**CASE NO. 09-4113, 09-4129**

**UNITED STATES COURT OF APPEALS**
**FOR THE TENTH CIRCUIT**

**BRITNEY JANE LITTLE DOVE NIELSON,**

**Petitioner-Appellee,**

**v.**

**SUNNY KETCHUM and JOSHUA KETCHUM,**

**Respondents-Appellants,**

**and**

**CHEROKEE NATION**

**Intervenor-Appellee.**

# APPELLEE'S CORRECTED BRIEF AND RESPONSE
# ORAL ARGUMENT REQUESTED

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On Appeal from the United States District Court
For the District of Utah, Case No. 2:08-CV-00490-TS
The Honorable Judge Ted Stewart

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## I. STATEMENT OF THE CASE

Cherokee Nation agrees with the Appellants' Statement of the Case with the inclusion of the following clarification/addition:

Although "[a]t the time she relinquished the child for adoption, Nielson was not a member[1] of an Indian Tribe and her non-member status was disclosed to Judge Page at the hearing[]" (Aplt. Br. at 8), Nielson disclosed her "Indian name:" "Little Dove," Nielson's mother disclosed that the family was of "Indian extraction," and Nielson's mother disclosed that she herself was "enrolled" in a tribe. (Aplt. App. at 76-77.) Unfortunately, the court never inquired as to whether or not C.D.K. was a member of or enrolled in a tribe.

Cherokee Nation disagrees that the "Cherokee Nation Citizenship Act "purports[2] to make any child who is a direct descendant of an 'original enrollee' . . . an automatic member of the Tribe." (Aplt. Br. at 9) (emphasis added). The Cherokee Nation Citizenship Act was passed pursuant to the Cherokee Nation Constitution (Aplt. App. at 311 and 358) and is valid Cherokee Nation law that does indeed confer "temporary" citizenship to a child who is a "Direct Descendent of an Original Enrollee." (Aplt. App. at 340).

## II. STATEMENT OF FACTS

Cherokee Nation agrees with the Appellants' Statement of the Case with the inclusion of the following clarification/addition:

Although "[a]t the time she relinquished C.D.K. for adoption, Nielson was asked by Judge Page about her Indian ancestry[] [and] Judge Page was informed by Nielson's mother, that Nielson was not a member of an Indian tribe" (Aplt. Br. at 13) Nielson did however disclose her

[1] Cherokee Nation agrees with the Ketchums that the terms "member" and "citizen" are used interchangeably throughout this case. In addition, Cherokee Nation would offer that the terms are also used interchangeable in cited authority.

[2] Black's Law Dictionary defines "purport" as "to profess or claim falsely; to seem to be." (573 (Bryan A. Garner ed., 2d Pocket ed., West 2001)).

"Indian name:" "Little Dove," Nielson's mother disclosed that the family was of "Indian extraction," and Nielson's mother disclosed that she herself was "enrolled" in a tribe. (Aplt. App. at 76-77.) Consequently, the court never inquired as to whether or not C.D.K. was a member of or enrolled in a tribe.

Cherokee Nation clarifies that the Cherokee Nation interrogatory responses (Aplt. App. at 139) (on which the Ketchums premise the fact that C.D.K. was not enrolled on November 6, 2007 and has never been enrolled (Aplt. Br. at 13)) admit that C.D.K. was not enrolled only to the extent that "enrolled" means "that the person is listed on the Cherokee Nation Register and has a registration number." (Aplt. App. at 138).

## III. SUMMARY OF ARGUMENT

First, pursuant to the Cherokee Nation Citizenship Act (11 C.N.C.A. § 11A), C.D.K. was a "member" of the Cherokee Nation for the purposes of the ICWA, both when he was born and when his mother consented to termination of her parental rights. Specifically, the District Court was correct in finding that 1) even though C.D.K. did not file an application for citizenship, he was still an "Indian child" by operation of law under both the ICWA and the Cherokee Nation Citizenship Act, and 2) there was sufficient and valid indirect evidence to prove that C.D.K. was a descendent of an "original enrollee" of the Cherokee Nation. Additionally, the District Court was correct in denying the Ketchums' argument that C.D.K. was not "member" of the Cherokee Nation because the Cherokee Nation Citizenship Act violated both C.D.K.'s and Nielson's United States Constitutional Rights. There is simply no case law to support their argument; furthermore, the United States Constitution does not apply to Indian Tribes.

