

No. 17-024

IN THE
Supreme Court of the Yuma Indian Nation

YUMA INDIAN NATION,
Plaintiff/Appellee,

v.

THOMAS SMITH AND CAROL SMITH,
Defendants/Appellants.

**On Appeal to
the Yuma Indian Nation
Tribal Court**

BRIEF FOR RESPONDENT

TEAM ID: 229

Counsel For Yuma Indian Nation

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QUESTIONS PRESENTED

Is the exercise of jurisdiction over a party voluntarily in contract with the Yuma Indian Nation, and seeking relief on claims before this Court, proper?

Was the trial court's dismissal of counterclaims against the Yuma Indian Nation and its members, under the well-established doctrine of tribal sovereign immunity, proper?

Should this Court forego traditional abstention and tribal remedy exhaustion doctrines to allow parties to seek an additional jurisdictional review in Federal District Court?

STATEMENT OF CASEStatement of Facts:

In 2007, Thomas Smith signed an employment contract with the Yuma Indian Nation (YIN) to consult the Nation in economic development. Record at ¶ 1. The terms of the contract included terms requiring “absolute confidentiality regarding any and all tribal communications and economic development plans” and stipulated liquidated damages for any breach. Record at ¶1. Over the course of the next ten years, Thomas Smith provided the Nation with advice via phone call, email, and in person on the reservation. Record at ¶ 2. Smith prepared and submitted written quarterly reports to the Yuma Tribal Council, and came to the reservation numerous times to present at Council meetings. Record at ¶ 2. Smith, as a result of his position, gained access to proprietary and confidential information regarding potential economic pursuits.

In 2010, with the written permission of the Nation’s Tribal Council, Thomas Smith contracted his sister Carol Smith to give Thomas Smith, the EDC, and the Nation advice regarding stocks, bonds, and securities issues. Record at ¶ 6. Their contract is identical to the one Thomas signed with the Nation in 2007 and includes a term that both parties are required to comply with the YIN-Thomas contract. Record at ¶ 6. While Carol primarily communicates with the Nation via Thomas, she emails monthly bills to the EDC CEO Fred Captain, and the EDC directly mails her payments. Record at ¶ 7. Carol has also visited the reservation on several occasions. Record at ¶ 6. Carol continued with her relationship with the Nation for seven years until the present litigation.

In 2009, the Yuma Indian Nation created the YIN Economic Development Corporation (EDC) pursuant to Yuma Tribal Code Title 11. Record at ¶ 3. The Nation created the EDC as a wholly owned subsidiary of the Nation and as an “arm-of-the-tribe” “to

create and assist in the development of successful economic endeavors, of any legal type or business, on the reservation and in southwestern Arizona.” Record at ¶ 3. The EDC’s charter states that the EDC, its board, and all employees are protected by tribal sovereign immunity to the fullest extent of the law. Record at ¶ 5.

In 2016, the YIN EDC began planning and research for a potential business venture in marijuana. Record at ¶ 8. Despite the potential clash with state law on the issue, the Tribal Council legalized marijuana, and subsequently the EDC developed a marijuana cultivation operation. Record at ¶ 8.

Thomas Smith found out about this operation and, with the moral support of Carol Smith at his back, breached his confidentiality agreement with the Nation by informing the Arizona Attorney General about the operation. Record at ¶ 8. The Attorney General’s office wrote a cease and desist letter to the Nation requesting they halt development of recreational marijuana operations. Record at ¶ 8.

Statement of Proceedings:

The Tribal Council and the EDC filed suit in Yuma Tribal Court for breach of contract, violation of fiduciary duties, and violation of duties of confidentiality. The Nation is seeking recovery of the liquidated damages for the breaches. The Smiths filed a motion to dismiss for want of personal and subject matter jurisdiction, as well as a motion to stay adjudication to hear the jurisdictional question in federal court. The trial court denied both motions.

The Smiths responded to and denied the Nation’s claims, and additionally sought relief from the Yuma Tribal Court on defamation and breach of contract counterclaims

against the Nation. They enjoined the EDC and two employees, Fred Captain and Molly Bluejacket, in their official and individual capacities, for these claims. The trial court dismissed all counts against the YIN and the third-party defendants on the grounds that the Nation was protected by sovereign immunity. The Smiths then filed an interlocutory appeal in the Supreme Court of the Yuma Indian Nation on the jurisdictional and sovereign immunity questions, and requested a writ of mandamus to stay the adjudication. The Supreme Court of the Yuma Indian Nation granted the Smiths' interlocutory appeal and agreed to hear these issues.

ARGUMENT

I. YUMA INDIAN NATION COURTS HAVE PERSONAL JURISDICTION OVER PETITIONERS BECAUSE PETITIONERS HAVE SUFFICIENT MINIMUM CONTACTS WITH THE FORUM AND THE CLAIMS AT HAND RISE OUT OF THESE CONTACTS.

Yuma Indian Nation courts have personal jurisdiction with the Smiths because the nature of their relationship with the Nation amounts to their purposeful availment of the Yuma legal system. As a matter of due process, establishing a continuous, consensual relationship with residents of one jurisdiction subjects a non-resident to the courts of that jurisdiction so long as the claim directly arises out of that relationship. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). Contractual obligations creating continuing relationships and obligations with citizens of another jurisdiction are subject to regulation and sanctions in the foreign forum for the consequences of their activities. *Id.* at 473.

The Due Process clause of the United States Constitution requires that individuals have some degree of “fair warning” that their activities in a foreign sovereign may subject them to that sovereign’s jurisdiction. *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in judgment). This allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). While constitutional guarantees of due process are not applicable in tribal courts, *see Talton v. Mayes*, 163 U.S. 376 (1896), the Indian Civil Rights Act (ICRA) provides that:

No Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

25 U.S.C. § 1302 (a)(8) (2016). Native Nations may exercise Tribal court adjudication as part of retained sovereign powers of self-government, unless divested by Congress. *United States*

v. Wheeler, 435 U.S. 313, 322-323 (1978); *Williams v. Lee*, 358 U.S. 217 (1959). Tribal court adjudication would thus be subject to ICRA’s guarantee of due process, parallel to that of the U.S. Constitution.

