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## ***Coeur D'alene Tribe v. Hawks: Why Federal Courts Have the Power to Recognize and Enforce Tribal Court Judgments Against Nonmembers "Because of the Federal Government's Unique Relationship with Indian Tribes"***

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# **COEUR D'ALENE TRIBE v. HAWKS: WHY FEDERAL COURTS HAVE THE POWER TO RECOGNIZE AND ENFORCE TRIBAL COURT JUDGMENTS AGAINST NONMEMBERS “BECAUSE OF THE FEDERAL GOVERNMENT’S UNIQUE RELATIONSHIP WITH INDIAN TRIBES”\***

*Heath Albert*\*\*

## *I. Introduction*

Lake Coeur d’Alene and the St. Joe River are long, winding bodies of water found in Northwest Idaho.<sup>1</sup> To the Coeur d’Alene Tribe, these waters are sacred and foundational to the Tribe’s culture.<sup>2</sup> The lake and river make up part of the Coeur d’Alene Tribe Reservation and are partially owned by the Tribe.<sup>3</sup> Because of the great reverence with which it views Lake Coeur d’Alene and the St. Joe River, the Tribe goes to great lengths to preserve the environmental integrity of the water.<sup>4</sup> For example, the Tribe regulates the structural encroachments, such as private docks, on tribal waters.<sup>5</sup>

At issue in *Coeur d’Alene Tribe v. Hawks* was an encroachment on the St. Joe River placed by a husband and wife, the Hawkses, who are not members of the Coeur d’Alene Tribe.<sup>6</sup> Since the Hawkses did not follow tribal ordinances when installing a boat garage on the lake, the Tribe sued

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\* *Coeur d’Alene Tribe v. Hawks*, 933 F.3d 1052, 1057 (9th Cir. 2019).

\*\* Third-year student, University of Oklahoma College of Law. Many thanks to Professor Liesa Richter of the University of Oklahoma College of Law for her invaluable advice and support during the writing of this Note.

1. *See Lake Management*, COEUR D’ALENE TRIBE, <https://www.cdatribe-nsn.gov/lake/> (last visited Jan. 2, 2020); *see Saint Joe River*, IDAHO DEP’T OF FISHING & GAME, <https://idfg.idaho.gov/ifwis/fishingplanner/water/1168011474569> (last visited Sept. 19, 2020).

2. *See Goals of Regulation*, COEUR D’ALENE TRIBE, <https://www.cdatribe-nsn.gov/lake/shoreline-protection/goals-of-regulation/> (last visited Jan. 2, 2020).

3. *See Map of the Coeur d’Alene Reservation*, COEUR D’ALENE TRIBE, <https://www.cdatribe-nsn.gov/nr/wp-content/uploads/sites/5/2020/01/fishfeereg.pdf> (last visited Sept. 19, 2020); *see History*, COEUR D’ALENE TRIBE, <https://www.cdatribe-nsn.gov/our-tribe/history/> (last visited Sept. 19, 2020).

4. *Lake Management*, *supra* note 1.

5. *Shoreline Protection*, COEUR D’ALENE TRIBE, <https://www.cdatribe-nsn.gov/lake/shoreline-protection/> (last visited Jan. 2, 2020).

6. *Coeur d’Alene Tribe v. Hawks*, 933 F.3d 1052, 1054 (9th Cir. 2019).

the couple in Coeur d'Alene Tribal Court.<sup>7</sup> The tribal court entered a default judgment against the Hawkses because they failed to appear to defend against the Tribe's claims.<sup>8</sup> To ensure the removal of the violating encroachment, the Tribe filed a complaint in federal court seeking recognition and enforcement of the tribal court judgment.<sup>9</sup>

When a court recognizes a judgment from another jurisdiction, it gives the outside judgment "the same effect that [the judgment] has in the [jurisdiction] where it was rendered with respect to the parties, the subject matter of the action and the issues involved."<sup>10</sup> A judgment from another jurisdiction is enforced when the prevailing party is given the relief granted by the court that originally rendered the judgment in the matter.<sup>11</sup> This Note considers whether federal courts have the power, or jurisdiction, to hear a recognition and enforcement case such as *Coeur d'Alene Tribe v. Hawks*. This discussion does not venture far into whether, and under what circumstances, a court should recognize a tribal court judgment. Instead, the main focus remains on whether an "action to recognize and enforce a tribal court's award against nonmembers of the tribe"<sup>12</sup> is appropriate for resolution in the federal courts.

Part I has served to broadly introduce *Coeur d'Alene Tribe* and recognition and enforcement suits. Parts II and III of this Note discuss the foundational legal principles necessary to understand the analysis in *Coeur d'Alene Tribe*; particularly, these sections consider the subject matter jurisdiction requirements of federal courts and the process by which a foreign judgment may be recognized in a new forum. Part IV provides the significant caselaw established on this issue before *Coeur d'Alene Tribe*. In Parts V and VI, this Note explains the Ninth Circuit's holding, assesses the court's reasoning, and considers the implications of the decision. Finally, Part VII concludes that federal courts are authorized to recognize and enforce tribal court judgments against nonmember defendants.

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7. *Id.*

8. *Id.*

9. *Id.*

10. RESTATEMENT (SECOND) OF CONFLICT OF L. ch. 5, topic 2, intro. note (AM. L. INST. 1971).

11. *Id.*

12. *Coeur d'Alene Tribe*, 933 F.3d at 1053.

## II. Jurisdiction of the Federal Courts

While state courts in the United States have broad jurisdiction to hear most kinds of legal disputes, federal courts have only limited jurisdiction.<sup>13</sup> Federal courts do not have general authority to make valid, legal judgments in many types of cases.<sup>14</sup> Among a few other categories of cases, the U.S. Constitution grants authority to the Supreme Court to preside over cases “arising under [the] Constitution, the Laws of the United States, and Treaties made . . . under their Authority.”<sup>15</sup> In addition to the power given to the Supreme Court, the Constitution further devises power to the congressional branch “[t]o constitute Tribunals inferior to the Supreme Court.”<sup>16</sup> Therefore, Congress established the federal district and appellate courts<sup>17</sup> and established the types of cases in which these federal courts can exercise jurisdiction.<sup>18</sup> Federal district courts have subject matter jurisdiction to hear most cases because of two federal statutes: 28 U.S.C. §§ 1331 and 1332.<sup>19</sup> Section 1331 authorizes federal courts to make rulings in cases involving federal law.<sup>20</sup> The other main jurisdictional authorization, § 1332, permits federal courts to rule in cases involving U.S. citizens from different states, commonly called diversity jurisdiction.<sup>21</sup> This Note focuses on the first-mentioned jurisdictional authorization in § 1331: federal question jurisdiction.

