reasons for eliminating the re-petition ban exception from the Final Rule are illogical, conclusory, and unsupported by the administrative record in violation of the APA. … DOI 'entirely failed to consider an important aspect of the problem' when it did not explain why banning re-petitioning is appropriate in light of the Final Rule's amended standards."

In *Hengle v. Asner*, 2020 WL 113496 (E.D. Va. 2020), Hengle and other class members sued **tribal lending** entities formed under the laws of the Habematolel Pomo of Upper Lake (Tribe), related entities, and their principals, as well as elected officials of the Tribe's government (Tribal Officials), asserting that loan agreements violated the Racketeer Influenced and Corrupt Organizations Act (RICO), Virginia's usury and consumer finance statutes and Virginia common law. The court denied the defendants' motion to enforce the provision in the loan agreements requiring borrowers to arbitrate disputes in a tribal forum pursuant to tribal law and denied the Tribal Officials' motion to dismiss based on sovereign immunity: "Clearly, the Tribal Lending Entities possessed superior bargaining power over Plaintiffs, who resorted to the triple-digit, high-interest payday loans that the Entities offered. The Tribal Lending Entities took advantage of their superior bargaining power to extract Plaintiffs' assent to terms couched in an Arbitration Provision that plainly functioned to violate public policy by depriving Plaintiffs of statutory remedies otherwise available to them. Accordingly, the Delegation Clause proves inseverable from the offending provisions and, therefore, unenforceable as a matter of law. … The Court… finds that the Tribe has not asserted a colorable claim of jurisdiction over Mwethuku's claims, or the claims of Plaintiffs generally. Like in *Jackson*, Plaintiffs obtained, negotiated and executed their loans from their residences in Virginia through websites maintained by companies in Kansas, far from the Tribe's reservation in California. … Plaintiffs also made loan payments from Virginia to payment processors operating out of Kansas. And although Mwethuku signed a loan agreement purporting to subject him to the jurisdiction of the 'Tribal Forum,' as the Seventh Circuit noted in *Jackson*, 'a tribal court's authority to adjudicate claims involving nonmembers concerns its subject matter jurisdiction, not personal jurisdiction,' so 'a nonmember's consent to tribal authority is not sufficient to establish the jurisdiction of a tribal court.' … Considering the evolution of Virginia's usury protections, the Court finds that enforcement of the Choice-of-Law Provision would violate Virginia's compelling public policy against the unregulated lending of usurious loans. … the Court … will join the Second Circuit in finding that *Bay Mills* permits *Ex parte Young*-style claims against tribal officials for violations of state law that occur on non-Indian lands. To hold otherwise would allow '[t]ribes and their officials ..., in conducting affairs outside of reserved lands, to violate state laws with impunity.'"

In *Rosebud Sioux Tribe v. Trump*, 2019 WL 7421956 (D. Mont. 2019), an Executive Order issued in 2004 authorized the President, through the Secretary of State, to issue cross-border pipeline permits after requesting the views of various federal agencies and departments and finding that issuance of the permit would "serve the national interest." In 2019, President Trump nullified the 2004 Executive Order and replaced it with a new Executive Order that authorized issuance of a cross-border pipeline permit "solely by the President," based on such information as "the President may deem

