



**UTE INDIAN TRIBE**  
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April 13, 2021

**RE: Native American Rights Fund and Confederated Tribe of the Chehalis Reservation Seek to Divide Indian Country in ANC Litigation**

Dear Tribal Leaders:

The Ute Indian Tribe writes this letter to express its grave concern regarding the recent actions of the Native American Rights Fund (NARF) and the Confederated Tribe of the Chehalis Reservation to block the Ute Indian Tribe from asserting our sovereign interests before the Supreme Court in the case *Yellen, et al v. Confederated Tribes of the Chehalis Reservation, Ute Indian Tribe of the Uintah and Ouray Reservation, et al.*, challenging whether Alaska Native Corporations (ANCs) were eligible for CARES Act Governmental Relief Funds.

The Ute Indian Tribe brought one of the three separate lawsuits in the District Court that have been consolidated into the current case before the Supreme Court. The Ute Indian Tribe has been actively involved in the case since the very beginning, having participated at every stage in the District Court, the D.C. Circuit Court of Appeals, and now the United States Supreme Court. The Tribe has undertaken these efforts and spent substantial time and financial resources in this matter because this issue is of the utmost importance to the Ute Indian Tribe and its membership.

Importantly, as is its right and prerogative as a distinct sovereign nation, the Ute Indian Tribe has consistently asserted its own interests and legal theories which do not conflict, but rather bolster the legal arguments made by other plaintiffs, including the Chehalis Tribe and NARF. The Ute Indian Tribe's legal argument focuses on two related but separate arguments. First, whether ANCs qualify as a "tribal government" as that term is defined in CARES Act. Second, whether ANCs qualify as "Indian Tribes" as defined in the Indian Self-Determination and Education Assistance Act (ISDEAA). In contrast, the Chehalis Tribe and NARF have agreed with the ANCs and the United States that the case should only focus on question of statutory interpretation of the ISDEAA.

In its Reply Brief to the Supreme Court, the United States addressed the Ute Indian Tribe's legal argument at length. Importantly, in responding to the Ute Indian Tribe's argument, the United States makes the claim that it is longstanding federal policy that the board of directors of

for-profit ANCs are “recognized governing bod[ies] of Indian Tribes” as that term is used in federal statutes and, more troublingly, asserted that the term “recognized” does not require formal political recognition or relationship with the United States. This assertion threatens to jeopardize the bedrock of federal Indian law, the “political versus racial” distinction that ensures that federal Indian law is not subject to the increasingly strict scrutiny applied by the courts which would upend all federal-tribal relations and how the government views tribal nations.

On March 29, 2021, legal counsel for the Chehalis Tribe and NARF contacted the Ute Indian Tribe to propose that the Chehalis Tribe be provided the entire amount of time allocated for oral argument before the Supreme Court and stated opposition to any attempt of the Ute Indian Tribe to request time to assert its arguments and interests. Given the divergence in legal arguments, the Ute Indian Tribe responded by writing a letter to the elected Tribal Leadership of the Confederated Tribes of the Chehalis Reservation informing them the Ute Indian Tribe would be seeking time for oral argument in the Supreme Court to assert its own sovereign interests and requesting that the Chehalis Tribe take no further action to block the Ute Indian Tribe.

The Ute Indian Tribe subsequently filed a motion to the Supreme Court which, as set out in the communication to the Chehalis Tribal Leadership, outlined the differing legal theories presented by the Ute Indian Tribe and requested oral argument time be split between the parties. Without responding to the Ute Indian Tribe’s communication or otherwise providing notice, legal counsel for the Chehalis Tribe and NARF filed a response which diminishes the Ute Indian Tribe’s interest and seeks to block the Ute Indian Tribe from fully participating in a case which it has been a party to from its inception. In doing so, they attempt to take credit that is not due to them, and they purposefully misstate the arguments by the Ute Indian Tribe. They then join forces with the ANCs and the United States to tell the Supreme Court that the Ute Indian Tribe’s argument is without merit. In fact, they go further than the opposing parties, asserting to the Supreme Court that the Ute Indian Tribe should not even be permitted to provide argument. In relevant part, the filing asserts that the Ute Indian Tribe should not be permitted to present oral argument because that would “detract” from the Chehalis Tribe and NARF’s ability to answer fully the Court’s questions.

After submitting these filings, legal counsel for the Chehalis Tribe, Riyaz Kanji, contacted the Tribe to further argue the merits of the Ute Indian Tribe’s legal interests and theories in the case. Specifically, Riyaz Kanji informed the Ute Indian Tribe that if the Supreme Court denied the Ute Indian Tribe’s request to split oral argument time, he would insist that the Ute Indian Tribe back down, and then if they chose not to, he would allow the case to be presented without oral argument on behalf of the Tribes, and would assert to all Indian Country that the Ute Indian Tribe was responsible for the case being submitted without argument by the Tribes.

Through these actions, NARF and the Chehalis Tribe’s legal counsel have shown a manifest disregard for the individual sovereignty and interests of the Ute Indian Tribe and an extreme indifference to the resources and time that the Ute Indian Tribe has committed to this case. While these types of strong-arm tactics may be expected from a non-native attorney like Riyaz Kanji, they are particularly troubling coming from an organization such as NARF which holds itself out as asserting and defending the rights of Indian tribes and should be condemned by every

federally recognized Indian Tribe as it creates division among tribes and diminishes the sovereign interests of the Ute Indian Tribe before the highest court in the United States.

These types of divide and conquer tactics are nothing new to Indian Country. However, as the COVID-19 pandemic has shown, federal agencies and lawmakers are increasingly turning to non-profit tribal entities run by unelected tribal leaders to interact with and speak for federally recognized Indian Tribes in contravention to the government-to-government relationship on which federal-tribal relationships are founded. Unfortunately, NARF and non-native attorneys such as Riyaz Kanji have been all too willing to take on that role, as if their officers are the leaders for, and speak for, all of the Tribes. As such, the Ute Indian Tribe strongly feels that tribal governments across the United States must take every opportunity to call out the actions of anyone who pits tribe against tribe and minimizes the interests of tribal governments in pursuit of name recognition and prestige.

Thank you for your consideration of these important matters which impact the rights and interests of all federally recognized Indian Tribes.

On Behalf of the Ute Indian Tribe Business Committee:

A handwritten signature in blue ink, appearing to read "Luke Duncan", written over a horizontal line.

Luke Duncan  
Business Committee Chairman