No. __-____

IN THE
Supreme Court of the United States

RAMONA TWO SHIELDS AND MARY LOUISE DEFENDER WILSON, INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED,
Petitioners,

v.

SPENCER WILKINSON, JR., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

KENNETH E. MCNEIL
SHAWN L. RAYMOND
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas 77002
(713) 651-9366

ANDRES C. HEALY
SUSMAN GODFREY L.L.P.
1201 3rd Ave., Suite 3800
Seattle, Washington 98101
(206) 505-3843

DAVID C. FREDERICK
Counsel of Record
JEREMY S. NEWMAN
KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@khhte.com)

MARIO GONZALEZ
GONZALEZ LAW OFFICE, PLLC
522 Seventh Street, Suite 202
Rapid City, South Dakota 57701
(605) 716-6355

October 13, 2015

QUESTION PRESENTED

In *Temple v. Synthes Corp.*, 498 U.S. 5 (1990) (per curiam), this Court unanimously held that joint tortfeasors are not required parties under Rule 19(a) of the Federal Rules of Civil Procedure because "[i]t has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit." *Id.* at 7. Six circuits have recognized the rule that joint wrongdoers are not required parties under Rule 19(a). Three circuits now have followed the opposite rule in holding that, in some circumstances, a joint tortfeasor is a required party, while case law in the Seventh Circuit is conflicted. The Eighth Circuit below followed the minority line of the circuit split to affirm the district court's dismissal of the action under Rule 19 for failure to join the United States.

The question presented is:

Does Rule 19 incorporate the common law rule that joint tortfeasors are not required parties?

LIST OF PARTIES TO THE PROCEEDING

Petitioners Ramona Two Shields and Mary Louise Defender Wilson, individually and on behalf of others similarly situated, were the plaintiffs in the district court and the appellants in the court of appeals.

Respondents Spencer Wilkinson, Jr., Rick Woodward, Robert Zinke, Dakota-3 E&P Company, LLC (n/k/a WPX Energy Williston, LLC), Zenergy, Inc., Dakota-3 LLC, Dakota-3 Energy, LLC, Zenergy Properties 6 Ft. Berthold Allottee, LLC, and John Doe, were the defendants in the district court and the appellees in the court of appeals.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES, REGULATIONS, AND RULES

OTHER MATERIALS

Petitioners Ramona Two Shields and Mary Louise Defender Wilson, individually and on behalf of others similarly situated, respectfully petition the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

INTRODUCTION

Petitioners are individual Native Americans with interests in real property on the Fort Berthold Reservation held in trust for their benefit by the United States. They also are the victims of an alleged scheme in which respondent private individuals and businesses induced the United States to approve below-market oil and gas leases — a scheme that resulted in a nearly billion dollar windfall for respondents at the expense of petitioners, other Indians, and the Three Affiliated Tribes. Petitioners contend that the United States breached its fiduciary duties to manage their trust lands in a manner that maximized their best economic interests and that respondents aided and abetted and tortiously induced the United States' breach.

Petitioners' effort to achieve justice was derailed by a procedural trap. Petitioners could not sue respondents along with the United States in the Court of Federal Claims, because that court does not have jurisdiction over respondents. Yet sovereign immunity prevented petitioners from joining the United States to their action against respondents in the district court. The Eighth Circuit affirmed the district court's dismissal of petitioners' action for failure to join the United States, holding that the United States was a "required party" under Rule 19(a) of the Federal Rules of Civil Procedure and that the inability to join the United States warranted dismissal

under Rule 19(b). The result of the Eighth Circuit's rulings is that respondents have complete immunity for their wrongdoing against petitioners because there is no court that has jurisdiction over petitioners' claims against all of the joint tortfeasors together.

The court of appeals' holding runs afoul of *Temple v. Synthes Corp.*, 498 U.S. 5 (1990) (per curiam), which held that "it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit." *Id.* at 7. Six circuits have recognized this rule and similarly held that joint wrongdoers are not required parties under Rule 19(a). Yet the Eighth Circuit joins a growing minority of circuits in holding that a joint tortfeasor may be a Rule 19(a) required party under a nebulous totality-of-the-circumstances analysis. The resulting circuit split has brought uncertainty to a legal issue that was once thought sufficiently clear that this Court was able to dispose of it in a brief, unanimous per curiam decision. This Court's review is necessary to eliminate the confusion that has developed in the courts of appeals in the quarter century since *Temple* and to reaffirm that joint tortfeasors are not required parties.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-16a) is reported at 790 F.3d 791. The order of the district court granting motions to dismiss (App. 17a-33a) is not reported.

JURISDICTION

The court of appeals entered its judgment on June 12, 2015. On August 7, 2015, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including October 13, 2015. App. 39a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES, REGULATIONS, AND RULES INVOLVED

Federal Rule of Civil Procedure 19, 25 C.F.R. §§ 212.1 and 212.3, and 25 U.S.C. § 396 are reproduced at App. 34a-38a.

STATEMENT

A. Statutory Background

1. United States Fiduciary Duties to Indians

By statute and regulation, federal law imposes on the United States the fiduciary obligation to represent the best interests of individual Indian interestholders like petitioners (commonly referred to as "allottees") in various aspects of the management of their lands, including oil and gas leases. The system of allotment derives from the General Allotment Act of 1887, ch. 119, 24 Stat. 388, which divided Indian tribal lands into allotments to individual Indians. The Act "provided that the United States would hold the allotted land for 25 years 'in trust for the sole use and benefit of the Indian to whom such allotment shall have been made.'" *United States v. Mitchell*, 463 U.S. 206, 208 n.5 (1983) (quoting § 5, 24 Stat. 389). Subsequent statutes have conferred specific powers and duties on the United States with respect to Indian lands that give rise to fiduciary obligations. As relevant here, "[a]ll lands allotted to Indians in severalty . . . may by said allottee be leased for mining purposes for any term of years *as may be deemed advisable by the Secretary of the Interior* . . . . The Secretary of the Interior shall have the right to reject all bids *whenever in his judgment the interests of the Indians will be served by so doing*, and to readvertise such lease for sale." 25 U.S.C. § 396 (emphases added). In 1998, Congress fortified the duties owed to Fort Berthold allottees like petitioners when it

amended § 396 to preclude the Secretary from approving Fort Berthold allottee mineral leases unless such approval was "in the best interest of the Indian owners of the Indian land." Act of July 7, 1998, Pub. L. No. 105-188, § 1(a)(2)(A)(ii), 112 Stat 620, 620. The federal government thus had both the power and the fiduciary obligation to manage petitioners' Fort Berthold mineral leases in a manner that serves their best interests.

