UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Amber Brooks, *et al.*,	*	
Plaintiffs	*	
v.	*	Civil Action No. 6:22-cv-00033-NKM
Kenneth Branham, *et al.*,	*	
Defendants	*	

* * * * * * * * * * * * *

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT

The Court lacks subject matter jurisdiction and must dismiss the Amended Complaint under Fed. R. Civ. P. 12(b)(1). The real party in interest Defendant is the federally-recognized Monacan Indian Nation ("Nation" or "Tribe") of which the Defendants are officials, as affirmed by the United States Government through the Bureau of Indian Affairs. The acts of which Plaintiffs complain are acts of a Tribal government and the relief Plaintiffs seek may only be granted by the Tribal government. The Tribe's administration of its powers of internal governance, including determining who is an enrolled Tribal citizen in good standing and thus eligible for benefits flowing therefrom, is the very heart of its expression of sovereign authority. Accordingly, the suit presents no federal question and sovereign immunity plainly bars the Court from jurisdiction.

The Court should also dismiss the Amended Complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiffs fail to assert any facts above a speculative level, request relief under a statute for which there is no private right of action, and request relief for which a remedy is available elsewhere.

I. Plaintiffs Misstate the Legal Standard for Review for Subject Matter Jurisdiction.

a. Legal Standard for Review Under Fed R. Civ. P. 12(b)(1).

As a threshold matter, Plaintiffs misstate the legal standards for interpretation of facts under Rule 12(b)(1). They incorrectly assert that "the Court may only accept the allegations of the complaint as true" when determining jurisdiction. Pl. Resp. at 12. "In ruling on a Rule 12(b)(1) motion, the court may consider exhibits outside the pleadings" and "is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Williams v. United States*, 50 F.3d 299, 304 (4th Cir. 1995) (internal citations omitted). Plaintiffs repeatedly err, therefore, in insisting that the Court blindly accept their allegations as truth when determining sovereign immunity or federal question jurisdiction, which fall under Fed. R. Civ. P. 12(b)(1). *See, e.g.,* Pl. Resp. at 12.

Indeed, when determining whether a person is acting in their official capacity in the context of sovereign immunity, the Supreme Court has found that "courts may not simply rely on the characterization of the parties in the complaint, but rather *must* determine in the first instance whether the remedy sought is truly against the sovereign." *Lewis v. Clarke*, 137 S. Ct. 1285, 1290 (2017) (citing *Hafer* v. *Melo*, 502 U.S. 21, 25 (1991)) (emphasis added). Federal courts have also held that "a plaintiff cannot circumvent tribal immunity by the simple expedient of naming an officer of the Tribe as a defendant, rather than the sovereign entity." *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718 (9th Cir. 2008) (quoting *Snow v. Quinalt Indian Nation*, 709 F.2d 1319, 1322 (9th Cir. 1983)). Plaintiffs' contention that the Court must treat the Complaint's allegations as true when determining whether Defendants are acting in their official capacities is directly contrary to this established caselaw.[1]

[1] Furthermore, as explained below, the relief Plaintiffs request here could *only* be provided by officials of the Nation acting in their official capacities.

Defendants note that any additional facts or exhibits provided in the Memorandum Supporting the Motion to Dismiss the Amended Complaint were accompanied by clear disclaimer that they were put forth only for consideration of Defendants' jurisdictional challenges to Plaintiffs' complaint.

In addition, Plaintiffs must overcome the presumption that subject matter jurisdiction does not exist to meet their burden to establish subject matter jurisdiction, something they have failed to do. *Kokkonen v. Guardian Life Ins. Co. of Am*., 511 U.S. 375, 377 (1994) (citing *Willy* v. *Coastal Corp.*, 503 U.S. 131, 136–37 (1992); *Bender* v. *Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986); *Turner* v. *Bank of North America*, 4 U.S. 8 (1799)). In cases where sovereign immunity is at issue, this burden includes showing proof of waiver. *Williams v. United States*, 50 F.3d 299, 304 (4th Cir. 1995). Therefore, in deciding a Rule 12(b)(1) motion, the Court is not required to draw inferences in favor of the Plaintiffs, and in fact must place the burden on the Plaintiffs to show that subject matter jurisdiction exists.