Cases considered “federal questions” involve claims that arise “under the Constitution, laws, or treaties of the United States.”<sup>22</sup> In *American Well Works v. Layne*, Justice Oliver Wendell Holmes provided a useful test to determine whether a suit arises under federal law; specifically, he reasoned that a federal question “arises under the law that creates the cause of action.”<sup>23</sup> Thus, claims that properly invoke federal question jurisdiction are created by federal law.<sup>24</sup> While this test is useful, it is not the only option a

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13. *Nw. Airlines, Inc. v. Transp. Workers Union of Am.*, 451 U.S. 77, 95 (1981).

14. *See id.*

15. U.S. CONST. art. III, § 2.

16. U.S. CONST. art. I, § 8.

17. 28 U.S.C. § 132; 28 U.S.C. § 43.

18. *See* 28 U.S.C. §§ 1331–1332; 28 U.S.C. § 1291.

19. *Subject Matter Jurisdiction*, CORNELL L. SCH. LEGAL INFO. INST., [https://www.law.cornell.edu/wex/subject\\_matter\\_jurisdiction](https://www.law.cornell.edu/wex/subject_matter_jurisdiction) (last visited Jan. 9, 2020); *see* 28 U.S.C. §§ 1331–1332.

20. *See* 28 U.S.C. § 1331.

21. *See id.* § 1332.

22. *Id.* § 1331.

23. *Am. Well Works v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916).

24. *See id.*

court has to resolve the issue of federal question jurisdiction.<sup>25</sup> Another standard the Supreme Court has offered for federal question analysis is whether the case raises a substantial question of federal law.<sup>26</sup> This standard was established in *Smith v. Kansas City Title & Trust Co.*, where a shareholder sued Kansas City Title & Trust to prevent it from violating its corporate charter.<sup>27</sup> The company planned to invest in federal securities recently authorized by Congress.<sup>28</sup> The shareholder claimed that the company's intended investment would cause misappropriation of corporate funds because the federal securities were invalidly authorized.<sup>29</sup> The shareholder argued that Congress lacked authority to create these securities, and thus any investment in them by Kansas City Title & Trust would constitute a misappropriation of corporate funds.<sup>30</sup> The Supreme Court ruled that the federal courts had proper subject matter jurisdiction because, while the plaintiff's claim was created by state law, the shareholder could succeed only if he established that a congressional act violated the Constitution.<sup>31</sup> The Court held that, to satisfy the substantial question standard, the question of federal law must be necessary to the plaintiff's claim for relief.<sup>32</sup>

A plaintiff's claim arises under federal law only if the issue of federal law appears on the face of the well-pleaded complaint.<sup>33</sup>

[A] suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution. It is not enough that the plaintiff alleges some anticipated defense to his cause of action, and asserts that the defense is invalidated by some provision of the Constitution of

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25. See *Smith v. Kan. City Title & Tr. Co.*, 255 U.S. 180 (1921); *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (“[F]ederal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.”).

26. See *Smith v. Kan. City Title & Tr. Co.*, 255 U.S. 180, 199 (1921).

27. *Id.* at 201–02.

28. *Id.* at 201.

29. *Id.*

30. *Id.*

31. *Id.* at 199–202.

32. *Id.*; see also *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1383 (9th Cir. 1988).

33. *Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908); see also *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 17 (1983).

the United States. Although such allegations show that very likely, in the course of the litigation, a question under the Constitution would arise, they do not show that the suit, that is, the plaintiff's original cause of action, arises under the Constitution.<sup>34</sup>

This precept is known as the well-pleaded complaint rule.<sup>35</sup> Given jurisdictional restraints, it is vital for a plaintiff seeking relief in federal court to clearly establish the court's subject matter jurisdiction; if the court decides at any phase of the proceedings it lacks subject-matter jurisdiction, it *must* dismiss the case.<sup>36</sup>

### *III. Territorial Limitation of Legal Judgments and Enforcement in Foreign Forums*

Courts, whether state, federal, or tribal, have the power to make rulings only within the legal authority granted by the sovereign they serve.<sup>37</sup> "No legal judgment has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived."<sup>38</sup> Of course, the physical limitations of a sovereign government are its territorial borders.<sup>39</sup> While a government's laws may be freely applied outside of its territory by the courts of other sovereigns, judicial rulings are limited to a sovereign's physical territory.<sup>40</sup> "No sovereignty can extend its process beyond its own territorial limits, to subject either persons or property to its judicial decision. Every exertion of authority of this sort beyond this limit is a mere nullity, and incapable of binding such persons or property in any other tribunals."<sup>41</sup>

Legal judgments come in various forms. In the most basic sense, a legal judgment is an order that must be satisfied by or executed against a person,

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34. *Mottley*, 211 U.S. at 152.

35. *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009).

36. FED. R. CIV. P. 12(h)(3).

37. *See Baskin v. Montedonico*, 115 F.2d 837, 838 (6th Cir. 1940).

38. *Wilson v. Marchington*, 127 F.3d 805, 807 (9th Cir. 1997).

39. John Agnew, *Sovereignty Regimes: Territoriality and State Authority in Contemporary World Politics*, 95 ANNALS OF THE ASS'N OF AM. GEOGRAPHERS 437, 437 (2005) ("Implicit in all claims about state sovereignty as the quintessential form taken by political authority are associated claims about distinguishing a strictly bounded territory from an external world and thus fixing the territorial scope of sovereignty.")

40. *See Brown v. Fletcher's Estate*, 210 U.S. 82, 89 (1908); *see also Baskin*, 115 F.2d at 838.

41. *Baskin*, 115 F.2d at 838 (citations omitted).

entity, or property. One important fundamental principle of legal judgments against defendants in civil cases is that they presuppose property within the court's jurisdiction to satisfy such judgments.<sup>42</sup> When a defendant lacks recoverable assets within the court's jurisdiction, the court cannot extend its reach to seize those assets located outside its jurisdiction.<sup>43</sup> "Enforcement of a judgment . . . does not become possible until the defendant or the defendant's property can be found within the enforcing forum . . ."<sup>44</sup>

So, what is a plaintiff to do after a valid judgment is entered against a defendant who is not present and has no property or recoverable assets in the ruling court's jurisdiction? In this scenario, a plaintiff must locate the jurisdiction that has the authority to enforce an identical judgment against the defendant.<sup>45</sup> Once the proper forum is located, the plaintiff must file a new lawsuit to domesticate and enforce the judgment, unless an existing treaty or law binds the new forum to honor the judgment.<sup>46</sup> The new forum will review the original judgment to assess its authenticity and the consequences of enforcing it against the defendant.<sup>47</sup>

The Full Faith and Credit Clause of the U.S. Constitution requires state courts to recognize and enforce judgments from courts sitting in other states as long as the ruling court had proper jurisdiction.<sup>48</sup> However, federal courts have determined that tribal courts are not afforded full faith and credit under the U.S. Constitution and other federal statutes.<sup>49</sup> Thus, tribal court judgments are not automatically recognized, regardless of their jurisdiction.<sup>50</sup> Instead, federal courts review tribal court judgments under the doctrine of comity.<sup>51</sup>

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another.

