

Indian Nations update



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In *Adams v. Dodge*, 2022 WL 458394 (9th Cir. 2022), Adams brought a federal action for habeas corpus relief under the Indian Civil Rights Act, 25 U.S.C. § 1302, after she had been arrested for failing to appear at a Nooksack Tribal Court criminal proceeding and detained for over seven hours. The district court dismissed for failure to exhaust tribal remedies and the Ninth Circuit affirmed: “Adams has not met her burden of demonstrating that due to bad faith she need not exhaust tribal remedies. Although Judge Dodge did not recuse himself from Adams’s ongoing criminal matter until after Adams filed a motion for his disqualification, the fact remains that Judge Dodge appointed Pro Tem Judge Majumdar to preside over her criminal proceedings and Adams has not explained why she cannot receive a fair hearing from Judge Majumdar. Moreover, the criminal charges Adams faces were brought with an objectively reasonable expectation of obtaining a conviction following a police investigation. ... Adams next argues that she was not required to exhaust her tribal court remedies because she was arrested on off-reservation allotted land, and the Nooksack Tribal Court lacked **criminal jurisdiction** to arrest her. Specifically, she asserts the Nooksack Tribal Court plainly lacks criminal jurisdiction because, consistent with Congress’s passage of Public Law 280 in 1953, ... Washington state assumed exclusive criminal jurisdiction over tribal lands by passing Revised Code of Washington (RCW) section 37.12.010. We disagree. As an initial matter, it is well established that, although ‘Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess,’ Indian tribes ‘have power to make their own substantive law in internal matters and to enforce that law in their own forums.’ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55–56 (1978) ... Here, Adams fails to show that Washington state’s jurisdiction is exclusive. Public Law 280 and RCW section 37.12.010 establish only that Washington state has jurisdiction; there is no language in either Public Law 280 or RCW section 37.12.010 that divests the Nooksack Tribal Court of jurisdiction.”

In *Martinez v. State*, 502 P.3d 111 (Okla. Crim. App. 2021), Martinez, an Indian, was convicted in 2016 of first-degree murder and assault with a dangerous weapon after killing two persons and battering their son on land that was originally within the Kiowa Comanche Apache Reservation. In a post-conviction petition for habeas corpus relief, he argued that the reservation was intact under the Supreme Court’s 2020 ruling in the *McGirt* case and that the State of Oklahoma had lacked jurisdiction over him. The Oklahoma Court of Criminal Appeal disagreed and dismissed the petition: “The record convinces us that Congress intended to disestablish the Kiowa Comanche Apache Reservation, and did so, by the Act of 1900. Nothing presented in the evidentiary hearing or the briefs casts serious doubt on this legal conclusion in previous cases, even in light of *McGirt*. We therefore affirm the trial court’s legal conclusion that Congress disestablished the Kiowa Comanche Apache Reservation. Mr. Martinez was subject to trial for murder and felony assault in the district court of Comanche County. ... Even if we concluded otherwise, we would grant no relief. In *State ex rel. Matloff v. Wallace*, 2021 OK CR 21,

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497 P.3d 686, this Court held that *McGirt's* holding, and its impact on state criminal jurisdiction in a vastly expanded Indian Country, was a procedural change of law that would not apply retroactively to void convictions already final when *McGirt* was decided.

In *Sault Ste. Marie Tribe of Chippewa Indians v. Haaland*, 2022 WL 332819 (D.C. Cir. 2022), Congress in 1997 had enacted the **Michigan Indian Land Claims Settlement Act** (Michigan Act) settling the land claims of the Sault Ste. Marie Chippewa Tribe. The Michigan Act provided that the Tribe would establish a “Self-Sufficiency Fund” to hold its settlement proceeds, that interest on the fund principal could be used of any of five specified purposes, including “consolidation of enhancement of tribal lands,” and that lands acquired under this category “shall be held in trust by the Secretary for the benefit of the tribe.” The Tribe later purchased 71 acres, known as the Sibley Parcel, several hundred miles from its reservation, for the purpose of establishing a gaming enterprise and demanded that the Department of Interior acquire the parcel in trust under the Michigan Act. The DOI declined based on determination that the “enhancement” referenced in the Michigan Act applied only to existing tribal lands. The Tribe sued the Secretary of Interior under the Administrative Procedure Act. The district court ruled in favor of the Tribe but the federal appellate court for the Federal Circuit reversed, holding that the Interior Department’s interpretation was reasonable: “The Michigan Act requires the Secretary of the Interior to take into trust land acquired with Fund interest, but the Act does not require the Secretary to violate the law. Therefore, before taking land into trust, Interior has the authority to confirm that the Tribe properly acquired the land with Fund interest for a statutorily permissible use. The Tribe may use Fund interest for the enhancement of tribal lands, but that does not include an acquisition of land that merely increases the acreage of the Tribe’s lands without improving the quality or value of existing tribal lands.”