Regulations and court decisions further establish the United States' fiduciary duty to manage allottee oil and gas leases in a manner that serves their best economic interests — a duty enforceable by actions against the United States for money damages. Regulations enacted by the Secretary of the Interior "are intended to ensure that Indian mineral owners desiring to have their resources developed are assured that they will be developed in a manner that maximizes their best economic interests." 25 C.F.R. § 212.1(a). The regulations further mandate that, "[i]n considering whether it is 'in the best interest of the Indian mineral owner' to take a certain action (such as approval of a lease . . .), the Secretary must consider every relevant factor, including, but not limited to: economic considerations" and "probable financial effect on the Indian mineral owner." *Id.* § 212.3. The Federal Circuit also has held that § 396 and its effectuating regulations "'can fairly be interpreted as mandating compensation by the Federal Government for damages sustained. Given the existence of a trust relationship, it naturally follows that the Government should be liable in damages for the breach of its fiduciary duties.'" *Pawnee v. United States*, 830 F.2d 187, 190 (Fed. Cir. 1987) (quoting *Mitchell*, 463 U.S. at 226).

2. Rule 19

Federal Rule of Civil Procedure 19 addresses compulsory joinder. Rule 19(a) defines a class of parties that are "required to be joined if feasible":

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1).

If a required party cannot be joined, then, under Rule 19(b), "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). Rule 19(b) contains a four-factor test to guide the court's consideration. *Id.* Yet where "the threshold requirements of Rule 19(a) have not been satisfied," then "no inquiry under Rule 19(b) is necessary," and the party need not be joined. *Temple v. Synthes Corp.*, 498 U.S. 5, 8 (1990) (per curiam).[1]

---

[1] Parties required to be joined if feasible under Rule 19(a) were formerly known as "necessary" parties; parties whose inability to be joined would compel dismissal of an action under Rule 19(b) were formerly known as "indispensable" parties. *See*

B. Factual Background

Petitioners are members of the Three Affiliated Tribes[2] and Standing Rock Sioux Tribe who are beneficial owners and heirs to trust allotments in the Fort Berthold Reservation in North Dakota. Compl. ¶¶ 2-3. Petitioners allege that respondents engaged in a scheme to abet and induce the United States to breach its fiduciary duties by approving below-market oil and gas leases by petitioners for the benefit of respondents. *Id.* ¶¶ 205-220. The Fort Berthold Reservation and petitioners' allotments are situated on the Bakken Shale formation, which "is touted as the largest oil discovery ever in the United States." *Id.* ¶ 20.

Respondents allegedly conspired to obtain oil and gas leases at below-market prices from petitioners, other allottees, and tribal interests, before selling them to a large energy conglomerate at far higher prices, earning a windfall of nearly one billion dollars. *Id.* ¶¶ 29-30. In 2007 and 2008, respondents executed more than 100 allottee oil and gas leases totaling 42,000 acres on the Fort Berthold Reserva-

---

7 Charles A. Wright et al., *Federal Practice and Procedure* § 1601, at 6 (3d ed. 2001) ("Wright").

[2] "The Three Affiliated Tribes . . . is the collective reference and name of the Mandan, Hidatsa, and Arikara Nations that were brought together by hardship, disease, and forced relocations by the government of the United States in the nineteenth century." Compl. ¶ 2 n.1. The history of the United States taking the vast majority of the Three Affiliated Tribes' land in many incidents spanning more than a century has been chronicled extensively in federal court decisions. *See generally Indians of the Fort Berthold Indian Reservation v. United States*, 71 Ct. Cl. 308, 309-29 (1930); *Three Affiliated Tribes of the Fort Berthold Reservation v. United States*, 390 F.2d 686, 688-89, 694-98 (Ct. Cl. 1968).

tion. *Id.* ¶¶ 157-159. They paid lease bonuses ranging from $400 to $451.48 per acre to petitioners; other allottees received bonus payments as low as $110 per acre. *Id.* No lease provided for more than an 18% royalty rate. *Id.* In January 2008, respondents also leased 42,500 acres of tribal lands for a bonus payment of just $50 per acre and an 18% royalty rate. *Id.* ¶¶ 30, 36. These leases were substantially below market. Leases in close proximity to Fort Berthold were made with bonuses of more than $2,000 an acre, and even within the Fort Berthold Reservation a non-Indian received a bonus of $500 per acre and a 20% royalty rate for a lease. *Id.* ¶¶ 131, 134. The difference between an 18% and 20% royalty rate alone is estimated to be more than $100 million for the 42,000 acres of allottee leases. *Id.* ¶ 160. Only a few years later, respondents sold their interests in these allottee and tribal leases to Williams Companies for $925 million in cash, or more than $10,000 per acre — far above the $400 and $451.48 per acre petitioners received and the $110 per acre many other allottees received. *Id.* ¶¶ 169-170.

Each allottee lease was approved by the Bureau of Indian Affairs ("BIA") as required by law for the leases to become effective. Petitioners allege that the BIA breached its fiduciary duties to allottees by approving below-market leases. *Id.* ¶ 38. Many of the allottees were poor and had no experience negotiating mineral leases and thus depended on the BIA to uphold its fiduciary duties to ensure they received appropriate remuneration. *Id.* ¶¶ 24-26. Instead, the BIA literally rubber-stamped each lease as being "in the best interest of the Indian mineral owner"

without exercising any meaningful oversight. *Id.* ¶¶ 75-76, 149-151.

