

In The
Supreme Court of the United States

YSLETA DEL SUR PUEBLO, et al.,
Petitioners,
v.
STATE OF TEXAS,
Respondent.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

JOINT APPENDIX

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**Petition For Certiorari Filed October 9, 2020
Certiorari Granted October 18, 2021**

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The following opinions and orders have been omitted in printing this Joint Appendix because they appear on the following pages in the appendix to the Petition for a Writ of Certiorari:

Order of the U.S. District Court for the Western District of Texas Regarding Magistrate’s Re- port and Recommendation and Plaintiff’s Ap- plication for Preliminary Injunction (Mar. 29, 2018)	App. 56
Memorandum Opinion and Order of the U.S. District Court for the Western District of Texas (Feb. 14, 2019).....	App. 18
Order of the U.S. District Court for the Western District of Texas Staying Permanent Injunc- tion (Mar. 28, 2019)	App. 98
Opinion of the U.S. Court of Appeals for the Fifth Circuit (Apr. 2, 2020).....	App. 1

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Order of the U.S. Court of Appeals for the Fifth Circuit denying rehearing and rehearing en banc (May 12, 2020)	App. 96

**Relevant Docket Entries
U.S. District Court for the
Western District of Texas (El Paso)
3:17-cv-00179-PRM**

Date Filed	#	Docket Text
06/07/2017	1	COMPLAINT <i>for Declaratory and Injunctive Relief</i> (Filing fee \$ 400 receipt number 0542-9659825). No Summons requested at this time, filed by State of Texas. (Attachments: # 1 Civil Cover Sheet, # 2 Civil Cover Sheet Civil Cover Sheet Supplement)(Mackin, Anne) (Entered: 06/07/2017)
08/14/2017	6	MOTION to Dismiss <i>and Memorandum in Support of Motion to Dismiss</i> by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit A)(Barnhouse, Randolph) (Entered: 08/14/2017)
08/15/2017	8	AMENDED COMPLAINT <i>for Declaratory and Injunctive Relief</i> against All Defendants amending, filed by State of Texas.(Mackin, Anne) (Entered: 08/15/2017)
08/15/2017	9	Opposed MOTION for Preliminary Injunction by State of Texas. (Attachments: # 1 Exhibit 1 – Video of May 17, 2017 Physical Inspection of Speaking Rock Entertainment Center(available via CD and will be located in the District Clerk’s Sealed File Room), # 2 Exhibit 2 – Expert

Report of Capt. Daniel Guajardo,
3 Proposed Order)(Mackin, Anne)
(Entered: 08/15/2017)

- 08/28/2017 12 RESPONSE to Motion, filed by State of Texas, re 6 MOTION to Dismiss *and Memorandum in Support of Motion to Dismiss* filed by Defendant Tribal Governor Carlos Hisa or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Mackin, Anne) (Entered: 08/28/2017)
- 08/29/2017 13 MOTION to Dismiss *and Memorandum in Support to Dismiss First Amended Complaint* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit A)(Barnhouse, Randolph) (Entered: 08/29/2017)
- 09/11/2017 15 Response in Opposition to Motion, filed by State of Texas, re 13 MOTION to Dismiss *and Memorandum in Support to Dismiss First Amended Complaint* filed by Defendant Tribal Governor Carlos Hisa or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Attachments: # 1 Proposed Order)(Mackin, Anne) (Entered: 09/11/2017)
- 09/11/2017 Text Order MOOTING 6 Motion to Dismiss entered by Judge Philip R. Martinez. Moot in light of Amended Complaint (ECF No. 8). (This is a text-only entry generated by the court.

There is no document associated with this entry.) (zz) (Entered: 09/11/2017)

- 09/11/2017 16 ORDER REFERRING MOTION: 9 Opposed MOTION for Preliminary Injunction filed by State of Texas. Accordingly, IT IS ORDERED that Plaintiff State of Texas Application for Preliminary Injunction (ECF No. 9) is REFERRED to United States Magistrate Judge Leon Schydlower for DETERMINATION.. Signed by Judge Philip R. Martinez.. Referral Magistrate Judge: Leon Schydlower. (dt) (Entered: 09/11/2017)
- 09/12/2017 17 Response in Opposition to Motion, filed by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo, re 9 Opposed MOTION for Preliminary Injunction filed by Plaintiff State of Texas (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Proposed Order)(Barnhouse, Randolph) (Entered: 09/12/2017)
- 09/18/2017 18 REPLY to Response to Motion, filed by State of Texas, re 9 Opposed MOTION for Preliminary Injunction filed by Plaintiff State of Texas (Mackin, Anne) (Entered: 09/18/2017)
- 09/25/2017 19 REPLY to Response to Motion, filed by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo, re 13 MOTION

to Dismiss *and Memorandum in Support to Dismiss First Amended Complaint* filed by Defendant Tribal Governor Carlos Hisa or is Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Barnhouse, Randolph) (Entered: 09/25/2017)

- 09/26/2017 21 Unopposed MOTION for Leave to File Pueblo Defendants Unopposed Motion for Leave to File Out of Time Defendants Reply in Support of Its Motion to Dismiss First Amended Complaint by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Proposed Order)(Barnhouse, Randolph) (Entered: 09/26/2017)
- 10/02/2017 Text Order GRANTING 21 Motion for Leave to File entered by Judge Philip R. Martinez. (This is a text-only entry generated by the court. There is no document associated with this entry.) (PRM) (Entered: 0/02/2017)
- 10/03/2017 Text Order GRANTING 23 Motion for Extension of Time to File Response/Reply entered by Judge Leon Schydlower. The deadline is extended to October 10, 2017 as requested.(This is a text-only entry generated by the court. There is no

document associated with this entry.)(LS) (Entered: 10/03/2017)

- 10/20/2017 32 Opposed MOTION to Vacate 30 Order *Setting Hearing on Plaintiff's Motion for Preliminary Injunction* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Proposed Order)(Barnhouse, Randolph) (Entered: 0/20/2017)
- 10/24/2017 33 RESPONSE to Motion, filed by State of Texas, re 32 Opposed MOTION to Vacate 30 Order *Setting Hearing on Plaintiff's Motion for Preliminary Injunction* filed by Defendant Tribal Governor Carlos Hisa or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Proposed Order)(Mackin, Anne) (Entered: 0/24/2017)
- 10/31/2017 36 REPLY to Response to Motion, filed by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo, re 32 Opposed MOTION to Vacate 30 Order *Setting Hearing on Plaintiff's Motion for Preliminary Injunction* filed by Defendant Tribal Governor Carlos Hisa or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Attachments: # 1