Second, the Cherokee Nation Citizenship Act does not impermissibly expand the reach of ICWA, because inherent in sovereign immunity, as well as specifically recognized by the ICWA

guidelines, is a tribe's right to determine membership.

Third, the Cherokee Nation Citizenship Act does not violate the Cherokee Nation Constitution, because on its face, the Cherokee Nation Constitution does not prohibit the Cherokee Nation Citizenship Act. Alternatively, although the decision was correctly held, the District Court lacked jurisdiction to decide the constitutionality of a tribal law under a tribal constitution.

Finally, the automatic membership provision of the Cherokee Nation did not create an unreasonable problem in this adoption case because the Ketchums had "reason to believe" that C.D.K. was an Indian Child.

For the above reasons, C.D.K. was a member of the Cherokee Nation and therefore an "Indian child" at the time that Nielson consented to the termination of her parental rights, and because the consent did not comport to the provisions of ICWA the consent is invalid, as the District Court correctly ruled below.

## IV. ARGUMENT

### A. C.D.K. was an "Indian child" under ICWA at the time that his natural mother relinquished her parental rights.

The Indian Child Welfare Act applies to cases in which there is a "termination of parental rights" of an "Indian child." 25 U.S.C. § 1913. At the time of his birth and his natural mother's consent to termination of parental rights, C.D.K. was an "Indian child" pursuant to the ICWA, 25 U.S.C. §1903(4)(a) because he was an unmarried person "under the age eighteen" and was "a member of an Indian tribe." Id. Emphasis added.

It is well settled federal law that membership in an Indian tribe is determined by the tribe. Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 42 (1989); Santa Clara Pueblo v.

Martinez, 436 U.S. 49 (1978). Additionally, the Bureau of Indian Affairs ICWA guidelines state "[t]he determination by a tribe that a child . . . is or is not eligible for membership in that tribe…is conclusive." 44 Fed. Reg. 67, 584 B.1(b)(i) (1979). The Bureau of Indian Affairs guidelines have been adopted and applied in both the United States Supreme Court and the Utah state courts. Miss Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989); In re Holloway, 732 P.2d 962 (Utah 1986); In re SAE, 912 P.2d 1002 (Ut. Ct. App. 1996); In re DAC, 933 P.2d 933 (Ut. Ct. App. 1997). Therefore, the determination by the Cherokee Nation that C.D.K. was a "member" of the Cherokee Nation at his birth makes him an "Indian Child" and requires that the adoption comply with all ICWA requirements. 25 U.S.C. § 1901 et seq.

**1. The Cherokee Nation Citizenship Act automatically conferred member status to C.D.K. upon his birth.**

**i. C.D.K. was a valid Constitutional member of the Cherokee Nation despite the failure to file an application for membership.**

The Cherokee Nation Citizenship Act, 11 C.N.C.A. § 11A automatically admits "as a citizen of the Cherokee Nation" every newborn child who is a "Direct Descendant of an Original Enrollee" for a period of 240 days following the birth of the child," whether or not any documentation is delivered to the Registrar. The Ketchums argue that C.D.K. can not be a member of the Cherokee Nation because he never filed an application (Aplt. Br. at 23).[3] However, the Citizenship Act specifically states that "[n]o request or application for Tribal Citizenship or other documentation need be submitted or delivered to the Registrar as a prerequisite to the temporary Tribal Citizenship of a child." 11 C.N.C.A. § 11A(B). Therefore,

[3] The Ketchums posit this argument on the deposition of Jana Leach who agreed that she was unaware of "any other process or procedure by which a person can be admitted as a citizen of the Cherokee Nation other than filing an application." Aplt. Br. at 21-22. However, Ms. Leach's lack of knowledge of the newborn provision of the Cherokee Nation Citizenship Act has no bearing whatsoever on the validity of the law.

C.D.K. was a "member" of the Cherokee Nation upon birth and subject to the ICWA.

