No. 15-640

IN THE
Supreme Court of the United States

WASATCH COUNTY, UTAH,
SCOTT H. SWEAT, & TYLER J. BERG,
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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Was the court of appeals correct in enjoining Petitioner Wasatch County, where the County's actions were directly contrary to the court's prior ruling regarding the Ute Indian Tribe's jurisdiction over the Forest lands, and where neither the holding nor the logic of this Court's decision in *Hagen v. Utah*, 510 U.S. 399 (1994), addressed the status of those lands?

CORPORATE DISCLOSURE STATEMENT

No corporate entity is a respondent.

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INTRODUCTION

In its petition, Wasatch County asks this Court to revisit a thirty-year-old decision of the Tenth Circuit that this Court has twice declined to review.[1] The County's unlawful prosecution of a tribal member for alleged criminal offenses committed on the Tribe's reservation, enjoined by the court of appeals, represents nothing less than a contrived attempt to relitigate the long-settled question of the Reservation's boundaries. For that reason alone, this Court's review is unwarranted. The Tenth Circuit's decision to enjoin the prosecution was entirely correct, and the County points to no conflicting decision of this or any other court indicating otherwise.

Certiorari is unwarranted for another reason: The petition is aimed at a phantom problem. The County complains of "jurisdictional chaos" on Reservation lands, but the truth is that the Tenth Circuit clearly defined the Reservation's boundaries nearly twenty years ago, and since then state, federal, and tribal officials have worked diligently to ensure that any questions regarding law enforcement and other governance matters are resolved cooperatively. Notably, the State of Utah—which was a defendant below

[1] Respondent has filed a separate brief in opposition to the petition for certiorari filed by Uintah and Duchesne Counties arising from the same Tenth Circuit decision (No. 15-641). Where appropriate, this brief refers to all three counties collectively as "the Counties."

and in whose name the County is bringing its unlawful prosecution—has chosen *not* to seek this Court's review.

Moreover, this case offers the Court no opportunity to address the County's broader concerns. The injunction ordered by the Tenth Circuit halts *only* the prosecution of a tribal member for an alleged offense committed on Reservation lands that are within the national forest reserve, known as the "Forest lands." There is no "checkerboard" allocation of jurisdiction relating to these lands, and this Court's review of the Tenth Circuit's decades-old ruling that the Forest lands are within the Reservation would do nothing to address the asserted "chaos" the County purports to decry. Therefore, as Judge Gorsuch, speaking for the Tenth Circuit, fully recognized in the decision below, the County's unlawful criminal prosecution is nothing more than another naked effort by "intransigent litigants" to "undo the tribal boundaries" settled by that court's prior rulings and left undisturbed by this Court. The petition should be denied.

STATEMENT OF THE CASE

1. Recognition of the Ute Tribe's Uintah Valley Reservation (which includes the Forest lands at issue in this case) dates back to 1861, when President Lincoln set aside over two million acres of land located in the Territory of Utah to which the Tribe held aboriginal title. *See* Exec. Order No. 38-1 (Oct. 3, 1861), *reprinted in* 1 Charles Kappler, *Indian Affairs: Laws and Treaties* 900 (1904). Congress confirmed that this land was "set apart for the permanent settlement and exclusive occupation" of Indian tribes in Utah. Act of

May 5, 1864, ch. 77, § 2, 13 Stat. 63. In 1882, President Arthur issued a similar executive order establishing the neighboring Uncompahgre Reservation. Exec. Order of Jan. 5, 1882, *reprinted in Executive Orders Relating to Indian Reserves* 109 (GPO 1902). Those two reservations—now known collectively as the Uintah and Ouray Indian Reservation ("the Reservation")—are the homeland for three formerly autonomous bands of Ute Indians, now united as the present-day Ute Tribe of the Uintah and Ouray Reservation.

In 1887, Congress passed the General Allotment Act, which "empowered the President to allot portions of reservation land to tribal members and, with tribal consent, to sell the surplus lands to white settlers," with the proceeds of these sales to be dedicated to the Indians' benefit. *DeCoteau v. Dist. Cty. Court for Tenth Judicial Dist.*, 420 U.S. 425, 432 (1975); *see also* Act of Feb. 8, 1887, ch. 119, 24 Stat. 388. But efforts to secure the Tribe's consent to such allotment and to "'relinquish[] to the United States'" any unallotted lands subsequently failed. *Hagen v. Utah*, 510 U.S. 399, 402-07 (1994) (quoting Act of Aug. 15, 1894, ch. 290, § 22, 28 Stat. 337).

In 1902, seeking to bypass tribal leadership, Congress passed legislation providing authority to the Secretary of the Interior to make allotments out of the Uintah Reservation if a majority of the adult male members of the Tribe consented. Act of May 27, 1902, ch. 888, 32 Stat. 263 ("1902 Act"). If agreement was obtained, unallotted lands were to be "restored to the public domain" and opened to settlement under the homestead laws. *Id.* After Ute tribal members refused

to consent, Congress passed another statute providing that unallotted Uintah Reservation lands would be unilaterally "opened to settlement and entry by proclamation of the President," Act of Mar. 3, 1905, ch. 1479, 33 Stat. 1069 ("1905 Act"), and President Theodore Roosevelt issued such a proclamation shortly thereafter, Proclamation of July 14, 1905, 34 Stat. 3119.

The 1905 Act also authorized the President to "set apart and reserve" lands in the Reservation as an addition to the Uintah Forest Reserve. 33 Stat. 1070. Pursuant to this authority, President Roosevelt proclaimed that one million acres of Reservation land would be added to the Forest Reserve. Proclamation of July 14, 1905, 34 Stat. 3116, 3117.

2. In 1936, the three autonomous bands of Ute Indians—the Uintah, Uncompahgre, and White River Bands—united under the Indian Reorganization Act of June 18, 1934, ch. 576, 48 Stat. 984. The unified Tribe's constitution—approved by the Department of the Interior—stated that the Tribe's jurisdiction "shall extend to the territory within the original confines of the Uintah and Ouray Reservation," as set forth by the 1861 and 1882 executive orders establishing the original Uintah and Uncompahgre Reservations, as well as the 1902 Act. *See* Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation, art. I.[2]

In subsequent decades, the Tribe's members improved the "effectiveness of their tribal institutions"

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[2] *Available at* http://tinyurl.com/zocpvgn.

and "sought a greater share of autonomy and control over their own lives and community affairs." *Ute Indian Tribe v. State of Utah*, 521 F. Supp. 1072, 1076 (D. Utah 1981) ("*Ute I*"). Among other things, the Tribe operated a government and judicial system and promulgated numerous ordinances regulating affairs within the Reservation. *Id.* at 1076-77.