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42. George Rutherglen & James Y. Stern, *Sovereignty, Territoriality, and the Enforcement of Foreign Judgments*, in *FOREIGN COURT JUDGMENTS AND THE UNITED STATES LEGAL SYSTEM* 13, 14–15 (Paul B. Stephan ed., 2014).

43. *See id.* at 15.

44. *Id.* at 14.

45. *See id.*

46. *Id.* at 16.

47. *Id.*

48. *Williams v. North Carolina*, 325 U.S. 226, 228 (1945); U.S. CONST. art. IV, § 1; 28 U.S.C. § 1738.

49. *Wilson v. Marchington*, 127 F.3d 805, 809 (9th Cir. 1997) ("Full faith and credit is not extended to tribal judgments by the Constitution or Congressional act, and we decline to extend it judicially.").

50. *Id.* at 810.

51. *Id.*

It is not a rule of law, but one of practice, convenience, and expediency. Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation. Rather, it is a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws. Comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.<sup>52</sup>

Federal courts will never recognize tribal court judgments if the tribal court lacks subject matter jurisdiction or personal jurisdiction, or "if the defendant was not afforded due process of law."<sup>53</sup> Comity is also the method the Supreme Court decided federal courts should use to determine whether to enforce a judgment from a court in a foreign country.<sup>54</sup> This doctrine gives courts broad discretion in ruling on the enforcement of foreign judgments; even if the foreign judgment is one which is usually enforced in the United States, a court is not necessarily bound to enforce it.<sup>55</sup>

#### *IV. Significant Law Before Coeur d'Alene Tribe v. Hawks*

The Supreme Court has not ruled on the particular issue presented in *Coeur d'Alene Tribe* and discussed in this Note; however, the Court's holding in *National Farmers Union Insurance Cos. v. Crow Tribes of Indians* in 1985 is instructive in determining whether federal courts have the power to enforce tribal court judgments against nonmembers of the tribe.<sup>56</sup> Before the Ninth Circuit's ruling in *Coeur d'Alene Tribe*, only two U.S. Courts of Appeals had addressed whether there is federal question jurisdiction for actions of recognition and enforcement of tribal court judgments against nonmembers.

Federal diversity jurisdiction was not available in *Coeur d'Alene Tribe* because Indian tribes, even those that are federally recognized, are not

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52. *Somportex Ltd. v. Phila. Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971).

53. *Wilson*, 127 F.3d at 810 (quoting RESTATEMENT (THIRD) OF FOREIGN RELS. L. OF THE UNITED STATES § 482 (AM. L. INST. 1986)).

54. *Hilton v. Guyot*, 159 U.S. 113 (1895).

55. *Rutherglen & Stern*, *supra* note 42, at 20.

56. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985).

citizens of any U.S. state.<sup>57</sup> Thus, federal courts must make the preliminary determination of whether there is jurisdiction in tribal court judgment recognition cases based upon a finding of an issue of federal law. In *Miccosukee Tribe of Indians v. Kraus-Anderson Construction Co.*, the Eleventh Circuit held that suits for recognition of tribal court judgments implicate no federal issue.<sup>58</sup> In contrast, the Tenth Circuit in *MacArthur v. San Juan County* disagreed and ruled that an issue of federal law does exist in these kinds of recognition suits.<sup>59</sup>

The Coeur d'Alene Tribe deems its sovereignty as inherent and endowed by its Creator.<sup>60</sup> "Tribal Sovereignty flows through American history in a timeless river, without beginning or end."<sup>61</sup> The federal government did not create tribal authority, but it nonetheless endures at the will of Congress.<sup>62</sup> Today, "Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status."<sup>63</sup> Thus, to determine the legitimacy of any exercise of tribal authority over a nonmember, courts must examine the aspects of sovereignty the tribe has retained.<sup>64</sup>

#### A. *National Farmers Union Insurance v. Crow Tribe of Indians*

In *National Farmers*, the Supreme Court held that, since federal law circumscribes tribal sovereignty, the question of whether a tribe properly exercised its civil jurisdiction over nonmembers raised a federal question. This case concerned the validity of a tribal court's exercise of jurisdiction over parties who were not members of the ruling tribe.<sup>65</sup> A member of the Crow Tribe sued a Montana school district in tribal court to recover damages he suffered after he was struck by a motorcycle in the school

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57. *Am. Vantage Cos. v. Table Mountain Rancheria*, 292 F.3d 1091, 1095 (9th Cir. 2002) ("First, as dependent domestic sovereign nations, Indian tribes are not state citizens. Second, despite ample opportunity, Congress has not seen fit to confer state citizenship on Indian tribes. Finally, because our holding is consistent with every other circuit to address this issue, we advance the interest of uniformity in a uniquely federal area of law.").

58. 607 F.3d 1268, 1274 (11th Cir. 2010).

59. 497 F.3d 1057, 1066 (10th Cir. 2007).

60. *Sovereignty*, COEUR D'ALENE TRIBE, <https://www.cdatribe-nsn.gov/our-tribe/sovereignty> (last visited Jan 3, 2020).

61. *Id.*

62. *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

63. *Id.*

64. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 855–56 (1985).

65. *Id.* at 852.

parking lot.<sup>66</sup> The land on which the injury occurred is within the Crow Tribe Reservation, but is owned by the State of Montana.<sup>67</sup> The school district never appeared in the tribal court action and, consequently, the Crow Tribal Court entered a default judgment in favor of the Tribe member.<sup>68</sup> To prevent the execution of this judgment, the school district and its insurer filed a complaint in the United States District Court for the District of Montana arguing that the Crow Tribal Court lacked subject matter jurisdiction over an accident occurring on non-tribal land.<sup>69</sup> The court eventually granted a permanent injunction against the execution of the tribal court judgment.<sup>70</sup> It held the tribal court lacked jurisdiction over the tort because the injury did not occur on tribal land and Congress did not delegate to the Crow Tribal Court the power to hear this case.<sup>71</sup>

The Ninth Circuit reversed the district court's decision and, ironically, concluded that the district court lacked subject matter jurisdiction to render the permanent injunction.<sup>72</sup> The Ninth Circuit's decision rested first on the determination that tribal courts are not constrained by the Fourteenth Amendment; thus, the school district's due process and equal protection claims did not arise under the Constitution.<sup>73</sup> Next, the court discussed whether the school district's claim that the tribal court violated the Indian Civil Rights Act,<sup>74</sup> conferred federal question jurisdiction.<sup>75</sup> "The ICRA requires tribal courts to exercise their jurisdiction in a manner consistent with due process and equal protection."<sup>76</sup> The Supreme Court, however, has determined that "[a] civil suit to enjoin violations of the ICRA is not cognizable in federal court."<sup>77</sup> Refusing to follow the school district's contentions, the Ninth Circuit held that the question of whether a tribal court has violated its adjudicatory authority does not raise an issue of federal common law, implicating federal question jurisdiction.<sup>78</sup>

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66. *Id.* at 847.

