

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

AARIN NYGAARD, and  
TERRANCE STANLEY,

Petitioners,

vs.

TRICIA TAYLOR; TED TAYLOR, JR.;  
JESSICA DUCHENEAUX; ED  
DUCHENEAUX; CHEYENNE RIVER  
SIOUX TRIBAL COURT; BRENDA  
CLAYMORE, in her official capacity as  
Chief Judge, Cheyenne River Sioux Tribal  
Court of Appeals; FRANK  
POMMERSHEIM, in his official capacity as  
Chief Justice; THE SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES;  
TODD WALDO, in his official capacity as  
Social Worker; and JENNY FARLEE, in her  
official capacity as Social Worker;

Respondents.

3:19-cv-03016-RAL

**REPLY OF DEFENDANTS SOUTH  
DAKOTA DEPARTMENT OF SOCIAL  
SERVICES, TODD WALDOW, AND  
JENNY FARLEE TO PETITIONERS'  
RESPONSE TO RULE 12(b) MOTION  
TO DISMISS**

This Reply is filed by Defendants Department of Social Services (DSS), Todd Waldow (Waldow), and Jenny Farlee (Farlee) in regard to Petitioners' Response to these Defendants' prior Rule 12(b) Motion to Dismiss.

Initially, DSS, Waldow, and Farlee have no objection if the Court holds this pending motion in abeyance until a decision on the merits on the Petition is reached. That may avoid further involvement by the Court as it relates to these Defendants. It is logical that a resolution

of the Petition on its merits as the Petition relates to certain other of these Defendants may render this pending Motion moot.

That being said, the remedy sought by Petitioners against these moving Defendants and the jurisdiction of this Court is solely dependent on the habeas corpus statute upon which the action is founded, 25 U.S.C. § 1303 – i.e., the only order that could be conceivably entered by this Court affecting these moving Defendants would be an order requiring them to produce custody or “the body” of the children. The present legal and physical custodians of the children do not hold legal or physical custody due to any act by these Defendants or any order entered by these Defendants.

Although these Defendants were not involved, it appears the present physical and legal custodians of the children hold custody pursuant to a tribal court order. As noted in several prior pleadings, these Defendants did not participate in the order that led to the physical or legal custody being awarded to the present custodians.

Jurisdiction of this Court and the ability to grant some remedy is, at present, limited to the habeas corpus provision contained in the Indian Civil Rights Act 25 U.S.C. § 1303. Absent that, there would likely be both abstention and jurisdictional arguments to be made by these Defendants. If a remedy exists, it must be a remedy based on the habeas corpus provisions of that statute.

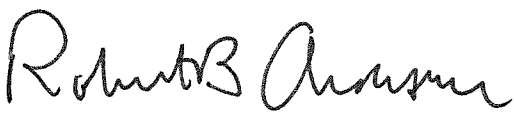
It is unlikely that any effective order could be entered by this Court against the two individual named Defendants who are no longer employees of the Department of Social Services. Also, these moving Defendants submit that it is unlikely that the Department of Social

Services could do something – i.e., produce the children – when it has no present power or ability to do so.

For all these reasons, holding this Motion in abeyance at the present time may be the best course.

Dated this 2<sup>d</sup> day of February, 2022.

MAY, ADAM, GERDES & THOMPSON LLP

BY:   
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### CERTIFICATE OF SERVICE

Robert B. Anderson, of May, Adam, Gerdes & Thompson LLP, hereby certifies that on this 2 day of February, 2022, he electronically filed and served the foregoing through the CM/ECF file and serve system which will automatically send email notification of such filing to the following counsel of record, to-wit:

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