Yuma Tribal code authorized the exercise of jurisdiction through its “long-arm” statute:

Subject to any limitations expressly stated elsewhere in this Code, the Courts of the Tribe shall have jurisdiction over the following persons:

- (a) Any person who transacts, conducts, or performs any business or activity within the reservation, either in person or by an agent or representative, for any civil cause of action or contract or in quasi contract or by promissory estoppel or alleging fraud. . . [or]
- (c) Any person who commits a tortious act on or off the reservation or engages in tortious conduct within the reservation, either in person or by agent or representative, causing harm within the reservation for any civil cause of action arising from such act or conduct.

Yuma Tribal Code § 1-104(2) (2015). The contractual relationship between the Smiths and the Yuma Indian Nation and its incorporated subsidiaries is exactly the kind of relationship contemplated by the due process guarantees of ICRA, and provides the basis for personal jurisdiction. The breach of this contract and related business tort claims are consequences of contractual activity subject to Yuma tribal court review.

- A. The Smiths’ contract with the Yuma Indian Nation, and the continuing performance under the contract from 2007 to 2017 are sufficient minimum contacts with the Yuma Indian Nation.

The cornerstone of the personal jurisdiction and due process is the requirement of a defendant’s “minimum contacts” with the forum. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The extent of those contacts are essential to determining how foreseeable litigation in a foreign forum. Personal jurisdiction is proper where the contacts proximately result from actions by the defendant that create a substantial connection with the

foreign forum, such that they should reasonably anticipate being haled into court there. *Burger King Corp.*, 471 U.S. at 475 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). In *Burger King*, the claim at issue was a Michigan franchisee's breach of contract with the parent Florida corporation. *Id.* at 468. The case was litigated in Florida, and the Michigan resident was found liable for the breach. *Id.* at 469. Upon appeal, the Michigan resident argued that their due process rights were violated by being haled into a Florida court that ostensibly would not have personal jurisdiction over a non-resident. *Id.* Despite the defendant never having physically entered or conducted business in Florida, the Court held that the contractual relationship and consensual activities intentionally directed at the Florida entity provided the requisite basis for Florida's jurisdiction. *Id.* at 480. The absence of physical presence or activity did not *per se* foreclose personal jurisdiction, as the Court explained:

Jurisdiction in these circumstances may not be avoided merely because the defendant did not physically enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.

Id. at 476 (internal quotes omitted). The Court also noted that the contract created a voluntary and "carefully structured" long-term relationship that "envisioned continuing and wide-reaching contacts" with the out-of-state party at could not be viewed as "random," "fortuitous," or "attenuated." *Id.* at 480.

The relationship between the Smiths and the Nation could not be more similar to the

franchisee's relationship with the foreign parent company in *Burger King*. Neither party disputes the presence of a valid contract for Thomas Smith to provide financial advisory services to the Yuma Indian Nation from 2007 to 2017. Record at ¶ 1. While the record is not clear on which party sought the other, Smith agreed to provide the Nation with financial advice on an as-needed basis regarding economic development issues. Record at ¶ 1. Much like the defendant in *Burger King*, Thomas Smith engaged in a carefully structured long-term relationship of ten years with the Nation, exchanging emails and telephone calls on a nearly daily basis with wide-reaching Yuma contacts, including various Tribal chairs and Tribal Council members. Record at ¶ 2. Smith prepared and submitted to the YIN Tribal Council written reports on a quarterly basis and presented these reports *in person* at Council meetings on the reservation. Record at ¶ 2. Unlike the defendant in *Burger King*, Smith physically entered the foreign jurisdiction to conduct the contractual business. Smith knew from the outset of the relationship until present that he was dealing with a Tribal entity.

Similarly, Carol Smith entered into a consensual relationship with the Nation in 2010 vis-à-vis her contract with Thomas, under written permission of the Nation's Tribal Council, to perform similar consultation services. Record at ¶ 6. The contract is identical to the one Thomas signed with the Nation in 2007 and includes a term that both parties are required to comply with the YIN-Thomas Smith contract. Record at ¶ 6. While Carol Smith provides her advice directly to her brother, she also submits monthly bills via email to the EDC CEO Fred Captain. Record at ¶ 6. She has visited the Nation along with her brother on two occasions, and the EDC directly mails her payments. Record at ¶ 6. However less extensive Carol's relationship to the Tribe may be, it is still of a direct and continuing nature for the purpose of conducting business in that forum.

The Smiths continuing relationships were not through happenstance, a single and random chance encounter with the Nation, or in any way unexpected. These extensive relationships directly with the Tribal government are sufficient enough contacts with the foreign forum to fall within ICRA's due process guarantees for personal jurisdiction.

B. The Yuma Indian Nation claims for breach of contract and violation of fiduciary duties, and violation of their duties of confidentiality arise directly from the voluntary contacts the Smiths had with the Nation.

Merely having sufficient contacts in the foreign sovereign forum is not enough for the exercise of personal jurisdiction. Due process requires that the suit must arise out of or relate to the defendant's contacts with the forum. *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S.Ct. 1773, 1780 (2017). There must be a direct affiliation between the sovereign forum and the activity that generated litigation. *Id. Burger King* is yet again illustrative of the type of situation where conduct wholly outside the forum jurisdiction can subject that conduct to the adjudicatory authority of a foreign sovereign. The franchisee's non-payment of installments and tortious, unauthorized use of trademarks occurred entirely outside the forum jurisdiction. *Burger King*, 471 U.S. at 468. Yet because the defendant "purposefully directed" his activities (performance or non-performance of the contract) at residents of the forum, and the litigation resulted from foreseeable injuries that arose out of or related to those activities, the foreign forum could exercise personal jurisdiction. *Id.* at 480. The U.S. Supreme Court has disapproved of the exercise of personal jurisdiction in case where, although a foreign party may have sufficient minimum contacts with a forum jurisdiction, the case arises from unrelated or attenuated activities outside that jurisdiction. *See, e.g., Daimler AG v. Bauman*, 134 S. Ct. 746 (2014).