67. *Id.*

68. *See id.*

69. *See id.* at 848–49.

70. *Nat'l Farmers Union Ins. Cos.*, 560 F. Supp. at 218.

71. *See id.* at 217.

72. *Nat'l Farmers Union Ins. Cos.*, 471 U.S. at 849.

73. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 736 F.2d 1320, 1322 (9th Cir. 1984).

74. Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301–1341.

75. *Nat'l Farmers Union Ins. Cos.*, 736 F.2d at 1322.

76. *Id.* at 1322–23 (citing 25 U.S.C. § 1302(a)(8)).

77. *Id.* (citing *Santa Clara Pueblo v. Martinez*, 463 U.S. 49, 67–70 (1978)).

78. *Id.* at 1323.

On appeal to the Supreme Court, the school district argued that assessing the validity of Indian Tribal jurisdiction over nonmembers “involves a careful examination of Tribal sovereignty and the extent to which that sovereignty has been divested.”<sup>79</sup> It further asserted that federal law divests the Crow Tribe of the sovereignty supporting its default judgment.<sup>80</sup> The Court agreed in an opinion authored by Justice Stevens.<sup>81</sup> Stevens reasoned that, since federal law “defines the outer boundaries of an Indian tribe’s power over non-Indians,” it must be analyzed to determine whether an Indian tribal court has properly exercised its civil jurisdiction over nonmembers.<sup>82</sup> Therefore, the Court found that the federal district court had subject matter jurisdiction under 28 U.S.C. § 1331 to determine whether the Crow Tribal Court exceeded its jurisdictional authorization when it rendered its default judgment.<sup>83</sup> The Court stated that all tribal court remedies must be exhausted before a federal district court will have jurisdiction to make any determination or grant any remedy.<sup>84</sup> As a result, the case was remanded to the district court for a determination of whether all Crow Tribal Court remedies were exhausted.<sup>85</sup>

*B. Miccosukee Tribe of Indians v. Kraus-Anderson Construction Co.*

In 2010, in *Miccosukee Tribe of Indians v. Kraus-Anderson Construction Co.*, the Eleventh Circuit heard a case brought to the federal courts by a plaintiff-tribe seeking recognition and enforcement of a tribal court judgment.<sup>86</sup> *Miccosukee Tribe of Indians* involved a contract dispute between the Miccosukee Tribe and a company hired to construct multiple buildings on the Tribe’s reservation.<sup>87</sup> Unlike *National Farmers*, where the party that first introduced the tribal court judgment to the U.S. federal courts was seeking protection from its execution, *Miccosukee Tribe of Indians* involved a tribe seeking domestication and enforcement of a tribal court judgment.<sup>88</sup> The Tribe originally sued the company in Miccosukee Tribal

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79. Brief for Petitioners at 7, *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985) (No. 84-320), 1985 WL 670173, at \*7.

80. *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852–53 (1985).

81. *Id.* at 847–53.

82. *Id.* at 851–52.

83. *Id.* at 857.

84. *Id.*

85. *Id.*

86. 607 F.3d 1268 (11th Cir. 2010).

87. *Id.* at 1270–72.

88. *Nat’l Farmers Union Ins. Cos.*, 471 U.S. at 848.

Court and, after a sixteen day bench trial, the tribal court ruled for the Tribe and awarded it \$1,654,988.88 in damages.<sup>89</sup> The construction company then exhausted the available review process through an appeal that was denied by the Miccosukee Business Council.<sup>90</sup>

Because the construction company refused to pay the award, the Tribe sued in federal court to enforce and recover on the tribal court judgment.<sup>91</sup> The district court held that an Indian tribe's claim for the federal recognition of tribal court judgments presents a question of federal common law, so the court had proper subject matter jurisdiction.<sup>92</sup> But the court refused to recognize and enforce the tribal court judgment under the doctrine of comity "because the Business Council was an interested party in the litigation and its disallowance of [the construction company's] appeal constituted a denial of due process."<sup>93</sup>

The Tribe appealed the district court decision to the Eleventh Circuit.<sup>94</sup> At the outset of every federal appeal, an appellate court will assess whether the trial court had valid jurisdiction to render the decision on appeal.<sup>95</sup> Even if the parties agree that federal subject matter jurisdiction is present, as in *Miccosukee Tribe of Indians*, the appellate court must confirm Congress has authorized the lower court to hear the particular suit.<sup>96</sup> In fulfillment of this obligation, the Eleventh Circuit concluded that 28 U.S.C. § 1331 provided no basis for federal jurisdiction over the Miccosukee Tribe's suit; thus, the Eleventh Circuit held that the case should be dismissed for lack of subject matter jurisdiction.<sup>97</sup> The court recognized that the Supreme Court in *National Farmers* found an issue of federal law in a case where the tribal court's jurisdiction was at issue.<sup>98</sup> But the Eleventh Circuit distinguished *National Farmers* on the basis that the Miccosukee Tribe and the non-tribal defendant agreed the tribal court possessed valid jurisdiction to make its judgment.<sup>99</sup> The Tribe was only willing to waive its sovereign immunity if the construction company agreed to adjudicate all claims in the Miccosukee Tribal Court System; thus, the contract contained a forum selection

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89. *Miccosukee Tribe of Indians*, 607 F.3d at 1271–72.

90. *Id.* at 1272.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *See id.* (citing *Great S. Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453 (1900)).

96. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986).

97. *Miccosukee Tribe of Indians*, 607 F.3d at 1275–77.

98. *Id.* at 1275.

99. *Id.*

provision.<sup>100</sup> The court reasoned that the issue of tribal sovereignty—the basis for federal question jurisdiction in *National Farmers*—was not present in this case.<sup>101</sup> According to the Eleventh Circuit, “[a] suit to domesticate a tribal judgment does not state a claim under federal law, whether statutory or common law.”<sup>102</sup>

Conversely, the Tenth Circuit has held that suits brought to federal court to enforce tribal court judgments present a federal issue sufficient to support the exercise of jurisdiction.<sup>103</sup> This is especially true “in cases encompassing the federal question whether a tribal court has exceeded its lawful limits of jurisdiction involving an exercise of civil subject-matter jurisdiction.”<sup>104</sup> In such cases, “the federal district court is empowered to review a tribal court decision under 28 U.S.C. § 1331.”<sup>105</sup> In the Tenth Circuit, tribal court judgments are reviewed under the doctrine of comity.<sup>106</sup> The court analyzes whether to extend comity to the tribal court judgment, but has held that under two conditions the court can never extend comity: (1) when the tribal court lacked proper jurisdiction (personal or subject matter), or (2) when the tribal court failed to afford due process of law to the party against whom the judgment was asserted.<sup>107</sup>

### C. *Wilson v. Marchington*

In 1997, the Ninth Circuit examined “whether, and under what circumstances, a tribal court tort judgment is entitled to recognition in the United States Courts.”<sup>108</sup> *Wilson v. Marchington* involved a negligence suit brought by a member of the Blackfeet Indian Tribe against a nonmember.<sup>109</sup> At issue in *Wilson* was an automobile accident which occurred on a Montana state highway within the Blackfeet Indian Tribe Reservation when, while the plaintiff was attempting to turn left and exit the highway, the defendant maneuvered his tractor trailer to pass the plaintiff on her left.<sup>110</sup> Having sustained significant injuries, the tribe member plaintiff sued

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100. *Id.* at 1271.