Petitioners allege that respondents hatched a concerted scheme to induce the United States to breach its fiduciary duties. Respondent Spencer Wilkinson, a casino manager at the Fort Berthold Reservation, used his position and casino funds to influence members of the Tribal Business Council to choose his friend, Marcus Wells, as tribal chairman. *Id.* ¶¶ 108-110. Respondents then used Wells to prompt the BIA to install a weak superintendent with little experience with oil and gas leasing to the Fort Berthold Reservation. *Id.* ¶¶ 121-122. They then pressured the superintendent and other BIA staff to rubber-stamp allottee leases without regard for their below-market terms — an effort that resulted in the BIA not rejecting or even attempting to renegotiate a single lease. *Id.* ¶¶ 127-130.

C. Proceedings Below

On November 26, 2012, petitioners commenced this action against respondents in the United States District Court for the District of North Dakota, seeking to represent a class of Indian allottees with mineral interests on the Fort Berthold Reservation that entered into mineral leases that were acquired by Williams Companies. *Id.* ¶ 180. Petitioners brought claims for aiding and abetting and inducing the United States' breach of fiduciary duty, seeking compensatory and consequential damages, disgorgement, a constructive trust, and an accounting. *Id.* ¶¶ 205-220, Prayer.

Petitioners did not join the United States because the Tucker Act limits the United States' waiver of sovereign immunity for petitioners' claims to actions brought in the Court of Federal Claims. *See* 28

U.S.C. § 1491(a)(1). Conversely, the Court of Federal Claims lacks jurisdiction against private third-party defendants such as respondents. *See Nicholson v. United States*, 29 Fed. Cl. 180, 185 (1993). Accordingly, petitioners maintained two parallel actions: one against respondents in the district court and another against the United States in the Court of Federal Claims.

Respondents moved to dismiss the Complaint under Rule 12(b)(7) for failure to join the United States under Rule 19. App. 4a-5a, 17a-18a. The district court granted respondents' motion. The court concluded that "the United States is a 'required party' who should be joined if feasible" under Rule 19(a) because "[t]he Secretary of the Interior is currently administering the leases which are the subject of this lawsuit." App. 24a-25a. The court next held that the United States was an "indispensable party" under Rule 19(b) "and the action should be dismissed" because the United States could not be joined. App. 32a.

The Eighth Circuit affirmed. The court concluded that the United States was a required party under Rule 19(a) because, "[w]ithout the participation of the United States, any determination that particular lands had been illegally titled would potentially cloud the validity of many of the land grants approved by the government." App. 9a. The court acknowledged that, in *Temple*, this Court held that "'it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit.'" App. 10a (quoting 498 U.S. at 7). Yet the court concluded that this rule was limited to "'the usual' joint and several liability" and did not apply because the United States "claims an interest in the administration, enforce-

ment, and interpretation of its laws and regulations." App. 11a. The Eighth Circuit then held that the district court's Rule 19(b) determination was not an abuse of discretion. App. 13a-14a.

While this case was on appeal to the Eighth Circuit, the Court of Federal Claims dismissed petitioners' claims against the United States. *See Two Shields v. United States*, 119 Fed. Cl. 762 (2015). The court concluded that petitioners' claims against the United States were released as part of the class-action settlement in *Cobell v. Salazar*, No. 1:96CV01285 (TFH), 2011 WL 10676927 (D.D.C. July 27, 2011), *aff'd*, 679 F.3d 909 (D.C. Cir. 2012). *See Two Shields*, 119 Fed. Cl. at 782. The *Cobell* class action was filed on behalf of more than 300,000 Indians, alleging that the United States mismanaged their Individual Indian Money accounts and committed various other trust violations. *Id.* at 769. The *Cobell* case eventually settled for consideration that included payments of $1,000 to each Historical Accounting Class member and $800 plus an additional contingent payment to each Trust Administration Class member. *See Cobell v. Salazar*, 679 F.3d 909, 914-15 (D.C. Cir. 2012). The Court of Federal Claims' decision is currently on appeal to the Federal Circuit and has been fully briefed.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW DEEPENS A CONFLICT OVER WHETHER JOINT WRONGDOERS MAY BE REQUIRED PARTIES

The Eighth Circuit's decision in this case deepens a circuit split over whether a joint wrongdoer may be a required party under Rule 19. Most circuits to address the issue, including the First, Third, Fifth, Sixth, Tenth, and D.C. Circuits, have held, following either *Temple* or pre-*Temple* case law, that joint wrongdoers are not required parties under Rule 19. By contrast, the Eighth Circuit has now joined the Ninth and Eleventh Circuits in holding that a joint tortfeasor may be a required party. Case law in the Seventh Circuit is conflicted, with Judge Easterbrook articulating a clear rule that joint tortfeasors are not required parties, and Judge Posner concluding that a "presumption" applies that joint tortfeasors are not required parties, but that the circumstances of a specific case must be examined in light of the policies of Rule 19.

A. The First, Third, Fifth, Sixth, Tenth, and D.C. Circuits Have Adopted The Rule That Joint Wrongdoers Are Not Required Parties

1. *First Circuit.* In *Goldman, Antonetti, Ferraiuoli, Axtmayer & Hertell v. Medfit International, Inc.*, 982 F.2d 686 (1st Cir. 1993), the court rejected without "extended discussion" the argument that a complaint should have been dismissed under Rule 19 for failure to join a non-diverse joint obligor. *Id.* at 691. Citing *Temple*, the court found "patently correct" the district court's reasoning that, "because defendants and the non-diverse [co-obligor] were alleged to be jointly and severally liable for the legal

fees owed plaintiff, joinder of [the co-obligor] was not mandatory, but was merely permissive." *Id.* In a later case, again citing *Temple*, the court held that it could preserve jurisdiction by dismissing a non-diverse party "because he is a potential joint tort-feasor, and thus a dispensable party." *Gorfinkle v. U.S. Airways, Inc.*, 431 F.3d 19, 22 (1st Cir. 2005).