The claims brought against the Smiths by the Nation arise directly out of the

relationship between the parties directed at the Nation's jurisdiction. Thomas Smith's disclosure to the state attorney general in violation of the contractual duty to confidentiality – the basis for the Nation's claims – is inherently connected to the contractual relationship to the Nation and the forum. Unlike the *Daimler* line of cases, the claims here arise directly the specific activity directed at the forum: the contractual relationship. Like *Burger King*, also dealing with a breach of contract, the activity bringing claims arises from the consensual relationship the foreign party has to the forum. Because the claims are based in and stem from the activity in the foreign forum, specific personal jurisdiction exists over the Smiths.

C. The exercise of personal jurisdiction by the Yuma courts is reasonable because the Smiths could reasonably anticipate litigation arising from their contract, and appearing in Yuma tribal court is not excessively inconvenient.

While sufficient contacts and the nexus of those contacts to the claims are the foundation of personal jurisdiction, defendants may still defeat personal jurisdiction by showing it would be fundamentally unfair to the defendant. *Burger King*, 471 U.S. at 476. If the primary elements are met, the defendant must present a “compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *Id.* Due process requirements look to whether foreign jurisdiction comports with notions of “fair play and substantial justice,” including weighing the burden on the defendant and the forum's interest in providing redress for its citizens. *Id.* A court may still lack personal jurisdiction if circumstances or forum rules make litigation so gravely difficult and inconvenient that a party is unfairly at a severe disadvantage in comparison to their opponent. *Id.* at 478.

Applying these principles to the Smiths, the Yuma Tribal Court's exercise of jurisdiction is not unfair nor unreasonable. The Yuma Tribal Courts exist in the same state that Thomas Smith lives. It would not be unreasonably inconvenient to appeal, submit

evidence, or call witnesses to tribal court. There are no additional burdens placed on Thomas Smith to litigate in tribal court than any other court in the state of Arizona. As for Carol Smith, like in *Burger King*, the court should weigh the interest of the Tribal forum in this litigation versus the inconvenience of her appearance. Because the Nation has a significant interest in enforcing its own contract law, compared to the minimal interests the state court of Oregon or Arizona may have over the parties, the exercise of jurisdiction is not unfair. Similar to the defendant in *Burger King*, mere inconvenience to the party, that does not rise to a *compelling substantial* injustice, does not quash personal jurisdiction for relationships directed at a forum.

D. Yuma Tribal Court's claim to personal jurisdiction is bolstered by the Smiths' own attempts to seek relief from the forum on connected counterclaims.

Finally, the Ninth Circuit has recognized that for Tribal Court jurisdiction, agreement to invoke the jurisdiction of the tribal court can fairly bring a party under Tribal Court jurisdiction. *Smith v. Salish Kootenai College*, 434 F.3d 1127, 1136 (9th Cir. 2006); *see also Ford Motor Credit Co. v. Poitra*, 776 F.Supp.2d 954 (D.N.D. 2011) (“A non-Indian cannot utilize a tribal forum to gain relief against a tribal member and then attempt to avoid that jurisdiction when it acts negligently in that same action resulting in potential harm to the tribal member.”) In *Salish*, a non-member party was haled into tribal court for a wrongful death suit, and chose to file cross-claims before the same court. *Id.* at 1129. The Ninth Circuit held that the defendant's consent to tribal jurisdiction to resolve the cross-claims as a plaintiff was consistent with the Tribe's limited sovereignty, despite a lack of other consensual relationships with the Tribe. *Id.* at 1136.

Just like the defendant in *Salish*, the Smiths were originally subject to claims against them by the Nation. At this point, their presence in the foreign forum was, ignoring minimum

contacts analysis, nonconsensual. The Smiths then consented to the adjudicatory authority of the Yuma Tribal Court by filing counterclaims for torts derivative of the original claims. It would hardly make sense to say the Smiths simultaneously were not subject to the authority of a court yet could find relief of their own connected claims before the court. The Smiths find themselves in the same situation as *Salish*, where otherwise nonconsensual and contestable jurisdiction became certain once they consensually sought relief in Tribal Court.

II. YUMA COURTS HAVE SUBJECT MATTER JURISDICTION OVER PETITIONERS BECAUSE PETITIONERS HAVE THE REQUISITE CONSENSUAL AND CONTRACTUAL RELATIONSHIP WITH THE NATION REQUIRED UNDER *MONTANA*.

Defendants' consensual and contractual relationship triggers the limited subject matter jurisdiction that this court may exercise over non-members. The Yuma Tribal Courts "shall have general civil jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the Tribe, including the Tribal common law, over all general civil claims which arise within the Tribal jurisdiction, and over all transitory claims in which the defendant may be served within the Tribal jurisdiction." Yuma Tribal Code § 1-107 (2015). Furthermore, Yuma Tribal Code made clear that: "the act of entry within the territorial jurisdiction of the Courts shall be considered consent to the jurisdiction of the Courts with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant or their agent(s) to the jurisdiction of the Courts for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place." *Id.* The actions of the Smiths, both in entering and executing the contract with the Nation, in addition to their entry to the Nation to conduct

contractual business, fall squarely into the jurisdiction of the Nation.

