

No. 15-\_\_

---

IN THE  
**Supreme Court of the United States**

---

UINTAH COUNTY, UTAH,  
AND DUCHESNE COUNTY, UTAH,

*Petitioners,*

v.

UTE INDIAN TRIBE OF  
THE UINTAH AND OURAY RESERVATION,

*Respondent.*

---

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

---

**PETITION FOR A WRIT OF CERTIORARI**

---

Stephen D. Foote  
Tyler Allred  
DUCHESNE COUNTY  
P.O. Box 206  
Duchesne, UT 84021

G. Mark Thomas  
Jonathan A. Stearmer  
UINTAH COUNTY  
641 East 300 South  
Suite 200  
Vernal, UT 84078

Thomas C. Goldstein  
*Counsel of Record*  
GOLDSTEIN & RUSSELL, P.C.  
7475 Wisconsin Ave.  
Suite 850  
Bethesda, MD 20814  
(202) 362-0636  
tg@goldsteinrussell.com

### **QUESTION PRESENTED**

Did the court of appeals err in defying this Court's decision in *Hagen v. Utah*, 510 U.S. 399 (1994), with respect to reservation lands diminished by Congress?

**RULE 29.6 DISCLOSURE STATEMENT**

No corporate entity is a petitioner.

# **TABLE OF CONTENTS**

QUESTION PRESENTED.....i

RULE 29.6 DISCLOSURE STATEMENT .....ii

TABLE OF AUTHORITIES.....iv

PETITION FOR A WRIT OF CERTIORARI..... 1

STATUTORY PROVISIONS INVOLVED..... 1

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

STATEMENT OF THE CASE ..... 1

REASONS FOR GRANTING THE WRIT ..... 5

CONCLUSION ..... 8

PETITION APPENDIX (the Petition Appendix  
 accompanies the parallel Petition filed in this case by  
 Wasatch County, Utah, et al.)

## TABLE OF AUTHORITIES

### Cases

<i>Hagen v. Utah</i> , 510 U.S. 399 (1994) .....	2, 3, 5, 6
<i>Ute Indian Tribe v. Utah</i> , 773 F.2d 1087 (10th Cir. 1985), <i>cert. denied</i> , 479 U.S. 994 (1986) .....	2
<i>Ute Indian Tribe v. Utah</i> , 114 F.3d 1513 (10th Cir. 1997), <i>cert. denied</i> , 522 U.S. 1107 (1998) .....	3

### Statutes

28 U.S.C. § 1254(1) .....	1
28 U.S.C. § 2283 .....	1

### Other Authorities

Stipulated Order Vacating Preliminary Injunction and Dismissing the Suit with Prejudice, <i>Ute Indian Tribe v. Utah</i> , 2:75-CV-00408, Dkt. No. 145 (D. Utah Mar. 28, 2000) .....	4
---	---

## **PETITION FOR A WRIT OF CERTIORARI**

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

### **STATUTORY PROVISIONS INVOLVED**

The Anti-Injunction Act provides in relevant part that “[a] court of the United States may not grant an injunction to stay proceedings in State court except as . . . necessary . . . to . . . effectuate its judgments.” 28 U.S.C. § 2283.

### **OPINIONS BELOW**

The court of appeals’ opinion is published at 790 F.3d 1000. The district court’s order is unpublished.

### **JURISDICTION**

The court of appeals issued its judgment on June 15, 2015. On August 25, 2015, Justice Sotomayor granted a timely application to extend the time to file this Petition to November 13, 2015. App. No. 15A237. This Court has jurisdiction under 28 U.S.C. § 1254(1).

### **STATEMENT OF THE CASE**

The facts giving rise to this case are set forth in detail in the Petition for a Writ of Certiorari contemporaneously filed by Wasatch County, Utah. They are summarized here, as relevant.

Petitioners Duchesne County and Uintah County, Utah (petitioners or Counties), include substantial land within the original boundaries of the Uintah Valley Indian Reservation and Uncompaghre Indian

Reservation (collectively, the Reservation). The members of respondent Ute Indian Tribe (Tribe) are the descendants of the Reservation's original inhabitants.