Seeking to "provide itself, its members, and other persons living within the territorial jurisdiction of the Tribe … with an effective means of redress in both civil and criminal cases," in 1975, the Tribe enacted a Law and Order Code governing the Reservation. *Id.* at 1077 n.6 (quoting Law and Order Code § 1-2-1). Consistent with the Ute Constitution, the Code declared that the tribal courts possessed territorial jurisdiction "within the original confines of the Uintah and Ouray Reservation." *Id.* at 1077 n.8 (quoting Law and Order Code § 1-2-2). The tribal court's subject-matter jurisdiction, however, excluded "any civil or criminal matter which does not involve either the Tribe … or a member of the Tribe." *Id.* (quoting Law and Order Code § 1-2-5). As the district court concluded in retracing this history, the Code did not "attempt[] a wholesale appropriation of governmental authority in the Uintah Basin," but instead represented a "carefully limited" effort to define its jurisdiction in conformity with congressional enactments and this Court's precedents. *Id.*

3. Although the Code was approved by the Bureau of Indian Affairs, the Tribe's reaffirmation of jurisdiction was met with "immediate protest" by local non-Indian governments, and officials "urged their constituents to resist the enforcement of the [Code]."

Id. at 1077-78. Beset by "mounting opposition to the exercise of its jurisdiction," in 1975 the Tribe filed suit in federal district court against Duchesne and Uintah Counties, as well as several municipalities, seeking a declaration that the Reservation's original exterior boundaries "continue to exist undiminished," and that all of the lands within those boundaries are "Indian country" as defined by federal statute. *Id.* at 1078. In response, the defendants—including the State as intervenor—argued that "Indian country" within the Reservation's original boundaries was limited solely to lands held in trust by the federal government. *Id.* The State specifically contended that the original Uintah Reservation was "diminished" by "withdrawal[]" of the Forest lands. *Id.* at 1079.[3]

After decisions by the district court and a panel of the Court of Appeals for the Tenth Circuit, the court, sitting en banc, found that the acts Congress passed in 1902 and 1905 did not provide the requisite "'substantial and compelling evidence of a congressional intention to diminish Indian lands'" sufficient to find that the Uintah Reservation had been reduced. *Ute Indian Tribe v. State of Utah*, 773 F.2d 1087, 1089 (10th Cir. 1985) ("*Ute III*") (quoting *Solem v. Bartlett*, 465 U.S. 463, 472 (1984)).

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[3] If Congress, in the exercise of its powers under Art. I, Sec. 8, modifies the boundaries of a reservation to reduce its lands, the reservation is said to be "diminished." If the reservation is eliminated altogether, it is said to be have been "disestablished." *See Yankton Sioux Tribe v. Gaffey*, 188 F.3d 1010, 1017 (8th Cir. 1999).

Most relevant to the present case, the en banc court also concluded that the 1905 Act had not removed the Forest lands from the Reservation. The court explained that nothing in the statute or the legislative history "establishe[d] a 'total surrender of tribal interests'" in those lands; instead, it merely authorized the President to set aside lands for forest reserve uses. *Id.* at 1090 (quoting *Solem*, 465 U.S. at 470). The court found no "congressional intent to remove the forest lands from the Uintah Reservation." *Id.*

The State and the local governments sought review by this Court, which it denied. 479 U.S. 994 (1986).

4. Unwilling to accept the finality of the Tenth Circuit's judgment, state and local officials sought to relitigate the Reservation's status in the state courts. To that end, they brought criminal prosecutions against tribal members for offenses committed on lands that the Tenth Circuit, in *Ute III*, had determined were within the Reservation, even though tribes have—and states lack—the "inherent power … to exercise criminal jurisdiction over all Indians" within reservations or other "Indian Country" as that term is defined in 18 U.S.C. § 1151. 25 U.S.C. § 1301(2); *see also Hagen*, 510 U.S. at 408 ("Congress has not granted criminal jurisdiction to the State of Utah to try crimes committed by Indians in Indian country ….").

The issue reached the Utah Supreme Court, though in a highly limited version. In *State v. Perank*, 858 P.2d 927 (Utah 1992)—a case to which the Tribe

was not a party—the Utah Supreme Court ruled that fee patented lands within the town of Myton, Utah were not within the Reservation, and therefore the state had criminal jurisdiction over a burglary committed by the Indian defendant on patented land within the town. The court based its decision on the conclusion that "the restoration language in the 1902 Act established the necessary congressional intent to diminish the Reservation as to those lands restored to the public domain." *Id.* at 934. Though the court recognized that its holding directly conflicted with the Tenth Circuit's decision in *Ute III*, *id*. at 938, it expressly declined to consider whether preclusion principles required deferring to the federal court ruling because that issue had not been raised below, *id.* at 931 & n.3. Importantly, however, the court noted that the status of the Forest lands, which had been previously resolved by the Tenth Circuit, was "not at issue." *Id.* at 934.

This Court subsequently granted review of *State v. Hagen*, 858 P.2d 925 (Utah 1992), a companion case also involving a crime committed by an Indian in Myton and to which the Tribe also was not a party. This Court explained that it granted the petition to address the "direct conflict" between *Ute III* and the state court decisions "on the question whether the Uintah Reservation has been diminished." *Hagen*, 510 U.S. at 409. The Court concluded that the Uintah Valley Reservation had been diminished with respect to land opened to non-Indian settlement under the 1905 Act. Like the Utah Supreme Court, the Court declined to consider whether the State should be estopped from "relitigating the reservation boundaries," because even though the Tribe had sought to raise

that issue before the Court, the criminal defendant had expressly disclaimed it as a basis for reversal. *Id.* at 409-10.