necessary," without consultation with other federal agencies and departments and without a national interest determination. In 2019, the President issued a permit "Authorizing **TransCanada Keystone Pipeline**, L.P., To Construct, Connect, Operate, and Maintain Pipeline Facilities at the International Boundary Between the United States and Canada." 84 Fed. Reg. 13101 (March 29, 2019). The Rosebud Sioux Tribe (Rosebud) and Fort Belknap Indian Community (Fort Belknap) (collectively "Tribes") sued Trump and various governmental agencies and agents in their official capacities (Agency Defendants) alleging that issuance of the 2019 Permit violated the 1851 Fort Laramie Treaty, the 1855 Lame Bull Treaty, the 1868 Treaty of Fort Laramie, the Foreign Commerce Clause of the United States Constitution, the Tribes' inherent sovereign powers, and various federal statutes and regulations. The Court denied the defendants' motion to dismiss: "The Tribes' general allegations that construction of Keystone would violate the Tribes' rights to their tribal land prove sufficient to satisfy standing requirements at the current stage of the proceedings. … the Court concludes that the Tribes have pled a plausible claim that the President exceeded his constitutional authority and usurped Congress's authority to regulate foreign commerce when he issued the 2019 Permit. … The Tribes allege that Article 3 of the 1851 Fort Laramie Treaty and Article 7 of the 1855 Lame Bull Treaty create binding obligations on the United States to protect the Tribes' natural resources from waste. … The Tribes further allege that Articles 2 and 16 of the 1868 Fort Laramie Treaty require TC Energy to obtain Rosebud's consent before crossing its territory, which includes it [sic] surface and mineral rights. … The Tribes have alleged sufficiently that depredations will or have occurred already on their land if the 2019 Permit authorizes the entire Keystone pipeline. … TC Energy asserts that the Tribes lack any power over Keystone because Keystone will not cross the current boundaries of either the Rosebud Reservation or the Fort Belknap Reservation. … Rosebud has alleged, however, that Keystone will cross and trespass upon Rosebud surface and mineral estates. … Rosebud asserts that, therefore, TC Energy must comply with Rosebud law. … At this point in the litigation, Rosebud has alleged sufficiently that TC Energy is required to comply with tribal laws as it seeks to construct and operate Keystone."

In *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe*, 2020 WL 43221 (S.D. Fla. 2020), a dispute arose over the leadership of a church, located on non-Indian land, after its pastor died. The Board of Directors of the church filed a federal suit against the Seminole Tribe and Auguste, the deceased pastor's widow, alleging that Auguste, with the assistance of Seminole police officers, forcibly took over the church and expelled Auguste's opponents in violation of the federal Freedom of Access to Clinic Entrances Act (FACE Act). The district court granted the Tribe's motion to dismiss, holding that the Tribe was protected by **sovereign immunity** regardless of whether the alleged conduct occurred off-reservation or whether it was allegedly criminal: "Absent some definitive language making it unmistakably clear that Congress intended to abrogate tribal sovereign immunity in enacting the FACE Act, the Court concludes that Defendant Seminole Tribe is entitled to immunity from suit in the instant action. … Further, the Court is unpersuaded by Plaintiffs' arguments with regard to the inapplicability of tribal sovereign immunity for off-reservation criminal tribal conduct. As explained above, the Supreme Court has repeatedly emphasized that tribal sovereign immunity applies regardless of where the challenged tribal actions occurred."

In *State ex rel. Ohio History Connection v. Moundbuilders Country Club Company*, 2020 WL 489189 (Ohio 2020), the Ohio History Connection (OHC) owned property that included ancient earthworks constructed by the Hopewell culture indigenous people more than 2,000 years ago, including the "**Octagon Earthworks**" featuring a lunar observatory. Moundbuilders Country Club Company (MBCC) operated a golf course on the site under a lease due to expire in 2078. In 2018, the OHC initiated eminent domain proceedings under Ohio state law in order to terminate the leasehold, improve the site and apply for status as a World Heritage designation under the United Nations Educational Science and Cultural Organization (UNESCO). MBCC filed a counterclaim for breach of

contract, arguing that eminent domain could not be used to terminate the lease and that OHC could not prove a public purpose. The trial court granted the OHC's motion to dismiss MBCC's counterclaims and the Ohio Supreme Court affirmed: "[W]e find little in the record before us to indicate that appellant has neglected proper stewardship of the Octagon Earthworks over the many past decades of use as a country club. … Nonetheless, we hold the trial court had before it extensive evidence and testimony to adequately support its conclusion that the present arrangement, in the interest of optimal usage and preservation, now needs to give way to full public access to these geographic remnants left by the prehistoric Native American inhabitants of this region."

