

No. 17-024

IN THE

SUPREME COURT OF THE YUMA INDIAN NAITON

JANUARY 8, 2018

THOMAS SMITH AND CAROL SMITH,
Petitioner,

v.

YUMA INDIAN NATION
Respondent.

BRIEF FOR THE PETITIONER

Team 198
Counsel for Petitioner

QUESTIONS PRESENTED

- I. Do the Yuma Indian Nation courts have jurisdiction over Thomas and Carol Smith, or should the trial court stay the suit while the Smiths seek a ruling in Arizona federal district court?
- II. Are the Yuma Indian Nation, the Economic Development Corporation, Fred Captain, or Molly Bluejacket protected from the Smiths' claims under any immunity doctrine?

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STATEMENT OF THE CASE

STATEMENT OF THE PROCEEDINGS

Yuma Indian Nation (“YIN”) Tribal Council filed suit against Thomas and Carol Smith for breach of contract, violation of fiduciary duties, and violation of their duties of confidentiality. R. at 3. The suit was filed in tribal court. *Id.* YIN sought liquidated damages in the amount set out in the contract with the Smiths. *Id.* In response, the Smiths filed special appearances and motions to dismiss YIN’s suit for lack of personal and subject matter jurisdiction in the tribal court or, in the alternative, for a stay in tribal court when the Smiths seek a jurisdictional ruling in Arizona federal district court. *Id.* Continuing under special appearances, the Smiths denied YIN’s claims and counterclaimed against YIN for contract payments and for defamation for impugning their professional skills through suit. *Id.*

Under YIN court ordinance regarding civil procedure, the Smiths filed claims against third parties also seeking contract payments and for defamation. R. at 3. The Smiths impleaded YIN Economic Development Corporation (“EDC”), and Fred Captain and Molly Bluejacket, both in their individual and official capacities. *Id.*

The tribal trial court dismissed the Smiths’ counterclaims against YIN and the claims against the EDC, Fred Captain, and Molly Bluejacket based on sovereign immunity. R. at 3. Thomas and Carol Smith filed an interlocutory appeal in YIN Supreme Court. *Id.* The Smiths requests that the Court decide the jurisdictional and sovereign immunity issues and issue a writ of mandamus for the trial court to stay the suit. *Id.*

STATEMENT OF THE FACTS

Thomas Smith is a certified financial planner and accountant. R. at 1. Thomas both lives and works in Phoenix, Arizona. *Id.* The Yuma Indian Nation (“YIN”) is an Indian

Nation that is located in southwest Arizona. *Id.* In 2007, Thomas entered into a contract with YIN. *Id.* The contract was signed by both of the parties at Thomas's office in Phoenix. *Id.* By signing the contract, Thomas agreed to provide YIN with financial advice regarding the Nation's economic development issues. *Id.* Thomas agreed to provide these services to the Nation on an "as-needed" basis. *Id.* The contract also provided that any and all disputes that arise from the contract itself should be litigated in a court of competent jurisdiction. *Id.*

After signing the contract, Thomas provided the Nation with financial advice for the next ten years. *Id.* Thomas provided the Nation with financial advice on a variety of economic development issues. *Id.* The communication between Thomas and the Nation primarily consisted of exchanging emails and telephone calls. *Id.* Thomas was in contact with various tribal chairs and Tribal Council members. *Id.* On a quarterly basis, Thomas would prepare and present the Tribal Council with written reports. *Id.* These presentations were the only times Thomas would visit the reservation for business purposes. *Id.*

In 2009, the Nation created YIN Economic Development Corporation ("EDC"). *Id.* The EDC was created under a 2009 tribal commercial code in hopes to promote the prosperity of the Nation and its citizens. *Id.* The EDC is funded by the Tribal Council by a one-time \$10 million loan from the Nation's general fund. *Id.* Under its operations, the EDC is authorized to buy and sell real property in fee simple title on or off the reservation, to buy any other types of property in whatever form of ownership, and to sue and be sued. R. at 2. After the EDC was created, Thomas included his standard communications with both the EDC CEO, Fred Captain, and EDC employee and accountant, Molly Bluejacket. R. at 1.