Exhibit A, # 2 Exhibit B)(Barnhouse, Randolph) (Entered: 0/31/2017)

- 11/07/2017 Text Order DENYING 32 Motion to Vacate Preliminary Junction hearing, entered by Judge Leon Schydlower. (This is a text-only entry generated by the court. There is no document associated with this entry.)(LS) (Entered: 1/07/2017)
- 11/13/2017 43 EXHIBITS by State of Texas. Plaintiff's Exhibit's 2-7 available via Flash Drive and will be located in the District Clerk's Sealed File Room. (Attachments: # 1 Exhibit Plaintiff's Exhibit 2, # 2 Exhibit Plaintiff's Exhibit 3, # 3 Exhibit Plaintiff's Exhibit 6, # 4 Exhibit Plaintiff's Exhibit 7, # 5 Exhibit Plaintiff's Exhibit 8, # 6 Exhibit Plaintiff's Exhibit 9, # 7 Exhibit Plaintiff's Exhibit 10, # 8 Exhibit Plaintiff's Exhibit 11, # 9 Exhibit Plaintiff's Exhibit 12, # 10 Exhibit Plaintiff's Exhibit 13, # 11 Exhibit Plaintiff's Exhibit 16)(dt) (Entered: 1/15/2017)
- 11/13/2017 44 EXHIBITS by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. Exhibits will be located in the District Clerk's File Room (Attachments: # 1 Exhibit Defendant Exhibits 2, # 2 Exhibit Defendant Exhibits 3, # 3 Exhibit Defendant Exhibits 4, # 4 Exhibit Defendant Exhibits 5, # 5 Exhibit Defendant Exhibits 6, # 6

Exhibit Defendant Exhibits 7, # 7
 Exhibit Defendant Exhibits 9, # 8
 Exhibit Defendant Exhibits 10, # 9
 Exhibit Defendant Exhibits 11, # 10
 Exhibit Defendant Exhibits 12)(dt)
 (Entered: 1/15/2017)

- 11/16/2017 47 NOTICE *Bench Memo on Preliminary Injunction Hearing* by State of Texas (Mackin, Anne) (Entered: 1/16/2017)
- 11/27/2017 54 SUPPLEMENTAL MEMORANDUM to 45 Status Conference *The Restoration Act Does Not Provide Plaintiff An Affirmative Basis For Relief* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit A)(Barnhouse, Randolph) (Entered: 1/27/2017)
- 11/27/2017 55 SUPPLEMENTAL MEMORANDUM to 45 Status Conference *The Interplay Between Restoration Act Sections 105(f) and 107(a)* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Barnhouse, Randolph) (Entered: 11/27/2017)
- 11/27/2017 56 SUPPLEMENTAL MEMORANDUM to 45 Status Conference *The Ysleta del Sur Pueblo Never Waived Its Right To Engage In Gaming* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1

Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M) (Barnhouse, Randolph) (Entered: 11/27/2017)

- 11/27/2017 57 SUPPLEMENTAL MEMORANDUM to 45 Status Conference *The Need To Define Or Identify "Gaming Activities," Dicta, and Surrogate Federal Law* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Barnhouse, Randolph) (Entered: 1/27/2017)
- 11/27/2017 58 NOTICE of Filing *ECF Nos. 54, 55, 56 and 57* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo (Barnhouse, Randolph) (Entered: 11/27/2017)
- 11/27/2017 59 BRIEF by State of Texas. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Mackin, Anne) (Entered: 11/27/2017)
- 01/23/2018 62 Joint MOTION for Protective Order by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Proposed Order Confidentiality and Protective Order)(Barnhouse, Randolph) (Entered: 01/23/2018)

- 01/24/2018 63 ORDER GRANTING 62 Motion for Protective Order Signed by Judge Philip R. Martinez. (dt) (Entered: 01/25/2018)
- 01/29/2018 64 REPORT AND RECOMMENDATIONS re 9 Motion for Preliminary Injunction, filed by State of Texas. Signed by Judge Leon Schydlower. (LS) (Entered: 01/29/2018)
- 02/12/2018 67 OBJECTION to 64 Report and Recommendations by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo.. (Barnhouse, Randolph) (Entered: 02/12/2018)
- 02/12/2018 68 OBJECTION to 64 Report and Recommendations by State of Texas.. (Attachments: # 1 Exhibit A_FOF, COL & Order, # 2 Exhibit B_Transcript Excerpts)(Mackin, Anne) (Entered: 02/12/2018)
- 02/26/2018 71 RESPONSE to 68 Objection to Report and Recommendations by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Barnhouse, Randolph) (Entered: 02/26/2018)
- 02/27/2018 72 NOTICE of Intent to File Reply in Support of Objection by State of Texas re 68 Objection to Report and Recommendations (Mackin, Anne) (Entered: 02/27/2018)

- 03/05/2018 73 OBJECTION to 64 Report and Recommendations – *Reply in Support of* by State of Texas.. (Mackin, Anne) (Entered: 03/05/2018)
- 03/09/2018 74 ***DOCUMENT STRIKEN AS PER ORDER. PLEASE REFER TO DOCUMENT ECF 80*** Supplemental MOTION to Dismiss *First Amended Complaint and Memorandum in Support*, MOTION to Dismiss for Lack of Jurisdiction by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit 1)(Barnhouse, Randolph) Modified on 4/2/2018 (dt). (Entered: 03/09/2018)
- 03/23/2018 75 Response in Opposition to Motion, filed by State of Texas, re 74 Supplemental MOTION to Dismiss *First Amended Complaint and Memorandum in Support* MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Tribal Governor Carlos Hisa or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Mackin, Anne) (Entered: 03/23/2018)
- 03/26/2018 76 ORDER DENYING 13 Motion to Dismiss Signed by Judge Philip R. Martinez. (dt) (Entered: 03/26/2018)
- 03/29/2018 77 ORDER Accepting insofar as it recommends denying preliminary injunctive relief, but REJECTED in its

proposed reasoning, REPORT AND RECOMMENDATIONS for 64 9 Motion for Preliminary Injunction is DENIED, filed by State of Texas. Signed by Judge Philip R. Martinez. (mt) (Entered: 03/29/2018)