Finally, Defendants have not conceded any facts in the Amended Complaint at this stage and have put forth only those additional facts necessary to demonstrate that the Nation is the true party in interest and is immune from suit. Plaintiffs' repeated assertions that Defendants do not dispute certain facts is inaccurate, as Defendants dispute jurisdictional facts, and any other facts need not be disputed at this stage to warrant the dismissal of the Amended Complaint.

b. Legal Standard for Review Under Fed. R. Civ. P. 12(b)(6).

When reviewing a motion to dismiss under Rule 12(b)(6), courts must treat the non-moving party's allegations as true, but such a presumption cannot overcome a plaintiff's failure to provide sufficient factual information. *Robinson v. Am. Honda Motor Co.,* 551 F.3d 218, 222 (4th Cir. 2009); *see, e.g., Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985) ("[caselaw]

does not require [the] courts to conjure up questions never squarely presented to them. District judges are not mind readers") (discussing the doctrine's limitations even in light of the lowered standard for pleadings from *pro se* litigants); *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989) (a court does "not have to guess at the nature of the claim asserted"). Furthermore, the Court "need not accept as true 'legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement, . . . unwarranted inferences, unreasonable conclusions, or arguments.'" *Richardson v. Shapiro & Brown, LLP*, 751 Fed. Appx. 346, 348 (4th Cir. 2018). Therefore, although the Court must make inferences in favor of the Plaintiffs in considering challenges under Rule 12(b)(6), it is not required to accept Plaintiffs' legal conclusions or their "bare assertions devoid of further factual enhancement." Finally, Defendants do not ask the Court to consider any facts outside the pleadings for the purposes of considering Defendants' motion to dismiss under Rule 12(b)(6).

II. The Complaint Should be Dismissed Because Sovereign Immunity Bars this Action.

The Court must dismiss the Amended Complaint because Defendants are effectively being sued in their official capacities, and sovereign immunity bars the suit. As discussed in detail in Defendants' Motion to Dismiss, the Nation is a federally recognized Tribal Nation, and courts have long recognized the sovereign immunity of federally recognized tribes. Sovereign immunity, which can only be overcome by express authorization by Congress, bars Plaintiffs' claims here.

First, as the parties' respective filings now make clear, Plaintiffs claims are barred because they are suing because they disagree with the decisions of the legitimate Tribal government, which decisions are protected by sovereign immunity. Plaintiffs are purporting to be the government of the Monacan Indian Nation, but can point to no federal, state, or local agency that treats Plaintiffs

as the legitimate Tribal government. They point to no Tribal programs that they administer, no official Tribal citizenship rolls that they maintain, no Tribal budgets that they manage, and no Tribal facilities that they occupy. Instead, Plaintiffs insist that the Court ignore the clear facts before it establishing that Defendants are officials of the Tribe's legitimate government, recognized as such by the United States through the Bureau of Indian Affairs, and treated as such by every other federal, state, and local agency with which the Nation has relations. Plaintiffs also ask the Court to ignore their own Amended Complaint, which references these officials receiving and administering extensive Tribal programming, maintaining the Tribal rolls, managing Tribal budgets, administering Tribal policy, and occupying Tribal facilities. Defendants discuss these facts not as an improper invitation for the Court to weigh in on intra-tribal disputes over the Tribe's governance, but because these facts, uncontested in Plaintiff's filings, demonstrate the appropriateness of the application of the doctrine of tribal sovereign immunity.

Second, Plaintiffs' assertion that the Amended Complaint does not name the Monacan Indian Nation as a party is immaterial for determining whether Defendants are, in fact, being sued in their official capacities. The Court may not simply rely on the characterizations within the Amended Complaint to determine whether sovereign immunity applies. *See Section I.a., supra.* Plaintiffs simply assert, repeatedly but without any factual or legal support, that the Defendants are not tribal officials. Such assertions are not sufficient to overcome sovereign immunity.

Third, as a matter of simple logic, the allegations in the Complaint and the requested relief could only be brought against tribal officials. When the federal government issues funds to tribal governments, within the broad contours of the specific funds and their corresponding regulations or rules, Tribal governments exercise sovereign authority to determine the exact manner, amount, and citizens' eligibility for such services. For example, when the federal government issued

funding to federally-recognized Tribal Nations to combat COVID, it did so by transferring the funds to the Tribal government with the understanding that, so long as the funds were used for pandemic relief, the Tribal government may use its discretion in determining expenditures. *See, e.g.,* 87 Fed. Reg. 4339 (Jan. 27, 2022) ("The interim final rule provided state, local, and Tribal governments substantial flexibility to determine how best to use payments from the SLFRF program[2] to meet the needs of their communities . . . The final rule provides [even] broader flexibility").