5. Following *Hagen*, the Tribe, the State, and the local governments returned to federal court. In 1997, the Tenth Circuit took up the question of how to reconcile *Ute III* and *Hagen*. *Ute Indian Tribe v. State of Utah*, 114 F.3d 1513, 1515 (10th Cir. 1997) ("*Ute V*"). Recognizing that *Hagen* conflicted with *Ute III* regarding patented lands from the Uintah Valley portion of the Reservation, the Tenth Circuit modified its prior mandate in conformity with this Court's reasoning, in order to preserve "uniformity and the integrity of our system of judicial decisionmaking." *Id.* at 1527. Following the recommendation of the United States, the court declined to recall *Ute III* "in its entirety," noting that leaving intact the portions of the *Ute III* mandate which were unaddressed by *Hagen* had "the benefit of producing a stable, unchanging allocation of jurisdiction" over the remaining lands within the Reservation. *Id.* at 1515, 1527, 1530.

Recognizing the importance of providing both clarity and finality, the Tenth Circuit took pains to carefully explain the legal status of every category of land within the boundaries of the original Reservation following *Hagen*. Because *Hagen* did not address the Forest lands or the Uncompahgre Reservation at all, the Court's prior final decision and mandate from *Ute III* remained binding: Those lands remained within the Reservation. *Id.* at 1528-29. As for the Uintah Reservation, the Tenth Circuit did not limit itself to the holding in *Hagen* (that the particular parcel of land at issue in that case was non-Reservation), but

revised its *Ute III* mandate in conformity with this Court's broader reasoning: Lands that had been unallotted, opened to non-Indian settlement under the 1902-1905 legislation, and not thereafter returned to tribal ownership were no longer within the Reservation. *Id.* at 1528.

Duchesne and Uintah Counties petitioned for certiorari, arguing that the Tenth Circuit had "seriously misconstrued" this Court's decision in *Hagen* and that the "mandate of this Court [had] been frustrated." Pet. 2, *Duchesne Cty. v. Ute Indian Tribe*, No. 97-570 (U.S. Sep. 29, 1997). Notably, the State did not seek certiorari, or even support the Counties' petition when this Court asked for its views. *See* Response of the State of Utah to Request for Statement of Position, *Duchesne Cty. v. Ute Indian Tribe*, No. 97-570 (U.S. Dec. 23, 1997). The State explained that while "further litigation on the boundary and jurisdictional issues might provide some additional clarity," whatever the legal outcome "a host of practical issues … [would] likely remain." *Id.* at 3. Because the Tribe and State had "already made some important progress in negotiating difficult issues" left outstanding following *Ute V*, the State's view was that discussion—not another round of judicial review—offered the best means of "resolv[ing] the complex problems confronting the parties." *Id.* at 4.

This Court denied review. 522 U.S. 1107 (1998). Then, consistent with the State's predicted outcome, the *Ute V* parties subsequently entered into a series of agreements regarding the allocation of law enforcement responsibility within the boundaries of the original Reservation. The State and Counties declined to

exercise misdemeanor jurisdiction over tribal members on lands within the original Reservation, instead deferring to the Tribe for prosecution under its Law and Order Code. Cooperative Agreement to Refer Tribal Members Charged with Misdemeanor Offenses to Tribal Court for Prosecution at 3, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Oct. 30, 1998), Dkt. 96. In return, the Tribe disclaimed some civil and regulatory authority over Reservation land owned by non-Indians. Disclaimer of Civil/Regulatory Authority at 1, Dkt. 96. The parties also entered into a cross-deputization agreement to ensure that "violations of the law are consistently and appropriately handled." Cooperative Agreement for Mutual Assistance in Law Enforcement at 2, Dkt. 96.

Nothing in these agreements purported to alter the Tenth Circuit's *Ute III* mandate, as modified by *Ute V*, respecting the Reservation's contours, nor call into question the finality of that judgment. Instead, the agreements were an expression of the parties' "agree[ment] to *accept* [that] decision and not seek to further litigate the boundaries of the Reservation." Order at 2-3, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Mar. 28, 2000), Dkt. 145 (emphasis added). Accordingly, the district court entered a stipulated order dismissing the case. *Id.* at 3-4.

6. The agreements held for over a decade, until officials in the Counties once again began prosecuting tribal members in state court for alleged crimes committed on lands that *Ute III* and *Ute V* had determined are within the Reservation. For example, in 2012 Uintah County charged a tribal member for an

assault occurring within the Uncompahgre Reservation, even though the defendant had already been successfully prosecuted in federal court for the same offense.[4] The County's chief argument in opposition to the defendant's motion to dismiss the duplicative state-court prosecution for lack of jurisdiction was that "*Ute V* is not controlling and is wrongly decided."[5] Much of the County's submission on this point was devoted to relitigating *Ute III's* conclusion that Congress did not disestablish the Uncompahgre Reservation in the 1890s. *Id.* at 19-41. Similarly, the County acknowledged in another prosecution for conduct occurring on the Uncompahgre Reservation that it "seeks to prove that it has jurisdiction in this area."[6]

Along similar lines, in 2013 Wasatch County brought criminal charges against tribal member Lesa Jenkins for alleged traffic offenses committed on a road in the Forest lands. When neither the State nor the County responded to Jenkins's request that the charges be dismissed for lack of jurisdiction, the Tribe filed a complaint in federal court seeking to enjoin the

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[4] Ex. 4 to Declaration of Keith Kessley Blackhair at 2-4, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Nov. 27, 2013), Dkt. 336-5.

[5] Memorandum in Opposition to Defendant's Motion to Dismiss Due to Lack of Jurisdiction at 1, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Nov. 27, 2013), Dkt. 336-10.

[6] Unopposed Motion to File Over Length Brief in Response to Defendant's Motion to Dismiss at 1, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Nov. 27, 2013), Dkt. 336-18.

impending prosecution.[7] The court denied the Tribe's requested injunction in a one-sentence order, finding that it had not demonstrated the requisite "irreparable injury." Order at 1, *Ute Indian Tribe v. State of Utah*, No. 13-cv-1070 (D. Utah Mar. 21, 2014), Dkt. 71.

