Chegup v. Ute Indian Tribe of Uintah and Ouray Reservation, ___ F. Supp. 3d ___, 2022 WL 4359260 (D. Utah Sept. 16, 2022)

- **Holding:** On remand from the Tenth Circuit, the district court dismissed without prejudice for failure to exhaust tribal remedies an action brought by tribal members challenging a five-year reservation banishment order under the habeas corpus provision of the Indian Civil Rights Act.
- **Summary:** In *Chegup v. Ute Indian Tribe of Uintah and Ouray Reservation*, 28 F.4th 1051 (10th Cir. 2022), summarized at https://docs.google.com/document/d/1MUQnnELKafUEdp8BOnaKnCZmmp-ak6F_/edit, the panel majority held that the district court had erred in addressing in the first instance whether subject-matter jurisdiction existed over an action seeking habeas corpus relief under 25 U.S.C. § 1303 with respect to a five-year reservation banishment order by a tribal business committee. It reasoned, in essence, that the district court should have addressed initially whether Plaintiffs had exhausted tribal court remedies and thereby avoided difficult jurisdictional questions related to the "detention" requirement in § 1303. On remand, the district court granted Defendants' motion to dismiss on exhaustion grounds.

  The principal exception to the exhaustion requirement raised by Plaintiffs was "that there was no cognizable relief available via the tribal courts due to an ordinance that prohibited the Ute tribal courts from reviewing the decisions made by the Tribal Business Committee[.]" The court disagreed, pointing to a 2014 ordinance that granted authority to the tribal courts "'to hear appeals from orders of exclusion and/or removal[.]'" Here, "Plaintiffs turned to the federal court system, thus denying the tribal courts the opportunity to resolve the banishment issue." The court continued on to reject various reasons why the ordinance did not apply, including that exhaustion had been attempted by two Plaintiffs and that the ordinance has not been approved by the Secretary of the Interior as required by the tribal constitution. On the latter point, the court recognized the need for secretarial approval but pointed out that "the Defendants have indicated that this ordinance was in fact submitted to the Superintendent of the Reservation as required by the Tribe's Constitution. Defendants suggest that the reason the signature block is blank is because there is no requirement that the Superintendent or Secretary return a signed copy to the Tribe."
- **Relevant (2022) Deskbook Section:** 6:4 n.22