The scope of Tribal court adjudicatory jurisdiction over non-members has been truncated in light of Supreme Court precedent established in *Montana v. U.S.*, 450 U.S. 544 (1981). While the Court asserted that the “general proposition [is] that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe,” they recognized that unless explicitly divested by Congress, Tribes could “regulate, through taxation, licensing, *or other means, the activities of nonmembers who enter consensual relationships with the tribe* or its members, through *commercial dealing, contracts, leases, or other arrangements.*” 450 U.S. at 565 (emphasis added). The Court also recognized that “tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* at 566. However, the level of harmful impact directly on the sovereignty of the Tribe must be so significant it threatens the Tribes ability to self-govern. *See generally Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*, 492 U.S. 408, 431 (1989); *Williams*, 358 U.S. at 222 (1959). By entering into consensual relationships with the Nation, the Smiths opened themselves to the regulatory and adjudicatory authority of the Nation. Furthermore, despite the Smiths’ presence outside the territorial boundaries of the Nation, the Nation’s exercise of adjudicatory authority over actions arising from the contract does not run afoul of the limitations placed on Tribal courts generally.

- A. Jurisdiction exists because the contractual relationship between Defendants and the Nation fits directly into contemplated regulatory and adjudicatory authority of the first *Montana* exception.

The Smiths’ contracts and relationships with the Yuma Indian Nation are subject to

the adjudicatory authority of the Nation. The *Montana* precedent allows Tribes to exercise regulatory jurisdiction over non-members in very limited circumstances, specifically, when non-members engage in contractual business with the Tribe. *Montana*, 450 U.S. at 565. Where Tribes possess regulatory authority over the activities of nonmembers, adjudicatory jurisdiction “presumptively lies in the Tribal courts.” *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997) (quoting *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987)). Absent clear authority, this court should not divest itself of the jurisdiction it is presumed to have.

Tribal court authority is typically described more clearly in what they *cannot* do. Tribal courts have been unable to exercise adjudicatory jurisdiction over suits involving traffic accidents on state or federal highways, suits involving non-member land sales to other non-members within the reservation, state police investigations of members for off-reservation offenses, and suits involving claims arising exclusively under federal law. *See Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997); *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316 (2008); *Nevada v. Hicks*, 533 U.S. 353 (2001); *El Paso Natural Gas Co. v. Neztosie*, 526 U.S. 473 (1999). However, none of these cases addressed the first *Montana* exception of consensual business transactions.

Courts have consistently kept claims arising from business transactions with Tribes or Tribal members in Tribal courts. The recent case in *Dolgenercorp, Inc. v. Mississippi Band of Choctaw Indians*, 746 F.3d 167 (5th Cir. 2014), *aff'd by an equally divided court*, 136 S.Ct. 2159 (2016), upheld the Tribal court jurisdiction of tort claims arising out of a non-member-owned business operating on the reservation. In *Dolgenercorp*, a minor working in a Dollar General store run through a commercial partnership with the Mississippi Choctaw was

sexually assaulted by a non-member manager. *Id.* at 169. While Dollar General tried to contest the Tribal Court jurisdiction, the Fifth Circuit held that the consensual business relationship between the Tribe and the member gave rise to Tribal court jurisdiction. *Id.* The court noted even, “every circuit court to consider the question—including the Fifth Circuit—has either held or assumed that tribal courts may exercise jurisdiction over tort claims against non-members under the first Montana exception.” *Id.* at 173 fn. 3.

The Ninth Circuit similarly held that a non-member business operating on leased tribal land was subject to tribal court jurisdiction. *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011). The non-member in *Water Wheel* owned and operated their business on tribal land for more than twenty years, and had extensive dealings with the Tribe enough to “support the tribal court's conclusion [that the non-member] had entered into a consensual relationship with the tribe and could reasonably anticipate that the tribe would exercise its jurisdictional authority.” *Id.* at 818, *see also Paddy v. Mulkey*, 656 F.Supp.2d 1241 (D. Nev. 2009) (holding colorable case for tribal jurisdiction where claim arose from nonmember’s employment relationship with tribe); *Stock West Corp. v. Taylor*, 964 F.2d 912 (9th Cir. 1992) (holding torts arising out of contract with tribe present a colorable claim for tribal jurisdiction); *FMC v. Shoshone-Bannock Tribes*, 905 F.2d 1311 (9th Cir. 1990) (holding that a mining company engaged in commerce with tribe was under tribal regulatory jurisdiction); *Cardin v. De La Cruz*, 671 F.2d 363 (9th Cir. 1982) (holding that consensual commercial dealing on reservation fell under tribal regulatory jurisdiction).

Finally, *Montana's* consensual relationship exception requires that the Tribe’s exercise of jurisdiction have a nexus to the consensual relationship itself. *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 656 (2001). *Atkinson* regarded a tribal occupancy tax on

nonmember fee land within the reservation, and the Court, seeing no application of the *Montana* exceptions, invalidated the application of the tax. *Id.* at 647-48. As the Court saw it, the business may have had consensual relations with the Tribe subject to regulatory authority for those relations, but the application of the tax in question was wholly unconnected to those relations and could not be regulated. *Id.* at 656.

The situation at hand falls squarely into the narrow exceptions defined by precedent: a non-member who consensually engaged the Tribe to directly conduct business on and off the reservation. Thomas Smith executed a contract with the Yuma tribal government, and maintained a continuous relationship that included activities on and off the reservation. Carol Smith communicated with and engaged in commercial activity with the Nation. All parties derived financial benefit from the relationship, and the relationship was of a qualitatively similar nature to that of an employee-employer. Both of their relationships are of the same nature as those in *Dolgenercorp* and *Water Wheel*: consensual business relationships on a continuous, regular basis. Much like the basis for personal jurisdiction here, the Smiths' relationship with the Nation was founded in consent and intentional engagement.

Furthermore, the application of civil adjudicatory jurisdiction to litigate claims arising from the contract fits *Strate*'s nexus test. The relationship that the Smiths had to the Nation was through their contracts and business dealings. The exercise of jurisdiction to hear claims here is specifically directed at those contracts and business dealings, and nothing more. Jurisdiction merely regulates the narrow band of activities engaged between the parties at hand. This case is a perfect example of the kind of activity contemplated in *Montana*'s first exception, and thus falls under the Nation's regulatory and adjudicatory jurisdiction.

B. The Yuma Court's exercise of jurisdiction for the limited purposes of claims arising from a consensual, contractual relationship with the Nation does not violate limitations on Tribal sovereignty.