On appeal by the Tribe, the Tenth Circuit reversed. Pet. App. 25a. Judge Gorsuch, writing for the unanimous court, explained that the Tribe satisfied the traditional requirements for a preliminary injunction. Recognizing that the prosecution of Ms. Jenkins was "part of a renewed campaign to undo the tribal boundaries settled by *Ute III* and *V*," the court found that the County's invasion of tribal sovereignty was "perhaps as serious [a harm] as any to come [the court's] way in a long time." Pet. App. 9a. And because there was no dispute that Ms. Jenkins's alleged offenses took place "within the reservation boundaries established in *Ute III* and *V*," any consideration of the merits of the Tribe's claim "favor[ed] it strongly." Pet. App. 10a-12a. Similarly, since the County had "no legal entitlement" to bring the prosecution, there was "no question" that public policy considerations and the balance of harms tipped decidedly towards the Tribe. Pet. App. 12a-13a.

The court also rejected the County's argument that the Anti-Injunction Act ("AIA") prohibited issuance of an injunction. The County's avowed attempt to reopen the long-settled question of whether the

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[7] Motion for a Preliminary Injunction at 1-3, *Ute Indian Tribe v. State of Utah*, No. 13-cv-1070 (D. Utah Dec. 3, 2013), Dkt. 3.

Forest lands are within the Reservation fell squarely within the AIA's "relitigation exception," which permits a federal court to "'prevent state litigation of an issue that previously was presented to and decided by the federal court.'" Pet. App. 13a-14a (quoting *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988)). And in response to Wasatch County's assertion that it is entitled to relitigate that issue because it was not a party to *Ute III* or *V*, the court noted that parties in privity with a litigant—like the County with the State—are bound by a prior judgment. Pet. App. 14a-16a. Though the court considered granting the Tribe's motion for sanctions against Uintah County "given the highly doubtful grounds of some of its arguments," it decided that its opinion would likely "send the same message: that the time has come to respect the peace and repose promised by settled decisions." Pet. App. 26a.[8]

[8] The court's opinion also addressed issues arising in a consolidated appeal and cross-appeal from a separate district court proceeding, in which the Tribe sought injunctive relief against the State and Duchesne and Uintah Counties precluding them from attempting to relitigate the Reservation's status via their own unlawful criminal prosecutions. *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Apr. 17, 29, 2013), Dkts. 153, 154, 176. In connection with those appeals, the Tenth Circuit held that the Tribe possessed sovereign immunity against the Counties' counterclaims alleging interference with their regulatory and criminal jurisdiction, and the court affirmed the district court's conclusion that Uintah County was not immune. Pet. App. 25a-26a. The present petition for certiorari does not seek review of either of those rulings.

None of the defendants sought en banc review. The County, but not the State, instead directly petitioned for certiorari.

REASONS TO DENY CERTIORARI

The petition should be denied, for at least four reasons: First, the Tenth Circuit's ruling that the AIA's "relitigation exception" permits an injunction against Wasatch County was correct and conflicts with no decision of this or any other court. Second, the court's holding that the County is bound by its prior judgment regarding the Forest lands is also correct, and likewise presents no disputed question of law. Third, the County seeks a remedy aimed at a problem that does not exist, and is not even presented by the facts of the underlying prosecution. And fourth, the Tenth Circuit's nearly two-decade-old decision to leave undisturbed its prior ruling that the Forest lands remain within the Reservation was entirely proper.

I. The Tenth Circuit's Grant Of A Preliminary Injunction To Halt The County's Unlawful Prosecution Was Correct And Conflicts With No Decision Of Any Court.

The Tenth Circuit's grant of an injunction halting the County's unlawful prosecution of Lesa Jenkins does not warrant this Court's review. The County does not assert that the court misstated or misapplied the traditional factors governing preliminary injunctions, nor does it suggest that the court's decision implicates any division in authority regarding the legal standards to be applied in such situations. In fact, the

County's argument that it cannot be precluded from attacking the Tenth Circuit's settled rulings ignores the entire purpose of the Anti-Injunction Act's "relitigation exception" and misconstrues the law of collateral estoppel more generally. And the County's contention that it cannot be bound by a judgment to which it was not a party turns well-established privity principles upside down.

A. The injunction was proper under the Anti-Injunction Act and well-settled collateral estoppel principles.

In challenging the Tenth Circuit's decision, the County does not take issue with the court's application of the traditional factors for granting a preliminary injunction.[9] Nor could it, as Judge Gorsuch's opinion carefully reviewed those factors in the context of this case and found the Tribe's entitlement to an injunction to be a matter of no legitimate dispute. Pet. App. 8a-13a. That decision was correct and presents no question of law meriting this Court's attention. Because the County's transparently unlawful prosecution of Ms. Jenkins represents a serious infringement of tribal sovereignty, all the preliminary injunction factors strongly favor the Tribe. *See supra* at 13.

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[9] *See University of Tex. v. Camenisch*, 451 U.S. 390, 392 (1981) (a court asked to grant a preliminary injunction must consider four factors: "whether the plaintiff will be irreparably harmed if the injunction does not issue; whether the defendant will be harmed if the injunction does issue; whether the public interest will be served by the injunction; and whether the plaintiff is likely to prevail on the merits").

Unable to meaningfully challenge the Tenth Circuit's decision on the merits, the County focuses its attention on the Anti-Injunction Act. But here again, the County fails to identify a conflict between the ruling below and a decision of any other court. And for good reason: As this Court has repeatedly recognized, while the AIA generally precludes the federal courts from enjoining state-court proceedings, its relitigation exception—"founded in the well-recognized concepts of *res judicata* and collateral estoppel"–was expressly designed to "prevent state litigation of an issue that previously was presented to and decided by the federal court." *Chick Kam Choo*, 486 U.S. at 147; *see also Smith v. Bayer Corp.*, 131 S. Ct. 2368, 2375-76 (2011).[10]

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[10] The County suggests that the Tenth Circuit's injunction contravenes this Court's command that the relitigation exception be narrowly construed. Pet. 24. But the County makes no effort to argue that the decision below was actually incorrect under this Court's precedent. Understandably so: In both *Chick Kam Choo* and *Bayer*, for example, the exception did not apply because the applicable legal standard in state and federal court differed. *See Bayer*, 131 S. Ct. at 2376-79. There is no such difference here. Whether in state or federal court, the Reservation's boundaries are determined by federal law. *See Seymour v. Superintendent of Wash. State Penitentiary*, 368 U.S. 351, 353 (1962).