Here, the Tribal government made numerous decisions, based on its own policies and priorities, to expend various funds including, for example, to buy vehicles used to support distribution of emergency supplies. The Complaint repeatedly details Plaintiff's disagreement with decisions by Tribal government officials, and it is therefore clear that the Tribal government is the real party in interest here. Indeed, Plaintiffs' portrayal of Defendants as interfering with the delivery of "federal benefits" in their individual capacities is procedurally impossible and, if taken as true, would lead the Court to limit the Tribe's sovereign immunity under false pretenses and when Congress has not expressly authorized this action. Therefore, Defendants are being sued in their official capacities as tribal officials, and sovereign immunity applies.

Fourth, Plaintiffs improperly invite the Court to interpret the Tribe's internal governing documents to validate Plaintiffs' claim that Defendants are not Tribal officials. For the Court to do so would be contrary to law, as the Tribe is a sovereign and its governing documents are tribal laws over which federal courts do not have jurisdiction. Where the claim before the court involves interpretation of a Tribe's internal laws, policies, and governance procedures, federal courts have consistently found that they do not have jurisdiction to decide such a case. *Crowe v. Eastern Band*

[2] The Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program is the fund set aside by the U.S. Department of Treasury for State, Local, and Tribal governments as per the American Rescue Plan.

of Cherokee Indians, Inc., 506 F.2d 1231, 1233 (4th Cir. 1974) (stating it is "well established that a federal court has no jurisdiction over an intra-tribal controversy."). This maxim is particularly enforced where the controversy involves tribal governance and eligibility for membership. *See, e.g., Prairie Band of Pottawatomie Tribe of Indians v. Puckkee*, 321 F.2d 767, 770 (10th Cir. 1963) (finding that the court had no jurisdiction where the dispute arose out of a disagreement over tribal membership and entitlement to Tribal programs that involve Congressionally appropriated funds).

Fifth and finally, despite Plaintiffs' contention that they request injunctive relief, they are actually requesting retroactive payment of monies, which is equivalent to monetary damages, a remedy at law, and therefore no exception to the application of sovereign immunity exists here. Plaintiffs' characterization of its requested remedies does not limit this Court, which may determine that a complaint is in fact requesting legal, rather than injunctive, relief, even if the complaint states otherwise. *See, e.g., Rego v. Westvaco Corp.,* 319 F.3d 140, 145 (4th Cir. 2003) (finding that despite the complaint's plain language, a plaintiff was in fact seeking remedies at law in a case alleging withheld benefits). Plaintiffs' focus on their purported losses shows this is not a case of alleged unjust enrichment requiring restitution. *See* Rendleman, Measurement of Restitution: Coordinating Restitution with Compensatory Damages and Punitive Damages, 68 WASH. & LEE L. REV. 973, 980 (2011) ("The principal distinction between compensatory damages and restitution is that compensatory damages respond to the plaintiff's loss, restitution to the defendant's gain"). Plaintiffs, in their Amended Complaint and Response, ask the Court to enjoin Defendants from allegedly interfering with Plaintiffs' receipt of Tribal monies, which is in reality a request for damages, a legal remedy. Moreover, even were the Court to require Defendants to pay Tribal funds to Plaintiffs, Defendants could only comply by acting in their official capacities. Plaintiffs attempt—irresponsibly—to conceal their true aim to undermine the principle of

sovereign immunity to receive monetary payment. For these reasons, the Defendants are being sued in their official capacities, and the Plaintiffs are truly requesting a legal remedy, and so the suit is barred by sovereign immunity.

III. The Complaint Should be Dismissed Because Plaintiffs Fail to Establish Federal Jurisdiction.

a. The Court does not have subject matter jurisdiction because Plaintiffs fail to state a federal question.