In 2010, Thomas entered into a contract with his sister, Carol Smith. R. at 2. Carol lives and works in Portland, Oregon. *Id.* The contract that Thomas and Carol entered into is

identical to the contract between Thomas and YIN. *Id.* The contract also includes a term that both parties are required to comply with YIN-Thomas contract. *Id.* Furthermore, the Nation's Tribal Council gave written permission to Thomas to enter into said contract with Carol. *Id.* Carol is a licensed stockbroker. *Id.* Her duties under the contract are to provide Thomas, the EDC, and YIN with advice regarding stocks, bonds, and securities issues. *Id.*

Like Thomas, Carol's primary form of communication is via email and telephone, but uses postal and delivery services as well. *Id.* However, Carol does not communicate directly with YIN, rather she provides her advice directly to Thomas. *Id.* The advice that Carol provides to Thomas is usually forwarded to the Nation's Tribal Council, Fred, and Molly. *Id.* Carol has only visited YIN reservation twice with Thomas while she was on vacation in Phoenix. *Id.* The only direct communication Carol has with YIN is through her submitting monthly bills via email to Fred, and the EDC mails her payments. *Id.*

In 2016, EDC began researching the possibility of participating in marijuana cultivation and sales. *Id.* In the State of Arizona, marijuana is legal for medical uses. *Id.* However, after failing to pass a state-wide referendum in the fall of 2016, marijuana for recreational use remains illegal in the State. *Id.* Disregarding the State's laws, the EDC discussed with YIN Tribal Council the possibility of their marijuana cultivation ideas. *Id.* The EC did convince YIN Tribal Council to enact a tribal ordinance that would make both marijuana cultivation and use on the reservation legal for any and all purposes. *Id.* After the EDC conferred with YIN Tribal Council on this endeavor, it began pursuing the development for the marijuana operation. *Id.*

The EDC then discussed with Thomas the plans with the marijuana operation. *Id.* Both Thomas and Carol are opposed to their involvement in anyway with the marijuana

operation. *Id.* Given his discomfort with the marijuana operation, Thomas shared the EDC's plans with his friend, the Arizona Attorney General. *Id.* After hearing of these plans, the Attorney General wrote a cease and desist letter regarding the development of the recreation marijuana operations, addressing both YIN and the EDC. *Id.*

Following the cease and desist letter from the Attorney General, the Tribal Council filed suit versus the Smiths in tribal court. R. at 3. The Nation sought recovery of liquidated damages, with the amount set in the contract. *Id.* The Smiths responded by filing special appearances and identical motions to dismiss the suit based on lack of personal and subject matter jurisdiction over them. *Id.* The Smiths also requested, in the alternative, for the trial court to stay suit while they pursue a ruling in Arizona federal district court as to whether the tribal court has jurisdiction over them. *Id.* After the trial court denied both of the motions, the Smiths filed an interlocutory appeal to the Yuma Indian Nation Supreme Court asking the Court to issue a writ of mandamus ordering the trial court to stay suit and for the Court to decide these issues. *Id.*

SUMMARY OF ARGUMENT

The action brought by YIN against Thomas and Carol Smith should be denied for lack of personal jurisdiction and subject matter jurisdiction. If the Court rules that YIN Tribal Court has jurisdiction over the matter, then the Court should order the trial court to stay the proceedings to afford the Smiths to seek a ruling on the claims in the Arizona federal district court.

In regard to whether YIN, the EDC, and/or Fred Captain and Molly Bluejacket are protected by sovereign immunity, the Court should find in favor of the Smiths. The Court should find that YIN waived its sovereign immunity. The language utilized by the parties in

the contract was an explicit waiver by YIN of its sovereign immunity. Furthermore, the language in the charter under which the EDC was created served as a waiver of immunity which the EDC and its employees may have had.

ARUGMENT

I. THE TRIAL COURT SHOULD STAY THE TRIBAL COUNCIL AND EDC'S SUIT AGAINST THOMAS AND CAROL SMITH WHILE THE SMITHS SEEK A RULING IN THE ARIZONA FEDERAL DISTRICT COURT BECAUSE THE TRIBAL COURT DOES NOT HAVE SUBJECT MATTER OR PERSONAL JURISDICTION OVER THE SMITHS.