The County is also wrong that, "because an element of the crime occurred outside Indian Country," this case presents "an important 'issue'" that was not decided in *Ute V*. Pet. 27. As the Tenth Circuit explained, that argument "fails on its facts," since it is "undisputed that Ms. Jenkins stands charged in state court for conduct that occurred within tribal lands and no one has pointed to any evidence in the record indicating that any part of the offense continued off-reservation." Pet. App. 12a n.1.

That is precisely—and admittedly—what the County seeks to do here. *See supra* at 12. As this Court recognized in *Hagen*, the entire purpose of state court prosecutions of tribal members for offenses committed on Reservation lands is to attempt to "relitigat[e] the reservation boundaries." 510 U.S. at 409.

Notably, the County does not dispute that the precise issue raised by the Jenkins prosecution has already been decided with finality by the federal courts. Sensibly so: In *Ute III*, the defendants argued that the 1905 enactments setting aside lands for a national forest reserve diminished the Uintah Valley Reservation. The Tenth Circuit unambiguously rejected that argument, holding instead that "the Uintah Reservation was not diminished by the withdrawal of the national forest lands." 773 F.2d at 1090. The State then unsuccessfully petitioned for certiorari. 479 U.S. 994 (1986).

Following this Court's decision in *Hagen*, the State *again* argued to the Tenth Circuit that "*Ute … III*'s holding concerning the National Forest Lands … cannot stand." *Ute V*, 114 F.3d at 1529. The court of appeals again rejected that argument, holding that "the Tribe and the federal government retain jurisdiction over … the National Forest Lands." *Id*. at 1530. Duchesne and Uintah Counties yet again petitioned for certiorari, which this Court again denied. 522 U.S. 1107 (1998). In such circumstances, "preclusion is clear beyond peradventure." *Bayer*, 131 S. Ct. at 2371.

Moreover, the injunction the Tenth Circuit ordered here is absolutely necessary to "protect … its

judgment[]." 28 U.S.C. § 2283. The fact that the Counties previously succeeded in using state-court prosecutions as a means of collaterally attacking *Ute III* does not mean that the Tenth Circuit was obliged to countenance a repeat effort here. In *Hagen* this Court expressly declined to consider whether preclusion principles barred it from considering whether the Uintah Reservation had been diminished, because, even though the Tribe sought to raise the issue, the criminal defendant chose to waive that argument. 510 U.S. at 409-10. Here the Tribe has argued from the outset that the AIA's relitigation exception permits the federal courts to preclude state-court reconsideration of a question already decided.[11]

The County attempts to resist the clear applicability of the relitigation exception in this case by insisting that "*Ute V* was an *opinion*, not a *judgment*," and therefore issue preclusion does not apply. Pet. 25-26. Leaving aside that the County yet again fails to identify any judicial disagreement regarding the legal standards governing this issue, the argument fails, for three reasons.

First, it was waived. Neither the State nor the County argued to the court of appeals that preclusion was improper because of some defect in the *Ute V* judgment.[12] Because this Court is one of "review, not

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[11] *See* Plaintiff's Response to Wasatch County's Motion to Dismiss the Tribe's Complaint at 3-11, *Ute Indian Tribe v. State of Utah*, No. 13-cv-1070 (D. Utah Feb. 21, 2014), Dkt. 49.

[12] *See* State of Utah's Answer Brief at 11-20, *Ute Indian Tribe v. State of Utah*, No. 14-4034 (10th Cir. Aug. 14, 2014), Dkt.

of first view," *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005), "[p]rudence dictates that [it] allow the lower courts to consider that question in the first instance," *Austin v. United States*, 509 U.S. 602, 622-23 (1993).

Second, the County concedes that, in the wake of the Tenth Circuit's *Ute V* decision, "[t]he district court did eventually enter a 'judgment'." Pet. 27; *see also* Order, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Mar. 28, 2000), Dkt. 145. The Tenth Circuit's decision in *Ute V*, therefore, undeniably resulted in a "valid and final judgment" that conclusively ended the litigation. Restatement (Second) of Judgments § 27 (1982).

Third, the County is wrong that *Ute III*'s decision regarding the Forest lands, as affirmed by *Ute V*, otherwise lacks preclusive effect. The Second Restatement of Judgments—to which this Court "regularly turns … for a statement of the ordinary elements of issue preclusion," *B&B Hardware, Inc. v. Hargis Indus., Inc.* 135 S. Ct. 1293, 1303 (2015)—indicates that "final judgment" includes "any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect." Restatement (Second) of Judgments § 13 (1982). Accordingly, courts have long afforded preclusive effect to judicial resolutions of issues if they were "adequately deliberated and firm, even if not final in the sense of

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1019293418; Wasatch Appellees' Brief at 49-54, *Ute Indian Tribe v. State of Utah*, No. 14-4034 (10th Cir. Aug. 11, 2014), Dkt. 1019293398.

forming a basis for a judgment already entered." *Id.* § 13 cmt. g.[13] As Judge Friendly explained, in a decision that has been relied upon hundreds of times over the past half century, "[f]inality" in the context of issue preclusion "may mean little more than that the litigation of a particular issue has reached a stage that a court sees no really good reason for permitting it to be litigated again." *Lummus Co. v. Commonwealth Oil Ref. Co.*, 297 F.2d 80, 89 (1961).

In this case, that stage was reached long ago. To make such a determination, courts look to factors including "the nature of the decision (i.e., that it was not avowedly tentative), the adequacy of the hearing, and the opportunity for review." *Id.* Here, the judicial decision at issue came in the form of a full opinion issued by a federal appeals court sitting en banc. That opinion clearly and decisively resolved the issue at stake; the County identifies nothing "avowedly tentative" about *Ute III* (or *Ute V*, for that matter). There is no suggestion that the hearings before the Tenth Circuit were in any way inadequate. Finally, not only was *Ute III* reviewed by the Tenth Circuit in *Ute V*, but the issue of the Forest lands' status was the subject of two

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[13] *See* 18A Charles Alan Wright, et al., *Federal Practice and Procedure* § 4434 at 110 (2d ed. 2002) ("[I]ssue preclusion [has been applied] to matters resolved by preliminary rulings or to determinations of liability that have not yet been completed by an award of damages or other relief."); *Dyndul v. Dyndul*, 620 F.2d 409, 412 (3d Cir. 1980) ("'Final judgment' (with respect to issue preclusion) includes any prior adjudication of an issue in another action between the parties that is determined to be sufficiently firm to be accorded conclusive effect." (quotation marks omitted)).

unsuccessful petitions to this Court for certiorari review.