Even if sovereign immunity did not require dismissal, Plaintiffs fail to raise a federal question in either the Amended Complaint or in their Response to the Motion to Dismiss. In their Response, Plaintiffs correctly state that district courts exercise original jurisdiction over cases involving "actions arising under the Constitution, laws, or treaties of the United States" pursuant to 28 U.S.C. § 1331. Pl. Resp. at 3. They completely fail, however, to present a federal question or issue arising under any of the federal laws to which they cite, including, for instance, the Thomasina Jordan Act, Public Law 115-121 Section 503 (b) (2). Pl. Resp. at 5-6.

The Fourth Circuit has held "that federal jurisdiction exists when a plaintiff has 'a substantial claim founded "directly" upon federal law.'" *Verizon Md., Inc.* v. Glob. NAPS, Inc., 377 F.3d 355, 362 (4th Cir. 2004) (quoting Paul J. Mishkin, *The Federal 'Question' in the District Courts*, 53 Colum. L. Rev. 157, 165 (1953)). In addition, according to the well-pleaded complaint doctrine, the federal question must be presented on the face of the complaint. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Vague references to federal funds or references to a federal law absent a clear controversy arising under federal law do not sufficiently establish a claim founded on federal law. *See Verizon Md., Inc.* 377 F.3d at 362.

First, Plaintiffs' imprecise assertions that Defendants violated federal laws are truly allegations regarding disagreements over Tribal government decisions and policies regarding administration of Tribal services and benefits, and therefore arise under tribal, not federal law. It is "well established that a federal court has no jurisdiction over an intra-tribal controversy." *Crowe,* 506 F.2d at 1233*,* citing *Pinnow v. Shoshone Tribal Council*, 314 F. Supp. 1157, *aff'd*, 453 F.2d 278 (10th Cir. 1971); *Motah v. United States*, 402 F.2d 1 (10th Cir. 1968). Moreover, where a dispute arises out of disagreement with tribal governance decisions regarding distribution of monies from programs supported by federal funds, there is no federal question because the dispute arises out of intra-tribal controversy. *See, e.g., Prairie Band of Pottawatomie Tribe of Indians*, 321 F.2d at 770 (finding that the court had no jurisdiction where the dispute arose out of a disagreement over tribal membership and entitlement to Tribal programs which leveraged Congressionally appropriated funds). Because Plaintiffs' claims are based on intra-tribal disputes about Tribal laws and policies, including the disbursement of Congressionally appropriated funds, rather than on any violations of federal law, federal jurisdiction does not exist. *Mulcahey v. Columbia Organic Chemicals Co., Inc.,* 29 F.3d 148, 153 (4th Cir. 1994).

Second, Plaintiffs' claims have no basis in the federal laws they cite. Although Plaintiffs repeatedly allege that Defendants have interfered with the delivery of "federal funds," they fail to allege any facts that would provide the basis for the Court to determine whether federal jurisdiction exists. For example, Defendants decline to state specifically what benefits Plaintiffs actually applied for, when, and to whom, which specific rules, regulations, or provisions in the federal laws cited entitles them to direct payments (and whether from the federal government or the Tribe), or when and how Plaintiffs were denied those benefits. Plaintiffs invoke the Native American Housing and Assistance Act of 1996, the Indian Health Service through the Snyder Act of 1921,

Title V of the Coronavirus Aid, Relief, and Economic Security Act, and the American Rescue Plan Act of 2021 as "sources of the benefits" they allege they have been denied. Pl. Resp. at 6. Beyond simply naming federal statues, however, Plaintiffs provide Defendants and the Court none of the details from which either could identify a federal case or controversy. In effect, Plaintiffs have done no more than state the existence of a federal law and then summarily declare their entitlement under that law. They have asserted no facts showing any required payment under such laws. They did not so assert because they cannot. The laws they cite contains no such mandates or particular directives. Rather, Plaintiffs entreat the Court to substitute its judgment for the governance discretion ceded by the federal government to tribal governments as part of its long-established Trust relationship. The Amended Complaint should therefore be dismissed, because Plaintiffs fail to properly assert a federal question.

Third, Plaintiffs also repeat their allegations that this matter is properly before the Court under federal question jurisdiction because of alleged violations of the Thomasina Jordan Act, but in doing so display a fundamental lack of understanding of the letter and purposes of the Act and the principles of tribal sovereignty it reinforces. The purpose of the Act, plain on its face, was to formally provide federal recognition to six Tribal nations headquartered in Virginia. One provision provides that the federal government will not deny to these six Tribes federal benefits otherwise available to Tribes that have reservation lands. Plaintiffs attempt to contort this basic provision to somehow establish a private right of action by individuals against the named Tribal governments for claims to specific Tribal benefits flowing from programs that make use of federal funds, which right of action, programs, and funds are found nowhere in the Act.