C.D.K. was a "member" of the Cherokee Nation even though he was not listed on the "membership records" of Cherokee Nation. The Ketchums argue that because the Act does not add the child to the "membership records" he is not a member of the Cherokee Nation. (Aplt. Br. at 19). The Ketchums premise this argument on the claim that Article IV of the Cherokee Nation Constitution requires all citizens to be listed on the "Cherokee Register." (Aplt. Br. at 20-23). However, a plain reading of the Constitution makes it clear that the only requirement that people must meet in order to be citizens of the Cherokee Nation is that they "must be original enrollees or descendents of original enrollees listed on the Dawes Commission Rolls." Cherokee Nation Constitution, Article IV Section 1. The requirement that the Cherokee Nation imposed on itself in Article IV Section 2 to establish a Register to keep track of its citizens does not preclude the legislature from temporarily including descendents of original enrollees in Cherokee Nation's membership. Further, there is no authority cited and no plausible argument that the language of the Cherokee Nation Constitution prohibits the Cherokee Nation Citizenship Act.[4] Finally, the District Court specifically found that "the Constitution of the Cherokee Nation does not explicitly prohibit the Membership Act." (Aplt. App. at 465).

**ii. There was sufficient evidence to prove lineage to an Original Enrollee**

The Ketchums next argue that even if the Act is valid, that C.D.K. did not meet the

[4] The Ketchums repeatedly cite Allen v. Cherokee Nation Tribal Council, (Judicial Appeals Tribunal 2006, JAT 04-09) for the assumption that the Cherokee Nation Constitution prohibits redefining Tribal membership requirements "absent a constitutional amendment." (See Aplt. Br. at 21). However, Allen is easily distinguishable from the present case in that it sought to restrict Tribal membership. In his concurring opinion, Justice Dowty stated that the legislation in question was unconstitutional because it imposed "a more restrictive requirement on membership than does the plain language of the Constitution." Allen at 23 (emphasis added). In the present case, the Act merely allows an alternative temporary way for a person who is constitutionally eligible for citizenship to be included in and protected by the Cherokee Nation.

requirements of the Act because neither Nielson nor Cherokee Nation has not proven the identity of an original enrollee. (Aplt. Br. at 25). Cherokee Nation agrees with the District Court that there was no direct documentary evidence that "J.G.'s [Nielson's great-great grandfather] and E.G.'s [Nielson's great-great grandmother] mothers were original enrollees. (Aplt. App. at 7-8). However, Cherokee Nation also agrees with the District Court that there was sufficient "indirect evidence" to conclude that C.D.K. was the descendent of an "original enrollee." (Aplt. App. at 8). And, as the Supreme Court has noted, "[c]ircumstantial [or indirect] evidence in this respect is intrinsically no different from testimonial [or direct] evidence. Holland v United States, 348 U.S. 121, 140 (1954).

From the indirect evidence in the record, it is a required inference that C.D.K. is a direct descendent of an original enrollee. First, it is undisputed that C.D.K. is a direct descendent of his grandmother and great-grandfather, and it is undisputed that the C.D.K.'s grandmother and great grandfather are enrolled members of the Cherokee Nation (Aplt. App. at 463). Further, the Cherokee Nation Constitution requires (as the Ketchums have repeatedly pointed out) that in order to be a member of Cherokee Nation, a person must be a "descendent of [an] original enrollee[]." (Aplt. Br. at 25). Based on the fact that C.D.K. is a direct descendent of his grandmother and great grandfather, and both of them are enrolled in the Cherokee Nation, and the Cherokee Nation Constitution requires all enrolled members to be a direct descendent of an original enrollee, there is clear and conclusive indirect evidence that C.D.K. is a direct descendent of an original enrollee and a reasonable fact finder could not find otherwise.[5]

**2. The Cherokee Nation Citizenship Act does not violate the United States Constitutional Rights of either C.D.K. or Nielson.**

[5] See Aplt. App. at 309 for a complete "family tree" that connects C.D.K. via each generation to an original enrollee.

It is well settled law that the United States Constitution does not bind Indian tribes and therefore United States citizens can not invoke the Constitution to right the alleged wrongs of Tribes. Since 1896, federal law has recognized that "The United States Constitution does not apply to any Indian tribe." Talton v. Mayes, 163 U.S. 376. As a result, the Indian Civil Rights Act (hereinafter the "ICRA") was created to apply certain, specific federal Constitutional provisions against tribal governments. et seq. However, as was established in Santa Clara Pueblo v. Martinez, even though the "ICRA imposed standards for tribal conduct, the only federal review specifically provided by the [ICRA] was through a writ of habeas corpus." 436 U.S. 49, 58 (1978). Hence, this Court cannot hold the Cherokee Nation Citizenship Act to the standards of review of the Constitution of the United States of America. Id. Furthermore, this Court could not review the alleged deprivation of parental rights in relation to the ICRA absent a claim for writ of habeas corpus. Id.