The County's additional argument—that the agreement entered into by the parties following *Ute V* invalidated the Tenth Circuit's mandate—fares no better. Nothing in that agreement undermined *Ute V*'s conclusion about the Reservation's boundaries. On the contrary, the agreement was premised on *Ute V*. It defined "Reservation lands" to mean "those lands within the original boundaries of the Uintah and Ouray Reservation over which the Tribe possesses civil and criminal jurisdiction, as set forth in [*Ute V*]." Cooperative Agreement to Refer Tribal Members Charged with Misdemeanor Offenses to Tribal Court for Prosecution at 5, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Oct. 30, 1998), Dkt. 96. It further clarified that "[n]othing in this Agreement is intended to, nor shall it be construed by any court of competent jurisdiction, to alter or affect the sovereign authority … of the Ute Indian Tribe." *Id. at* 9. The Tenth Circuit was therefore correct to give the decision in *Ute V* full preclusive effect.

B. The County is properly bound by the *Ute V* judgment.

Wasatch County is also wrong in asserting that it cannot be bound by *Ute V* because it was not a party to that proceeding. To the contrary, courts have consistently held that local entities, including counties,

are bound by litigation conducted in the federal courts by the state which created them.[14]

For good reason: As this Court has explained, "[p]olitical subdivisions of States"—including "counties"—"never have been considered as sovereign entities," but rather "as subordinate governmental instrumentalities created by the State." *Reynolds v. Sims*, 377 U.S. 533, 575 (1964); *see also Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907) (stating that "political subdivisions of the State" are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them"). And it is well-established that "[t]here is privity between officers of the same government so that a judgment in a suit between a party and a representative of the [government] is *res judicata* in relitigation of the same issue between that party and another officer of the government." *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 402-03 (1940) (citations omitted); *see also* 18A Wright, *supra*, § 4458, at 560 ("The general rule is that litigation by one agency is binding on other agencies of the same government ….").

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[14] *See, e.g.*, *Grand Traverse Band of Ottawa & Chippewa Indians v. Dir., Mich. Dep't of Nat. Res.*, 141 F.3d 635, 642 (6th Cir. 1998) (local entities are instrumentalities of the state, and are bound by litigation conducted by the state); *County of Boyd v. US Ecology, Inc.*, 48 F.3d 359, 361 (8th Cir. 1995) (county bound by litigation brought by state where state and counties' interests "were nearly identical"); *Nash Cty. Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484, 495 (4th Cir. 1981) (county bound by consent decree entered into by state following antitrust litigation).

Utah law confirms the County's subordinate position. Counties are defined in the State Constitution as "legal subdivisions" of the State. Utah Const. art. XI, § 1; *see also* Utah Code Ann. § 11-13-103(18)(a) (defining counties as "political subdivision[s] of the state"). Indeed, in the briefing submitted in *Ute III* and *Ute V*, both Duchesne and Uintah Counties identified themselves as "political subdivision[s] of the State of Utah." In addition, Utah law authorizes the Attorney General to litigate on behalf of the state as a whole. *See* Utah Code Ann. § 67-5-1(2) & (6) (the Attorney General is required to "take charge … of all civil legal matters in which the state is interested" and to "exercise supervisory powers over the district and county attorneys of the state in all matters"). And the very criminal prosecution at issue in this case was brought by the County in the name of the State. *See, e.g.*, Ex. H to Motion for Preliminary Injunction at 2, *Ute Indian Tribe v. State of Utah*, No. 13-cv-1070 (D. Utah Dec. 3, 2013), Dkt. 3-8. There is therefore no question that, in consistently arguing that the Forest lands are not within the Reservation, throughout this litigation the State has acted in a representative capacity for all of its political subdivisions, including Wasatch County.[15]

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[15] The cases cited by the County provide no support for its contention that a county is not bound by the results of prior litigation conducted by the state. Those cases largely involve state-law disputes about whether a county is bound by litigation conducted by a state agency or another county. *See, e.g.*, *City of Martinez v. Texaco Trading & Transp., Inc.*, 353 F.3d 758, 763 (9th Cir. 2003); *Froebel v. Meyer*, 217 F.3d 928, 934 (7th Cir. 2000). That question is altogether different from the question

The County's subordinate position aside, it is black-letter law that a putative litigant may be bound by a determination in an action brought by others when the nonparty "was adequately represented by someone with the same interests who was a party to the suit" or where there is a "preexisting substantive legal relationship[]" between the parties. *Taylor v. Sturgell*, 553 U.S. 880, 894 (2008) (quotation marks and alterations omitted).

The County is bound the Tenth Circuit's decisions in *Ute III* and *V* under that standard. "A party's representation of a nonparty is 'adequate' for preclusion purposes" if "(1) The interests of the nonparty and her representative are aligned; and (2) either the party understood herself to be acting in a representative capacity or the original court took care to protect the interests of the nonparty." *Id*. at 900 (citations omitted). As noted earlier, *see supra* at 18, the argument the State offered in *Ute III* and *V* was the same as the argument offered by the County here, and it fails to

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whether, under *federal law*, a county or other political subdivision of a state is bound by litigation conducted *by the state itself*. Under state law, a state may structure the relationship among its political subdivisions and agencies in various ways. *See Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71 (1978). When the state itself litigates in federal court, however, all of the state's different instrumentalities and political subdivisions must be bound. To hold otherwise would interject federal judges into intra-state disputes. *See* 18A Wright, *supra*, § 4458.

identify in any respect how the State's interests in litigating *Ute III* and *V* differed from its own.[16]

Finally, even if there were some divergence of interests between it and the State, the County concedes that, more than thirty years ago, the district court invited nonparty counties to intervene in the litigation, and Wasatch County chose not to do so. Pet. 30; *see also Ute I*, 521 F. Supp. at 1078 n.10. For four decades, the County has been content to let the State and other counties bear the cost of litigating these issues. Having made that decision, the County may not now belatedly challenge the settled decisions of a federal appeals court through an unlawful state court prosecution.

