

1 Alicia Sisaudia
11823 N 76th Way
2 Scottsdale, AZ 85260
(602) 388-0358
3 sisaudiaalicia@gmail.com

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7 **UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

8 ALICIA SISAUDIA,
9
10 Plaintiff,

11 vs.

12 UNITED STATES DEPARTMENT OF THE
INTERIOR,
13 1849 C Street, N.W.
Washington, D.C. 20240, and

14 DEB HAALAND, in her official capacity as
the Secretary of the U.S. Department of the
Interior,
15 1849 C Street, N.W.
Washington, D.C. 20240,

16 THE CHEROKEE NATION,
and CHUCK HOSKIN, Jr.,
17 Principal Chief of the Cherokee Nation
W.W. Keeler Tribal Complex 17675 S.
18 Muskogee Ave. Tahlequah, OK 74464

19 Defendants.
20

Case No. 1:22-cv-3689-CJN

**RESPONSE TO FEDERAL
DEFENDANTS' MOTION TO DISMISS
AND MEMORANDUM OF LAW**

RECEIVED

2/3/2023

Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

21 Plaintiff, Alicia Sisaudia, hereby files the following in response to the FEDERAL
22 DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM OF LAW:

**RESPONSE TO FEDERAL DEFENDANTS' MOTION TO DISMISS AND
MEMORANDUM OF LAW- 1**

1 1. The Federal Defendants, US Department of the Interior and Deb Haaland (hereinafter
2 “Defendants”), have claimed that pursuant to a Federal Rules of Civil Procedure
3 (“Rules”) 12(b)(1) and 12(b)(6), the case against them must be dismissed, but they only
4 provided arguments for the Rules 12(b)(6) defense. They claimed that a Rules 12(b)(1)
5 defense (lack of subject matter jurisdiction) applied when they stated that the Plaintiff
6 lacks standing because the damages were not traced directly back to them. The
7 Defendants’ statement that the Plaintiff did not trace the damages directly to them is in
8 reality nothing more than not stating “a claim upon which relief can be granted”, which
9 is a Rules 12(b)(6) defense. For a Rules 12(b)(1) defense to be valid, however, there
10 would have to exist a law that prohibited this court from hearing the matter because
11 subject matter jurisdiction is granted or limited by law. The Defendants did not provide
12 any law that prohibits this Court from hearing this case. Neither Rules 12(b)(1) or
13 12(b)(6) are actually applicable. This Court has subject matter jurisdiction over this
14 matter as outlined by the laws provided in the original petition. The claim upon which
15 relief can be granted has also been provided to the court. The Plaintiff will clarify,
16 expound, and demonstrate these hereinafter.

16 2. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331,
17 which states: “The district courts shall have original jurisdiction of all civil
18 actions arising under the Constitution, laws, or treaties of the United States.”
19 Subject matter jurisdiction is also based upon 28 U.S.C. § 1362. This Court has
20 jurisdiction to grant a declaratory judgment pursuant to 28 U.S.C. § 2201, and to
21 grant injunctive relief pursuant to 28 U.S.C. § 2202. Venue is proper in this
22 judicial district (District of Columbia) pursuant to 28 U.S.C. § 1391(e). This

1 Court has personal jurisdiction over the federal agency defendants. All of these
2 laws provide this Court with subject matter jurisdiction over this case, and
3 therefore the Rules 12(b)(1) defense of lack of subject matter jurisdiction is not
4 applicable.

- 5 3. To properly understand how the Defendants have wronged the Plaintiff, and to better
6 “state a claim upon which relief can be granted” (Rules 12(b)(6)), the basic principles
7 of sovereignty must be understood. Two types of sovereignty in the world are external
8 and internal. To be externally sovereign means that the sovereign government has the
9 ability to act independently and autonomously in the face of external forces and is
10 subject to no other sovereign force. To be internally sovereign means that the sovereign
11 government has power and control over its people and over its territory, which affects
12 all its individuals, associations, and also the territory under its control. A sovereign
13 government can be both externally and internally sovereign. Other sovereign
14 governments can be simply internally sovereign and not also externally sovereign
15 because a separate external sovereign imposes certain restrictions upon their
16 government. This is precisely what exists within the United States. The external
17 sovereign is the United States. Various internal sovereigns include the several states
18 and Indian tribes, which are ultimately subject to the external sovereign. The United
19 States, by virtue of being the external sovereign, can and does impose restrictions on
20 the internal sovereigns including the several states and the Indians tribes by enacting
21 laws as allowed under the United States Constitution and Treaties. Because the United
22 States is the external sovereign of the several states and the Indian tribes, there exists
certain responsibilities which must be fulfilled in order to maintain external sovereignty

1 of all of them. These responsibilities are enumerated in the United States Constitution,
2 Treaties, and Federal law.