The Smiths' domiciles and primary business locations outside the reservation do not dispose of the Nation's ability to exercise jurisdiction over them. Although Supreme Court dicta has suggested that "there can be no assertion of civil authority beyond tribal lands," *Atkinson*, 532 U.S. at 657 fn. 12, the application of such a limitation is with regards to the second *Montana* exception – nonmember conduct that threatens tribal self-government. The corollary limitation then placed on adjudicatory jurisdiction would only be with respect to the second *Montana* exception as well: Tribal courts could hear cases arising from consensual business relationships with the Tribe arising anywhere, and could hear cases arising from activities within the reservation that threaten health, safety, economic security, or self-governance. The Court in *Montana* specifically used the language "within the reservation" only with regards to the second exception. *Montana*, 450 U.S. at 567. The distinction is clarified further in *Merrion v. Jicarilla Apache Tribe*, where the Court reasoned that "the limited authority that a tribe may exercise over nonmembers does not arise until the nonmember enters the tribal jurisdiction. . . . a tribe has no authority over a nonmember until the nonmember enters tribal lands *or conducts business with the tribe.*" 455 U.S. 130, 142 (1982) (emphasis added). The Court emphasized the entry to jurisdiction rather than territory, and distinguished physical entry from conducting business. The Supreme Court has consistently kept jurisdiction over business relationships separate from the realm of territorial regulation.

The Ninth Circuit has also twice agreed that the locus of an act arising out of the business relationship with a Tribe does not conclusively foreclose adjudicatory jurisdiction.

Babbitt Ford, Inc. v. Navajo Indian Tribe, 710 F.2d 587, 596 fn. 7 (9th Cir. 1983), *cert. denied*, 466 U.S. 926 (1984); *Littell v. Nakai*, 344 F.2d 486, 490 (9th Cir. 1965), *cert. denied*, 382 U.S. 986 (1966). Even more recently, the Eighth Circuit at least recognized that claims over wholly off-reservation conduct were not *per se* barred from Tribal court. *DISH Network Service L.L.C. v. Laducer*, 725 F.3d 877, 885-86 (8th Cir. 2013). In *DISH Network*, the court held that an abuse of process claim “predicated on claims made by a party litigating a contract suit with an Indian” was not “plainly” lacking in Tribal court jurisdiction despite no activity taking place on the reservation. *Id.* at 886. Because the claims arose from the contractual relationship (the second *Montana* exception), the location of the conduct giving rise to the claims was not dispositive. *Id.*, compare *Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927 (8th Cir. 2010).

Where the United States has recognized the authority of the Nation to regulate and litigate its business relationships, it makes no jurisdictional difference where Smith breached the contract. It does not matter that the claims did not relate to any particular physical entry to the Nation – like in *DISH Network*, their tortious conduct arose from a contract directed into the reservation. The claims against the Smiths fit into the first *Montana* exception, and thus no territorial limitation precludes the Nation’s exercise of jurisdiction.

III. THIS COURT SHOULD NOT ALTERNATIVELY GRANT A STAY OF ADJUDICATION BECAUSE YUMA COURTS HAVE A COLORABLE CLAIM TO JURISDICTION THAT REQUIRES TRIBAL COURT EXHAUSTION

The validity of Tribal court jurisdiction over the Smiths is not so *ultra vires* that a stay of adjudication would be warranted. As a matter of comity, Tribal Courts are the primary location to conduct determinations of a Tribe’s jurisdiction, and litigants must exhaust Tribal remedies before pursuing claims in Federal court. *National Farmers Union*

Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845, 856-57 (1985). Federal courts defer to Tribal courts to initially litigate matters under a policy of supporting tribal self-government and self-determination, to provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge and for the orderly administration of justice in the federal courts. *Id.* Tribal exhaustion is not required when sought in bad faith, where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction. *Id.* at 858 fn. 21. For example, in *Strate*, the Tribe's inability to exclude nonmembers from state highways precluded regulation, and thus precluded adjudication. *Strate*, 520 U.S. at 459 fn. 14. Tribal court exhaustion was unnecessary because the Tribal court clearly had no jurisdiction, and thus would waste time. *Id.*

The Ninth Circuit requires that plaintiffs demonstrate a "colorable question" of the Tribal court jurisdiction to maintain a suit in Tribal courts. *Stock West Corp.*, 964 F.2d at 919. Courts look to see if "on the record before [the court], the assertion of tribal court jurisdiction is plausible and appears to have a valid or genuine basis." *Id.* So long as jurisdiction is at least plausible, the federal should stay pending Tribal court exhaustion. *Id.*

Here, Yuma courts have had no opportunity to examine the record at the trial level for precise determinations of the Nation's jurisdiction. The analysis above establishes that, at the very least, there is a *plausible* case for the Nation's exercise of jurisdiction. The Smiths' consensual business relationship with the Nation opens up a broad possibility that they are subject to Yuma adjudicatory jurisdiction. Because the first *Montana* exception does not have the territorial requirement, unlike *Strate*, the issue is not so easily disposed. The Smiths

have an opportunity to be heard in a competent forum with well-established procedural safeguards and jurisprudence. This exercise is not patently violative of Tribal jurisdictional limitations, nor brought in bad faith, nor futile in any way. Thus, this case must be litigated in its entirety in Yuma courts until all Tribal remedies are exhausted.

IV. YUMA INDIAN NATION RETAINS SOVEREIGN IMMUNITY FROM SUIT BECAUSE THE INHERENT RIGHT HAS NOT BEEN WAIVED EXPRESSLY BY CONGRESS NOR VOLUNTARILY BY THE YUMA INDIAN NATION.

