

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Nos. 08-17094, 08-17115

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MARIA M. GONZALEZ, et. al.,
Plaintiffs-Appellants,
v.
STATE OF ARIZONA, et. al.,
Defendants

On appeal from the
United States District
Court for the District of
Arizona

No. CV06-01268-PHX-
ROS
No. CV06-01362-
PHX.ROS

**KELLY DASTRUP
AND LAURETTE
JUSTMAN'S
RESPONSE TO ITCA
AND GONZALEZ
APPELLANTS'
MOTIONS/APPLICAT
IONS FOR
ATTORNEYS' FEES
AND EXPENSES**

**THE INTER TRIBAL COUNCIL OF
ARIZONA,**
Plaintiffs-Appellants,
v.
**KEN BENNETT, in his official capacity
as SECRETARY OF STATE OF
ARIZONA,**
Defendants-Appellees

Navajo County Attorney's Office
P.O. Box 668
Holbrook, AZ 86025
Phone: (928) 524-5307

1 The Navajo County Attorney's Office, on behalf of Navajo County
2 parties Kelly Dastrup and Laurette Justman, hereby respond to the ITCA and
3 Gonzalez Appellants' separate Applications for Attorney's Fees and Expenses
4 as follows:

- 5 1.) Navajo County parties in this litigation take no position on the
6 reasonableness of the costs and fees incurred by the Inter Tribal
7 Council of Arizona or the Gonzalez Appellants. However, the County
8 does note that the Applications fail to clearly identify the parties from
9 whom it is seeking to collect costs and fees. While undersigned
10 counsel does not necessarily believe it was the intent of the ITCA to
11 request costs or fees from Navajo County, the response is being filed
12 to make certain that the record is clear that Navajo County would
13 oppose such a request.
- 14 2.) Navajo County is involved in this matter solely as a "nominal
15 party." While the County does have the responsibility of enforcing
16 laws adopted by the Arizona State Legislature, and is bound by the
17 Court's decision in this matter, it was not responsible for the adoption
18 of the law that was the subject of the Ninth Circuit's decision.
- 19 3.) Navajo County has taken no position in this litigation either at the
20 trial court level or at the appellate level, has made no effort to defend
21 the law in question, and has not taken any position adverse to that of
22 the ITCA or Gonzalez Appellants. Navajo County's actions have not
23 caused either the ITCA or Gonzalez Appellants to incur any additional
24 costs or fees in this matter.
- 25 4.) For the foregoing reasons, Navajo County would object to any
26 award of costs and fees against Navajo County in this matter to any
27 party, including the ITCA or Gonzalez Appellants. Holding a
28

1 “nominal party” in this matter responsible for the costs and/or
2 attorney’s fees of the real parties in interest would constitute a
3 manifest injustice.

4 For the aforementioned reasons, Navajo County would request that if
5 costs or attorney’s fees in this matter be awarded to any party, that Navajo
6 County be excluded from the Judgment.

7
8 RESPECTFULLY SUBMITTED this 25 day of May, 2012.

9
10 BRAD CARLYON
Navajo County Attorney

11
12 By: /s/ Jason S. Moore
13 NAVAJO COUNTY ATTORNEY’S
OFFICE
14 Jason S. Moore
Attorney for Kelley Dastrup and
15 Laurette Justman
P.O. Box 668
16 Holbrook, AZ 86025
(928) 524-4307

17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF COMPLIANCE FOR CASE NO. 08-17115, 08-17094

I hereby certify that this Response complies with the page limitation of Fed. R. App. P. 27(d)(2) because it does not exceed 20 pages. I further certify that the foregoing Response complies with the type style and typeface requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in a proportionately spaced typeface using MS Word in 14-point Times New Roman.

By: /s/ Jason S. Moore
NAVAJO COUNTY ATTORNEY'S OFFICE
Jason S. Moore
Attorney for Kelley Dastrup and Laurette Justman

1
2
3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on May 25, 2012, I electronically transmitted the
5 foregoing document with the Clerk of the Court for the United States Court of
6 Appeals for the Ninth Circuit using the appellate CM/ECF system.
7

8 I further certify that some of the participants in this case are not registered
9 CM/ECF users. I have mailed a copy of the foregoing document by First-Class
10 Mail, postage prepaid, to the following non-CM/ECF participants:
11

12 Samuel R. Barenstos
13 U.S. Department of Justice
14 Civil Rights Division
15 950 W. Pennsylvania Ave., N.W.
16 Washington, D.C. 20530

17 Charles E. Borden
18 O'Melveny & Myers LLP
19 1625 Eye Street, N.W.
20 Washington, DC 20006

21 Kali Nneka Bracey
22 Jenner & Block LLP
23 1099 New York Ave., NW
24 Suite 900
25 Washington, DC 20001

26 Scott J. Detamore
27 Mountain States Legal Foundation
28 2596 South Lewis Way
Lakewood, CO 80227

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Karl J. Sandstrom
Perkins Coie LLP
700 13th St., NW
Washington, DC 20005-3960

James P. Walsh
Pinal County Attorney
30 N. Florence St.
Building D.
Florence, AZ 85332

s/ Jason S. Moore