- 03/30/2018 78 REPLY to Response to Motion, filed by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo, re 74 Supplemental MOTION to Dismiss *First Amended Complaint and Memorandum in Support* MOTION to Dismiss for Lack of Jurisdiction filed by Defendant Tribal Governor Carlos Hisa or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Barnhouse, Randolph) (Entered: 03/30/2018)
- 03/30/2018 79 ATTACHMENT to 78 Reply to Response to Motion, by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Barnhouse, Randolph) (Entered: 03/30/2018)
- 04/02/2018 80 ORDER Striking Pleading 74 Supplemental MOTION to Dismiss *First Amended Complaint and Memorandum in Support* MOTION to Dismiss for Lack of Jurisdiction . Signed by Judge Philip R. Martinez. (dt) (Entered: 04/02/2018)

- 04/16/2018 81 *Defendants'* ANSWER to 8 Amended Complaint *First Amended* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Bonner, Richard) (Entered: 04/16/2018)
- 04/18/2018 83 Second MOTION to Dismiss *Plaintiff's First Amended Complaint* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit, # 2 Exhibit)(Bonner, Richard) (Entered: 04/18/2018)
- 05/02/2018 86 Response in Opposition to Motion, filed by State of Texas, re 83 Second MOTION to Dismiss *Plaintiff's First Amended Complaint* filed by Defendant Tribal Governor Carlos Hisa or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Mackin, Anne) (Entered: 05/02/2018)
- 05/07/2018 87 AMENDED ANSWER to 8 Amended Complaint, COUNTERCLAIM against State of Texas by Tribal Governor Carlos Hisa or His Successor, The Tribal Council, Ysleta Del Sur Pueblo. (Barnhouse, Randolph) (Entered: 05/07/2018)
- 05/09/2018 90 REPLY to Response to Motion, filed by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo, re 13 MOTION

to Dismiss *and Memorandum in Support to Dismiss First Amended Complaint* filed by Defendant Tribal Governor Carlos Hisa or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo *Second Motion to Dismiss First Amended Complaint* (Bonner, Richard) (Entered: 05/09/2018)

- 05/22/2018 95 NOTICE of Filing Pueblo Defendants' Memorandum of Law: Protection of Non-Party Sovereign's Sovereign Immunity by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo (Attachments: # 1 Memo in Support Pueblo Defendants' Memorandum of Law: Protection of Non-Party Sovereign's Sovereign Immunity)(Barnhouse, Randolph) (Entered: 05/22/2018)
- 05/29/2018 97 MOTION to Dismiss *Defendants' Counterclaims* by State of Texas. (Attachments: # 1 Proposed Order)(Mackin, Anne) (Entered: 05/29/2018)
- 06/12/2018 98 Response in Opposition to Motion, filed by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo, re 97 MOTION to Dismiss *Defendants' Counterclaims* filed by State of Texas (Attachments: # 1 Exhibit 1,

2 Exhibit 2) (Barnhouse, Randolph)
(Entered: 06/12/2018)

- 06/19/2018 99 REPLY to Response to Motion, filed by State of Texas, re 97 MOTION to Dismiss *Defendants' Counterclaims* filed by State of Texas (Mackin, Anne) (Entered: 06/19/2018)
- 08/14/2018 108 Opposed MOTION for Reconsideration re 107 Order on Motion for Discovery *and Motion for Protective Order* by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit Email, # 2 Exhibit Email, # 3 Exhibit Email, # 4 Exhibit Email, # 5 Exhibit Email, # 6 Exhibit Email, # 7 Exhibit Email, # 8 Exhibit Email, # 9 Exhibit Email, # 10 Exhibit Email, # 11 Exhibit Email, # 12 Exhibit Email, # 13 Exhibit Email, # 14 Exhibit Email, # 15 Exhibit Email, # 16 Exhibit Email, # 17 Exhibit Email, # 18 Exhibit Plaintiff's Amended Notice of Deposition for Art Werge, # 19 Exhibit Email, # 20 Exhibit Memorandum Order, # 21 Exhibit Court Opinion, # 22 Proposed Order)(Bonner, Richard) (Entered: 08/14/2018)
- 08/16/2018 110 RESPONSE to Motion, filed by State of Texas, re 108 Opposed MOTION for Reconsideration re 107 Order on Motion for Discovery *and Motion for Protective Order* filed by Tribal

Governor Carlos Hisa or His Successor, The Tribal Council, Ysleta Del Sur Pueblo (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Mackin, Anne) (Entered: 08/16/2018)

- 08/16/2018 111 ORDER REFERRING MOTION: 108 Opposed MOTION for Reconsideration re 107 Order on Motion for Discovery and Motion for Protective Order filed by Tribal Governor Carlos Hisa or His Successor, The Tribal Council, Ysleta Del Sur Pueblo. The Court requests that the determination be made on or before August 27, 2018.. Signed by Judge Philip R. Martinez.. Referral Magistrate Judge: Leon Schydlower for Determination. dt) (Entered: 08/16/2018)
- 08/21/2018 114 ORDER re 108 Opposed MOTION for Reconsideration re 107 Order on Motion for Discovery. Signed by Judge Leon Schydlower. (eep) (Entered: 08/21/2018)
- 08/27/2018 115 ORDER DENYING DEFENDANT'S MOTION TO DISMISS AND GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO DISMISS. DENYING 83 Motion to Dismiss ; GRANTING 97 Motion to Dismiss AS TO DEFENDANT'S Counterclaims C,D,E and F AND DENIED as to declarations A and B. IT IS FURTHER ORDERED Declarations C,D and E are DISMISSED.