YIN does not have personal jurisdiction over Thomas or Carol Smith. According to Title 1, Article 1-104(2)(a) of YIN tribal code, YIN shall have personal jurisdiction over: “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.” The key language in this code is “within”. This limits YIN’s jurisdiction to people and/or entities and the actions that take place within the reservation’s physical boundaries. In this case, Thomas and Carol do not fit this criterion. Thomas conducts his part of the contractual agreement from his personal office in Phoenix, Arizona, while Carol works out of Portland, Oregon, neither within the reservation. R. at 1-2. Although Thomas gives quarterly reports to YIN regarding the Nation’s financial advisement, he was simply presenting information to YIN. R. at 1.

Under Title 1, Article 1-107 of YIN tribal code, YIN courts have personal jurisdiction over “all defendants served within territorial jurisdiction of the Courts, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and all persons consenting to such jurisdiction. 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.” Here, neither Thomas nor Carol consented to the Tribal Court jurisdiction. In order to consent to the jurisdiction, the Smiths’ actions would have had to have taken place within the physical boundaries of the reservation. While Thomas does visit the reservation during the year, the current suit is not arising out of conduct within the territorial jurisdiction of the Courts. R. at 1.

YIN does not have subject matter jurisdiction over this case either. Under Title 1, Article 1-106 and Article 1-107, YIN Court has general subject matter jurisdiction, including “over all general civil claims which arise within the Tribal jurisdiction”. However, YIN Court does not have jurisdiction over this case because the controversy of this case did not arise within the territorial boundaries of YIN reservation. The reasoning here is very similar as to why YIN Court lacks personal jurisdiction over this case. Here, in order to have subject matter jurisdiction, the civil claim has to arise within Tribal jurisdiction. The conduct of neither Thomas nor Carol equates to this. The advisement that the Smiths offer to YIN is primarily conducted off of the reservation, out of Tribal jurisdiction.

There is a generally accepted proposition that a tribe’s sovereign exercise of jurisdiction does not extend to nonmember activities. *Montana v. U.S.*, 450 U.S. 544, 565 (1981). The Court created two exceptions to this general rule, including when there is a consensual relationship between the parties or if the matter concerns an activity that directly affects political integrity, economic security, health, or welfare. *Id.* at 565-66. In *Montana*, the state was trying to regulate hunting and fishing of nonmembers on non-Indian fee lands within the reservation. *Id.* at 549. The Smiths do have a contractual relationship with the tribe, which could subject them to tribal regulatory jurisdiction. R. at 1-2.

A Montana analysis has similar location requirements to YIN's Code. After *Montana*, the tribal court's jurisdiction over nonmembers became heavily determinative on land status, which is material factor when considering tribal jurisdiction. *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 554 U.S. 316, 339 (2008). The regulation of fishing and hunting in *Montana* covered nonmember activity on reservation fee land held by nonmembers. *Montana*, 450 U.S. at 547. *Plains Commerce* considered a lease between a bank and a non-Indian. 554 U.S. at 320. The bank was located on reservation land owned in fee by the non-Indian bank. *Id.* The Court held that the tribal court did not have authority to adjudicate non-Indian fee land on the reservation. *Plains Commerce*, 554 U.S. at 330.

This case falls outside the scope of the tribe's adjudicative authority. The Smiths' argument is even stronger than the petitioners' arguments in *Montana* or *Plains Commerce* because the Smiths' interactions with YIN did not even occur on the reservation. R. at 1-2. Thomas' job is to provide YIN with financial advice, which he does from Phoenix, Arizona, where he lives and works. R. at 1. The only time Thomas visits YIN reservation is when he presents quarterly reports to the Council. *Id.* All of his work on the reports is done in Phoenix. *Id.* These reports are prepared and submitted to the Council before Thomas travels to the reservation to present these reports. *Id.* Furthermore, Thomas and YIN signed the agreement at his place of work in Phoenix with the understanding that he would communicate primarily with the Nation through telephone calls and email. *Id.* Carol is even further removed from the reservation than Thomas. R. at 2. Carol's job is to give YIN investing advice, which she does from Portland, Oregon. *Id.* She provides her advice to Thomas through email, telephone, and postal services and does not do business on the reservation. *Id.* Her only direct communication with the tribe is through bills and payments.