Plaintiffs provide the Court an abridged quotation from the Act to the effect that tribal members "shall receive 'services and benefits provided by the Federal Government to Federally

recognized tribes.'" Pl. Resp. at 7. However, the full sentence reads, "the Tribe and tribal members shall be eligible for all services and benefits provided by the Federal Government to federally recognized Indian tribes *without regard to the existence of a reservation for the Tribe*." Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017 (hereinafter, "Thomasina Jordan Act"), Pub. L. No. 115-121, § 503, 132 Stat. 40 (2018) (emphasis added). Section 503 is titled "Federal Recognition," making it clear that the purpose of this section is to establish federal recognition of the six Tribes. *Id.* In short, "eligibility" as discussed in the Act derives from the federal recognition of the Tribe. Substantive benefits, such as federal support for Tribal housing and healthcare programs that the Tribe or its members receive by virtue of the Nation's federal recognition, are awarded and administered according to the procedures for each individual benefit, and not because of or through the Thomasina Jordan Act.

Because none of Plaintiffs' claims are particular or substantial enough to show a claim founded substantially and directly on federal law, and the claims are founded instead on disputes about the Tribe's implementation of its own policies and laws, Plaintiffs fail to establish federal question jurisdiction.

IV. The Amended Complaint Should Be Dismissed For Failure To State A Claim.

Even if the Court declines to grant Defendants' motion to dismiss on sovereign immunity grounds or for failure to assert a federal question, Plaintiffs' Amended Complaint should also be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

a. Plaintiffs fail to respond substantively to Defendants' Motion to Dismiss for failure to state a claim.

As described in the original Memorandum in Support of Motion to Dismiss the Amended Complaint, Plaintiffs' Amended Complaint fails to provide sufficient factual basis to allege for a

claim for relief. Plaintiffs' Response does not substantively address the Defendants' arguments on their failure to state a claim. As such, the arguments are unopposed and Defendants incorporate their arguments set forth in the Memorandum in Support of their Motion to Dismiss.

The Amended Complaint fails to state a claim upon which relief can be granted. Complaints must contain sufficient factual allegations that rise above a speculative level. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555–56 (2007). Further, conclusory statements that Defendants violated the law, without any factual basis to support those conclusory claims, are insufficient. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.,* 591 F.3d 250, 256 (4th Cir. 2009). Plaintiffs repeatedly describe completely legal actions by Defendants, and then follow these descriptions with either conclusory statements that such actions violate federal law, or else provide speculation without any evidence to support such speculation. Because Plaintiffs have failed to plead facts above a speculative or conclusory level, the Amended Complaint should be dismissed for failure to state a claim.

b. The Plaintiffs base their claims on laws with no private cause of action against the Nation or its government officials.

Even if Plaintiffs provided facts sufficient for a court to determine a cause of action, which they have not done, the Thomasina Jordan Act does not provide a path for Plaintiffs to sue the Nation. An action to allege entitlement to a particular federal benefit must be brought under the applicable federal statutory or administrative process for the particular benefit at issue, if one exists. The Thomasina Jordan Act does not provide Plaintiffs with a private cause of action against the Nation because the Act does not expressly or impliedly create a private right of action.

Plaintiffs argue that the Thomasina Jordan Act provides an express and implied right of action because of the use of the word "shall" in the statute and argue "[t]he U.S. Supreme Court has never withheld a private remedy where the statute explicitly confers a benefit on a class of

persons and where it does not assure those persons the ability to activate and participate in the administrative process contemplated by statute." Pl. Resp. at 8. These arguments misinterpret both the text and purpose of the Thomasina Jordan Act.

As opposed to creating statutory rights specifically for the members of the Monacan Indian Nation that would create a right to sue the Nation in the context Plaintiffs allege here, the Act made applicable to members of the Nation "all laws that are generally applicable to American Indians and federally recognized Indian tribes." Thomasina Jordan Act, § 503(b)(1). The Act does not explicitly confer "specific benefits" to the Plaintiffs such that this Court could imply a private right of action; rather, the Act gives the Nation and its members equal footing to access federal benefits with other federally recognized tribes.

