

1 S. Barry Paisner  
2 Arizona Bar No. 009793  
3 Hinkle Shanor LLP  
4 218 Montezuma Avenue  
5 Santa Fe, New Mexico 87501  
6 (505) 982-4554  
7 E-mail: [bpaisner@hinklelawfirm.com](mailto:bpaisner@hinklelawfirm.com)

8 Jeremiah Todd Oster  
9 Arizona Bar No. 027369  
10 Navajo-Hopi Legal Services Program  
11 Post Office Box 2990  
12 Tuba City, Arizona 86045  
13 (928) 283-3300  
14 E-mail: [joster@nndoj.org](mailto:joster@nndoj.org)

15 *Attorneys for Plaintiff*

16 UNITED STATES DISTRICT COURT  
17 DISTRICT OF ARIZONA

18 Rosita George  
19 Plaintiff,

20 vs.

21 OFFICE OF NAVAJO HOPI INDIAN  
22 RELOCATION, AN ADMINISTRATIVE  
23 AGENCY OF THE UNITED STATES,  
24 Defendant.

25 **COMPLAINT FOR JUDICIAL  
26 REVIEW**

27 Rosita George, Plaintiff, brings this action because the Defendant has wrongfully  
28 denied her application for relocation assistance benefits in violation of the law.

**INTRODUCTION**

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2 1. In 1962, this Court determined that the Navajo Nation and Hopi Indian Tribe  
3 held joint interests in a large area of land in northern Arizona long occupied by members  
4 of both tribes, known as the Joint Use Area (“JUA”). *Healing v. Jones*, 210 F. Supp. 125,  
5 192 (D. Ariz. 1962).  
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7  
8 2. Twelve years later, Congress enacted the Navajo-Hopi Land Settlement Act  
9 (“Settlement Act”), Pub. L. No. 93-531, § 12, December 22, 1974, 88 Stat. 1716, which  
10 authorized partition of the JUA between the tribes into Hopi Partition Land (HPL) and  
11 Navajo Partition Land (NPL), ordered tribe members who lived on the partitioned land of  
12 the other tribe to relocate to the land partitioned to their own tribe, and created a generous  
13 benefit program to compensate the thousands of primarily Navajo people who would be  
14 forced to abandon their homes on lands partitioned to the other tribe.  
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17 3. The Settlement Act is to be implemented to “insure that persons displaced as  
18 a result of the Act are treated fairly, consistently, and equitably so that these persons will  
19 not suffer the disproportionate adverse, social, economic, cultural and other impacts of  
20 relocation.” 25 C.F.R. § 700.1(a).  
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23 4. To manage this unprecedented forced relocation of American citizens, the  
24 Settlement Act created an agency now known as the Office of Navajo and Hopi Indian  
25 Relocation (ONHIR), and gave it five years from the date of the submission of its  
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1 “relocation plan” to complete the relocation of affected Navajo and Hopi tribal members.  
2 Pub. L. No. 93-531, 88 Stat. 1718 § 14 (a), 88 Stat. 1718.

3  
4 5. Seven years after the passage of the Settlement Act, in 1981, ONHIR finally  
5 issued its relocation plan. Pursuant to the terms of the Settlement Act, ONHIR was  
6 mandated to complete the relocation by the end of 1986.

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8 6. On July 7, 1986, ONHIR closed the application process for relocation  
9 benefits.

10  
11 7. Approximately 19 years later, in 2005, ONHIR began a new round of benefit  
12 applications for certain individuals who had previously contacted ONHIR to apply for  
13 benefits.  
14

15 8. Today, more than forty years after the passage of the Settlement Act and  
16 thirty-one years after Congress mandated relocation be completed, ONHIR still has not  
17 provided relocation benefits to all of the eligible Navajo relocatees, including the Plaintiff,  
18 Ms. George.  
19

20 9. To be eligible for relocation assistance and benefits, an individual Navajo  
21 must have lived on the HPL, relocated from the HPL after the passage of the Settlement  
22 Act, and been a head of household at the time of relocation. *See* Settlement Act, Pub.L.  
23 No. 93-531, §15 (g) Dec. 22 1974, 88 Stat 1719, formerly codified at 25 U.S.C. 640d-14  
24 (c).  
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27 10. Rosita George meets all the eligibility requirements.  
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1            11.    ONHIR’s denial of relocation benefits to Ms. George was arbitrary and  
2 capricious, not supported by substantial evidence, and unlawful.

3    **JURISDICTION AND VENUE**

4            12.    This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 5  
6 U.S.C. § 701 *et seq.*, and the Settlement Act, Pub. L. No. 93-531, § 12, December 22, 1974,  
7 88 Stat. 1716.

8  
9            13.    Ms. George has exhausted her administrative remedies.