FINALLY, IT IS ORDERED that Defendants/Counter-Plaintiffs are Granted Leave to Amend their Counterclaims on regarding declaration F no later than September 7, 2018 at 12 noon. Signed by Judge Philip R. Martinez. (mg2) (Entered: 08/27/2018)

- 08/27/2018 116 NOTICE of Filing PUEBLO DEFENDANTS REPLY IN SUPPORT OF THEIR MEMORANDUM OF LAW: THE PROTECTION OF NON-PARTY SOVEREIGNS SOVERIGN IMMUNITY by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo (Attachments: # 1 Proposed Order)(Miano, Michelle) (Entered: 08/27/2018)
- 09/07/2018 121 *First* AMENDED COUNTERCLAIM *First* against State of Texas amending 87 Amended Answer to Complaint, Counterclaim., filed by The Tribal Council, Ysleta Del Sur Pueblo, Tribal Governor Carlos Hisa or His Successor.(Barnhouse, Randolph) (Entered: 09/07/2018)
- 09/21/2018 130 ANSWER to 121 Amended Counterclaim by Ken Paxton, State of Texas. (Mackin, Anne) (Entered: 09/21/2018)
- 10/12/2018 143 AMENDED ANSWER to 121 Amended Counterclaim by Ken Paxton, State of Texas. (Mackin, Anne) (Entered: 10/12/2018)

- 11/14/2018 146 MOTION for Summary Judgment by State of Texas. (Attachments: # 1 Exhibit, # 2 Proposed Order)(Abrams, Michael) (Entered: 1/14/2018)
- 11/14/2018 147 MOTION for Summary Judgment by Ken Paxton. (Attachments: # 1 Exhibit, # 2 Proposed Order)(Abrams, Michael) (Entered: 1/14/2018)
- 12/05/2018 153 Response in Opposition to Motion, filed by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo, re 147 MOTION for Summary Judgment filed by Counter Defendant Ken Paxton (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Barnhouse, Randolph) (Entered: 2/05/2018)
- 12/05/2018 154 RESPONSE to Motion, filed by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo, re 146 MOTION for Summary Judgment filed by Plaintiff State of Texas (Attachments: # 1 Exhibit A – G, # 2 Exhibit H1 – M)(Austin, Joseph) (Entered: 2/05/2018)
- 12/07/2018 155 ORDER REQUIRING SUPPLEMENTAL BRIEFING.. Signed by Judge Philip R. Martinez. (dt) (Entered: 2/07/2018)

- 12/14/2018 157 RESPONSE in Support, filed by State of Texas, re 146 MOTION for Summary Judgment filed by Plaintiff State of Texas (Attachments: # 1 Exhibit)(Abrams, Michael) (Entered: 12/14/2018)
- 12/14/2018 158 REPLY to Response to Motion, filed by Ken Paxton, re 147 MOTION for Summary Judgment filed by Counter Defendant Ken Paxton (Abrams, Michael) (Entered: 12/14/2018)
- 12/14/2018 159 BRIEF regarding 155 Order by State of Texas. (Abrams, Michael) (Entered: 2/14/2018)
- 12/28/2018 161 BRIEF regarding 155 Order by The Tribal Council, Tribal Governor Carlos Hisa or His Successor, Ysleta Del Sur Pueblo. (Austin, Joseph) (Entered: 2/28/2018)
- 01/18/2019 171 ORDER STRIKING JURY DEMAND AND SETTING BENCH TRIAL, (Bench Trial set for 3/4/2019 09:00 AM before Judge Philip R. Martinez,). Signed by Judge Philip R. Martinez. (dt) (Entered: 01/18/2019)
- 02/07/2019 175 ADR Report Filed – *Joint Final ADR Report* by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo(Austin, Joseph) (Entered: 02/07/2019)
- 02/11/2019 176 ORDER GRANTING 147 Motion for Summary Judgment Signed

by Judge Philip R. Martinez. (dt)
(Entered: 02/11/2019)

- 02/11/2019 177 NOTICE *Plaintiff Texas's Submission of Pretrial Filings* by State of Texas (Attachments: # 1 Exhibit Plaintiff's List of Proposed Stipulated Facts, # 2 Exhibit Plaintiff's Trial Exhibit List, # 3 Exhibit Plaintiff's Trial Witness List, # 4 Exhibit Plaintiff's Designation of Witnesses by Deposition, # 5 Exhibit Plaintiff's Proposed Findings of Fact and Conclusions of Law, # 6 Exhibit Plaintiff's Proposed Jury Charge)(Abrams, Michael) Entered: 02/11/2019)
- 02/11/2019 178 Pretrial Disclosures *Rule CV-16(e)* by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit List of Proposed Stipulated Facts, # 2 Exhibit Pueblo Defendants' Exhibit List, # 3 Exhibit Pueblo Defendants' Proposed Findings of Fact and Conclusions of Law, # 4 Exhibit Pueblo Defendants' Proposed Jury Charge)(Bonner, Richard) (Entered: 02/11/2019)
- 02/11/2019 179 Exhibit List by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo.. (Bonner, Richard) (Entered: 02/11/2019)
- 02/12/2019 180 Minute Entry for proceedings held before Judge Philip R. Martinez:

Docket Call held on 2/12/2019
(Minute entry documents are not
available electronically.). (Court
Reporter Walter Chiriboga.)(dt)
(Entered: 02/12/2019)

- 02/14/2019 183 MEMORANDUM OPINION AND
ORDER GRANTING 146 Motion for
Summary Judgment. IT IS FUR-
THER ORDERED that the March 4,
2019, trial setting in this matter is
VACATED. IT IS FINALLY OR-
DERED that, in light of this Memo-
randum Opinion, each party may
draft and submit a proposed perma-
nent injunction, if it so chooses, by
March 1, 2019, at 5:00 p.m. Moun-
tain Time. Signed by Judge Philip R.
Martinez. (dt) (Entered: 02/14/2019)
- 03/01/2019 185 RESPONSE *Plaintiff's Proposed
Injunction* to 183 Order on Motion
for Summary Judgment, by State
of Texas. (Abrams, Michael)
(Entered: 03/01/2019)
- 03/01/2019 186 RESPONSE *To Court's Invitation To
Submit Draft Proposed Permanent
Injunction Language* to 183 Order on
Motion for Summary Judgment, by
The Tribal Council, Tribal Governor
Michael Silvas or His Successor, Ys-
leta Del Sur Pueblo. (Barnhouse,
Randolph) (Entered: 03/01/2019)
- 03/01/2019 187 Opposed MOTION for Reconsidera-
tion re 183 Order on Motion for

Summary Judgment, by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo. (Barnhouse, Randolph) (Entered: 03/01/2019)