In *Gustafson v. Poitra*, 2020 WL 373052 (N.D. 2020), Gustafson brought a state court action to evict Poitra, a member of the Turtle Mountain Chippewa tribe, from land that Gustafson owned in fee simple within the Turtle Mountain reservation. Poitra contested the eviction on the ground that the state court had no jurisdiction and Gustafson should have brought his action in tribal court. The trial court rejected this argument, entered a judgment of eviction and sent a North Dakota law enforcement officer onto the reservation to evict the Poitras. The North Dakota Supreme Court affirmed: "The Poitras broadly argue that eviction of tribal members from land within the Turtle Mountain Reservation by a state law enforcement officer violates the ***Montana* exceptions**. However, they make no discernable argument addressing the first exception permitting tribal regulation of certain consensual relationships. Regarding the second *Montana* exception, the Poitras argue 'the utilization of a nonfederal law enforcement official from a foreign jurisdiction to enforce the eviction action certainly appears to challenge the political integrity and the health and welfare of the [t]ribe.' They provide no legal support for the claim. Nor do they explain how the remedy selected by the court deprives the court of subject matter jurisdiction. … Therefore, the Poitras have not met their burden."

In *Minnesota v. Thompson*, 2020 WL 218405 (Minn. 2020), Thompson, a non-Indian, appeared at the Red Lake Indian Health Service Hospital, located on the Red Lake Chippewa Reservation, to pick up his brother, who was being discharged as a patient. Bendel, a Red Lake Tribal Police Officer, perceived that Thompson seemed intoxicated. After conducting sobriety tests and determining that Thompson was intoxicated, Bendel handcuffed Thompson and transported him in his patrol car to the reservation boundary, where he transferred custody to Beltrami County Deputy Sheriff Roberts. Thompson was convicted in state court of driving while impaired. He appealed his conviction, arguing that Thompson had no authority to arrest him. The Court of Appeals rejected Thompson's challenge and the Minnesota Supreme Court affirmed: "Indian tribes possess the traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands. … Tribal law enforcement authorities therefore have the **power to restrain those who disturb public order on the reservation**, and if necessary, to eject them. Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities. … Bendel detained and investigated Thompson and ejected him from the Red Lake Reservation pursuant to the tribal authority to detain and remove recognized by the Supreme Court and other federal courts. Officer Bendel observed that Thompson seemed intoxicated. He conducted a preliminary breath test and field sobriety tests with Thompson's consent. And he contacted the Beltrami County Sheriff—the proper law enforcement authority—to arrange for a deputy sheriff to pick up Thompson at the reservation-county line. Officer Bendel was acting within his proper authority to detain and transport Thompson. Thompson's detention was therefore lawful." (Citations and quotations omitted.)

In *Mendoza v. Isleta Resort and Casino*, 2020 WL 241008 (N.M. 2020), Mendoza was employed by the Isleta Resort & Casino. Isleta Casino is located on the Pueblo of Isleta (Pueblo). After she was injured, she filed a workers' compensation claim with the New Mexico **Workers' Compensation**