10            14.    Venue is proper in this District pursuant to Pub. L. No. 93–531, §15(g), Dec.  
11 22, 1974, 88 Stat. 1719, as amended by Pub. L. 100-666, §10, July 8, 1980, 102 Stat. 3929  
12 November 16, 1988, *formerly codified as* 25 U.S.C. 640d-14(g), which requires appeals of  
13 ONHIR eligibility determinations to be brought in this Court.

14    **PARTIES**

15            15.    Ms. George is an enrolled member of the Navajo Nation who was relocated  
16 from her home on the HPL due to the Settlement Act, Pub. L. No. 93-531, §12, December  
17 22, 1974, 88 Stat. 1716.  
18

19            16.    Defendant ONHIR is an independent federal agency created by Congress  
20 pursuant to the Settlement Act, Pub. L. No. 93-531, §12, December 22, 1974, 88 Stat. 1716,  
21 as amended by Pub. L. No. 100-666, § 4(a), November 16, 1988, 102 Stat. 3929, 3934, to  
22 carry out the relocation of members of the Navajo and Hopi Tribes who resided on land  
23 partitioned to the other tribe and to provide relocation assistance benefits for households  
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1 required to relocate. ONHIR has a fiduciary obligation to administer its program in a fair  
2 manner to assure that Navajo relocatees receive the full benefits they are entitled to receive.

3  
4 **LEGAL RESIDENCY HISTORY**

5 17. Ms. George was born in 1965 and raised in Red Lake Chapter, Arizona,  
6 where her parents lived.

7 18. Ms. George's ancestral home of Red Lake Chapter was eventually decreed  
8 to be on the HPL.

9  
10 19. At no point did Ms. George voluntarily abandon her ancestral home.

11 **REQUEST FOR RELOCATION BENEFITS AND ONHIR'S DENIALS**

12 20. Ms. George's mother and father were certified for relocation assistance  
13 benefits in 1981, arising out of their legal residence at Red Lake Chapter, Arizona (HPL).  
14 Ms. George's parents relocated from the HPL in 1988.

15  
16 21. On February 27, 2008, this Court determined that ONHIR had breached its  
17 fiduciary duty to all Navajo and Hopi individuals subject to relocation by failing to inform  
18 them of their potential eligibility for relocation benefits prior to the July 7, 1986 application  
19 deadline. *Noller Pete Herbert v. ONHIR*, CV-06-3014-PCT-NVW ONHIR (D. Ariz.  
20 2008). In response, ONHIR issued its Policy 14, which reinstated the eligibility  
21 requirements that were in place for individuals who submitted applications for relocation  
22 benefits on or before July 7, 1986. Ms. George is one of those individuals.  
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1           22.    On January 13, 2009, ONHIR accepted Ms. George’s application for  
2 relocation assistance benefits, which was subject to the eligibility requirements set out in  
3 Policy 14.

4           23.    On October 21, 2009, ONHIR denied Ms. George’s application for relocation  
5 benefits by finding that she had not achieved head of household status by July 7, 1986.

7                                       **ADMINISTRATIVE APPEALS**

8           24.    On November 4, 2009, Ms. George appealed the denial of her request for  
9 benefits.  
10

11           25.    On August 23, 2013, over four years after Ms. George applied for relocation  
12 assistance benefits, ONHIR finally held an administrative hearing on Ms. George’s appeal  
13 before an Independent Hearing Officer (“IHO”).  
14

15           26.    At the hearing Ms. George established the following:  
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- 17               a) She was born and raised in Red Lake Chapter, Arizona, an area later  
18               designated as the HPL.
- 19               b) After graduating from high school, she temporarily left the HPL to seek  
20               employment in Flagstaff, Arizona.
- 21               c) Beginning in 1985, Ms. George no longer relied on her parents to provide  
22               or pay for basic necessities.
- 23               d) From 1985 until June 1986, Ms. George sold Kachina dolls and lamps for  
24               an extended family member and was paid approximately 200 to 300 dollars  
25               in cash every two weeks.
- 26
- 27
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1 e) Ms. George also worked for various other companies and earned \$3,371  
2 in documented income in 1986.