- 03/05/2019 188 RESPONSE to Motion, filed by State of Texas, re 187 Opposed MOTION for Reconsideration re 183 Order on Motion for Summary Judgment, filed by Tribal Governor Michael Silvas or His Successor, The Tribal Council, Ysleta Del Sur Pueblo (Attachments: # 1 Proposed Order)(Abrams, Michael) (Entered: 03/05/2019)
- 03/08/2019 190 REPLY to Response to Motion, filed by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo, re 187 Opposed MOTION for Reconsideration re 183 Order on Motion for Summary Judgment, filed by Tribal Governor Michael Silvas or His Successor, The Tribal Council, Ysleta Del Sur Pueblo (Barnhouse, Randolph) (Entered: 03/08/2019)
- 03/08/2019 191 RESPONSE to *Plaintiff Texas's Proposed Injunction* to 185 Response by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit A)(Barnhouse, Randolph) (Entered: 03/08/2019)

- 03/15/2019 196 NOTICE *of Authority* by State of Texas (Abrams, Michael) (Entered: 03/15/2019)
- 03/22/2019 197 MOTION to Stay *Judgment and Injunction Pending Appeal and Memorandum In In Support* by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Exhibit 1 and 2, # 2 Proposed Order)(Martin, Brant) (Entered: 03/22/2019)
- 03/22/2019 198 RESPONSE *to Plaintiff's Notice of Authority and Notice of Additional Authority* by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo. (Attachments: # 1 Proposed Order)(Martin, Brant) (Entered: 03/22/2019)
- 03/22/2019 199 NOTICE *of Pueblo Defendants' Request for Hearing* by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo (Martin, Brant) (Entered: 03/22/2019)
- 03/27/2019 200 RESPONSE to Motion, filed by State of Texas, re 197 MOTION to Stay *Judgment and Injunction Pending Appeal and Memorandum In Support* filed by Defendant Tribal Governor Michael Silvas or His Successor, Defendant The Tribal Council, Defendant Ysleta Del Sur Pueblo (Attachments: # 1 Proposed

Order)(Abrams, Michael) (Entered: 03/27/2019)

- 03/28/2019 201 ORDER DENYING 187 Motion for Reconsideration Signed by Judge Philip R. Martinez. (dt) (Entered: 03/28/2019)
- 03/28/2019 202 PERMANENT INJUNCTION as to The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo. Signed by Judge Philip R. Martinez. (dt) (Entered: 03/28/2019)
- 03/28/2019 203 ORDER GRANTING 197 Motion to Stay. IT IS FURTHER ORDERED that enforcement of the “Memorandum Opinion and Order” (ECF No. 183), issued on February 14, 2019, and the Permanent Injunction, entered on this date, is STAYED pending a final ruling on the Pueblo Defendants’ appeal of the Court’s orders in the above-captioned cause. IT IS FINALLY ORDERED that, if the Permanent Injunction remains undisturbed when the appellate process is complete, then the Permanent Injunction shall become effective ninety (90) days after all opportunities for appeal have been exhausted. Signed by Judge Philip R. Martinez. (dt) (Entered: 03/28/2019)
- 03/28/2019 204 FINAL JUDGMENT. Accordingly, IT IS ORDERED that the above-captioned cause is DISMISSED

WITHOUT PREJUDICE with each party to bear its own costs. IT IS FURTHER ORDERED that all settings in this matter are VACATED. IT IS FURTHER ORDERED that all pending motions in this cause, if any, are DENIED AS MOOT. FINALLY, IT IS ORDERED that the CLERK shall CLOSE this case..
Signed by Judge Philip R. Martinez.
(dt) (Entered: 03/28/2019)

04/26/2019 205 Appeal of Final Judgment 176, 76, 183, 204, 115, 201, 202, 77, 80 by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo. (Filing fee \$ 505 receipt number 0542-12048569) (Martin, Brant) (Entered: 04/26/2019)

04/26/2019 NOTICE OF APPEAL following 205 Notice of Appeal (E-Filed), by The Tribal Council, Tribal Governor Michael Silvas or His Successor, Ysleta Del Sur Pueblo. Filing fee \$ 0, receipt number XXX. Per 5th Circuit rules, the appellant has 14 days, from the filing of the Notice of Appeal, to order the transcript. To order a transcript, the appellant should fill out Form DKT- 13 (Transcript Order) and follow the instructions set out on the form. This form is available in the Clerk's Office or by clicking the hyperlink above.
(mg2) (Entered: 04/29/2019)

- 06/04/2019 Certification of the Electronic Record on Appeal has been accepted by the 5th Circuit re Notice of Appeal,,. Attorneys are advised that they may now download the EROA from the Fifth Circuit CM/ECF site by following these instructions here (dt) (Entered: 06/04/2019)
- 05/21/2020 207 Certified copy of USCA JUDGMENT/MANDATE Affirming 205 Notice of Appeal (EFiled), filed by Tribal Governor Michael Silvas or His Successor, The Tribal Council, Ysleta Del Sur Pueblo, 206 Appeal Transcript Request filed by Tribal Governor Michael Silvas or His Successor, The Tribal Council, Ysleta Del Sur Pueblo, 181 USCA Judgment/Mandate,, Notice of Appeal,, filed by Tribal Governor Michael Silvas or His Successor, The Tribal Council, Ysleta Del Sur Pueblo, Appeal Record Accepted and Available Electronically,. (dt) (Entered: 05/21/2020)
- 10/19/2021 214 ORDER of USCA (certified copy) regarding Petition for a Writ of Certiorari ; re Notice of Appeal,, (dt) (Entered: 0/19/2021)
-

Relevant Docket Entries
United States Court of Appeals
for the Fifth Circuit
19-50400

- 05/03/2019 PRIVATE CIVIL FEDERAL CASE docketed. NOA fled by Appellants Tribal Council, Tribal Governor Michael Silvas or His Successor and Ysleta del Sur Pueblo[19-540] (SDH) [Entered 05/03/2019 0:23 [Entered: 05/03/2019 02:23 PM]
- 06/04/2019 ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? No. Electronic ROA deadline satisfied. [19-54000] (CB) [Entered: 06/04/2019 12:38 PM]
- 08/09/2019 APPELLANT'S BRIEF FILED # of Copies Provided: 0 A/Pet's Brief deadline satisfied. Appellee's Brief due on 09/09/2019 for Appellee State of Texas. Paper Copies of Brief due on 08/19/2019 for Appellants Tribal Council, Tribal Governor Michael Silvas or His Successor and Ysleta del Sur Pueblo. [19-50400] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S BRIEF FILED by Ysleta del Sur Pueblo, Tribal Council and Tribal Governor Michael Silvas or His Successor. Date of service: 08/09/2019 via email - Attorney for Appellees: Abrams, Lee, Lyles, Mackin; Attorney for Appellants: Callister,