Id. Since none of the Smiths' work interactions with YIN occur on the reservation, YIN cannot exercise adjudicatory authority over the Smiths.

In addition to the land status analysis, this case is outside the scope of the *Montana* analysis because *Montana* is a case about tribal regulatory jurisdiction and this is a case about adjudicatory jurisdiction. *Montana v. U.S.*, 450 U.S. 544, 565-66 (U.S. 1981).

Applying *Montana*, the Court held that a tribe's adjudicatory jurisdiction cannot exceed its regulatory jurisdiction. *Strate v. A-1 Contractors, Inc.*, 520 U.S. 438, 453 (1997). *Montana* has been expanded to other areas of regulation, including taxation and water quality standards. See *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645 (2001); *City of Albuquerque v. Browner*, 97 F.3d 415 (10th Cir. 1996). Unlike those cases, this case involves breach of contract, which does not involve regulation by YIN. R. at 3. Therefore, even though the Smiths have a contractual relationship with the tribe, this does not subject the Smiths to tribal jurisdiction under a *Montana* regulatory analysis. R. at 1-2. Since the tribal court would not have regulatory jurisdiction over this case, it does not have adjudicatory jurisdiction to hear the case.

In some cases, exercise of tribal adjudicatory jurisdiction requires an exhaustion of tribal remedies before a stay can be issued on a lower court's decision pending another court's jurisdictional ruling. *National Farmers Union v. Crow Tribe*, 471 U.S. 845, 857 (1985). In *National Farmers*, petitioners were required to exhaust tribal remedies before seeking a ruling on jurisdiction in federal court. *Id.* Federal law has been provided on the tribal jurisdiction question. *National Farmers Union*, 471 U.S. at 851. The Smiths' claim is different from the petitioners' claim in *National Farmers* because the Smiths' disclosure of contractually protected information is a question of federal law. R. at 2. Invoking a federal

district court's jurisdiction is necessary to assert a claim that arises under federal law.

National Farmers Union, 471 U.S. at 850.

The tribe's ability to open a marijuana business is a federal question and, therefore, should be subject to adjudication in federal court. Under a provision in the U.S. Code, the manufacturing and distribution of controlled substances is a federal offense. 21 U.S.C.A § 841 (2010). One hundred kilograms or more of marijuana and one hundred or more marijuana plants are each considered a controlled substance, subject to federal penalties. *Id.* The Cole Memorandum legalized the possession of marijuana and permitted the production and sale of marijuana in states, as long as the states complied with regulations in the memorandum. Memo: James M. Cole, *Guidance Regarding Marijuana Enforcement* (2013). The Wilkinson memorandum extended the Cole Memorandum to marijuana legalization in Indian Country, with tribes also being subject to the regulations laid out in the memorandum. Memo: Monty Wilkinson, *Policy Statement Regarding Marijuana Issues in Indian Country* (2014). Recently, however, the Cole Memorandum was repealed. Memo: Jefferson B. Sessions, *Marijuana Enforcement* (2018). Tribal marijuana industry is no longer protected from federal prosecution, making it illegal to possess, produce, and sell marijuana in any states or in Indian Country. *Id.*

Thomas Smith is a citizen of the State of Arizona, where marijuana is illegal for anything other than medical purposes. R. at 2. Thomas' contract with YIN does not require him to do anything illegal, but it does require him to discreetly participate in illegal activity. *Id.* Arizona state laws do not allow Thomas to participate in the processing or sale of marijuana in the state. *Id.* Even working with the tribe on an internal matter, Thomas works from Phoenix, not within the boundaries of the reservation, which subjects him to the

jurisdiction of Arizona. R. at 1. Even though the breach of contract claim does not arise under federal law, the nature of Thomas' breach gives rise to a question of federal law.

In the alternative, if it is found that the tribal court does have jurisdiction over Thomas and Carol Smith, the Supreme Court should issue a writ of mandamus ordering the trial court to stay the proceedings while the Smiths seek a ruling in Arizona's Federal District Court. The Supreme Court of the United States has ruled that, "tribal courts should be able to determine its jurisdiction in the first instance." *Iowa Mut. Ins. Co. v. LaPlante*, 107 S.Ct. 971, 973 (1987). However, YIN tribal code authorizes YIN Supreme Court to issue a writ of mandamus in matters such as these. Under Title 2, Article 15-1501 of the Tribal Code, the Supreme Court can issue a writ of mandamus to compel the trial court to stay the proceedings at hand while the Smiths seek a ruling in Arizona's Federal District Court.