2. *Third Circuit.* In *Huber v. Taylor*, 532 F.3d 237 (3d Cir. 2008), the district court dismissed a lawsuit by asbestosis plaintiffs against their lawyers for unfairly distributing settlement funds in violation of fiduciary duties on the ground that the plaintiffs' local counsel was a required and indispensable party. The court of appeals reversed, concluding that the fact "Defendants and Local Counsel may have 'jointly owed fiduciary duties to their mutual clients' does not mean that they shared an 'interest relating to the subject of the action' for purposes of Rule 19(a) analysis." *Id.* at 249. Rather, courts "have long recognized that 'it is not necessary for all joint tort-feasors to be named as defendants in a single lawsuit.'" *Id.* at 250 (quoting *Temple*, 498 U.S. at 7).

3. *Fifth Circuit.* The Fifth Circuit has twice held in unpublished opinions that joint tortfeasors are not required parties under Rule 19. In *Chiasson v. Karl Storz Endoscopy-America, Inc.*, No. 94-30591, 1995 WL 582010 (5th Cir. Sept. 29, 1995) (per curiam) (judgment noted at 68 F.3d 472 (table)), the court determined that the district court erred in dismissing an entire case because two of three defendants were non-diverse. It held that the non-diverse defendants, "as potential joint tortfeasors with [the diverse defendant], are not indispensable parties to [the plaintiff's] claim against [the diverse defendant]. As a result, their presence destroyed complete diversity

but did not prevent the court from exercising jurisdiction over [the non-diverse defendant]." *Id.* at *2. The court later held in another case that a district court erred in dismissing a case for failure to join an alleged joint tortfeasor because that party was "not a necessary party as a matter of law, based on the unqualified, broad rule established by *Temple*, that joint tortfeasors are not necessary parties." *August v. Boyd Gaming Corp.*, 135 F. App'x 731, 734 (5th Cir. 2005).

4. *Sixth Circuit.* In *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194 (6th Cir. 1983), the court held that a bankruptcy stay in asbestos litigation against two defendants did not require staying the actions against their solvent co-defendants. The court held that "[i]t is beyond peradventure that joint tortfeasors are not indispensable parties in the federal forum. Indeed, the Advisory Committee Notes accompanying Rule 19 provide that 'a tortfeasor with the usual "joint and several" liability is merely a permissive party to an action against another with like liability' and 'Joinder of these tortfeasors continues to be regulated by Rule 20'." *Id.* at 1198-99 (citations omitted). Since *Temple*, the Sixth Circuit has reaffirmed that "a person's status as a joint tortfeasor does not make that person a necessary party, much less an indispensable party." *PaineWebber, Inc. v. Cohen*, 276 F.3d 197, 204 (6th Cir. 2001) (citing *Temple*, 498 U.S. at 7-8).

5. *Tenth Circuit.* In *Jett v. Phillips & Associates*, 439 F.2d 987 (10th Cir. 1971), the court held that Rule 19 did not prevent a lawsuit from proceeding against joint obligors in an action on a note when a non-diverse joint obligor was dismissed to preserve jurisdiction. The court held that, "[b]y the very

nature of this joint and several liability [of joint obligors], it was not necessary for . . . the obligee to proceed against each and every joint obligor on the note." *Id.* at 990.

6. *D.C. Circuit.* In *Park v. Didden*, 695 F.2d 626 (D.C. Cir. 1982), the court, per then-Judge Ginsburg, held that a tenant could sue a lessor for wrongful refusal to consent to a lease assignment without joining co-lessors. Judge Ginsburg noted that "[a]n almost unbroken line of federal decisions holds that persons whose liability is joint and several may be sued separately in federal court." *Id.* at 631. The court therefore affirmed the district court's conclusion that the co-lessors were "'proper' parties, persons whose joinder is permissive, not compulsory." *Id.*

B. The Eighth Circuit Joined The Ninth And Eleventh Circuits In Rejecting *Temple*'s Categorical Rule

1. *Eleventh Circuit.* In holding that a joint tortfeasor was a required party, the Eighth Circuit relied heavily on the Eleventh Circuit's holding in *Laker Airways, Inc. v. British Airways, PLC*, 182 F.3d 843 (11th Cir. 1999). App. 11a-12a. In that case, Laker Airways sued British Airways ("BA") for allegedly conspiring with Airport Coordination Ltd. ("ACL") — a company appointed by the government of the United Kingdom to coordinate takeoff and landing slots at British airports — to monopolize access to slots at London airports. *See* 182 F.3d at 845.

Addressing the Rule 19 issue, the court held that "a joint tortfeasor will be considered a necessary party when the absent party 'emerges as an active participant' in the allegations made in the complaint that are 'critical to the disposition of the important issues in the litigation.'" *Id.* at 848 (quoting *Haas v.*

Jefferson Nat'l Bank, 442 F.2d 394, 398 (5th Cir. 1971)). Thus, despite *Temple*, the court held that ACL was a "necessary" party under Rule 19(a) because ACL's interests "are more significant than those of a routine joint tortfeasor." *Id.* at 847-48. In particular, Laker's claims "necessarily require that a court evaluate ACL's conduct," and a ruling against ACL "would surely implicate the interests of ACL because the United Kingdom's enabling legislation . . . requires that the [government] withdraw its approval of an appointed coordinator if its behavior is not neutral." *Id.* at 848. The court then dismissed those claims because it found ACL's interests also made it an "indispensable" party under Rule 19(b). *See id.* at 848-50.

2. *Ninth Circuit.* The Ninth Circuit also recently held that a joint tortfeasor could constitute a required party — though it decided the absent party was not required in that case. In *Ward v. Apple Inc.*, 791 F.3d 1041 (9th Cir. 2015), the plaintiffs sued Apple for entering into an allegedly unlawful exclusivity agreement with AT & T Mobility ("ATTM") for Apple's iPhone, but the plaintiffs did not name ATTM as a defendant to avoid falling within an arbitration clause with ATTM. The district court dismissed the case under Rule 19 for failure to join ATTM. *Id.* at 1045.