Administration (WCA) against Hudson Insurance Company, Isleta Casino's insurer, and Tribal First, Hudson's third-party administrator. The WCA dismissed Mendoza's claim for lack of jurisdiction, citing the Pueblo's tribal sovereign immunity. The Court of Appeals reversed and remanded. Citing Section 4(B)(6) of the Pueblo's gaming compact, which required the Pueblo to adopt laws "to provide to all employees of the Gaming Enterprise employment benefits, including … workers' compensation insurance … and … include an effective means for an employee to appeal an adverse determination by the insurer to an impartial forum, such as (but not limited to) the Tribe's Tribal Court," the Court concluded that the Pueblo's gaming compact waived its immunity, Mendoza had the right to pursue her workers' compensation claim directly against Hudson and Tribal First even if there was no waiver, the Pueblo was not an indispensable party, and Mendoza was a third-party beneficiary to the Pueblo's workers' compensation policy. The New Mexico Supreme Court reversed the Court of Appeals: "We … determine that Section 4(B)(6) does not contain an unambiguous, express, and unequivocal waiver, so as to permit jurisdiction shifting for workers' compensation claims. … Section 4(B)(6) … does not confer jurisdiction on the WCA. … [W]e reverse the Court of Appeals and conclude that (1) the Compact contains no express and unequivocal waiver as to the Pueblo's sovereign immunity; (2) as a non-contracting party, Worker cannot pursue a private right of action to enforce Compact compliance; and (3) the Pueblo is an indispensable party to Worker's claim, and therefore, the action must be dismissed in its entirety."

In *State v. Salazar*, 2020 WL 239879 (N.M. App. 2020), Salazar, a non-enrolled 7/32 Mescalero Apache by blood, was a lifelong resident of the Mescalero Apache reservation, had attended reservation schools, obtained medical care at the Tribe's clinic and had been prosecuted in tribal court for several criminal offenses. After he had been convicted of a New Mexico offense in state court, Salazar was required to comply with New Mexico statutes as a condition of his parole. The State sought to revoke his parole for a new offense he allegedly committed on the reservation. Salazar argued that, as an Indian in Indian country, the state had no jurisdiction over his new offense. The trial court rejected his argument on the ground that he was not an enrolled tribal member but the New Mexico appellate court reversed, concluding that enrollment was not essential to Indian status for purposes of **criminal jurisdiction**: "[E]nrollment as a member of a recognized tribe or pueblo is not a mandatory prerequisite for Indian status, and that whenever a person is not enrolled, the court must consider other factors to determine whether the second requirement—tribal or federal recognition as an Indian—is satisfied."

In *California Valley Miwok Tribe v. California Gambling Control Commission*, 2020 WL 467794 (Cal. App. 2020), different factions of the California Valley Miwok Tribe claimed to be the legitimate government. The California Court of Appeals had previously held that the California Gambling Control Commission could withhold payment of funds otherwise due the Tribe from the Indian Gaming Revenue Sharing Trust Fund (RSTF) until the **Bureau of Indian Affairs identified a tribal governing body** entitled to contract with the BIA under the Indian Self Determination and Education Assistance Act. Although the BIA had not made that determination, a faction of the Tribe renewed suit, contending that it was entitled to the RSTF funds due to changed circumstances. The tribal court dismissed on the ground that the conditions for release of funds established in the previous lawsuit had not been met. The California Court of Appeals affirmed, found the appeal to be frivolous and imposed sanctions on the plaintiff's attorney: "[B]ased on the doctrines of claim preclusion and issue preclusion, Plaintiffs are not entitled to any of the relief that they sought in this lawsuit. The trial court properly sustained the demurrer without leave to amend."

In *Barrett v. Selnek-is*, 2020 WL 103798 (Cal. App. 2020), Barrett, representing the interests of a competing minimart and truck-stop, sued Selnek-is Tem-al Corporation (Selnek-is), an entity wholly owned by the Torres Martinez Desert Cahuilla Indians (the Tribe), for failure to pay state taxes on

beer and wine sales at its travel center. Barrett also sued state officials to compel them to revoke Selnek-is' license. The trial court dismissed on **sovereign immunity** grounds and the California Court of Appeals affirmed. Applying the five-factor test prescribed in *People v. Miami Nation Enterprises*, the Court determined that Selnek-is was an arm of the Tribe and shared its immunity. The Court rejected Barrett's argument that a provision in the Tribe's corporate ordinance authorizing corporations to "sue and be sued" constituted a waiver.

National Law Review, Volume X, Number 52