Tribes generally have the inherent right of immunity from suit traditionally enjoyed by sovereigns. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024 (2014). “Among the core aspects of sovereignty that tribes possess—subject to congressional action—is the “common-law immunity from suit traditionally enjoyed by sovereign powers.” *Santa Clara Pueblo*, 436 U.S. 49 at 58. That immunity applies whether a suit is brought by a State, *see, e.g., Puyallup Tribe, Inc. v. Department of Game of Wash.*, 433 U.S. 165 (1977), or arises from a tribe's commercial activities off Indian lands, *see Kiowa Tribe of Okla. v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998); *Bay Mills*, 134 S.Ct. at 2027. The Supreme Court has held that “an Indian tribe is not subject to suit in a state court – even for breach of contract involving off-reservation commercial conduct – unless Congress has authorized the suit or the tribe has waived its immunity.” *C & L Enters. Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 412 (2001). Congress has the plenary power to waive sovereign immunity for tribes because of the status of Indian Tribes as “domestic dependent nations.” *See generally, Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). The Supreme Court has not deviated from the requirement that Congress must “unequivocally” express their purpose to abrogate tribal sovereign immunity. *See Bay Mills*,

134 S. Ct. at 2032; *C & L Enters.*, 532 U.S. at 418; *see also White v. Univ. of California*, 765 F.3d 1010 (9th Cir. 2008); *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505 (1991) (stating “In light of this Court's reaffirmation, in a number of cases, of its longstanding doctrine of tribal sovereign immunity, and Congress' consistent reiteration of its approval of the doctrine in order to promote Indian self-government, self-sufficiency, and economic development, the Court is not disposed to modify or abandon the doctrine at this time.”).

Tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities, and whether they were made on or off a reservation. *Kiowa*, 523 U.S. at 760. A Tribe's waiver must be “clear” to relinquish its immunity. *Citizen Band Potawatomi*, 498 U.S. at 509. The Supreme Court has not explicitly stated what “clear” signifies. The court in *C & L Enters., Inc.*, held that an arbitration clause or an ambiguous choice-of-law clause could waive tribal sovereign immunity. 532 U.S. at 412. Tribes do not waive sovereign immunity unless it “voluntarily invokes jurisdiction or makes a ‘clear declaration’ that it intends to submit itself to jurisdiction.” *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 724 (9th Cir. 2008). A tribe's action for injunctive relief in federal or state court is not a submission to jurisdiction. *Citizen Band Potawatomi*, 498 U.S. at 509.

Neither Yuma Indian Nation nor Congress has waived the Nation's right to sovereign immunity. Congress has made no express or clear intention of waiving sovereign immunity in this case. Yuma Indian Nation contract and codes are clear that the Nation has the right to invoke their privilege of sovereign immunity:

By the adoption of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, federal, tribal or state, and neither the adoption of this Code, nor the incorporation of any corporation hereunder, shall be construed to be a waiver of the sovereign immunity of the Tribe or a consent

to suit against the Tribe in any such court.

Yuma Tribal Code § 11-081 (2015). Yuma Indian Nation does not stipulate to any facts that may state in any contract with the YIN EDC, EDC employees, or YIN itself that an arbitration clause exists or that any ambiguous language regarding choice-of-law waives it sovereign immunity. Nor should the Court be inclined to change *stare decisis*, or the assertions that Congress has reiterated and maintained statutorily, being fully aware of all facts involving the doctrine of tribal sovereign immunity. The Court should recognize the precedent set by the Supreme Court in affirming Yuma Indian Nation sovereign immunity.

A. Sovereign immunity protects the Yuma Economic Development Company, Inc. Because it is an “arm of the tribe” and therefore under the nation’s umbrella of sovereign immunity protection

The Yuma Economic Development Company is protected by tribal sovereign immunity as an “arm of the tribe” and because the suit arises out of commercial activity by the tribe. Indian tribes enjoy sovereign immunity from civil suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off a reservation. *Kiowa*, 523 U.S. at 751. In the Ninth Circuit, “tribal corporations acting as an arm of the tribe enjoy the same sovereign immunity granted to a tribe itself.” *AVI Casino Enters.*, 548 F.3d at 726. The court there adopted a five part test to determine whether an entity acts as an “arm of the tribe,” or that its activities are “properly deemed to be those of the tribe.” *Id.* at 725. The determination rests on: (1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities. *Id.*, see also *White v. University of California* 765 F.3d at 1025.

1. The EDC enjoys the rights of sovereign immunity because it was created by the Tribal Commercial Code.

The Yuma Indian Nation Economic Development Company should be considered an “arm of the tribe” because it was created by tribal commercial codes. For an entity to be considered an “arm of the tribe” it should be created through the Tribe’s inherent sovereign authority. *University of California*, 765 F.3d at 1025. The Ninth Circuit recognized a Tribe’s Repatriation Committee to be an “arm of the tribe” because it was created by resolution of the tribe. *Id.* Furthermore, the Ninth Circuit recognized the Fort Mojave Tribe’s economic development corporation as an “arm of the tribe” because the Tribe created their corporation “pursuant to a tribal ordinance and intergovernmental agreement.” *AVI Casino Enters.*, 548 F.3d at 725.

Yuma Indian Nation created the EDC under a 2009 tribal commercial code. Record at ¶ 2. Title 11 of the Yuma Indian Nation is the Business Corporation Code and is the outline and law for the Yuma Indian Nation to create its business and economic development corporation. The Tribal Code was created pursuant to its inherent sovereign authority and power to create and charter public and private corporations to operate business both on and off the reservation. Record at ¶ 3. Yuma Indian Nation meets this factor of the definition of “arm of the tribe,” and should enjoy the rights of sovereign immunity extended to it by the Nation.

2. The EDC enjoys the rights of sovereign immunity because it was created for the benefit of the Nation

The Yuma Indian Nation Economic Development Company should be considered an “arm of the tribe” because its purpose is to benefit the tribe. The doctrine of sovereign immunity has been consistently approved by Congress for the purpose of promoting “Indian

self-government, self-sufficiency, and economic development.” *Citizen Band Potawatomi*, 498 U.S. at 505. Sovereign immunity is extended to tribal entities that promote self-sufficiency and economic development for the betterment of Indian Nations. *See generally Cook, University of California*. The purpose under the tribal code requires incorporation for general business purposes and specifically the YIN EDC was created to promote the prosperity of the Nation and its Citizens. Yuma Tribal Code § 11-101 (2015). Its primary purpose being, “to create and assist in the development of successful economic endeavors, of any legal type or business, on the reservation and in southwestern Arizona.” Record at ¶ 3. Yuma Indian Nation meets this factor of the definition of “arm of the tribe,” and should enjoy the rights of sovereign immunity extended to it by the Nation.

