

Medina v. Estate of Cody, --- P.3d ---, 2023 WL 6470727 (Ariz. Ct. App., Oct. 5, 2023).

- **Holding:** Arizona state courts do not have jurisdiction to hear civil claims brought against estate of tribal member who was alleged to have negligently killed four nonmembers on state highway running through Navajo Nation.
- **Summary:** A tribal member drove his mother's car across the center line of an undivided state highway running through the Navajo Nation, and collided with a vehicle carrying four non-members, who were all killed. A surviving family member brought an action in state court against the estate of the deceased tribal member. The action was ultimately dismissed for lack of subject matter jurisdiction, and the plaintiff appealed.

The court of appeals affirmed, relying principally on a 1977 decision, *Enriquez v. Superior Court*, 115 Ariz. 342, 342–43 (App. 1977), which held that under the Supreme Court's holding in *Williams v. Lee*, 358 U.S. 217 (1959), state courts generally lack jurisdiction over civil actions brought by non-tribal members against members arising out of on-reservation conduct, because the exercise of state court jurisdiction would “infringe[] on the right of reservation Indians to make their own laws and be ruled by them.” 358 U.S. at 218–21.

Plaintiffs argued that since the decision in *Enriquez*, the Supreme Court had, in the *Montana* line of cases, applied much stricter limits on the reach of tribal jurisdiction. The court held, however that the *Montana* line of cases, including the holding in *Strate v. A-1 Contractors*, 520 U.S. 438 (1997), that a right-of-way for a state highway on tribal land is “equivalent, for nonmember governance purposes, to alienated, non-Indian land,” such that tribes need “[n]either regulatory nor adjudicatory authority over [] state highway accident[s] ... to preserve” their right “to make their own laws and be ruled by them,” *id.* at 454-59, was inapplicable, because the question before it was the “scope of state court jurisdiction, not ... the extent of tribal court jurisdiction.” Thus, the court concluded, the “case falls squarely under *Williams*' framework.” The court did note, however, that:

[T]he United States Supreme Court, since *Montana*, has curtailed the scope of tribal authority, and may yet hold that state rights-of-way within tribal territorial boundaries are the equivalent of non-Indian fee land for jurisdictional purposes in all cases, regardless of the nonconsenting party's status. See *Winer [v. Penny Enterprises]*, 674 N.W.2d [9, 15 (N.D. 2004)] 15 (stating “[i]t is not yet clear whether *Strate* forecasts” a complete “erosion” of the *Williams*' analysis for “state rights-of-way”) (quoting W. Canby, Jr., *American Indian Law in a Nutshell*, 175–76 (3rd ed. 1998)). But to date, the Supreme Court has not done so, nor do we.

In short, “a plaintiff bringing a claim against an enrolled tribal member cannot hale that nonconsenting defendant into state court for torts arising from conduct on the defendant's reservation, even on a state highway open under an easement.”

- **Relevant (2023) Deskbook Section:** 6:11 n.15
- **Comment:** As noted in note 15 of Deskbook 6:11, courts have split on the issue of state court jurisdiction over torts committed by tribal members on state highways within reservations. Since such highways are regulated by the state, with the state establishing

the rules of the road that govern conduct thereon, it is difficult to see how state court jurisdiction infringes upon the right of the tribe to govern its members.