In *Fletcher v. United States*, 2022 WL 552144 (Fed. Cir. 2022), individual holders of **Osage headrights**, i.e., the right under a 1906 act of Congress to receive royalties from sales of gas and oil extracted from tribal lands, filed suit against the United States in the Court of Federal Claims (Claims Court) seeking damages resulting from breach of fiduciary duties relating to royalties from the Osage mineral estate. The Claims Court determined that the plaintiffs, descendants of original headright owners and non-Osage members, had no standing and had failed to identify a source of money-mandating obligation as required under the Tucker Act. The Court of Appeals for the Federal Circuit reversed: “[T]he text of the 1906 Act plainly indicates that individual headright owners have a trust relationship with the United States. Although Section 3 establishes that the mineral estate is reserved to the tribe and the preamble of Section 4 describes the trust fund as belonging to the tribe, the subsections of Section 4 explicitly provide that the royalties from the mineral estate are to be placed in the trust account ‘to the credit of the members’ and ‘distributed to the individual members’ in the same manner as ‘other moneys held in trust’ in the account. ... Our holding today that a trust relationship exists between the individual headright owners and the government and that ‘the 1906 Act imposes an obligation on the federal government to distribute funds to individual headright owners in a timely (quarterly) and proper (pro rata, with interest) manner,’ ... is sufficient to resolve the questions presented in this appeal on standing, as well as jurisdiction under the Tucker Act, discussed below. We do not think the present appeal requires precisely defining the respective boundaries of the trust interests of the tribe and the individual headright owners.”

In *Jones v. United States*, 2022 WL 473032, Unpublished (Fed. Cir. 2022), Murray, a member of the Ute Tribe of the Uintah and Ouray Reservation, was either shot by federal officers or committed suicide following a high speed chase within the reservation. His parents, the Joneses, sought compensation in the Court of Federal Claims pursuant to Article VI of the government’s 1868 Treaty with the Ute Tribe, which provided that the United States would compensate individual members of the Ute Tribe for losses incurred if “**bad men among** the whites or among other people, subject to the authority of the United States, shall commit any wrong” on the tribal member’s person or property. The Court dismissed on the ground that the claim was precluded by previous litigation. The Court of Appeals for the Federal Circuit had remanded and ordered the lower court to consider whether the government’s alleged spoliation of evidence, a firearm, changed the evidentiary landscape such that the Bad Men claim should be considered. After the Court of Claims decided the issue in the negative, the appellate court again reversed and remanded: “We ... conclude that the Claims Court abused its discretion in issuing an ineffective sanction for the government’s spoliation of the handgun. We further find that the Claims Court erred in finding that the spoliation of the handgun did not change the evidentiary landscape of this case as compared to a related previously litigated case before the District Court for the District of Utah. That erroneous finding led the Claims Court to incorrectly find that the

doctrine of issue preclusion barred Mr. Murray's parents from relitigating issues critical to their claims. ... We remand the spoliation decision for consideration in accordance with this opinion. We reverse the Claims Court's summary judgment decision and remand for further proceedings."

In *Western Shoshone v. United States*, 2022 WL 386167 (Fed. Cl. 2022), the Yomba Shoshone Tribe, Timbisha Shoshone Tribe, and the Duckwater Shoshone Tribe sued the United States in the Court of Claims contending that the federal government negligently invested over \$29 million awarded to the tribes in 1977 pursuant to proceedings brought under the Indian Claims Commission Act. The Court had previously found that the government had **breached its fiduciary duty**. In the instant, 88-page decision, following a trial on damages, the court determined that the tribes should be awarded the tribes damages based on the difference between the return the tribes actually received on their investment and the amount that they would have received if the funds had been prudently invested:

In *Kewadin Casinos Gaming Authority v. Draganchuk*, (W.D. Mich. 2022), JLLJ Development, LLC and Lansing Future Development II, LLC (Developers) brought an action seeking declaratory judgment and alleging contract, quasi-contract, and tort claims against Kewadin Casinos Gaming Authority (Kewadin), the gaming department of the Sault Ste. Marie Chippewa Tribe, in federal court. After the court dismissed for lack of jurisdiction, Developers sued in Michigan State court and the case was assigned to Judge Draganchuk. When Kewadin failed to respond to Developers' discovery demands, Draganchuk ordered Kewadin to show cause why it should not be held in contempt and scheduled a hearing on the matter, whereupon Kewadin sued in federal court to enjoin the hearing and asking the federal court to determine that Kewadin was protected against the state court proceedings by its **sovereign immunity** and contending that Judge Draganchuk had refused to address the Tribe's argument that the state court lacked subject matter jurisdiction. The federal court denied Kewadin's motion for injunctive relief, holding that Draganchuk had already determined that Kewadin had waived its immunity, that the Rooker-Feldman doctrine and Anti-Injunction Act (AIA) barred the federal court from granting Kewadin's request for equitable relief: "Kewadin makes much about the fact that the state court did not decide the issue of subject matter jurisdiction. This argument is unavailing because Kewadin does not raise any other arguments in its moving brief regarding the state court's subject matter jurisdiction except the issue of sovereign immunity, which the state court ruled on. In other words, Kewadin has not supplied an argument for why the state court lacks jurisdiction and, therefore, there is no jurisdiction issue for the state court to address as all the claims against Kewadin are state law claims. ... The Rooker-Feldman doctrine provides that lower federal courts do not have subject matter jurisdiction to review final judgments from state court. ... The state court has already ruled on whether there is a waiver of sovereign immunity in the contracts between the Developers and Kewadin. Kewadin's request that this Court decide this question anew is a request to review the state court's decision. This Court lacks subject matter jurisdiction to decide this question. ... The AIA provides that a court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. ... Section 1362 is a specific grant of jurisdiction to district courts over civil actions brought by an Indian tribe "wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1362. There is no statutory language here permitting federal court injunctions to issue against state court proceedings." (Citations, quotations and internal emendations omitted.)