Chappell, Martin, Minshull [19-50400]
(Brant Campbell Martin) [Entered:
08/09/2019 08:48 PM]

08/09/2019 SUFFICIENT RECORD EXCERPTS
FILED. # of Copies Provided: 0 Sufficient
Record Excerpts deadline satisfied.
Paper Copies of Record Excerpts due
on 08/26/2019 for Appellants Tribal
Council, Tribal Governor Michael
Silvas or His Successor and Ysleta
del Sur Pueblo. [19-50400]
REVIEWED AND/OR EDITED - The
original text prior to review appeared as
follows: RECORD EXCERPTS FILED.
Record Excerpts NOT Sufficient as they
require INSUFFICIENT FOR: MISSING
CERTIFICATE OF SERVICE. # of
Copies Provided: 0 Sufficient Record Ex-
cerpts due on 08/28/2019 for Appellants
Tribal Council, Tribal Governor Michael
Silvas or His Successor and Ysleta del
Sur Pueblo [19-50400] REVIEWED
AND/OR EDITED - The original text
prior to review appeared as follows:
RECORD EXCERPTS FILED by Appel-
lants Tribal Council, Tribal Governor
Michael Silvas or His Successor and
Ysleta del Sur Pueblo. Date of service:
08/09/2019 via email - Attorney for
Appellees: Abrams, Lee, Lyles, Mackin;
Attorney for Appellants: Callister,
Chappell, Martin, Minshull [19-50400]
(Brant Campbell Martin)
[Entered: 08/09/2019 08:50 PM]

08/23/2019 SUFFICIENT
AMICUS CURIAE BRIEF FILED by
Alabama-Coushatta Tribe of Texas.
Consent is Not Necessary as a Motion
has been Granted.
of Copies Provided: 0
Sufficient Brief deadline satisfied.
Paper Copies of Brief due on 09/03/2019
for Amicus Curiae Alabama-Coushatta
Tribe of Texas. [19-50400]
REVIEWED AND/OR EDITED - The
original text prior to review appeared
as follows: AMICUS CURIAE BRIEF
FILED by Alabama-Coushatta Tribe
of Texas. Consent is Not Necessary as
a Motion has been Granted. Brief NOT
Sufficient as it requires a cover w/ Case
No. & Caption; appearance form needed
for attorney Danny S. Ashby. Instruc-
tions to Attorney: PLEASE READ THE
ATTACHED NOTICE FOR INSTRUC-
TIONS ON HOW TO REMEDY THE
DEFAULT. # of Copies Provided: 0 Suffi-
cient Brief due on 09/09/2019 for Amicus
Curiae Alabama-Coushatta Tribe of
Texas. [19-50400] REVIEWED AND/OR
EDITED - The original text prior to review
appeared as follows: AMICUS CURIAE
BRIEF FILED by The Alabama-Coushat-
ta Tribe of Texas. Date of service:
08/23/2019 via email - Attorney for Ap-
pellees: Abrams, Lyles, Mackin; Attorney
for Appellants: Callister, Chappell, Mar-
tin, Minshull [19-50400] (Danny Scot
Ashby) [Entered: 08/23/2019 04:56 PM]

- 10/10/2019 SUFFICIENT APPELLEE'S BRIEF FILED # of Copies Provided: 0 Sufficient Brief deadline satisfied. Paper Copies of Brief due on 10/21/2019 for Appellee State of Texas. [19-50400] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED Additionally the Brief requires citations to the record on pages 18, 19 and 29 must be corrected to the proper form. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0 E/Res's Brief deadline satisfied. Sufficient Brief due on 10/24/2019 for Appellee State of Texas.. Reply Brief due on 10/31/2019 for Appellants Tribal Council, Tribal Governor Michael Silvas or His Successor and Ysleta del Sur Pueblo [19-50400] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by State of Texas. Date of service: 10/10/2019 via email - Attorney for Appellees: Abrams, Lyles, Mackin; Attorney for Amici Curiae: Ashby, Briones, Chapa, Monteiro, Petti, Whisler; Attorney for Appellants: Callister, Chappell, Martin, Minshull [19-50400] (Anne Marie Mackin) [Entered: 10/10/2019 12:09 AM]
- 10/31/2019 APPELLANT'S REPLY BRIEF FILED by Ysleta del Sur Pueblo. # of Copies Provided: 0 Reply Brief deadline

satisfied. Paper Copies of Brief due on 11/12/2019 for Appellants Tribal Council, Tribal Governor Michael Silvas or His Successor and Ysleta del Sur Pueblo. [19-50400] REVIEWED AND/OR EDITED -The original text prior to review appeared as follows: APPELLANT'S REPLY BRIEF FILED by Tribal Council, Tribal Governor Michael Silvas or His Successor and Ysleta del Sur Pueblo. Date of service: 10/31/2019 via email - Attorney for Appellees: Abrams, Lyles, Mackin; Attorney for Amici Curiae: Ashby, Briones, Chapa, Monteiro, Petti, Whisler; Attorney for Appellants: Callister, Chappell, Martin, Minshull [19-50400] (Brant Campbell Martin) [Entered: 10/31/2019 07:18 PM]

- 02/04/2020 ORAL ARGUMENT HEARD before Judges Dennis, Graves, Willett. Arguing Person Information Updated for: Anne Marie Mackin arguing for Appellee State of Texas; Arguing Person Information Updated for: BrantCampbell Martin arguing for Appellants The Tribal Council, Et Al. [19-50400] (PFT) [Entered: 02/04/202001:54 PM]
- 04/02/2020 PUBLISHED OPINION FILED. [19-50400 Affirmed] Judge: JLD, Judge: JEG, Judge: DRW Mandate issued date is 04/24/2020. (This opinion includes URL material that is archived by the United States Court of Appeals Library, and made available at <http://www.lb5>.)