101. *Id.* at 1275.

102. *Id.*

103. *MacArthur v. San Juan Cnty.*, 497 F.3d 1057, 1066 (10th Cir. 2007).

104. *Superior Oil Co. v. United States*, 798 F.2d 1324, 1329 (10th Cir. 1986).

105. *Id.*

106. *MacArthur*, 497 F.3d at 1066.

107. *Id.* at 1067.

108. *Wilson v. Marchington*, 127 F.3d 805, 807 (9th Cir. 1997).

109. *See id.*

110. *Id.*

the truck driver and his employer in the Blackfeet Indian Tribal Court.<sup>111</sup> Explicitly reserving all jurisdictional objections, the defendants appeared in the tribal court action to defend against the plaintiff's claims.<sup>112</sup> Ultimately, the jury returned a verdict for the plaintiff.<sup>113</sup> After multiple appeals at the tribal court level, the plaintiff then brought the tribal court verdict to federal court to be recognized and enforced.<sup>114</sup> The U.S. District Court for the District of Montana granted summary judgment in favor of the plaintiff, and the defendant appealed to the Ninth Circuit.<sup>115</sup>

Without expressly identifying the issue of federal law that would support the exercise of subject matter jurisdiction, both the district court and the Ninth Circuit rendered judgments on the merits.<sup>116</sup> First, the Ninth Circuit declined to extend the application of the Full Faith and Credit Clause to recognize tribal court judgments; the court noted that such an extension would be proper only if done legislatively.<sup>117</sup> Instead, the court ruled that tribal court judgments should be reviewed and, if appropriate, recognized in U.S. federal courts under the doctrine of comity.<sup>118</sup>

The Ninth Circuit acknowledged that "the existence of subject matter jurisdiction is a threshold inquiry in virtually every federal examination of a tribal judgment."<sup>119</sup> Ultimately, the tribal court subject matter analysis led the court to refuse the enforcement of the judgment.<sup>120</sup> Under Supreme Court precedent, tribal courts do not have authority to make judgments against nonmembers in cases involving automobile accidents on state highways, even if the accident occurred within an Indian reservation.<sup>121</sup> Because the tribal court lacked subject matter jurisdiction, the Ninth Circuit denied the recognition and enforcement of the judgment in favor of the Blackfeet Indian Tribe member.<sup>122</sup>

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111. *See id.*

112. *Wilson v. Marchington*, 934 F. Supp. 1176, 1178 (D. Mont. 1995).

113. *Wilson*, 127 F.3d at 807.

114. *Id.*

115. *See id.*

116. *Id.* at 805; *see Wilson*, 934 F. Supp. 1176.

117. *Wilson*, 127 F.3d at 809.

118. *Id.*

119. *Id.* at 811.

120. *Id.* at 815.

121. *Strate v. A-1 Contractors*, 520 U.S. 438, 442 (1997) ("[T]ribal courts may not entertain claims against nonmembers arising out of accidents on state highways, absent a statute or treaty authorizing the tribe to govern the conduct of nonmembers on the highway in question.").

122. *Wilson*, 127 F.3d at 815.

*V. Statement of the Case: Coeur d'Alene Tribe v. Hawks*

The Coeur d'Alene Tribe is a federally recognized Indian tribe with over 2190 enrolled members that once claimed over 3.5 million acres of what is now northern Idaho.<sup>123</sup> Today, the Tribe's sovereign authority spans over a 345,000-acre reservation.<sup>124</sup> Within the Coeur d'Alene Reservation are portions of land submerged by Lake Coeur d'Alene and the St. Joe River.<sup>125</sup> The Tribe expresses great interest in preserving and protecting its waters.<sup>126</sup> It states the intent behind its water regulation this way:

Although the Coeur d'Alene Tribe has the right of exclusive use and occupancy and to exclude non-Tribal member uses of the waters and submerged lands within the Reservation, the Coeur d'Alene Tribe may permit non-Tribal members the privilege to use these waters and submerged lands in certain specific, well-defined ways. This non-Tribal member use is by permission only and is to be narrowly construed.<sup>127</sup>

Steve and Deanne Hawks, who are not members of the Coeur d'Alene Tribe, own property along the submerged land possessed by the Tribe.<sup>128</sup> Without the consent of the Tribe, the Hawkses installed a boat garage that extended from their property into the river.<sup>129</sup> According to the Tribe, the Hawkses directly violated Coeur d'Alene tribal law, which prohibits "[a]ll encroachments on Tribal submerged lands and waters . . . unless there is a solid permit and lease currently in effect for the encroachment."<sup>130</sup> The Tribe sued the Hawkses in Coeur d'Alene Tribal Court for violating the tribal law.<sup>131</sup> The Hawkses failed to appear before the tribal court; consequently, the tribal court entered a default judgment against them.<sup>132</sup> The judgment charged the Hawkses with a \$3900 penalty and declared the Tribe had authority to remove the boat garage.<sup>133</sup>

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123. *History*, *supra* note 3; *Idaho v. United States*, 553 U.S. 262, 265 (2001).

124. *History*, *supra* note 3.

125. *Coeur d'Alene Tribe v. Hawks*, 933 F.3d 1052, 1054 (9th Cir. 2019).

126. *Lake Management*, *supra* note 1.

127. COEUR D'ALENE TRIBAL LAW AND ORDER CODE ch. 44-1.01, <https://www.cdatribe-nasn.gov/lake/wp-content/uploads/sites/7/2020/03/Chapter-44.pdf> [<https://perma.cc/TGK2-N5CA>].

128. *Coeur d'Alene Tribe*, 933 F.3d at 1054.

129. *Id.*

130. COEUR D'ALENE TRIBAL LAW AND ORDER CODE ch. 44-8.01(D)(1).

131. *Coeur d'Alene Tribe*, 933 F.3d at 1054.