There is accordingly no intent on the part of Congress to create a private right of action, nor would the Court need to read one into the statute to give effect to Congressional purpose. On the contrary, because the Thomasina Jordan Act recognized the sovereignty of the Nation, it would frustrate Congressional purpose to recognize the type of claims Plaintiffs seek to bring here. *Cannon v. University of Chicago*, cited by Plaintiff, does not warrant a different result. 441 U.S. 677 (1979). In that case, Title IX explicitly conferred a benefit, and there was evidence of Congressional intent to create a private right of action. *Id.* at 693-95. The cases Plaintiffs cite to argue that there is no sufficient administrative remedy are similarly inapposite.[3]

[3] Plaintiffs cite *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987) and *Wilder v. Virginia Hospital Association*, 496 U.S. 498 (1990) to support their argument that there is a private right of action because there is no sufficient administrative means of enforcing the Thomasina Jordan Act. Pl. Resp. at 7. Those cases involved lawsuits against state officials under 42 U.S.C. § 1983, which provides a private right of action against state actors for deprivations of rights secured by federal law unless the state actor can demonstrate Congress did *not* intend to create such a right. Whether there is a private right of action in a suit brought pursuant to Section 1983 therefore reverses the usual burden for establishing a private right of action, where Congressional intent to create the right must be evident. *Bauer v. Elrich*, 8 F.4th 291, 299 (4th Cir. 2021) ("courts may not create a private remedy without evidence of Congress' intent to do so.") (citation omitted).

Nor does the Thomasina Jordan Act provide a path for Plaintiffs to sue the Defendants in their individual capacities. The Act mentions only Tribes, their members, and the federal government—and so Plaintiffs' attempts to make claims against Defendants in their private capacities similarly have no basis in the law. *See, e.g., Ordinance 59 Ass'n v. Babbitt,* 970 F. Supp. 914, 925 (D. Wyo. 1997) (explaining that where a federal statute only describes federal or Tribal action, there can be no action against defendants in an individual capacity). Plaintiffs therefore cannot sue Defendants, particularly in their individual capacities, as there is no basis in the Thomasina Jordan Act or any other law Plaintiffs cite to do so.

Finally, Plaintiffs seek relief from this Court when a pathway to oversight for the benefits Plaintiffs allege they have been denied is available elsewhere. Plaintiffs claim that this case involves a right without a remedy. Yet the proper avenue for relief—and the only one established by Congress—is through the federal agency in charge of those benefits. For example, Plaintiffs claim that they were denied benefits under the CARES Act. Am. Compl. at ¶¶ 18-26. If Plaintiffs believe CARES Act funding was improperly expended or withheld, then the proper remedy is through the U.S. Department of Treasury,[4] not this Court. The U.S. Department of Treasury is the federal agency charged with administering funds under the CARES Act to tribal governments and investigating any public complaints regarding the expenditures made by tribal governments. Plaintiffs have shown no evidence of an attempt to resolve their dispute through these more appropriate administrative means.

Plaintiffs fail to state any claim for which this Court could grant relief, and the Amended Complaint should be dismissed.

[4] The Act sets up an Office of the Inspector General which considers complaints.

CONCLUSION

The Court should grant Defendants' Motion to Dismiss the Amended Complaint because it does not have jurisdiction to hear the case, and because Plaintiffs fail to state a claim. In bringing this case, Plaintiffs are requesting this Court to set aside decades of caselaw, constitutional law, and federal policy. Plaintiffs improperly demand that the Court insert itself squarely into issues of Tribal self-governance and even limit Tribal sovereign immunity when Congress has not authorized any such limitation. Permitting the Plaintiffs' claims to proceed despite the jurisdictional bars would set off a cascade of consequences affecting this case and others. Defendants, for example, would be barred under sovereign immunity from producing documents regarding their official tribal duties, and the Nation would strenuously oppose discovery on these grounds. As a matter of policy, the Court would also extend itself into matters over which federal courts have consistently declined to deliberate, upholding fundamental constitutional principles and jurisdictional limits.

For the above reasons, this Court should grant Defendants' Motion to Dismiss.

Dated: August 22, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August 2022, a copy of the foregoing Reply Memorandum in Support of Defendants' Motion to Dismiss was served via the Court's ECF system on the following:

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