The Tribe maintains that Congress has not diminished or disestablished the Reservation. On that view, substantial portions of the Counties are within the Reservation and thus are, according to the Tribe, subject to its sovereign authority.

To establish that its position was correct, the Tribe brought a declaratory judgment action in federal court. The State of Utah and petitioners were parties. In a decision known as *Ute III*, the divided en banc Tenth Circuit agreed with the Tribe. *Ute Indian Tribe v. Utah*, 773 F.2d 1087 (10th Cir. 1985) (en banc), *cert. denied*, 479 U.S. 994 (1986).

Subsequently, in *Hagen v. Utah*, 510 U.S. 399 (1994), this Court considered a case arising on lands in the Uintah Valley Reservation that were not allotted to members of the Tribe but instead were transferred to non-Indian settlers. The parties call these "unallotted" lands. The Utah Supreme Court held those lands were diminished. This Court affirmed, expressly agreeing with the state courts and rejecting the holding of *Ute III* by name. *Id.* at 414-15, 421-22.

The Tribe then sought a federal court injunction to prevent the State and petitioners from relying on *Hagen* to allege that the Reservation's boundaries had been diminished. In a decision known as *Ute V*,

the Tenth Circuit held that because the State and petitioners were parties to the final judgment in *Ute III*, they were largely bound by that ruling. *Ute Indian Tribe v. Utah*, 114 F.3d 1513 (10th Cir. 1997), *cert. denied*, 522 U.S. 1107 (1998).

In *Ute V*, the court of appeals did recall its mandate in *Ute III* to the limited extent required to hold that just those unallotted lands in the Uintah Valley Reservation were diminished. *Id.* at 1527-28. But with respect to the parties to *Ute III*, the court otherwise refused to revisit *Ute III*'s determination of the boundaries in light of the legal rule adopted by this Court in *Hagen*. *Id.* at 1528. So, for example, *Ute V* held that the indistinguishable unallotted lands in the adjoining Uncompaghre Reservation were not diminished. *Id.* at 1529.

Petitioners sought certiorari from the Tenth Circuit's ruling in *Ute V*, but the State did not. No. 97-570, *Duchesne Cty. v. Ute Indian Tribe*. Directed by this Court to respond to the Petition, the State advised this Court that it intended to settle the jurisdictional dispute. Response of the State of Utah to Request for Statement of Position, No. 97-570, *Duchesne Cty. v. Ute Indian Tribe* (Dec. 23, 1997). This Court only then denied review.

The parties to *Ute V* then did settle, but on terms that defined their respective jurisdiction very differently than had the Tenth Circuit. As stipulated, the district court dismissed the Tribe's complaint with prejudice. Stipulated Order Vacating



Preliminary Injunction and Dismissing the Suit with Prejudice, *Ute Indian Tribe v. Utah*, 2:75-CV-00408, Dkt. No. 145 (D. Utah Mar. 28, 2000) (“[Q]uestions of jurisdiction on the various categories of land within the original boundaries of the Uintah and Ouray Reservation have been determined by the decisions of the United States Supreme Court and the Tenth Circuit Court of Appeals, *as modified by the agreements between the parties . . .*” (emphasis added)). No judgment was entered against the defendants (which include petitioners here). Some terms of the settlement were never implemented, and the Tribe later announced that it would not abide by major terms of the settlement, many of which had expired.

A different county—Wasatch County, which was not a party to *Ute III* or *Ute V*—subsequently brought a state court prosecution against a member of the Tribe for violating state law on a state road in a national forest within the original Reservation boundaries. The Tribe filed another suit in federal court to enjoin the prosecution. It named the State and Wasatch County as defendants. The district court consolidated the case with the prior *Ute* litigation which the Tribe reopened after the settlement failed, making petitioners defendants as well. The Tribe sought a declaration that all the defendants were all bound by the Tenth Circuit’s holdings in *Ute III* and *Ute V*. It further sought an injunction against the prosecution by Wasatch County.