Further, even if this Court could review the Cherokee Nation Citizenship Act under the Untied States Constitution, the Ketchums do not have standing to assert the Constitutional rights of Nielson. The Ketchums cannot plead and allege a statutory violation of constitutional rights when they are not the ones suffering the alleged harm. Los Angeles Police Dept. v. United Reporting Pub. Corp., 528 U.S. 32, 38 (1999) ("The traditional rule is that 'a person to whom a statute may constitutionally be applied may not challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before this Court'" (quoting New York v. Ferber, 458 U.S. 747, 767 (1982), citing Broderick v. Oklahoma, 413 U.S. 601, 610 (1973)). The Ketchums allege the Cherokee Nation Citizenship Act violates Nielson's constitutional right to parent her child. (Aplt. Br. at 32). The Ketchums could conceivably raise a violation of Nielson's constitutional rights if she had not appeared before the District Court.

However, Nielson was a party to those proceedings and was represented by counsel. Therefore, the Ketchum's have no standing to argue for the protection of Nielson's constitutional rights.

Finally assuming, aguendo, that the Ketchums could raise and this Court could rule on the United States constitutionality of the Cherokee Nation Citizenship Act, the Act does not violate the rights of Nielson or C.D.K. because C.D.K., via his parent or legal guardian, could withdraw his Cherokee Nation membership pursuant to the ICWA and 11 C.N.C.A. § 5. And finally, as the District Court correctly noted, "there is no case law to support the application of [the right of association] to Indian tribes . . . as applied to a rule intended to provide Indian birth parents with protection for their children during the period in which they could put together the paperwork to be granted full membership." (Aplt. App. at 465).

**B. The Cherokee Nation Citizenship Act does not impermissibly expand the reach of ICWA**

Nothing in the Membership Act violates or impermissibly expands the ICWA. The ICWA lays the foundation for determination of an "Indian child" with the final determination being made by the tribe. See Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n.32 (1978) ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.") Furthermore part of an Indian tribe's inherent power is the authority to grant membership. An Indian tribe may establish and qualify membership requirements through written law. Delaware Indians v. Cherokee Nation, 193 U.S. 127 (1904).

Additionally, in other ICWA cases, the term "member" has been liberally construed to include: children who are not deemed to be "native" in the Alaska Native Claims Settlement Act, children whose ancestry is uncertain, and children whose own tribes were not able to

conclusively determine the child's membership eligibility. State ex rel Juvenile Dept. of Lane County v. Tucker, 710 P.2d 793 (Or. Ct. App. 1985); In re J.T., 693 A.2d 283 (Vt. 1997); In re Baby Boy Doe, 849 P.2d 925, 927-928 (Idaho 1993).

Finally, the entire purpose behind the passage of the ICWA was to stop the "wholesale separation of Indian children from their families"[6] through state court proceedings, which is exactly what has happened in this case. H.R. Rep. No. 95-1386, 95th Cong., 2d Sess. 9 (1978). Congress adopted the ICWA in order to promote the stability and security of Indian tribes and families and to encompass the interest of Indian nations in their survival and self-governing community. Id. The Cherokee Nation, in exercising its self-governance, determines who is and is not a member, including those temporary members, in order to ensure the continuance of the Cherokee Nation. This is why the ICWA was adopted, to promote the stability and continuance of Indian tribes. To argue that the exercise of membership determination by the Cherokee Nation violates the ICWA demonstrates a fundamental lack of understanding of the purpose for which the ICWA was enacted.