II. This Case Provides No Opportunity To Address The County's Broader Arguments.

This Court's review is also not warranted to remedy supposed confusion surrounding the Reservation's boundaries. *Ute V* was absolutely clear: Following *Hagen*, lands in the Uintah Indian Reservation that were opened to settlement in the early 1900s and not previously allotted to Indians or later

[16] In asserting that the State did not protect its interests following *Ute V* because it "would not have given up its own jurisdictional claim in exchange for the settlement, which gave it nothing," Pet. 30, the County again ignores the fact that it is not the post-*Ute V* agreement that precludes relitigation of the status of the Forest lands; it is the Tenth's Circuit's decision in *Ute III*, as affirmed by *Ute V*. The County's "jurisdictional claim" to the Forest lands was fully litigated and conclusively rejected in those decisions.

restored to trust status are no longer within the Reservation. Everything else—including the Forest lands in question in this case—remains part of the Reservation. 114 F.3d at 1530-31.

Notably, the County does not allege that there is any confusion about whether Ms. Jenkins's alleged crime occurred within the Reservation. Nor could it. *Ute III*'s ruling regarding the Forest lands has been the status quo for three decades. Nor are the identity and extent of the Forest lands in dispute. Determining jurisdiction over Ms. Jenkins's offense requires no "title search" or any other individualized inquiry. *See* Pet. 20. It requires nothing more than looking at a map—the very map that the parties to *Ute V* agreed would resolve such questions going forward. Order Approving Maps Depicting Status of Land Within the Uintah Valley Indian Reservation, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Nov. 20, 1998), Dkt. 100.

Nor does the County offer any credible evidence that *Ute V* created an unworkable jurisdictional regime. Its argument relies on entirely unsupported allegations that the Tribe has failed to exercise governmental authority on Reservation lands or has impeded lawful county efforts to do the same. Pet. 14, 22. But the County does not offer a single piece of evidence indicating that *Ute V* poses a problem for law enforcement or other governmental activities.

Reality reveals a very different picture than the one painted by the County. As noted above, *see supra* at 10-11, following *Ute V* the Tribe and the State ad-

dressed the complexity resulting from this Court's decision in *Hagen* by entering into an agreement allocating law enforcement responsibility on the Reservation among the parties. The agreement was explicitly premised on the understanding that the Tribe "possesses the authority … to provide for the maintenance of law and order within [the] Reservation." Cooperative Agreement for Mutual Assistance in Law Enforcement at 1-2, *Ute Indian Tribe v. State of Utah*, No. 75-cv-408 (D. Utah Oct. 30, 1998), Dkt. 96. Until the Counties began their most recent campaign to undermine tribal authority over Reservation lands, that agreement enabled tribal, federal, state, and local officials to handle "violations of the law … consistently and appropriately." *Id.* at 2.

Similarly, in the two decades following *Hagen*, state, federal, and tribal officials have worked diligently to resolve outstanding questions regarding the status of lands within the boundaries of the original Reservation. The result is a comprehensive GIS map identifying the status of every acre of land on the Reservation, "which will [soon] be available to law-enforcement and civil government officials who deal with jurisdictional issues." United States' Brief as Amicus Curiae in Support of Plaintiff-Appellant and in Support of Reversal at 12 n.8, *Ute Indian Tribe v. Myton*, No. 15-4080 (10th Cir. Oct. 22, 2015), Dkt. 10313147.

These cooperative efforts are ongoing. The Tribe and the State are currently negotiating a renewed agreement regarding the allocation of law enforcement and other governmental responsibilities on the Reservation. Memorandum of Agreement Between

Ute Indian Tribe and State of Utah (Dec. 16, 2015). Notably, the State—despite being a defendant subject to the Tenth Circuit injunction and the party in whose name Ms. Jenkins is being prosecuted—has declined to seek this Court's review of the decision below, just as it did following *Ute V*. *See supra* at 10. And the United States has consistently supported the positions taken by the Tribe in this litigation respecting the Forest lands. *See* Brief for the United States as Amicus Curiae at 7-8, *State of Utah v. Ute Indian Tribe*, No. 85-1821 (U.S. Nov. 1986); Brief for the United States as Amicus Curiae at 14-15, *Ute Indian Tribe v. State of Utah*, No. 96-4073 (10th Cir. July 1996). In short, the only stakeholders who believe that this Court's intervention is required are the same entities that have manufactured the controversy in the first place.

Moreover, the assertion of "jurisdictional chaos" is based upon the supposed "checkerboard allocation of jurisdiction" in the former Uintah Reservation. Pet. 9-10. That alleged problem is simply *not* presented by the facts of this case. The Forest lands are a large contiguous area of Reservation, in which there is no "checkerboard" at all, and Ms. Jenkins was stopped miles inside its boundaries. Therefore, even if this Court were to grant certiorari, it would not have before it any question related to parcels of land *elsewhere* in the Reservation, which are the actual object of the Counties' complaints.

In fact, the Counties have made no secret of the fact that the Forest lands are not their true target: They want the Utah state courts—and ultimately this Court—to overturn the mandate from *Ute III* and now

rule that the former Uncompahgre Reservation was diminished or disestablished. *See supra* at 12. That is the primary objective of the deliberate campaign undertaken by the Counties' attorneys to bring state court criminal prosecutions against tribal members for alleged offenses committed on Reservation land.

In short, it is apparent that what the Counties actually want is not to alleviate the "jurisdictional chaos" that supposedly reigns in Utah. Rather, they seek to disrupt the staus quo and create confusion — as long as doing so diminishes tribal authority and increases the influence county officials enjoy over both Indians and non-Indians living within the Reservation's original boundaries.

III. The Court Of Appeals In *Ute V* Properly Respected The *Ute III* Mandate Addressing The Forest Lands.

Finally, the pages of briefing the County devotes to rearguing the merits of *Ute V* are misguided and provide no basis for review. In the present case, the Tenth Circuit properly held that Wasatch County is bound by that judgment regarding the status of the Forest lands, and precluded from seeking to relitigate that issue. Preclusion does not depend on the correctness of the prior judgment to be enforced. *See, e.g.*, *City of Arlington, Tex. v. F.C.C.*, 133 S. Ct. 1863, 1869 (2013); *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). All that matters is whether—as here—the issue has actually been litigated and has been validly and finally determined. *See supra* at 20-22.