132. *Id.*

133. *Id.*

The Coeur d'Alene Tribe, seeking federal recognition and enforcement of the tribal court judgment, filed a complaint in the U.S. District Court for the District of Idaho.<sup>134</sup> It was then, for the first time, that the Hawkses appeared to defend themselves by moving to dismiss for lack of subject matter jurisdiction.<sup>135</sup> They argued the Tribe's federal suit did not place tribal jurisdiction and sovereignty at issue; instead, the couple argued, the Tribe was only seeking federal enforcement of a tribal judgment.<sup>136</sup> It was the Hawkses' position that a federal court would have the authority granted by 28 U.S.C. § 1331 to rule on an issue of tribal jurisdiction over nonmember defendants, but the analysis for the Coeur d'Alene Tribe's federal claim would not involve such an issue because all the Tribe sought was recognition and enforcement of a judgment.<sup>137</sup> The district court agreed and, "[h]aving found 'no federal statute or law . . . in dispute,' the district court dismissed the suit for lack of subject matter jurisdiction."<sup>138</sup> In support of its ruling, the court relied heavily on the Eleventh Circuit's decision in *Miccosukee Tribe of Indians*.<sup>139</sup> Just like the Eleventh Circuit held, it was the district court's position that there could be a federal issue in cases involving tribal court judgments only if the tribal court's jurisdiction is challenged by one party.<sup>140</sup>

The Coeur d'Alene Tribe appealed to the Ninth Circuit.<sup>141</sup> The issue on appeal was "whether the grant of federal question jurisdiction in 28 U.S.C. § 1331 encompasses an action to recognize and enforce a tribal court's award against nonmembers of the tribe."<sup>142</sup> On appeal, the Tribe abandoned enforcement of the Hawkses' \$3900 judgment because the fine was penal in nature, and courts do not impose the penal laws of another sovereign.<sup>143</sup> The Tribe, however, still sought the recognition and enforcement of the ruling of the Coeur d'Alene Tribal Court judgment that entitled the Tribe to remove the Hawkses' encroaching boat garage.<sup>144</sup>

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134. *Id.*

135. *Id.*

136. Reply in Support of Motion to Dismiss or Stay at 3, *Coeur d'Alene Tribe v. Hawks*, 933 F.3d 1052 (9th Cir. 2019) (No. 2:16-cv-00366-BLW), 2016 WL 9344143.

137. *Id.*

138. *Coeur d'Alene Tribe*, 933 F.3d at 1054 (quoting *Coeur d'Alene Tribe v. Hawks*, No. 2:16-CV-366-BLW, 2017 WL 3699347, at \*2 (D. Idaho Aug. 25, 2017)).

139. *Coeur d'Alene Tribe*, 2017 WL 3699347, at \*2.

140. *Id.*

141. *Coeur d'Alene Tribe*, 933 F.3d at 1054.

142. *Id.* at 1053.

143. *Id.* at 1054 n.2.

144. *Id.* at 1054.

Judge Richard Clifton authored the decision for the Ninth Circuit. From the outset of the opinion, Judge Clifton recognized the court's limited jurisdiction and inability to expand such jurisdiction by way of judicial decree.<sup>145</sup> The party asserting jurisdiction must convince the court that the case at hand properly fits into the few categories Congress has authorized federal courts to adjudicate; the court will always begin its analysis with a presumption that the present case is outside its limited jurisdiction.<sup>146</sup> Since there is no constitutional provision or federal statute that creates the Coeur d'Alene Tribe's claim for the recognition and enforcement of its judgment against the Hawkses, it was the Tribe's burden to prove that the district court and the Ninth Circuit had the authority to make valid judgments.<sup>147</sup> Therefore, the Tribe had to establish that the case "depend[ed] on the necessary presence of a substantial question of federal law."<sup>148</sup>

The court accordingly examined whether the Coeur d'Alene Tribe's claim necessarily depended on an issue of federal law.<sup>149</sup> A substantial issue of federal law does not exist based merely on the involvement of a federal Indian tribe in litigation.<sup>150</sup> Further, the Supreme Court has clarified there is no "general 'federal common law of Indian affairs.'"<sup>151</sup> Thus, the Ninth Circuit needed to "articulate a specific rule of federal common law under which the Tribe's case arises" to identify a substantial issue of federal law that would support the exercise of jurisdiction.<sup>152</sup>

To satisfy this standard, the Coeur d'Alene Tribe proffered a rule of federal common law under which its claim arose: congressional limitations on tribal sovereignty over nonmembers.<sup>153</sup> Tribal authority was not created by federal law and "[a]t one time [tribes] exercised virtually unlimited power over their own members as well as those who were permitted to join their communities."<sup>154</sup> But throughout the history of the United States, Congress has placed limits on Indian tribes' sovereignty and, today, "the

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145. *Id.* (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)).

146. *Id.*

147. *Id.*

148. *Id.* at 1055 (citing *Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 27–28 (1983)).

149. *Id.* at 1055–56.

150. *Stock W., Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225–26 (9th Cir. 1989).

151. *Coeur d'Alene Tribe*, 933 F.3d at 1055 (quoting *Inyo Cnty. v. Paiute-Shoshone Indians*, 538 U.S. 701, 712 (2003)).

152. *Id.*

153. *Id.*

154. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 851 (1985).

power of the Federal Government over the Indian tribes is plenary.”<sup>155</sup> Since federal law constrains and circumscribes the outer boundaries of Indian tribal authority over nonmembers,<sup>156</sup> “the question of ‘whether a tribal court has adjudicative authority over nonmembers is a federal question.’”<sup>157</sup>

The Hawkses countered by arguing the district court’s dismissal for lack of subject matter jurisdiction was proper for two reasons: (1) because the couple did not challenge the Coeur d’Alene Tribal Court’s jurisdiction, and (2) because the Tribe did not seek a declaration by the district court that the tribal court properly exercised its jurisdiction.<sup>158</sup> Thus, the Hawkses attacked the Tribe’s assertion that this recognition and enforcement suit presented a substantial issue of federal law.<sup>159</sup> Since the tribal court’s jurisdiction to render its default judgment against the Hawkses was not disputed, the Hawkses’ claim cannot be the source of the federal issue that supports subject matter jurisdiction.<sup>160</sup>

Ultimately, the Ninth Circuit agreed with the Coeur d’Alene Tribe.<sup>161</sup> The court held that “the Tribe’s action to enforce the Tribal Court’s judgment against a nonmember presents a substantial issue of federal law.”<sup>162</sup> The Tribe’s federal action depended entirely on the determination of whether applying tribal law in the ruling against the Hawkses was proper, given the limits placed by Congress on the Tribe’s sovereignty over nonmembers.<sup>163</sup> “[A] federal question inhered in the Tribe’s complaint because in order to impose its policy, embodied in a declaration by its judiciary, it will inevitably be forced to establish its authority to do so under federal common or statutory law.”<sup>164</sup>

The Coeur d’Alene Tribe was “‘pressing the outer boundaries’ of its authority over nonmembers” when it applied Coeur d’Alene Tribal Law to

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155. *Id.*

156. *Coeur d’Alene Tribe*, 933 F.3d at 1055–56; *Nat’l Farmers Union Ins. Cos.*, 471 U.S. at 851.