The Ninth Circuit rejected the plaintiffs' argument that "the longstanding principle that joint tortfeasors need not be joined in one action" was dispositive. *Id.* at 1048. The court first concluded that antitrust co-conspirators did not need to be joined under Rule 19(a)(1)(A), which applies where "the court cannot accord complete relief among existing parties," because a plaintiff could recover full damages from one

defendant. *See id.* at 1049. Yet the court concluded that "[i]t does not follow, however, that an absent antitrust coconspirator like ATTM cannot be a required party under Rule 19(a)(1)(B)(i), the purpose of which is to protect the interests of absent parties." *Id.* The court held that it was necessary to "analyze the particular facts" to decide whether ATTM was a required party. *Id.* Undertaking that analysis, the court determined that ATTM's purported "risk of regulatory scrutiny," "reputational interests," and "contract interests" were not legally cognizable under Rule 19(a)(1)(B) and reversed the district court's dismissal. *Id.* at 1051-55.

C. Case Law In The Seventh Circuit Is Conflicted

The Seventh Circuit has been inconsistent as to whether the principle that joint tortfeasors are not required parties is a rule or a presumption. In *Sterling v. United States*, 85 F.3d 1225 (7th Cir. 1996) (Easterbrook, J.), the court reversed the district court's holding that an unsuccessful *Bivens* action against a federal officer had preclusive effect on a Federal Tort Claims Act case against the United States. The district court had reasoned that preclusion applied because the plaintiff "was obliged to join the United States as a party to the initial action," but the court of appeals rejected this conclusion, holding that "[v]ictims are free to litigate separately against joint tortfeasors." *Id.* at 1228. In *Salton, Inc. v. Philips Domestic Appliances & Personal Care B.V.*, 391 F.3d 871 (7th Cir. 2004) (Posner, J.), however, the court stated that there existed a "presumption against deeming unjoined joint tortfeasors indispensable parties." *Id.* at 877. The court stated that "the factors that should guide a ruling on indispensability

. . . boil down to telling the judge to balance the harm to the party opposing dismissal against the harm to an absent party from the continuation of the litigation in its absence." *Id.* at 880. After undertaking such a balancing, the court decided that the absent alleged joint tortfeasor was not indispensable. *Id.*

* * *

In sum, the majority of circuits to address the issue have affirmed the rule, consistent with this Court's *Temple* decision, that a plaintiff need not join all potential joint wrongdoers in a lawsuit. Yet the Eighth Circuit has joined a minority of circuits that have jettisoned this clear rule in favor of a free-flowing multifactor analysis. This Court's intervention is required to clarify the standard for determinations under Rule 19(a).

II. THE EIGHTH CIRCUIT ERRED

A. *Temple* Established That Joint Tortfeasors Are Not Required Parties

The decision below conflicts with this Court's clear command in *Temple* that potential joint tortfeasors are not required parties. In *Temple*, the petitioner underwent surgery in which a device was implanted in his back; he was injured when the device's screws broke off inside his body. 498 U.S. at 5-6. He sued the manufacturer of the device in federal court and pursued a separate state court action against the doctor and hospital. *Id.* at 6. In the federal action, the district court held that the doctor and hospital were necessary and indispensable parties under Rule 19 because the "case [wa]s not one where a claim against the named defendant can proceed without effect upon the absent parties," and it dismissed the suit. *Temple v. Synthes Corp.*, 130 F.R.D. 68, 69

(E.D. La. 1989). The Fifth Circuit affirmed. 898 F.2d 152 (5th Cir. 1990) (table).

This Court reversed in a unanimous per curiam opinion. Noting that the manufacturer, doctor, and hospital were "potential joint tortfeasors," the Court held that "it was error" to dismiss the case under Rule 19 because "[i]t has long been the rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit." 498 U.S. at 7. The Court further concluded that "[n]othing in the 1966 revision of Rule 19 changed that principle." *Id.* Indeed, the Court noted that "[t]he Advisory Committee Notes to Rule 19(a) explicitly state that 'a tortfeasor with the usual "joint-and-several" liability is merely a permissive party to an action against another with like liability.'" *Id.* (quoting Fed. R. Civ. P. 19 advisory committee's note (1966 Amendment)).

The Court likewise rejected the suggestion that any examination of the Rule 19(b) factors first set forth in *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102 (1968), was necessary in a joint tortfeasor case. It explained that, "[h]ere, no inquiry under Rule 19(b) [was] necessary, because the threshold requirements of Rule 19(a) have not been satisfied. As potential joint tortfeasors with Synthes, Dr. LaRocca and the hospital were merely permissive parties." 498 U.S. at 8.

Temple is dispositive here. As in *Temple*, the United States and respondents are "potential joint tortfeasors." *Id.* at 7. This case thus falls under the longstanding rule "that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit." *Id.* The United States is "merely [a] permissive part[y]." *Id.* at 8. Because "the threshold requirements of Rule 19(a) have not been satisfied,"

id., the Eighth Circuit's Rule 19(b) analysis was superfluous.

B. *Temple*'s Categorical Rule Is Grounded In Text, Precedent, And Purpose

Temple's categorical rule that joint tortfeasors are not required parties is mandated by the text of Rule 19 and consistent both with longstanding precedent and Rule 19's purpose.