3 4. The Treaty of 1866 simply solidifies the relationship between the United States and the
4 Cherokee Nation as outlined in previous treaties, in which the Cherokee Nation agreed
5 to be subject to the United States as their external sovereign. As per the terms of the
6 treaties, any limitations placed upon the internal sovereignty of the tribe and its
7 members can only be imposed by an act of Congress which explicitly includes them, or
8 by voluntary limitation through the tribe enacting a tribal law on itself.

9 5. One responsibility of the United States as the external sovereign of the several states
10 and the Indian tribes is to keep one internal sovereign from exploiting another internal
11 sovereign by preventing them from becoming externally sovereign over one another
12 through imposition of their own laws or court rulings. Federal law 25 U.S. Code § 2
13 was implemented for that purpose. It states “The Commissioner of Indian Affairs shall,
14 under the direction of the Secretary of the Interior, and agreeably to such regulations as
15 the President may prescribe, have the management of all Indian affairs and of all
16 matters arising out of Indian relations.” This means that under federal law, the
17 Defendants have the management of ALL Indian affairs. This is an imposition of
18 authority by the external sovereign over the tribes, done as per the terms of the treaties
19 by an act of Congress, for the ultimate management of ALL of the Indians’ affairs and
20 of ALL matters arising out of their relations, including relations with the several states.
21 The word *all* denotes that there is no limit. It is altogether encompassing. As the
22 Defendants pointed out, there is a trust relationship that is maintained with the tribes
and their members and they are supposed to allow the Indian tribes to maintain as much
sovereignty as possible, as prescribed by Congress in 25 U.S.C. § 3601. In order for the

1 Indian tribes to maintain their internal sovereignty to be subject only to the United
2 States and the explicit laws that limit certain portions of that internal sovereignty, the
3 Defendants are responsible for managing the enumerating of which federal laws apply
4 or do not apply to the tribes. They are also responsible for managing all cases where the
5 several states or other internally sovereign governments attempt to impose restrictions
6 upon the Indian tribes or their members, in an attempt to impose themselves as external
7 sovereigns over the Indian tribes. It is not allowed under treaty for states to impose
8 themselves as external sovereigns over the Indian tribes.

9 6. On any occasion when a state attempts to impose itself as an external sovereign over an
10 Indian tribe by dictating, through their laws or their courts, a limit upon the internal
11 sovereignty of Indian tribes, it establishes an Indian affair arising out of Indian
12 relations. On any occasion when an Indian tribe attempts to impose itself as an external
13 sovereign over a state, it also constitutes an Indian affair arising out of Indian relations.
14 According to 25 U.S. Code § 2, the Defendants have the responsibility to manage both
15 of these scenarios.

16 7. There have been at least eighteen (18) different and diverse rulings in regards to the
17 applicability of 28 U.S.C. § 1738A (hereinafter called the UCCJEA) to the Indian tribes
18 by courts in various states and different Indian tribes since 2004. According to the
19 Department of the Interior's Bureau of Indian Affairs' website, the Bureau of Indian
20 Affairs is required to keep track of all tribal court proceedings as a part of tribal court
21 establishment when the tribal courts have replaced the Courts of Indian Offenses.
22 Therefore, the Defendants knew about the diverse cases, yet chose to be negligent in
their duty to manage the Indian affairs concerning the applicability of the UCCJEA to
the Indian tribes and their members. Some courts have ruled that the UCCJEA applies

1 to the Indian tribes and others have ruled that it does not apply to them unless the
2 Indian tribe has passed a tribal law to be bound by it. The courts that ruled that the
3 UCCJEA does not apply to the Indian tribes, recognized the internal sovereignty of the
4 tribes over their people which can only be abridged by explicit limitation of Congress.
5 The courts that ruled that the UCCJEA does apply to the Indian tribes claimed that the
6 purpose of the law was to limit all internal sovereigns of the United States, regardless
7 of the law not explicitly including the Indian tribes.

- 8 8. The Mashantucket Pequot Tribal Court even concluded that “it had jurisdiction over the
9 father's claim for joint legal custody, even though he and the child resided in
10 Connecticut, because the child was a tribe member and the court had jurisdiction over
11 its tribal members wherever they resided.” (Father J v. Mother A, 6 Mash.Rep. 297,
12 2015 WL 5936866 (Mash. Pequot Tribal Ct. 2015)). Their court again ruled that
13 “Focusing only on the question of jurisdiction, it noted that the federal statute giving
14 full faith and credit to child custody determinations, 28 U.S.C.A. § 1738A(g), applied
15 only to "states," which did not include Native American tribes, and that the UCCJEA
16 referenced that statute. Furthermore, it found, the fact that the State of Indiana had
17 adopted an optional provision in the UCCJEA to recognize tribes as "states of the
18 United States" did not mean that the tribe was bound by Indiana law. Because the tribe
19 had not consented to or adopted the UCCJEA, the court held, it did not apply to this
20 court. Honoring tribal sovereignty, the court declined to defer its jurisdiction to the
21 Indiana court as the more appropriate forum.” (Mother H v. Father H, 6 Mash.Rep. 424,
22 2017 WL 3039105 (Mash. Pequot Tribal Ct. 2017)). Additionally, in the state of
Arizona, it was ruled that the “[p]rovision of Uniform Child Custody Jurisdiction and
Enforcement Act (UCCJEA) requiring state courts to treat tribes as if they were states