- uscourts.gov/ArchivedURLS/.) [19-50400]
(LLL) [Entered: 04/02/2020 03:41 PM]
- 04/02/2020 JUDGMENT ENTERED AND FILED.
Costs Taxed Against: Appellants. [19-50400]
(LLL) [Entered: 04/02/2020 03:52 PM]
- 04/03/2020 TECHNICAL REVISION MADE TO
OPINION. (This opinion includes URL
material that is archived by the Fifth
Circuit Court of Appeals Library, and
made available at <http://www.lb5.uscourts.gov/ArchivedURLS/>.) [9286180-2] [19-50400]
(LLL) [Entered: 04/03/2020 03:46 PM]
- 04/30/2020 PETITION for rehearing en banc
[9304837-2] Number of Copies: 0. Man-
date issue date canceled.. [19-50400]
REVIEWED AND/OR EDITED - The
original text prior to review appeared as
follows: PETITION filed by Appellants
Tribal Council, Tribal Governor Michael
Silvas or His Successor and Ysleta del
Sur Pueblo for rehearing en banc
[9304837-2]. Date of Service: 04/30/2020
via email - Attorney for Appellees:
Abrams, Lyles, Mackin; Attorney for
Amici Curiae: Ashby, Briones, Chapa,
Monteiro, Petti, Whisler; Attorney for
Appellants: Callister, Chappell, Martin,
Minshull [19-50400] (Brant Campbell
Martin) [Entered: 04/30/202009:18 PM]
- 05/12/2020 COURT ORDER denying Petition for
rehearing en banc filed by Appellants
Ysleta del Sur Pueblo, Tribal Council and
Tribal Governor Michael Silvas or His

- Successor [9304837-2] Without Poll. Mandate issue date is 05/20/2020 [19-50400] (RSM) [Entered: 05/12/2020 07:49 AM]
- 05/20/2020 MANDATE ISSUED. Mandate issue date satisfied. [19-50400] (RSM) [Entered: 05/20/2020 11:03 AM]
- 10/19/2020 SUPREME COURT NOTICE that petition for writ of certiorari [9424169-2] was filed by Appellants Tribal Council, Tribal Governor Michael Silvas or His Successor and Ysleta del Sur Pueblo on 10/09/2020. Supreme Court Number: 20-493. [19-50400] (SBS) [Entered: 10/19/2020 03:29 PM]
- 10/19/2021 SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellants Ysleta del Sur Pueblo, Tribal Council and Tribal Governor Michael Silvas or His Successor in 19-50400 on 10/18/2021. [9692134-1] [19-50400] (SMC) [Entered: 10/19/2021 12:36 PM]
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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

STATE OF TEXAS,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
YSLETA DEL SUR PUEBLO,	§	No. 03:17-CV-00179
the TRIBAL COUNCIL, and	§	
the TRIBAL GOVERNOR	§	
CARLOS HISA or his	§	
SUCCESSOR,	§	
<i>Defendants.</i>	§	

**PLAINTIFF STATE OF TEXAS' ORIGINAL
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

(Filed Jun. 7, 2017)

Plaintiff the State of Texas (“Texas”) files this Original Complaint for Declaratory and Injunctive Relief (“Complaint”) against Defendants Ysleta del Sur Pueblo (“Pueblo” or “Tribe”), the Tribal Council of the Ysleta del Sur Pueblo (in its official capacity only), and Tribal Governor Carlos Hisa or his Successor (in his official capacity only). Texas brings this lawsuit to enforce the Restoration Act, 25 U.S.C. § 1300g *et seq.*, which provides that Texas gambling law serves as surrogate federal law on the Pueblo’s reservation. The Pueblo currently operates several thousand one-touch “electronic bingo” slot machines, as well as an unlicensed 24/7 bingo operation, on its El Paso reservation.

These activities violate Chapter 47 of the Texas Penal Code, which prohibits illegal lotteries—games involving chance, prize, and consideration. Through this lawsuit, Texas requests declaratory, preliminary and permanent injunctive relief against these violations of the Restoration Act.

I. PARTIES

1. Plaintiff the State of Texas is represented by the Office of the Attorney General of Texas.

2. Defendant Ysleta del Sur Pueblo is a federally recognized Tribe pursuant to the Restoration Act, U.S.C. § 1300g-1, § 1300g-2. The Pueblo is represented by its attorney, Mr. Randolph H. Barnhouse, Johnson Barnhouse & Keegan, L.L.P., 7424 4th Street, N.W., Los Ranchos de Albuquerque, New Mexico 87107, and may be served with citation at that address.

3. Defendant Tribal Council (sued in its official capacity only) and Defendant Tribal Governor Carlos Hisa or his successor (sued in his official capacity only) (collectively, “Pueblo Defendants”), are represented by their attorney Mr. Randolph H. Barnhouse, Johnson Barnhouse & Keegan, L.L.P., 7424 4th Street, N.W., Los Ranchos de Albuquerque, New Mexico 87107, and may be served with citation at that address.

II. JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 25 U.S.C. § 1300g-6(c),

which provides that “nothing in this section shall be construed as precluding the State of Texas from bringing an action in the courts of the United States to enjoin violations of the provisions of this section.” 25 U.S.C. § 1300g-6(c).

5. Venue is proper in this Court because this is a judicial district “in which a substantial part of the events or omissions giving rise to the claim occurred.” *See* 28 U.S.C. § 1391(b).

III. FACTUAL BACKGROUND

6. On August 18, 1987, Congress restored federal tribal status to the Ysleta del Sur Pueblo. *See* 25 U.S.C. § 1300g-1, § 1300g-2. The Restoration Act, 25 U.S.C. § 1300g *et seq.*, reestablished the trust relationship between the United States and the Tribe—which had been terminated in 1968—and re-invoked the federal assistance and services the Tribe received by virtue of this relationship. *See* Tiwa Indians Act of 1968, Pub. L. 90-287, 82 Stat. 93 (1968) (terminating the federal trust relationship between the Tribe and the United States); 25 U.S.C. § 1300g-5 (repealing Tiwa Indians Act); 25 U.S.C. § 1300g-2 (restoring the federal trust relationship between the Tribe and the United States).