In any event, *Ute V was* correctly decided. In that decision, the Tenth Circuit fully recognized that *Hagen* conflicted with *Ute III* regarding patented lands from the Uintah Valley portion of the Reservation, and that its duty was therefore to "reconcile two inconsistent boundary determinations and to provide a uniform allocation of jurisdiction among separate sovereigns." 114 F.3d at 1523.

This was not a simple task. On the one hand, "the importance of finality" counseled in favor of adhering to the longstanding rule that a court should not disrupt a prior final judgment unless it is absolutely necessary, so as to ensure that legal controversies that have been fully and fairly litigated come to a definitive end. *Id.* at 1522. On the other hand, the court appreciated that leaving its mandate wholly unchanged after *Hagen* would potentially compromise the "uniformity" that is so crucial to "judicial decisionmaking." *Id.* at 1527.

Weighing these competing imperatives, the court recalled its mandate to the extent required to ensure that its determination of the Reservation's boundaries fully conformed with *Hagen*. *Id.* at 1527-28. In *Hagen* this Court concluded that the state courts had criminal jurisdiction over an Indian defendant because the parcel of land where he committed a crime was "not in Indian country." 510 U.S. at 421. Fully respecting that ruling, the Tenth Circuit in *Ute V* did not simply modify its mandate to exclude that particular parcel from the Reservation; applying *Hagen*'s reasoning, it held that *all* lands in the Uintah Reservation opened to non-Indian settlement under the

1902-1905 legislation that had not been previously allotted to tribal members or later returned to tribal ownership were no longer within the Reservation. 114 F.3d at 1528.

The County is therefore wrong in asserting that in *Ute V* the Tenth Circuit "def[ied] this Court's decision in *Hagen*." Pet. i. Just the opposite: The court of appeals gave that decision full effect, while sensibly preserving those portions of the *Ute III* mandate unaddressed by *Hagen*'s holding or reasoning. And appropriately so, as nothing in *Hagen* conflicts with *Ute III*'s ruling regarding other parts of the Reservation—including the Forest lands at issue here. As the United States explained following *Hagen*, that decision was "not even arguably in tension with [*Ute III*'s] ruling on the forest reserve lands." Brief for the United States as Amicus Curiae at 14, *Ute Indian Tribe v. State of Utah*, No. 96-4073 (10th Cir. July 1996).

Consideration of the actual history of the Forest lands—something the County studiously avoids—confirms this fact. In *Hagen*, this Court concluded that the original Uintah Reservation was diminished in large part because the 1902 Act providing for allocation of lands to tribal members stated that "'all the unallotted lands within said reservation shall be *restored to the public domain*.'" 510 U.S. at 412 (quoting 32 Stat. 263) (emphasis added in *Hagen*); *see also id.* at 413. Given this "*operative* language," *Hagen* concluded that the Act evinced "a congressional purpose to terminate reservation status." *Id.* at 413.

The 1902 Act restoring Uintah Reservation lands to the public domain did not address the Forest lands; they were addressed only by the 1905 Act, which permitted the President to "set apart and reserve as an addition to the Uintah Forest Reserve … such portion of the lands with the Uintah Indian Reservation as he considers necessary." 33 Stat. 1070. Notably, the 1905 Act did not open the Forest lands to non-Indian settlement and did not include any operative language restoring them to the public domain.

This difference is crucial. *Hagen* itself recognized that the language of the 1905 Act, standing alone, did not express a congressional intent to diminish the Uintah Reservation. *See* 510 U.S. at 415-16. Nor did President Roosevelt's order adding the Forest lands to the Uintah Forest Reserve signal any intent to do so. It simply declared that certain lands in the Reservation were "made a part of the Uintah Forest Reserve." 34 Stat. 3117. In other words, nothing in the "operative language" of the 1905 enactments relevant to the Forest lands gives rise to an inference of diminishment similar to that which *Hagen* drew from the 1902 Act.

The County's cursory arguments to the contrary are unavailing. In asserting that the Forest lands are "obviously diminished" under *Hagen*, the petition conspicuously does not cite the 1905 Act or President Roosevelt's proclamation. Instead, it refers (without direct citation) to an earlier statute that generally authorized the President to set apart "public land bearing forests … as public reservations." Act of Mar. 3, 1891, ch. 561, § 24, 26 Stat. 1095, 1103. That statute, however, is not the act that empowered the president

to set aside the Forest lands for the Uintah Forest Reserve. It also said nothing about "restoring" lands originally designated as an Indian reservation to the "public domain"—which is the "operative language" of the 1902 Act that *Hagen* found to be determinative of the Uintah Reservation's diminished status.

The County also asserts—without explanation—that the Tribe has "lost control" over the Forest lands. Pet. 36. Presumably it is referring to the fact that assignment of the Forest lands to the Uintah Forest Reserve resulted in federal management of those lands. *See* 33 Stat. 1070 (rendering the Forest lands "subject to the laws, rules and regulations governing forest reserves"). But as the United States itself has explained, federal management of the Forest lands is wholly compatible with reservation status. Brief for the United States as Amicus Curiae at 7, *State of Utah v. Ute Indian Tribe*, No. 85-1821 (U.S. Nov. 1986); *see also Ute III*, 773 F.3d at 1099 (Seymour, J., concurring) ("[I]t is clear that the goals of the national forest system as of 1905 … could be achieved without taking jurisdiction away from Indian Tribes.").

Given that nothing in *Hagen*'s reasoning suggested—let alone mandated—a different conclusion respecting the Forest lands, the Tenth Circuit's decision in *Ute V* to respect that portion of its *Ute III* judgment was entirely sound. This Court properly denied

the petition for writ of certiorari in *Ute V* and should likewise do so here.[17]

CONCLUSION

For the foregoing reasons, the petition should be denied.

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[17] The County suggests that this Court denied certiorari in *Ute V* because the parties were negotiating an agreement to resolve outstanding issues and because the State did not seek review. Pet. 11. Even if accurate, that fact only further supports a denial here. As before, the State is not seeking review. And, like before, the Tribe and State are currently engaged in negotiations toward a renewed agreement addressing law enforcement and other issues. Memorandum of Agreement Between Ute Indian Tribe and State of Utah (Dec. 16, 2015).