### C. The Cherokee Nation Citizenship Act does not violate the Cherokee Nation Constitution

#### 1. The District Court lacked jurisdiction to determine whether or not the Citizenship Act violated the Cherokee Nation Constitution

The Cherokee Nation first argues that the District Court was not the proper venue to determine whether or not the Cherokee Nation Citizenship Act violated the Cherokee Nation Constitution. The Tenth Circuit has established that "tribal courts have repeatedly been

[6] This "wholesale separation" was evidenced by an extremely high percentage of Indian children in State custody compared to non-Indian children. It was estimated that between 1969 and 1974, in states with large Indian populations, that "approximately 25-35 percent of all Indian children [were] separated from their families and placed in foster homes, adoptive homes, or institutions," and the problem was only getting worse. H.R. Rep. No. 95-1386, 95th Cong., 2d Sess. 9 (1978).

recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal . . . interests of both Indians and non-Indians." Ordinance 59 Association v. Babbitt, 163 F.3d 1150, 1155 (1998). Babbitt, like Santa Clara, involved tribal membership and "implicates relations among the various branches of [Indian] tribal government" and resolution of such "internal issues" will "'depend on questions of tribal tradition and custom which tribal courts may be in a better position to evaluate than federal courts.'" 163 F.3d 1150, 1155 (citing Santa Clara Pueblo v. Martinez, 436 U.S. 49, 71.

Any issue as to the constitutionality of the Citizen Act is an internal issue between Cherokee Nation citizens and the Cherokee Nation government. The appropriate forum to bring this claim, therefore, is the Cherokee Nation District Court in Tahlequah, Oklahoma. The United States District Court District of Utah, Central Division was without jurisdiction to determine the constitutionally of the Cherokee Nation Membership Act in relation to the Cherokee Nation Constitution, and this Court is without jurisdiction to review that decision.

**2. Assuming jurisdiction, the Cherokee Nation Citizenship Act does not violate the Cherokee Nation Constitution**

Assuming that the District Court had jurisdiction to determine (and this Court has jurisdiction to review the determination of) whether or not the Cherokee Nation Citizenship Act violated the Cherokee Nation Constitution, the District Court made the correct finding that: "because the Constitution of the Cherokee Nation does not explicitly prohibit the Membership Act, [the District] Court is an improper forum for determining whether the Membership Act violates the [Cherokee Nation] Constitution." (Aplt. App. at 465).

The Ketchums cite several federal court cases that "enforced and deferred to the express language of tribal constitutions." (Aplt. Br. at 35) (emphasis added). However, as the District

Court noted, neither the express language of the Cherokee Nation Constitution nor Cherokee Nation case law prohibits the Citizenship Act. Additionally, a plain reading of the Constitution makes it clear that the only requirement that people must meet in order to be citizens of the Cherokee Nation is that they "must be original enrollees or descendents of original enrollees listed on the Dawes Commission Rolls." Cherokee Nation Constitution, Article IV Section 1. Therefore there is no authority supporting the argument that federal courts can or should go beyond the express terms of tribal constitutions to rule on political internal matters of the tribe. On their face, the Cherokee Nation Constitution and the Cherokee Nation Citizenship Act are wholly consistent.

**D. The automatic membership provision of the Cherokee Nation did not create an unreasonable problem in this adoption case.**

The Ketchums argue that "the Cherokee Nation Citizenship Act would create substantial problems when applied to adoption cases" because adoptive families would be at risk if "a birth mother hides her Cherokee ancestry." (Aplt. Br. at 38). Although a valid argument,[7] that is not the case before this Court. The Ketchums can not espouse the hypothetical case in which a birth mother tries to fraudulently conceal her Indian heritage, because in this case, all parties were well aware of the natural mother's Indian heritage from the beginning.

In the present case, the judge in state court, the Ketchums, and the Ketchums' counsel all had "reason to believe"[8] that C.D.K. was an Indian child. As previously noted, Nielson disclosed her "Indian name:" "Little Dove," Nielson's mother agreed that the family was of "Indian

[7] Cherokee Nation concedes that had the mother fraudulently hid her Cherokee heritage from the court, the analysis would be very different.