3. The EDC enjoys the rights of sovereign immunity because Yuma Indian Nation has majority control over the EDC

The Yuma Indian Nation Economic Development Company should be considered an “arm of the tribe” because it is wholly owned by the Yuma Indian Nation. The structure, ownership, and management, to include the amount of control the tribe has over the entity should be substantial. *See Cook*, 548 F.3d at 727. The Ninth Circuit recognized a Tribe’s Repatriation Committee to be an “arm of the tribe” because it was “funded exclusively by the tribe”. *University of California*, 765 F.3d at 1025. Furthermore, the Ninth Circuit recognized the Fort Mojave Tribe’s economic development corporation as an “arm of the tribe” because their corporation is “wholly owned and managed by the tribe.” *Cook*, 548 F.3d at 725.

In this case, while the EDC is to be operated by its own board of directors, the Tribal Council selects the initial board of directors, the majority must be tribal citizens, and the Tribal Council retains the authority to remove any director at any time for no cause by a 75% vote. The Tribal Council has authority over the EDC board of directors. Additionally, the

EDC must report to the Tribal Council for review and approval on a quarterly basis. Yuma Indian Nation wholly owns the YIN EDC and therefore meets the definition of “arm of the tribe,” and should enjoy the rights of sovereign immunity extended to it by the Nation.

4. The EDC enjoys the rights of sovereign immunity because Yuma Indian Nation intended for the EDC to share its rights of sovereign immunity

The Yuma Indian Nation Economic Development Company should be considered an “arm of the tribe” because their tribal business code confers their intent to retain immunity. The tribe’s “intent with respect to the sharing of its sovereign immunity” should be considered in determining whether its an “arm of the tribe.” *University of California*, 765 F.3d at 1025. Yuma Indian Nation does allow for tribal corporations to be sued, however, sovereign immunity is primarily assumed. More importantly, the tribal corporation must give its consent to be sued provided that it comply with the tribal business code. Yuma Indian Nation intended that their Economic Development Company should enjoy the privileges of sovereign immunity as it states in their tribal business code, created pursuant to the Nation’s inherent sovereignty:

The sovereign immunity of the Tribe is hereby conferred on all Tribal corporations wholly owned, directly or indirectly, by the Tribe. A corporation wholly owned, directly or indirectly, by the Tribe shall have the power to sue and is authorized *to consent* to be sued in the Court, and in all other courts of competent jurisdiction, provided, however, that:

a. no such consent to suit shall be effective against the corporation unless such consent is:

1. explicit,
2. contained in a written contract or commercial document to which the corporation is a party, and
3. specifically approved by the board of directors of the corporation, and

b. any recovery against such corporation shall be limited to the assets of the corporation. Any consent to suit may be limited to the Court or courts in which suit may be brought, to the matters that may be made the subject of the suit and to the assets or revenues of the corporation against which any judgment may be executed.

Yuma Tribal Code § 11-1003 Sub. 2 (2015) (emphasis added). Yuma Indian Nation expressly intended for its Tribal corporations, of which the YIN EDC is considered and therefore meets the definition of “arm of the tribe,” to enjoy the rights of sovereign immunity extended to it by the Nation.

5. The EDC enjoys the rights sovereign immunity because Yuma Indian Nation and the EDC have a financial relationship

The Yuma Indian Nation Economic Development Company should be considered an “arm of the tribe” because the Nation and the YIN EDC have a financial relationship. “Arm of the tribe” status can be based on whether the entity and the tribe have a financial relationship. In *University of California*, the Repatriation Committee, again, was considered to be an “arm of the tribe” because it was “funded exclusively by the tribe”. 765 F.3d at 1025. In *Cook*, the Fort Mojave Tribe’s economic development corporation was an “arm of the tribe” because their corporation is “wholly owned and managed by the tribe.” 548 F.3d at 725.

In this case, the Yuma Indian Nation Tribal Council funded the EDC with a one-time \$10 million loan from the Nation’s general fund. Record at ¶ 3. The YIN EDC must pay 50% of net profits to the YIN general fund annually – thus far contributing \$2 million to the Nation’s general fund. Record at ¶ 4. This shows a financial relationship between the Nation and the YIN EDC. The YIN EDC, having met this factor as well as the others that must be considered to determine the status of the EDC, therefore meets the definition of “arm of the tribe,” and should enjoy the rights of sovereign immunity extended to it by the Nation.

B. Individual defendants are not protected by Tribal sovereign immunity because the Nation is not at interest in the charges against the defendants and the defendants were operating outside the scope of their contracts

The named defendants should not be extended tribal sovereign immunity because the real party at interest is not the tribe, but the defendants in a personal capacity. The Supreme Court recently ruled that a “suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest and the tribe’s sovereign immunity is not implicated. *Lewis v. Clarke*, 137 S.Ct. 1285, 1291 (2017). The Supreme Court here explained the difference between an official-capacity claim and a personal-capacity suit, stating:

In an official-capacity claim, the relief sought is only nominally against the official and in fact is against the official's office and thus the sovereign itself. This is why, when officials sued in their official capacities leave office, their successors automatically assume their role in the litigation. The real party in interest is the government entity, not the named official. Personal-capacity suits, on the other hand, seek to impose individual liability upon a government officer for actions taken under color of state law.

Id. (internal citations omitted).