157. *Coeur d’Alene Tribe*, 933 F.3d at 1056 (quoting *Plains Com. Bank v. Long Fam. Land & Cattle Co.*, 554 U.S. 316, 324 (2008)).

158. Appellee’s Brief at 8, *Coeur d’Alene Tribe v. Hawks*, 933 F.3d 1052 (2019) (No. 17-35755), 2017 WL 6550777 at \*8.

159. *Id.* at 7–8, 2017 WL 6550777, at \*7–8.

160. *Id.* at 8, 2017 WL 6550777, at \*8.

161. *Coeur d’Alene Tribe*, 933 F.3d at 1057.

162. *Id.*

163. *See id.* at 1058.

164. *Id.* at 1060.

the Hawkses.<sup>165</sup> The Tribe further tested these boundaries when it sought federal recognition and enforcement of its tribal court judgment against the Hawkses.<sup>166</sup> As the Supreme Court clarified in *National Farmers*, federal law defines the confines of tribal authority over nonmembers.<sup>167</sup> Determining tribal court jurisdiction is an incredibly complex task that requires courts to assess the implications of numerous legal and political actions taken by the federal government.<sup>168</sup>

[T]he existence and extent of a tribal court's jurisdiction will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions.<sup>169</sup>

To determine whether the district court should recognize and enforce the tribal court judgment, it is first necessary to determine whether the Tribe proceeded appropriately within these limits of tribal sovereignty over nonmembers set by federal law.<sup>170</sup> The Ninth Circuit placed a limitation on further application of the holding in *Coeur d'Alene Tribe* by confining the holding to the facts presented: "a tribe seeking to enforce a tribal court judgment against a nonmember."<sup>171</sup>

### VI. Analysis

The Ninth Circuit's reasoning in *Coeur d'Alene Tribe* is sound and should be followed in all federal courts. Further, at least two of the justifications for federal question jurisdiction—"experience . . . and hope of uniformity that a federal forum offers on federal issues"<sup>172</sup>—are satisfied by

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165. *Id.* at 1059 (citing *Chilkat Indian Village v. Johnson*, 870 F.2d 1469, 1474 (9th Cir. 1989)) (internal citation omitted).

166. *Id.*

167. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985).

168. *Id.* at 855–56.

169. *Id.*

170. *Coeur d'Alene Tribe*, 933 F.3d at 1059.

171. *Id.* at 1060.

172. *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). The justification offered by the Supreme Court but absent here is solicitude: the belief that a federal court approaches federal claims with greater care than would a state court. John F. Preis, *Reassessing the Purposes of Federal Question Jurisdiction*, 42 WAKE FOREST L. REV. 247, 287 (2007). While federal courts are an optimal forum for tribal court judgment

the federal courts' exercise of subject matter jurisdiction over cases in which tribes seek recognition and enforcement of tribal court judgments against nonmembers. Assuring the consideration of these tribal court judgments in federal court will simultaneously legitimize tribal court proceedings and protect nonmembers from potentially unfair tribal court proceedings.

The Ninth Circuit correctly found a federal issue in *Coeur d'Alene Tribe* because resolving the Tribe's claim requires a complex survey of the history and relationship between the federal government and the Tribe. Here, the court looked beyond the label of the Tribe's claim—a judgment recognition suit—to the actual task the court had to undertake to rule on the claim. Federal courts determine whether tribal court judgments will be recognized under the doctrine of comity.<sup>173</sup> Before a court can extend comity to a tribal court judgment, it must first conclude that the tribal court had both subject matter jurisdiction over the matter and personal jurisdiction over the defendant.<sup>174</sup> This analysis will necessarily involve an examination of how much sovereignty the Coeur d'Alene Tribe retains over nonmembers. Because federal law defines the outer limits of tribal authority over nonmembers, federal law will be the focal point of this examination.<sup>175</sup> Thus, a federal issue sufficient to satisfy the jurisdictional authorization in 28 U.S.C. § 1331 is present in *Coeur d'Alene Tribe* and will be present in future suits for the recognition and enforcement of tribal court judgments against nonmembers.

Perhaps an effective manner to assess the reasoning in *Coeur d'Alene Tribe* is to contrast the Ninth Circuit's reasoning with the Eleventh Circuit's decision in *Miccosukee Tribe of Indians*. Both decisions discuss the consequential holding in *National Farmers*; however, the two Circuit Courts of Appeals disagree as to the appropriate scope of the Supreme Court's holding. The Eleventh Circuit interpreted the Supreme Court's holding in *National Farmers* narrowly, while the Ninth Circuit opted for a broader interpretation.<sup>176</sup> Even though the facts of these two cases are not identical, both cases involve a tribe seeking the recognition and

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recognition suits, state courts are able to fairly and carefully review tribal court judgment recognition suits. *See, e.g.*, *Coeur d'Alene Tribe v. Johnson*, 405 P.3d 13 (Idaho 2017).

173. *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997).

174. *Id.* (citing RESTATEMENT (THIRD) OF FOREIGN RELS. L. OF THE UNITED STATES § 482 (AM. L. INST. 1986)).

175. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985).

176. *Compare Coeur d'Alene Tribe*, 933 F.3d at 1059, with *Miccosukee Tribe of Indians v. Kraus-Anderson Constr. Co.*, 607 F.3d 1268, 1275 (11th Cir. 2010).

enforcement of a tribal court judgment. The most consequential difference between the cases is the conditional forum selection clause in *Miccosukee Tribe of Indians*.

The Eleventh Circuit described the decision in *National Farmers* as holding “that a dispute over tribal court jurisdiction is considered a dispute over tribal sovereignty, and therefore—like a dispute over tribal sovereignty—is a matter of federal law to which § 1331 applies.”<sup>177</sup> Since the parties in *Miccosukee Tribe of Indians* agreed to resolve their disputes in tribal court, the Eleventh Circuit reasoned there was no dispute over tribal court jurisdiction, and thus no federal issue.<sup>178</sup> By requiring a dispute between the parties over the tribal court’s jurisdiction, the court seems to implicitly conclude that the parties in *Miccosukee Tribe of Indians* could enlarge the power of tribal courts, including tribal authority over nonmembers, by contractually agreeing to litigate in the tribal court systems. This contradicts the Supreme Court’s declaration that tribal authority over nonmembers is defined by federal law.<sup>179</sup>

In *Coeur d’Alene Tribe*, the Ninth Circuit properly applied a less-constrained interpretation of the holding in *National Farmers*. The Supreme Court articulated that “[t]he question whether an Indian tribe retains the power to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a ‘federal question’ under § 1331.”<sup>180</sup> The Ninth Circuit accurately decided this question must be answered regardless of which party makes the first move to bring the tribal court judgment to the attention of a federal court. Further, the Ninth Circuit realized that the question from *National Farmers* must still be answered even if the parties agree, or at least do not dispute, that the tribal court had proper jurisdiction to render the judgment.