1. An absent joint tortfeasor does not fit within any of the categories of required parties under Rule 19. Rule 19(a) reads as follows:

> (a) Persons Required to Be Joined if Feasible.
>
> (1) *Required Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

First, it is not the case that, absent joinder of a joint tortfeasor, "the court cannot accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A). The plaintiff may achieve complete relief

from any one tortfeasor without joining others. *See* 3A James Wm. Moore, *Moore's Federal Practice* ¶ 19.07[2.—2], at 19-125 n.42 (2d ed. 1996) ("Moore") ("Since the defendant is severally liable for the entire damage, complete relief can be accorded between the parties to the suit."); *Jett*, 439 F.2d at 990 ("[b]y the very nature of this joint and several liability, it was not necessary . . . to proceed against each and every joint obligor").[3]

Second, proceeding without a joint tortfeasor does not "as a practical matter impair or impede the [absent tortfeasor]'s ability to protect [its] interest." Fed. R. Civ. P. 19(a)(1)(B)(i). "Indeed, since the decline of the mutuality doctrine he may be benefitted, since he may be able to take advantage of collateral estoppel as to facts found adverse to the plaintiff in the first case without being in any way bound." 3A Moore ¶ 19.07[2.—2], at 19-125 n.42. The greatest potential prejudice to the absent tortfeasor is that "a judgment against Defendants in this action might set a persuasive precedent" against the absent tortfeasor, but that interest is insufficient to trigger Rule 19(a). *Huber*, 532 F.3d at 250.

Third, an action that includes only some joint tortfeasors would not "leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." Fed. R. Civ. P. 19(a)(1)(B)(ii). That provision is implicated where an absent potential plaintiff has a potential claim against the defendant, or where there are absent

---

[3] Although North Dakota has modified damages apportionment by statute, joint and several liability still applies where, as is alleged here, parties "act in concert in committing a tortious act or aid or encourage the act, or ratifies or adopts the act for their benefit." N.D. Cent. Code Ann. § 32-03.2-02.

potential claimants to a common fund. *See*, *e.g.*, *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 738-39 (1977). It has no application to an absent potential defendant such as a joint tortfeasor.

2. *Temple*'s holding is rooted in more than a century of common law precedent. As early as 1866, this Court wrote that it "seem[ed] to be conceded by all the authorities . . . [t]hat persons engaged in committing the same trespass are joint and several trespassers, and not joint trespassers exclusively. Like persons liable on a joint and several contract, they may be all sued in one action; or one may be sued alone, and cannot plead the nonjoinder of the others in abatement." *Lovejoy v. Murray*, 70 U.S. (3 Wall.) 1, 10-11 (1866). The plaintiff alleged that a company had executed a bond so that a sheriff could wrongfully attach and seize plaintiff's property. The Court held that, because the company and the sheriff were "joint trespassers," the plaintiff was permitted first to sue the sheriff and then separately to sue the company on any uncollected damages. *Id.* at 9, 17.

The rule that joint tortfeasors may be sued separately is equally well established and longstanding in state courts. *See*, *e.g.*, *Hoosier Stone Co. v. McCain*, 31 N.E. 956, 957 (Ind. 1892) ("If, as the complaint alleges, the defendant was guilty of a culpably negligent breach of duty owing to its employee, the fact that another person was also negligent would not compel the plaintiff to make that person a party to the action, since it is an elementary rule that a plaintiff may sue one or more of several joint tort feasors."); *Riverside Cotton Mills v. Lanier*, 45 S.E. 875, 875 (Va. 1903) ("[T]he general rule is that any member of tort feasors may be joined in the same action, where all are alleged to have participated in

the wrong. They may be sued jointly or severally at the election of the plaintiff; and that is true notwithstanding there may exist a difference in the degree of liability, or the quantum of evidence necessary to establish such liability.").[4]

3. The 1966 amendment to Rule 19, which adopted the rule in close to its current form, was intended to preserve the common law rule that joint tortfeasors need not all be joined in an action. As the Advisory Committee wrote, the revised Rule 19(a) was "not at variance with the settled authorities holding that a tortfeasor with the usual 'joint-and-several' liability is merely a permissive party to an action against another with like liability. Joinder of these tortfeasors continues to be regulated by Rule 20; compare Rule 14 on third-party practice." Fed. R. Civ. P. 19 advisory committee's note (1966 Amendment) (citations omitted). The Advisory Committee cited Professor Wright's edition of *Federal Practice*

---

[4] *See also*, *e.g.*, *McReady v. Rogers*, 1 Neb. 124, 127 (1871) ("Regarding . . . one of several wrong-doers, . . . the rule is, that each may be proceeded against, separately, although but one satisfaction can be had."); *Black v. Bringhurst*, 7 Cal. App. 2d 711, 714 (1935) ("Where there are several joint tort-feasors the injured party may sue all in one action or may maintain separate and successive actions against those who joined in the commission of the injury."); *Brooks v. City of Birmingham*, 194 So. 525, 527 (Ala. 1940) ("When a tort is committed by two or more persons, the claim against them is joint and several. And suits may be prosecuted against them separately to judgment, though there can be but one satisfaction.") (citations omitted); *Melichar v. Frank*, 98 N.W.2d 345, 347 (S.D. 1959) ("[I]t is self-evident, because the master and servant are severally liable in such circumstances, that the right of plaintiff, at his option, to sue them separately would remain."); 7 Wright § 1651, at 390 (at common law, "[j]oint tortfeasors and defendants whose contract obligations were both joint and several could be sued jointly or severally at plaintiff's option").

and Procedure, which read: "Since the liability of joint tort-feasors is joint and several, the plaintiff may sue one or more as he chooses. The omitted wrongdoers are neither indispensable nor necessary." 2 William W. Barron & Alexander Holtzoff, *Federal Practice and Procedure* § 513.8, at 127 (Wright ed. 1961).

Since the 1966 amendment, the leading civil procedure and torts treatises have reaffirmed that joint tortfeasors need not be joined in a lawsuit. *See* 7 Wright § 1623, at 361 ("The 1966 amendment of Rule 19 does not alter the long standing practice of not requiring the addition of joint tortfeasors. Thus, plaintiff may sue one or more of them without joining the others.") (footnote omitted); 4 James Wm. Moore, *Moore's Federal Practice* § 19.06[2], at 19-111 (3d ed. 2014) ("Joint tortfeasors may be joined as proper parties under Rule 20, but are not necessary parties.") (citation omitted); 3A Moore ¶ 19.07[2.—2], at 19-124 (not "necessary" for "joint tortfeasors" to "be joined in the same suit"); W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* 327-28 (5th ed. 1984) ("When joinder is permitted, it is not compelled, and each tortfeasor may be sued severally, and held responsible for the damage caused, although other wrongdoers have contributed to it.").