In this case, the Yuma Indian Nation is imposing individual liability on the defendant, a former tribal YIN EDC officer, for actions taken against the tribe in a breach of contract. The duties of a director, like the defendant, include discharging “duties in good faith, in a manner that the director reasonably believes to be in the best interest of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs as such is not liable by reason of being or having been to director of the corporation.” Yuma Tribal Code § 11-251 Sub. 1 (2015). Disclosing confidential and proprietary information to anyone not on the board or in the tribal council is not conduct indicative of a director who acted in “good faith” or in the

“best interest” of the corporation. Yuma Tribal Code § 11-011(14) (2015) (“Good faith” means honesty in fact in the conduct of the act or transaction concerned). The defendant therefore should be held liable for his actions. The tribe does not have liability for his actions in a personal capacity.

The defendant here breached his contract and disclosed confidential information to another sovereign’s government official. This grievous breach demonstrates a “willful misconduct” that according to Tribal business code lays liability to the person, not the employee. Yuma Tribal Code § 11B-302(1) (2015). This is a personal-capacity suit. The Nation should not be held liable and thereby extend its right of sovereign immunity to a former employee that committed a breach of contract. Granting the defendant the Nation's extended protection of sovereign immunity would effectively kill any remedy the tribe has for his breach. This is not what Congress intended, nor what the Supreme Court has upheld either. *See Santa Clara Pueblo*, 436 U.S. at 65. The Supreme Court has stated, “In making an assessment on whether sovereign immunity extends to a tribal employee courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance with it the remedy sought is truly against the sovereign.” *Lewis*, 137 S.Ct. at 1290. The remedy is not sought against the sovereign tribe, but rather petitioned *by* the sovereign. The mere fact that he was a Tribal official does not trump the ability of the Nation to be provided a remedy. The Tribal Code expresses that the Nation must be an interested part for the Nation to implicate themselves. Yuma Tribal Code § 11-917 Sub. 1 (2015). The ability to individually sue officials was suggested to be part of the remedy the Supreme Court suggested in *Santa Clara Pueblo*. 436 U.S. at 65.

The corporate veil may be pierced to hold members liable for their actions against the

corporation regardless of the defendant's characterization as a tribal official. *Arrow Midstream Holdings, LLC v. 3 Bears Const., LLC*, 873 N.W.2d 16, 21 (N.D. 2015). Other immunities of defenses could apply to the defendant, however, Tribal Codes have made it so these defenses are moot. Personal immunity can apply for a defendant if a Tribe has any laws or codes indicating this to be a defense for the defendant's capacity. *Lewis*, 137 S.Ct. at 1287. The Nation has no such procedures for personal immunity defenses. The defendant may be privy to an indemnification clause, however, there are limitations to the indemnification protection. Yuma Tribal Code § 11-521 Sub. 2 (2015). The Tribal business code states, "the corporation should indemnify a person made or threatened to be made party to a proceeding... if the person complained of in the proceeding: acted in good faith, reasonably believed that the conduct was in the best interest of the corporation..." *Id.* While the defendant may have thought he was acting in good faith towards his own conscience and the state, he was not acting in good faith towards the tribe and his employer, thus committing a breach of contract and excluding himself from indemnification.

Similarly, the defendant could have thought he was acting in the best interest of the Nation. However, the standard of a reasonable person in like position is set in the duties section of the code for best interest. Yuma Tribal Code § 11-251 Sub. 1 (2015). A reasonable person in like position would presumably know that a disclosure of confidential information that could incur legal action was not in the best interest of the tribe when other remedies were available to subdue his conscience. In conclusion, other potential immunities or avenues for the defendant are not viable options in this case.

1. Tribal sovereign immunity only extends to employees of the Economic Development Company who acted within the scope of their employment

Employees named in the suit working in their official and individual capacities are

under the protection of the tribe's sovereign immunity. The Supreme Court ruled that, tribal sovereign immunity "extends to tribal officials when acting in their official capacity and within the scope of their authority." *AVI Casino Enters.*, 548 F.3d at 727. The Court in that case extended sovereign immunity to two of its employees, employed in their tribal corporation. Similarly, in this case, the court should rule that Tribal sovereign immunity extends to the two employees named in the suit because they are being sued in their official capacity as employees and not in a personal capacity suit. Additionally, the Nation has mandated in the charter for the EDC that its board, and all employees, are protected by tribal sovereign immunity to the fullest extent of the law. The two employees should be under the umbrella of protection of tribal sovereign immunity.

The two employees named in the suit have another remedy to dis-enjoin themselves from the suit. Naming a Tribal official as an individual in a suit cannot circumvent Tribal immunity as a loophole for suing the Tribe – because suing a tribal official as an official is essentially the same as suing the Tribe. *Cook*, 548 F.3d at 727. The Supreme Court in spoke to this saying, "we have held that a [party] cannot circumvent tribal immunity 'by the simple expedient of naming an officer of the Tribe as a defendant, rather than the sovereign entity.'" *Id.* The Smith's suit against the individual employees is redundant, a waste of court resources, and accordingly should be dismissed.

CONCLUSION

The Nation asks the Court to deny the writ of mandamus ordering the trial court to stay this suit, uphold the trial court's dismissal of counterclaims against the third parties on the grounds of sovereign immunity, and uphold the trial court's denial of the defendant's motions to dismiss based on lack of jurisdiction. The Smiths' consensual and contractual relationships with the Nation establish both personal and subject matter jurisdiction to hear these claims. Because there is a colorable claim to jurisdiction over the Smiths, Tribal Court exhaustion is also required.

Yuma Indian Nation should enjoy the rights of sovereign immunity afforded to them by their inherent rights. The umbrella of Tribal sovereign immunity protects the Economic Development Company as an "arm of the tribe." The nature of the allegations against the third party EDC puts the Nation at interest and grants them the rights of sovereign immunity. For these reasons, this court should deny the Smith's request for a writ of mandamus and uphold the decisions of the trial court.

CERTIFICATE OF SERVICE

I, Logan Forbes Cooper, hereby certify that on January 8th, 2018, I will submit electronically a copy of the attached brief to:

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