3 27. Ms. George is eligible for relocation benefits under the Act, ONHIR  
4 regulations, and Policy 14 because she resided on the HPL before December 22, 1973; did  
5 not abandon her residence on the HPL prior to the passage of the Settlement Act; continued  
6 to reside on the HPL when she became a head of household; became a head of household  
7 prior to or by July 7, 1986; did not reject relocation benefits; has not already received  
8 relocation benefits; did not relocate with a different head of household; and did not sign an  
9 Accommodation Agreement with the Hopi Tribe allowing her to remain temporarily on  
10 HPL pursuant to the Navajo-Hopi Land Dispute Settlement Act of 1996, Pub. L. 104-301,  
11 § 2, October 11, 1996, 110 Stat. 3649.  
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15 28. The IHO in his Findings of Fact, Conclusions of Law and Decision found  
16 that the testimony of Ms. George and her aunt, Cecilia Sands, was not credible regarding  
17 Ms. George's employment selling Kachina dolls and lamps in 1985 and 1986 because Ms.  
18 George was unable to provide documentation of her cash payments and Ms. George and  
19 Ms. Sands' "recollection of events more than 28 years ago, without any corroboration, is  
20 unreliable."  
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23 29. The IHO found that the testimony of Ms. George's mother, Emilia George,  
24 was credible regarding Plaintiff's legal residency on the HPL.  
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1           30.    The IHO discounted all of Ms. George’s stated income from selling Kachina  
2 dolls and lamps and concluded that Ms. George’s other documented income did not meet  
3 the threshold to qualify her as a head of household by July 7, 1986.  
4

5           31.    The IHO’s decision is erroneous in finding that Ms. George was not a self-  
6 supporting head of household under ONHIR’s eligibility requirements.  
7

8           32.    ONHIR issued a Final Agency Action on December 5, 2013, upholding its  
9 denial of Ms. George’s eligibility for relocation assistance benefits.  
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11   **COUNT I**

12           33.    The forgoing allegations are incorporated by reference as if fully set forth  
13 herein.  
14

15           34.    ONHIR’s final decisions regarding eligibility determinations are subject to  
16 judicial review under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706.  
17

18           35.    This Court may set aside an agency decision that is “unsupported by  
19 substantial evidence” or “arbitrary, capricious, an abuse of discretion, or otherwise not in  
20 accordance with law[.]” 5 U.S.C. § 706(2)(A), (E).  
21

22           36.    ONHIR’s denial of Ms. George’s eligibility for relocation benefits adversely  
23 affects her and is arbitrary and capricious, not supported by substantial evidence, and is  
24 contrary to law.  
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**COUNT II**

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2 37. The forgoing allegations are incorporated by reference as if fully set forth  
3 herein.

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5 38. ONHIR owes a fiduciary obligation to all members of the Navajo Nation  
6 who were required to relocate from the HPL pursuant to the court-ordered partition and the  
7 Settlement Act.

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9 39. The APA permits judicial review on behalf of a person who ONHIR owes a  
10 fiduciary obligation.

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12 40. The APA permits judicial review on behalf of any person who seeks  
13 nonmonetary relief and has suffered a legal wrong because of action or inaction by a federal  
14 agency, or an officer or employee of an agency.

15  
16 41. This Court is granted authority by the APA to find an agency's inaction and  
17 delay to be unlawful. The APA further directs courts to overturn agency action that violates  
18 the Constitution, exceeds statutory authority or jurisdiction, fails to observe a procedure  
19 that is required by law, is unsupported by substantial evidence, or is unwarranted by the  
20 facts.

21  
22 42. Ms. George became eligible for relocation assistance benefits in 1986.  
23 ONHIR knew or should have known that Ms. George was a member of the class of  
24 relocatees that ONHIR was obligated to assist pursuant to the Settlement Act when it  
25 certified her mother and father for benefits.  
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1 43. In 2009, ONHIR finally accepted Ms. George's application for relocation  
2 assistance benefits and did not provide her a hearing until 2013. Final agency action was  
3 delayed until December 2013.

4 44. ONHIR delayed action regarding Ms. George's entitlement for relocation  
5 assistance benefits for approximately 27 years.

6 45. ONHIR has used the delay it caused to the detriment of Ms. George. ONHIR  
7 has put the burden of proof on Ms. George regarding lost evidence, including Ms. George  
8 and her witnesses' difficulty remembering details about specific events that occurred  
9 decades earlier, which are key evidentiary issues for her claim to relocation assistance  
10 benefits.  
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13 46. These actions and inactions by ONHIR are a violation of the APA and a  
14 breach of ONHIR's trust obligation to Ms. George.  
15

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Rosita George respectfully request that this Court:  
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19 A. Enter judgment reversing ONHIR's denial of Ms. George's eligibility for  
20 relocation benefits and ordering ONHIR to find Ms. George eligible for  
21 relocation benefits;  
22

23 B. Award Plaintiffs' costs and reasonable attorney's fees pursuant to 28 U.S.C. §  
24 2412; and  
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26 C. Award Plaintiff such other relief as the Court deems just and proper.  
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28 Respectfully submitted this 19th day of September, 2017.

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s/ S. Barry Paisner  
Hinkle Shanor LLP  
218 Montezuma Avenue  
Santa Fe, New Mexico 87501  
*Attorney for Plaintiff*