C. The Eighth Circuit's Justifications For Its Ruling Were Unpersuasive

The Eighth Circuit advanced various arguments for why the United States had interests in the litigation that were worthy of protection under Rule 19, but none justified disregarding *Temple*'s rule that joint tortfeasors are not required parties.

1. The Eighth Circuit's primary justification for considering the United States a required party was

that petitioners' Complaint implicated the United States in wrongdoing. The court reasoned that, in order to hold respondents liable, petitioners "necessarily would have to prove that the United States has acted illegally and breached its fiduciary duty in approving the leases." App. 7a. The court concluded that the government "'cannot be tried behind its back.'" App. 8a (quoting *Nichols v. Rysavy*, 809 F.2d 1317, 1333 (8th Cir. 1987)).

This argument proves too much and is inconsistent with *Temple* and Rule 19. In almost any case in which a plaintiff sues some joint tortfeasors who allegedly acted in concert in committing a single wrong without suing others, the lawsuit may implicate the absent tortfeasors' participation in the wrong. But if that possibility were sufficient to make an absent joint tortfeasor a required party, that would eviscerate the "rule that it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit." *Temple*, 498 U.S. at 7. Instead, Rule 19(a)(1)(B) requires that an absent party "claim[] an interest" that could be "impair[ed] or impede[d]" by the litigation. Fed. R. Civ. P. 19(a)(1)(B)(i). As then-Judge Breyer wrote: "The mere fact . . . that Party A, in a suit against Party B, intends to introduce evidence that will indicate that a non-party, C, behaved improperly does not, by itself, make C a necessary party. Given the vast range of potential insults and allegations of impropriety that may be directed at non-parties in civil litigation, a contrary view would greatly expand the universe of Rule 19(a) necessary parties. It is therefore not surprising that cases interpreting Rule 19 consistently hold that such 'slandered outsiders' need not be joined." *Pujol v.*

Shearson/American Express, Inc., 877 F.2d 132, 136-37 (1st Cir. 1989).

2. The fact that the absent joint tortfeasor is the United States does not change the analysis. The Eighth Circuit's statement that a decision against respondents could have "potentially far reaching effects" on the United States' management of Indian mineral leases, App. 10a, does not withstand scrutiny. Petitioners seek money damages from respondents; they do not seek to set aside the leases or request any other equitable relief that could affect the United States' management of their leases. *See* Compl. ¶¶ 212, 220, 239, Prayer. A ruling ordering respondents to compensate petitioners for their role in assisting the United States' fiduciary breach would not bind the United States in any way.[5] At worst, it may bring bad publicity or serve as persuasive authority. But it is "err[or]" to "hold[] that the mere possibility that [a court's] decision in the present action would be a 'persuasive precedent' in any subsequent . . . action . . . could, as a practical matter, impair or impede [the absent party's] interest under Rule 19(a)(2)(i)." *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 411 (3d Cir. 1993).

Further, "[t]he Government has other devices available to protect its interests . . . such as intervention, amicus participation and primary jurisdiction." Arthur F. Greenbaum, *Government Participation in Private Litigation*, 21 Ariz. St. L.J. 853, 888 (1989). Here, petitioners invited the United States to consent

---

[5] In fact, this Court has been far more restrictive in granting collateral estoppel against the United States than against private litigants. *See United States v. Mendoza*, 464 U.S. 154, 162-63 (1984).

either to be sued in the district court alongside respondents or to allow the private action to be coordinated with the government action in the Court of Federal Claims; the United States declined to do either. *See* Tr. of Mots. Hr'g at 79:17-24, Dkt. #111 (D.N.D. Nov. 15, 2013). The United States' decision not to participate in this action casts doubt on the importance of any purported interest of the United States in this litigation.

As several courts have held correctly, governments are not required parties even when they are alleged to have participated in serious wrongdoing in concert with nongovernmental individuals or entities. For example, in *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117 (E.D.N.Y. 2000), the plaintiffs sued French banks for assisting the Vichy and Nazi governments of France and Germany in violating international law by looting the assets of Jewish depositors in aid of the Holocaust. Even though the plaintiffs' claims required proof of governmental atrocities, including genocide, *see id.* at 134, the court adhered to *Temple* and concluded that "[t]he complicity of the French and German governments in effecting and perpetu-at[ing] the spoilation [sic] of Jewish assets does not mandate their joinder, it merely codifies their status as joint tortfeasors," *id.* at 137.

Similarly, in *Doe v. Unocal Corp.*, 963 F. Supp. 880 (C.D. Cal. 1997), the court held that Myanmar's military junta was not a required party in a lawsuit against oil companies for acting in concert with the government to oppress local residents to clear the way for a pipeline. *Id.* at 889; *cf. Sterling*, 85 F.3d at 1228 (plaintiff not required to join United States to suit against federal employee because "[v]ictims are free to litigate separately against joint tortfeasors").

So too, here, the fact that petitioners' lawsuit depends on proving that the United States committed wrongdoing does not require joinder of the United States because "[n]o final judgment sought by plaintiffs would require affirmative conduct or an altered position on the part of the [United States] government[]." *Bodner*, 114 F. Supp. 2d at 138.

If anything, courts should be particularly wary of extending Rule 19's reach when the United States is an alleged joint tortfeasor. Sovereign immunity and the limitations on jurisdictional statutes often render it impossible to sue the United States and a private defendant in the same court. The Tucker Act contains a waiver of sovereign immunity for certain claims against the United States, including fiduciary breach claims like the ones at issue here, but that waiver is limited to claims brought in the Court of Federal Claims. *See* 28 U.S.C. § 1491(a)(1). However, the Court of Federal Claims "*lacks jurisdiction* over suits against private third-party defendants," and its jurisdiction "extends only to claims against the United States." *Nicholson v. United States*, 29 Fed. Cl. 180, 185 (1993). Therefore, plaintiffs such as petitioners cannot sue private defendants and the United States in the same court. Thus, if courts hold, as the Eighth Circuit did here, that the United States is a required and indispensable party in lawsuits against the alleged private joint tortfeasors, then such tortfeasors effectively will be immune from liability.