The Supreme Court, in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, provided the justifications for the jurisdictional authorization in § 1331.<sup>181</sup> These justifications show that while many state courts can properly adjudicate federal claims, a federal forum for these claims is optimal. First, federal question jurisdiction is necessary because federal forums possess greater experience analyzing and

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177. *Miccosukee Tribe of Indians*, 607 F.3d at 1275.

178. *Id.*

179. *Nat’l Farmers Union Ins. Cos.*, 471 U.S. at 852.

180. *Id.*

181. 545 U.S. 308, 312 (2005).

applying federal law.<sup>182</sup> Experience and expertise in applying federal law is vital for tribal court judgment recognition suits because the process for determining whether a tribal court judgment should be enforced under the doctrine of comity involves an extremely complex analysis of federal statutes, treaties, and administrative law.<sup>183</sup> Federal courts are in the best position to make these convoluted analyses of federal law because of the accrued experience of deciding federal claims.<sup>184</sup> Federal question jurisdiction is also necessary for the “hope of uniformity that a federal forum offers on federal issues.”<sup>185</sup> State courts and their judges greatly outnumber their federal counterparts; “[t]he judiciaries of fifty states (plus the District of Columbia and Puerto Rico) are, it is argued, likely to spawn greater interpretive variance than the thirteen U.S. courts of appeals.”<sup>186</sup> Although there is not current uniformity among the three federal circuits regarding claims such as *Coeur d’Alene Tribe’s*, there is much greater potential for realizing this “hope of uniformity”<sup>187</sup> in the federal court system. A uniform approach to the recognition of tribal court judgments will promote equal treatment of Indian tribes throughout the United States. Consistent and equal treatment of tribes is crucial for the continued legitimacy of tribal sovereignty for all tribes.

Under *National Farmers*, nonmember defendants may challenge tribal court judgments in federal court.<sup>188</sup> The Supreme Court has established that such a claim presents an issue of federal law to satisfy § 1331.<sup>189</sup> By ruling that the recognition and enforcement claim in *Coeur d’Alene Tribe* presented a substantial issue of federal law, the Ninth Circuit avoided a legal injustice to the Tribe. This legal injustice, which is currently present in

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182. *See id.*

183. *Nat’l Farmers Union Ins. Cos.*, 471 U.S. at 855–56.

184. Martin H. Redish, *Judicial Parity, Litigant Choice, and Democratic Theory: A Comment on Federal Jurisdiction and Constitutional Rights*, 36 UCLA L. REV. 329, 333 (1988) (“No matter how broadly we are willing to extend state court authority to adjudicate federal rights, it is difficult to imagine that such matters will—or should—consume a substantial proportion of a state court’s docket. It is likely, then, that most of the state court’s efforts will be devoted to state law, rather than federal law matters. The exact opposite is true for the federal courts. Therefore, federal courts will have a greater expertise in federal substantive law than will state courts.”).

185. *Grable & Sons Metal Prods., Inc.*, 545 U.S. at 312.

186. Gil Seinfeld, *The Federal Courts as a Franchise: Rethinking the Justifications for Federal Question Jurisdiction*, 97 CALIF. L. REV. 95, 107 (2009).

187. *Grable & Sons Metal Prods., Inc.*, 545 U.S. at 312.

188. *Nat’l Farmers Union Ins. Cos.*, 471 U.S. at 857.

189. *Id.*

the Eleventh Circuit, rears itself by granting nonmember defendants like the Hawkses access to the federal courts to challenge a tribal court judgment while shutting the doors of the federal courts to Indian tribes, preventing them from bringing a parallel claim seeking recognition of the same tribal court judgment. One of the foundational principles of the federal judicial system is equality of access to the federal courts for all parties in a legal matter.<sup>190</sup> As Justice Joseph Story stated in *Martin v. Hunter's Lessee*:

The constitution of the United States was designed for the common and equal benefit of all the people of the United States. The judicial power was granted for the same benign and salutary purposes. It was not to be exercised exclusively for the benefit of parties who might be plaintiffs, and would elect the national forum, but also for the protection of defendants who might be entitled to try their rights, or assert their privileges [sic], before the same forum. Yet, if the construction contended for be correct, it will follow, that as the plaintiff may always elect the state court, the defendant may be deprived of all the security which the constitution intended in aid of his rights. Such a state of things can, in no respect, be considered as giving equal rights.<sup>191</sup>

By avoiding this legal injustice, the Ninth Circuit ensured that all parties share equal rights to a federal forum in suits involving tribal court judgments against nonmember defendants. Equal access to federal courts is imperative for a fair and just judicial system and is accomplished by the decision in *Coeur d'Alene Tribe*.

The Ninth Circuit's *Coeur d'Alene Tribe* decision will have numerous positive consequences. First, this decision will legitimize tribal court proceedings. Tribal courts, at least those in the Ninth and Tenth Circuits, should be on notice that their decisions in cases involving nonmember defendants can be reviewed by the U.S. federal courts. This will not only incentivize a transparent and fair process in tribal court cases, but it will also incentivize nonmember defendants to appear at tribal courts to present a defense on the merits. Second, nonmember defendants can take comfort in the fact that any tribal court judgment issued against them can be reviewed by a federal court under the doctrine of comity. Thus, a tribal court judgment will never be enforced by a federal court if the tribal court

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190. See *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 348–49 (1816).

191. *Id.*

lacked jurisdiction or if the defendant was denied due process of law.<sup>192</sup> This means that, even before tribal courts, nonmember defendants will still enjoy due process rights guaranteed by the Constitution. The decision to find a substantial question of federal law in *Coeur d'Alene* will benefit the tribal courts' legal process without depriving nonmember defendants of any of their legal protections.

### *VII. Conclusion*

The Ninth Circuit properly decided that an action to recognize and enforce a tribal court's award against nonmembers falls within the grant of federal question jurisdiction afforded by 28 U.S.C. § 1331. The Coeur d'Alene Tribe's sovereignty has existed since time immemorial; it "flows through American history in a timeless river, without beginning or end."<sup>193</sup> But that inherent sovereignty is not unlimited, assuredly so in regard to nonmembers. The federal government and the American Indian tribes have a long, complicated history. Because of this "unique relationship with Indian tribes,"<sup>194</sup> federal courts have the power to hear claims for the recognition and enforcement of tribal court judgments against nonmember defendants.

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192. *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997) (citing RESTATEMENT (THIRD) OF FOREIGN RELS. L. OF THE UNITED STATES § 482 (AM. L. INST. 1986)).

193. *Sovereignty*, *supra* note 60.

194. *Coeur d'Alene Tribe v. Hawks*, 933 F.3d 1052, 1057 (9th Cir. 2019).