1 of the United States for purposes of applying UCCJEA's jurisdictional standards did not
2 require tribal courts to abide by UCCJEA, where tribe did not adopt its own version of
3 UCCJEA.” (Ariz. Rev. Stat. Ann. § 25-1004(B). *Holly C. v. Tohono O'odham Nation*,
4 452 P.3d 725 (Ariz. Ct. App. Div. 2 2019)). As far as the Plaintiff can tell, there has
5 never been a conclusive ruling from a federal court or management and guidance by the
6 Defendants in regards to the applicability of the UCCJEA to Indian tribes and their
7 members, as required by 28 U.S.C. § 1331 and 25 U.S. Code § 2. The Defendants’
8 negligence in this matter has led to confusion and uncertainty that any of the court
9 rulings thus far are correct in their decisions about the applicability of the UCCJEA to
10 the Indian tribes.

- 11 9. The United States Supreme Court explicitly stated in 1993 that they had not yet decided
12 whether or not an Indian tribe’s civil authority over its members extends over them
13 when not residing in Indian Country. They stated “this Court need not determine
14 whether the Tribe's right to selfgovernance could operate independently of its territorial
15 jurisdiction...” (*Oklahoma Tax Comm'n v. Sac and Foc Nation*, 508 U.S 114 (1993)).
16 Directly after the United States Supreme Court ruled in this case that a decision had not
17 been made in regards to an important part of the Indian tribes’ sovereignty over their
18 own members, the Defendants’ responsibility to manage all Indian affairs required
19 them to have made a clarifying declaration in regards to the subject. They could have
20 used, as a guiding principle of their declaration, what the United States Supreme Court
21 said, that the "tradition of Indian sovereignty over the reservation and tribal members
22 must inform the determination whether the exercise of state authority has been
preempted by operation of federal law." (*White Mountain Apache
Tribe v. Bracker*, 448 U. S. 136, 142. Pp. 123-126.). This informs us that the Indian

1 tribes have sovereignty over both their land AND their tribal members. The United
2 States Supreme Court has recognized again and again that the fundamental principle of
3 Indian tribes' internal sovereignty is the supreme control over a sovereign's lands and
4 their citizens, while not expressing that the control over their citizens is directly tied to
5 their lands. Therefore, we must conclude as the Mashantucket Pequot Tribal Court
6 ruled, that the Indian tribes maintain jurisdiction over their tribal members regardless of
7 where they live and the UCCJEA does not apply to them without the tribe passing their
8 own version of the UCCJEA. Because of the negligence of the Defendants, as the
9 external sovereign, not managing this Indian affair issue, as they are required by law to
10 do, they have allowed the various jurisdictions to rule vastly differently on the topic
11 instead of establishing who actually has jurisdiction in child custody cases. The
12 Plaintiff and others are actively being damaged by adverse rulings against them as a
13 consequence of courts who are upset when their jurisdiction was challenged. One such
14 adverse ruling directly affected the Plaintiff when the state court and Cherokee Nation
15 tribal court judges held a conference between themselves, but did not include any of the
16 parties involved. They decided the matter without receiving any jurisdictional
17 arguments from the Plaintiff, and only relied upon the arguments from that case's
18 opposing counsel. Additionally, the state court of appeals would not hear the special
19 action appeal challenging the jurisdiction. The Plaintiff has also been damaged by the
20 jurisdictional challenges monetarily because they have cost the Plaintiff additional
21 attorney's fees and court fees. The state court had not demonstrated any prejudice
22 toward the Plaintiff until after the jurisdictional challenge was made. These injustices
toward the Plaintiff happened despite the state courts having no proof that their courts

1 had jurisdiction to begin with, and is a direct reflection of the confusion created by the
2 Defendant's negligence by not managing the required clarification about the UCCJEA.