Such a construction of Rule 19 would grant an undeserved windfall to private individuals who jointly commit torts with the United States and would unjustifiably deprive plaintiffs of a remedy against such tortfeasors. *See* Greenbaum, 21 Ariz. St. L.J. at

886 ("[T]his approach directly confronts a competing policy concern: that private plaintiffs should not be left without a remedy.").

3. The harm caused by the Eighth Circuit's decision would extend far beyond situations in which the United States is an alleged joint tortfeasor. The court stated that, in each case, the court must "examine the interests" of an absent joint tortfeasor to make a Rule 19 determination. App. 11a. Further, the court endorsed the reasoning of *Laker Airways* that a joint tortfeasor may be a required party if its "interests were 'more significant than those of a routine joint tortfeasor'" and that "a joint tortfeasor is a necessary party if it 'emerges as an active participant in the allegations made in the complaint that are critical to the disposition of the important issues in the litigation.'" App. 11a-12a (quoting *Laker Airways*, 182 F.3d at 847-48). The Eighth Circuit's decision thus invites parties to file motions to dismiss under Rule 19 in any case involving absent joint tortfeasors, based on ill-defined tests of whether the absent party was an "active participant" in the allegations, or whether its interest is greater than that of a "routine joint tortfeasor." Such a result would dramatically depart from the common law rule, codified in Rule 19 and recognized in *Temple*, that a victim may join as few or as many joint tortfeasors in an action as she wishes.

III. THIS CASE IS A SUPERIOR VEHICLE FOR ADDRESSING AN ISSUE OF NATIONAL IMPORTANCE

The scope of compulsory joinder of joint tortfeasors is an important question that warrants this Court's review. It has the potential to arise whenever a plaintiff does not or cannot join an alleged joint tort-

feasor to an action, which can occur for a variety of reasons, including lack of diversity jurisdiction, *see Goldman*, 982 F.2d at 691; lack of personal jurisdiction, *see Bigelow v. Old Dominion Copper Mining & Smelting Corp.*, 225 U.S. 111, 125 (1912); sovereign immunity, *see Doe*, 963 F. Supp. at 889; an arbitration clause, *see Ward*, 791 F.3d at 1044; a bankruptcy stay, *see Lynch*, 710 F.2d at 1197-98; settlement; a statute of limitations; or the plaintiff's simple preference, *see Salton*, 391 F.3d at 875-76.

Although this Court resolved the issue in *Temple* by holding unanimously that "it is not necessary for all joint tortfeasors to be named as defendants in a single lawsuit," 498 U.S. at 7, the clarity of that rule has since been eroded by several courts of appeals (including the Eighth Circuit below). The law on the application of Rule 19 to joint tortfeasors is now hopelessly conflicted, with some circuits adhering to *Temple*'s traditional rule and others applying nebulous, totality-of-the-circumstances tests to determine whether a joint tortfeasor has a sufficient interest in a particular case to qualify as a required party. *See*, *e.g.*, App. 11a-12a (absent party that "'emerges as an active participant'" is a required party) (quoting *Laker Airways*, 182 F.3d at 847-48); *Ward*, 791 F.3d at 1049 (court must "analyze the particular facts" in Rule 19(a) determination, which "requires identifying the specific interest the absent party claims and determining whether the party's ability to protect that interest may be impaired").

This Court's review is needed to restore the clarity of the *Temple* rule. Rule 19 serves a similar role to a jurisdictional statute in that it determines whether a court may adjudicate a dispute between the parties before it. For such a rule, "administrative simplicity

is a major virtue." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). The current legal uncertainty "complicate[s] a case, eating up time and money as parties litigate, not the merits of their claims, but" whether the court may decide the case without an absent party. *Id.* Given the depth of the circuit split, only this Court's review can provide certainty regarding the correct legal standard in order to minimize the waste of judicial resources resolving collateral disputes.

This case presents an appropriate vehicle to resolve the question presented. The district court dismissed the action under Federal Rule of Civil Procedure 12(b)(7) on the sole ground that the United States was a required party under Rule 19(a) and an indispensable party under Rule 19(b). Pet. App. 17a-18a, 24a-25a, 32a; *see also* App. 33a (denying defendants' other motions to dismiss as moot). The Eighth Circuit affirmed on the same ground. *See* App. 12a ("We . . . conclude that the United States is a required party which should be joined if feasible under Rule 19(a)."); App. 16a ("we conclude that the district court was well within its discretion to dismiss this case after careful analysis of the Rule 19 factors"). In holding that the United States was a required party under Rule 19(a), the Eighth Circuit explicitly rejected petitioners' argument that "the United States cannot be a required party under Rule 19 because it is a joint tortfeasor," App. 10a, instead concluding that "*Temple* did not establish that Rule 19 lacks application to all who are alleged to share liability for a wrong," App. 11a. The question presented therefore presents a threshold question of law that, if decided in petitioners' favor, would compel reversal and remand for the merits to be litigated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

KENNETH E. MCNEIL
SHAWN L. RAYMOND
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100
Houston, Texas 77002
(713) 651-9366

ANDRES C. HEALY
SUSMAN GODFREY L.L.P.
1201 3rd Ave., Suite 3800
Seattle, Washington 98101
(206) 505-3843

DAVID C. FREDERICK
Counsel of Record
JEREMY S. NEWMAN
KELLOGG, HUBER, HANSEN,
TODD, EVANS & FIGEL,
P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@khhte.com)

MARIO GONZALEZ
GONZALEZ LAW OFFICE, PLLC
522 Seventh Street, Suite 202
Rapid City, South Dakota 57701
(605) 716-6355

October 13, 2015