II. THOMAS AND CAROL SMITH'S CLAIMS AGAINST THE YUMA INDIAN NATION, THE EDC, AND EMPLOYEES OF THE EDC ARE NOT BARRED BY IMMUNITY.

A United States Supreme Court case has ruled that a tribe retains sovereign immunity unless Congress abrogates sovereign immunity or the tribe waives sovereign immunity through consent. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998). YIN adopted this doctrine of sovereign immunity in Title 1, Article 9-919 of its ordinance. The Supreme Court has also held that a tribe can waive its immunity through a contract. *C&L Enter's v. Citizen Band of Potawatomi*, 532 U.S. 411, 414 (2001). In *C&L Enterprises*, the Court held that an Indian Tribe waived its immunity from suit in Oklahoma state court when it expressly agreed to an arbitration clause in a tribal contract with a non-Indian contractor. *Id.* The arbitration clause allowed awards "in any court having jurisdiction thereof." *Id.*

Here, the issue in this case is whether YIN consented to waive its immunity in signing the contract with Thomas Smith. The contract did not specify a court in which litigation would take place, however, it did include that “any and all disputes arising from the contract be litigated in a court of competent jurisdiction.” R. at 1. This language is similar to C&L Enterprises’ contract language of “any court having jurisdiction thereof.” *C&L Enterprises*, 532 U.S. at 414. Carol also signed a contract requiring her to comply with the contract between YIN and Thomas. The language in the contract with Carol is identical to the one Thomas signed with the tribe, including this litigation language. R. at 2. Further, in negotiating terms of the agreement with Thomas, YIN could have required all disputes be settled in tribal court, but the Nation did not do this. The original contract was between Thomas and the Nation. R. at 1. Since the tribe was one of two parties to this suit and it included this language in the contract, it must have been subjecting itself to suit. Therefore, YIN waived its immunity from suit when it signed the contract with Thomas Smith.

Specific language has been pointed to by courts to determine whether sovereign immunity has or has not been expressly waived by a tribe. The 9th Circuit Court looked to language in an employment application to conclude that the tribe had not waived its sovereign immunity. *Allen v. Gold Country Casino* 464 F.3d 1044, 1047 (9th Cir. 2006). The application in that case stated that Allen’s employment could be terminated “for any reason consistent with applicable state or federal law” and that the tribe would “practice equal opportunity employment and promotion...” *Id.* In *Allen*, the 9th Circuit distinguished its ruling from *C&L Enterprises* because the statement in C&L Enterprises’ arbitration clause was an explicit waiver of immunity, while the statements in Allen’s application were only implicit in the tribe’s consent to suit in federal court. *Id.* The language in the Smiths’

contracts with YIN requires litigation involving the contract to occur in a court of competent jurisdiction, which is closer to the language found in *C&L Enterprises* than the language found in *Allen*.

The tribe's contract was signed before the EDC was created. Therefore, any immunity privileges that the EDC or employees of the EDC would have, under the tribe's waiver, also would have been waived in the tribe's contract with Thomas. Tribal sovereign immunity can be extended to a commercial venture that is conducted outside of the reservation. *Kiowa Tribe of Oklahoma*, 523 U.S. at 1705. To be protected under the tribe's sovereign immunity, an entity must be an "arm-of-the-tribe." *Cook v. AVI Casino Enterprises*, 548 F.3d 718, 725 (9th Cir. 2008). An entity acts as an arm-of-the-tribe if it carries out activities for the tribe. *Id.* at 725. In *Cook*, the casino was created under a tribal ordinance to make money for the tribe. *Id.* at 726. The tribe also owned and managed the casino. *Id.* The tribe retained control of the casino and the casino's purpose in benefitting the tribe classified the casino as an arm of the tribe. *Id.*