3 10. The Defendants, at any time since the passage of the UCCJEA in 1994, and certainly
4 since the various diverse rulings that have occurred by the various states and Indian
5 tribes after its passage, could have clarified the law to outline the applicability to the
6 Indian tribes in order to fulfill their responsibility to manage all Indian affairs. If the
7 Defendants did not feel that they could legally make such a decision because of 28
8 U.S.C. § 1331, then it was incumbent upon them to have sought for the clarification of
9 the UCCJEA with the federal courts so they would not remain negligent in their duties
10 of managing all Indian affairs. Because of the negligence of the Defendants in not
11 issuing or seeking clarification of this Indian affair, the Plaintiff has sustained damages,
12 specifically the wrongful dismissal of the case in the Cherokee Nation court because the
13 court did not know if it had jurisdiction, monetary damages, and also the adverse
14 rulings in the state courts. If it were not for the negligence of the Defendants in their
15 management of Indian affairs and having the applicability of the UCCJEA to Indian
16 tribes decided, the Plaintiff would have known exactly which court has jurisdiction over
17 the child custody case prior to filing. The Plaintiff would not have gone to the effort
18 and expense to file in more than one court, causing bias and prejudice against the
19 Plaintiff from all the judges involved because jurisdictional challenges occurred. No
20 jurisdictional challenges should have been necessary had the Defendants managed
21 Indian affairs properly.

22 11. The Plaintiff is not seeking to have the Defendants enforce or impose anything upon the
Cherokee Nation because, as stated, that would violate the fundamental principles of
their internal sovereignty unless done by an act of Congress. Rather, the Plaintiff is

1 simply seeking to have the issue that the Defendants have previously failed to manage,
2 as required by federal law and which is an Indian affair and relation issue, resolved by
3 Declaratory Relief so that jurisdiction is properly known by all the states and Indian
4 tribes for all cases of child custody involving members of Indian tribes. The damages
5 caused to the Plaintiff by the Defendants' lack of action over managing the Indian
6 affairs involved, would then be remedied, and the Plaintiff could then move forward to
7 have all other issues resolved in the proper courts. This issue involves a question of
8 federal law and its applicability to the various internal sovereigns, which can only be
9 decided by a federal court as outlined by Congress in 28 U.S.C. § 1331. Only the
10 external sovereign of both the Indian tribes and the several states, through this federal
11 court, can resolve this issue now because of the Defendants' negligence regarding this
12 issue of not managing the necessary clarification in regards to the matter. Once
13 resolved by this court through the Declaratory Relief, all other courts will be able to
14 determine who actually has jurisdiction in this matter and should act accordingly
15 thereafter.

15 12. The Plaintiff only wants the Declaratory relief to specifically state that if an Indian tribe
16 has adopted the UCCJEA, then it applies to them and the various states must treat them
17 as a state in terms of its applicability. If an Indian tribe has not passed a law to adopt
18 the UCCJEA, then they are not bound by it and retain exclusive jurisdiction over the
19 child custody and visitation decisions for all tribal children regardless of where they
20 reside. This Declaratory Relief will not force an Indian tribe to take up child custody
21 cases because they can always pass a law adopting the UCCJEA, so they only have to
22 handle cases where the child lives in the reservation. All that this will do is clarify who
has jurisdiction and then the Indian tribes can then decide how to run their own courts

1 in the application of that jurisdiction. This Declaratory Relief will simply be helping the
2 Indian tribes, in the trust relationship that the United States has with them, to
3 understand their jurisdiction, as to when they have it and when they do not. This will
4 also help to inform the various states about tribal jurisdiction and help the Indian tribes
5 to retain their sovereignty.

6 13. If this Court and the Defendants believe that the Commissioner of Indian Affairs must
7 also be involved or be the only party involved as a part of this suit for proper remedy to
8 be provided because of 25 U.S. Code § 2, the Plaintiff asks that the Court please allow
9 the Motion for Joinder of the Commissioner of Indian Affairs instead of simply
10 dismissing the case. The Plaintiff did not realize that the Commissioner of Indian
11 Affairs needed to be included originally because the final responsible parties are the
12 Defendants because the Commissioner of Indian Affairs only acts under the
13 Defendants' direction.

14 14. The Plaintiff denies all claims unless specifically admitted so that it cannot be claimed
15 that the Plaintiff agreed to something that was not specifically addressed in this
16 response.

17 For the reasons stated above, Plaintiff respectfully requests that the Court deny the
18 FEDERAL DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM OF LAW and
19 allow the case to continue forward against the Defendants so that the issue of tribal jurisdiction
20 and the applicability of the UCCJEA to the Indian tribes can finally be resolved, despite the
21 Defendants' failure to manage this part of Indian affairs and relations previously.

22 **DATED:** February 3, 2023

By: /s/ Alicia Sisaudia

Alicia Sisaudia, Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2023, I electronically filed the above and foregoing document with the Clerk of Court via the email for the civil office for filing and caused it to be e-mailed to the Defendants’ e-mail addresses listed in her signature on the motion.

/s/ Alicia Sisaudia

Alicia Sisaudia