After the district court refused to enter an injunction against Wasatch County, the Tenth Circuit reversed in the opinion that is the subject of the Petition of Wasatch County and this follow-on Petition. The Court of Appeals held that all the governmental defendants—not just the parties to *Ute III* and *Ute V*—were bound by the “judgment” in *Ute V*—by which the Tenth Circuit meant only its own opinion, as that opinion had not in fact produced any judgment in favor of the Tribe. According to the Court of Appeals, *Ute V* conclusively established that the original boundaries of the Reservation remain intact, with the sole exception of the unallotted lands of the Uintah Valley Reservation. On that basis, the Court of Appeals enjoined the state court prosecution by Wasatch County. The court of appeals admonished the defendants that if they continued to pursue the issue, they were subject to sanctions.

This petition followed.

### **REASONS FOR GRANTING THE WRIT**

The parallel Petition for Certiorari filed by Wasatch County details why certiorari is warranted. The Tenth Circuit’s ruling is irreconcilable with this Court’s decision in *Hagen* and with the precedent of the Utah state courts. The resulting conflict over the boundaries of the Reservation is intolerable. Frequently, no one—not the Tribe, the state, the counties, members of the Tribe, or non-Indians—can know ahead of time which government has jurisdiction over their activities on non-trust land.

The answer to that question frequently depends on a title search to determine the property's history and on which court system hears the dispute. Just as in *Hagen*, this Court's intervention is required to provide a single answer to this recurring question of federal law.

Certiorari is also warranted because the Tenth Circuit's decision is contrary to basic, long-established principles of collateral estoppel. The Court of Appeals in this case held that all the defendants were bound by its earlier judgment in *Ute V*—whether they were parties to *Ute V* or not. But even with respect to the actual parties to *Ute V*, including petitioners here, that decision is plainly incorrect. The conflict between the Tenth Circuit's decision and this Court's decision in *Hagen* is alone a sufficient basis to deny collateral estoppel effect to the decision of an *inferior* federal court. So too is the jurisdictional chaos that results from giving the broadest possible effect to *Ute V* and the narrowest possible compass to the contrary decision of this Court in *Hagen*. But in any event, that decision did not even produce a final adverse judgment to which collateral estoppel could possibly attach. That case *settled*, and that settlement *did not* implement the Tenth Circuit's decision. The ruling in *Ute V* accordingly has no collateral preclusive effect, including with respect to the parties to that case.

Petitioners recommend that this Court grant both this Petition and the separate Petition filed by Wasatch County. If this Court grants only the

Wasatch County Petition, it is possible that this Court would reverse the judgment on narrower grounds that do not resolve the important, broader conflict over the Reservation's boundaries. That is so because the application of collateral estoppel to Wasatch County is particularly indefensible, given that it was not a party to *Ute III* or *Ute V*. In addition, the ruling below violates the Anti-Injunction Act with respect to Wasatch County, by prohibiting it from conducting an ongoing criminal prosecution in state court.

Granting both Petitions would not produce any inefficiencies. The Petitions share common lead counsel. If both Petitions are granted and consolidated, the Petitioners anticipate filing a single brief on the merits. The Tribe is the respondent in both Petitions and no doubt would do the same.

**CONCLUSION**

This Court should grant the Petition for a Writ of Certiorari, as well as the parallel Petition filed by Wasatch County.

Respectfully submitted,

Stephen D. Foote  
Tyler Allred  
DUCHESNE COUNTY  
P.O. Box 206  
Duchesne, UT 84021

G. Mark Thomas  
Jonathan A. Stearmer  
UINTAH COUNTY  
641 East 300 South  
Suite 200  
Vernal, UT 84078

Thomas C. Goldstein  
*Counsel of Record*  
GOLDSTEIN & RUSSELL, P.C.  
7475 Wisconsin Ave.  
Suite 850  
Bethesda, MD 20814  
(202) 362-0636  
tg@goldsteinrussell.com