This case is similar. The EDC was created under a tribal commercial code. R. at 1. The EDC's purpose was to promote prosperity of YIN by creating and assisting "in the development of successful economic endeavors..." *Id.* The board of directors was initially selected by the Tribal Council. *Id.* Even though the board of directors elect new members, the tribe retains control of the board because it picked the initial board. *Id.* The council also has authority to remove directors at any time and for any reason. *Id.* Further, the EDC was created as an owned subsidiary of YIN and an "arm-of-the-tribe." *Id.* As an arm-of-the-tribe, the EDC falls under the tribe's sovereign immunity. In this case, however, YIN waived its sovereign immunity in its contract with Thomas. YIN's waiver of sovereign immunity

prevents the EDC from using the sovereign immunity defense. Thomas and Carol Smith's suit against the EDC is not barred by immunity.

Additionally, the EDC was created via a corporate charter which authorized the EDC to "sue and be sued". The "sue or be sued" clause is a general waiver of sovereign immunity on its own. *Federal Housing Admin. v. Burr*, 309 U.S. 242, 245 (1940); *Fontenelle v. Omaha Tribe of Nebraska*, 430 F.2d 143, 147 (8th Cir. 1970). In 2004, the New Mexico Court of Appeals held that the "sue and be sued" clause in the corporation charter was not an effective waiver of sovereign immunity. *Sanchez v. Santa Ana Golf Club, Inc.*, 104 P. 3d 548 (N.M. Ct. App. 2004). In that case, no waiver was created by the "sue or be sued" clause because other requirements that were needed to effectuate a waiver were not met. *Id.* at 551. However, the case at hand is distinguishable from *Sanchez* because there are no known requirements which need to be met to effectuate the "sue and be sued clause".

In a United States District Court case, the Court held that the "sue or be sued" clause in corporate charter served as a waiver because the clause had no restrictions or limitations and was a clear, explicit, and unambiguous waiver. *Parker Drilling Co. v. Metlakatla Indian Cmty.*, 451 F.Supp. 1127, 1136 (D. Alaska 1978). The EDC "sue and be sued" clause clearly expresses an intent to waive sovereign immunity. In fact, the *Sanchez* court's review of the law indicates that a "sue and be sued" clause will accomplish a waiver when it clearly expresses an intent to waive immunity. *Sanchez v. Santa Ana Golf Club, Inc.* at 551.

Furthermore, in an Arizona Court of Appeals case, the Court held that the tribal corporation waived immunity due to express provision within its charter allowing it to be sued in courts of competent jurisdiction. *S. Unique, Ltd. v. Gila River Pima-Maricopa Indian*

Cnty., 138 Ariz. 378, 386 (Ct. App. 1983). These cases are analogous because both are concerned with tribal corporations and whether they have waived their sovereign immunity.

Employees have an immunity shield when working in the course of employment. *Ex Parte Young*, 209 U.S. 123, 184 (1908).¹ In another Supreme Court case, the tribe was protected from suit because of sovereign immunity, but Petitioner Padilla was not protected under the tribe's immunity as an officer of the tribe. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 59 (1978). The Smiths' suit against Fred Captain and Molly Bluejacket in their official capacities will fall under the Nation's sovereign immunity only if they were working within the course of their employment in their interactions with Thomas and Carol. There is no evidence that the officers were working outside of their course of employment. Even if Fred Captain and Molly Bluejacket fall under the tribe's immunity, the tribe's waiver of immunity does not bar the Smiths' suit against them.

CONCLUSION

YIN does not have subject matter or personal jurisdiction over Thomas or Carol Smith. Even if the Court finds that YIN trial court can assert jurisdiction over the Smiths, the Supreme Court should issue a writ of mandamus to stay the suit in the trial court while the Smiths seek a ruling on the claims in Arizona federal district court. The Smiths' counterclaims are not barred by immunity because YIN waived its sovereign immunity when it signed the contract with Thomas. The EDC, Fred Captain, and Molly Bluejacket are not protected by the tribe's sovereign immunity because YIN waived its immunity in the contract

¹ *Ex Parte Young* is not a Federal Indian Law case, but it has been widely applied to all areas of law to fit employees under a sovereign immunity shield to prevent suits against employees when they are working on behalf of the government.

with Thomas, before the EDC was created. Therefore, this Court should stay the suit in YIN trial court when the Smiths pursue a ruling in federal district court.