[8] The Ketchums argue they had "no reason to believe that Nielson's one day old child could possibly be a member of the Cherokee Nation." (Aplt. Br. at 39) (emphasis added). Based on the record in trial court, it is absurd for the Ketchums to argue that they could not "possibly" know that C.D.K. may be a member of a tribe.

extraction," and Nielson's mother disclosed that she herself was "enrolled" in an Indian tribe. (Aplt. App. at 76-77). The Ketchums may argue that they had "no reason to believe" that C.D.K. was an "Indian child" but the record is clear that the Ketchums (as well as the state court) were put on notice that an "Indian child" may be the subject of the adoption. Instead of inquiring, on the record, whether C.D.K. was a member of a tribe, or contacting the Cherokee Nation to determine C.D.K.'s membership status, the Ketchums chose to ignore the probability that C.D.K. was an Indian child. Had the Ketchum's simply contacted the tribe, they would have been informed that C.D.K. was indeed a citizen of Cherokee Nation,[9] they then could have waited nine more days to proceed with the voluntarily termination of Nielson's parental rights, and this case would not be before this Court today.

It is unfair for the Ketchums to claim they had "no reason to know" that C.D.K. was an "Indian child" when the record clearly indicates otherwise, the Ketchums should not be allowed to claim lack of knowledge because they chose to stick their head in the sand once they were put on notice that C.D.K. may be an "Indian child."

Finally, the Ketchums argue that it is "blatantly unfair" and "contrary to the ICWA" to allow the "disruption of C.D.K.'s adoption" based on an "obscure rule" that is meant to "interfere with a non-member mother's decision to place her child for adoption." (Aplt. Br. at 39). Again, the Ketchums argument that the Cherokee Nation Citizenship Act is obscure, unfair and in contravention to the ICWA reiterates why ICWA was passed in the first place and why Indian tribes needed the help of Congress to protect their children. Congress specifically reasoned in passing the ICWA that "there is no resource that is more vital to the continued existence and Integrity of Indian tribes than their children" 25 U.S.C. § 1901(2) and for the

[9] Had the Ketchum's contacted Cherokee Nation on November 6, 2007 they would have promptly received the letter then that they later received via their attorney stating that C.D.K. was an "Indian child." See Membership Determination Letter (Aplt. App. at 372).

Ketchums to argue that a Cherokee Nation law intended to protect that vital resource is contrary to ICWA is preposterous.

## V. CONCLUSION

The District Court below made the correct decision in determining that C.D.K. was an "Indian Child" pursuant to §1903(4)(a) of the ICWA because he was an unmarried person "under the age eighteen" and was "a member of an Indian tribe" by operation of Cherokee Nation's Citizenship Act. Therefore, the state court was required to follow the ICWA in the child custody proceeding involving C.D.K. Because the ICWA requires that consent to terminate parental rights can not be given within ten days of the birth of the child and Nielson gave consent less than forty-eight hours after the birth of C.D.K., her consent is invalid under the ICWA For those reasons, the District Court ruled Nielson's consent invalid and this Court should uphold that decision.

Respectfully submitted this 7th day of January, 2010.

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## ORAL ARGUMENT STATEMENT

The Cherokee Nation respectfully submits that this Court should simply affirm the trial court's decision granting partial summary judgment based on the briefs in this matter. Of course, Cherokee Nation stands ready to present oral argument if the Court would find it helpful to the resolution of this matter.

Respectfully submitted this 7th day of January, 2010.

/s/ Chrissi R. Nimmo
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**CERTIFICATE OF COMPLIANCE**

This Corrected Brief contains 4,130 words, inclusive of headings and footnotes, and exclusive of any attachments. It complies with the limitation set forth in Fed. R. App. P. Rule 32(7)(B).

Respectfully submitted this 7th day of January, 2010.

/s/ Chrissi R. Nimmo
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**CERTIFICATE OF DIGITAL SUBMISSION**

I hereby certify that:

(1) There are no privacy redactions made to this Corrected Brief;

(2) The hard copy and electronic copy of this Corrected Brief are identical; and

(3) The electronic copy of this Corrected Brief has been checked for viruses using McAfee VirusScan Enterprise 8.5i, and is free of viruses according to that program.

Respectfully submitted this 7th day of January, 2010.

/s/ Chrissi R. Nimmo
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**CERTIFICATE OF SERVICE**

I, Chrissi R. Nimmo, hereby certify that on the 7th day of January, 2010, I caused the foregoing Appellee's Corrected Brief and Response to be filed with the United States Court of Appeals for the Tenth Circuit via the ECF system, with seven (7) hard copies filed with the Clerk by Federal Express. On the same date, I served the foregoing Appellee's Corrected Brief and Response via the ECF system upon the following:

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