7. In 1987, to secure passage of the Restoration Act, and to avail itself of the benefits of a trust relationship with the United States federal government, the Tribe pledged to refrain from gambling on its land. This mutually beneficial *quid pro quo*—a commitment to prohibit gambling in exchange for the benefits of a trust

relationship with the United States—was so fundamental to the passage of the Restoration Act that the tribal resolution prohibiting “gambling or bingo in any form” appears in the text of the Restoration Act. *See* 25 U.S.C. § 1300g-6a. That tribal resolution reads, in part:

the Ysleta del Sur Pueblo remains firm in its commitment to prohibit outright any gambling or bingo in any form on its reservation . . . the Tribe strongly believes that the controversy over gaming must not be permitted to jeopardize th[e] [Restoration Act] . . . , the purpose of which is to ensure the Tribe’s survival, protect the Tribe’s ancestral homelands and provide the Tribe with additional tools to become economically and socially self-sufficient; . . . the Ysleta del Sur Pueblo respectfully requests its representatives in the United States [Senate] and House of Representatives to amend [§ 107(a) of the Restoration Act] by striking all of that section as passed by the House of Representatives and substituting in its place language which would provide that all gaming, gambling, lottery, or bingo, as defined by the laws and administrative regulations of the State of Texas, shall be prohibited on the Tribe’s reservation or on tribal land.

Tribal Resolution No. T.C.-02-86 (1986); *Ysleta del Sur Pueblo v. State of Tex.*, 36 F.3d 1325, 1328 (5th Cir. 1994) (“*Ysleta I*”) (quoting Tribal Resolution No. T.C.-02-86 (1986); citing Restoration Act’s legislative history).

8. The Restoration Act incorporated the Pueblo's disavowal of gambling, and provided for Texas gambling law to operate as federal law on the Pueblo's reservation. 25 U.S.C. § 1300g-6(a) ("All gaming activities which are prohibited by the laws of the State of Texas are hereby prohibited on the reservation and on lands of the tribe. . . . The provisions of this subsection are enacted in accordance with the tribe's request in Tribal Resolution No. T.C.-02-86.").

9. The Fifth Circuit held in *Ysleta I* that the Tribe is, first, organized pursuant to the Restoration Act, and second, that "[a]ll gaming activities which are prohibited by the laws of the State of Texas are prohibited on the reservation and on lands of the [T]ribe." 36 F.3d at 1332. As such, under the Restoration Act, Texas law "functions as surrogate federal law" on the Tribe's reservation. *Id.* at 1335. The Court continued

the Tribe has already made its 'compact' with the State of Texas, and the Restoration Act embodies that compact. If the Ysleta del Sur Pueblo wishes to vitiate the compact it made to secure passage of the Restoration Act, it will have to petition Congress to amend or repeal the Restoration Act[.]

Id.

10. Despite this unambiguous legal framework, the Tribe has been offering various types of illegal gambling on its reservation for much of the past two decades. Courts have consistently found that—mutable as they have been—these gaming activities share one

commonality: they all violate the Restoration Act, by violating chapter 47 of the Texas Penal Code.

11. In 2002, the Pueblo was found to be operating illegal “slot machines” and illegal “card and dice games.” *Tex. v. del Sur Pueblo*, 220 F. Supp. 2d 668, 674-75 (W.D. Tex. 2001), *modified* May 17, 2002 (“*del Sur Pueblo*”) (Eisele, J.). The district court observed that the Pueblo “ha[d] embarked upon a long-continued habitual course of conduct clearly violative of the Gambling Laws of the State of Texas and that [the Pueblo], unless enjoined, w[ould] continue such habitual illegal activities[.]” *Id.* at 700. The Court then issued an injunction (the “2002 Injunction”) prohibiting the Pueblo from engaging in illegal gambling in violation of Chapter 47 of the Texas Penal Code. *Id.* at 697-98. The Fifth Circuit upheld that decision on appeal. *State of Tex. v. Pueblo*, 69 F. App’x 659 (5th Cir. 2003).

12. Further litigation regarding the 2002 Injunction ensued. *See, e.g., Tex. v. Ysleta del Sur Pueblo*, 431 F. App’x 326, 329 (5th Cir. 2011); *Tex. v. Ysleta del sur Pueblo*, No. EP-99-CV-320-KC, 2015 WL 1003879, at *4 (W.D. Tex. Mar. 6, 2015) (Cardone, J.); *State of Tex. v. Ysleta del Sur Pueblo*, No. EP-99-CV-320-KC, 2016 WL 3039991, at *26-27 (W.D. Tex. May 27, 2016).

13. The Pueblo Defendants govern the Ysleta del Sur Pueblo, retain control over and approved the violations of the Restoration Act described in this Complaint, and must be enjoined from further violations of the Restoration Act in order to afford the State the equitable relief it seeks.

14. Prompted by media reports¹ in the summer of 2016 that the Tribe was “transitioning to bingo,” Texas inspected the Pueblo’s gaming facility on May 17, 2017. During that inspection, the State found the Tribe offering the following to the public:

- a variant on traditional, paper-based bingo, in which balls were drawn from a hopper and called by an attendant while players, seated close together at long tables, marked paper cards. Most players had before them multiple cards of several different sizes and varieties;
- 90-card bingo card minders—portable electronic devices that tracked multiple electronic cards, only a few of which were visible on the device’s screen at any one time. These consoles worked in parallel to the paper-based bingo, and automatically “marked” the card for the player when the attendant pulled a ball and input the number into a wireless system linking the card minder console to the attendant’s input station;
- pull tabs, a paper-based, lottery ticket-like game available and playable at any time at

¹¹ A July 23, 2016 *El Paso Times* article reported that the Pueblo was “transitioning to bingo” gambling activities. Marty Schladen, [Tiguas ending sweepstakes, starting bingo](http://www.elpasotimes.com/story/news/local/el-paso/2016/07/23/tiguas-ending-sweepstakes-startingbingo/87458650/), EL PASO TIMES, July 23, 2016, <http://www.elpasotimes.com/story/news/local/el-paso/2016/07/23/tiguas-ending-sweepstakes-startingbingo/87458650/>. Beginning on March 21, 2016, the State initiated attempts to schedule an inspection of the Tribe’s gaming facility. On April 20, 2017, the State and the Tribe agreed that the State would conduct an inspection to be governed by the provisions of Federal Rule of Civil Procedure 34.

the counter that dispensed the card minders;
and

- thousands of slot machines operating “electronic bingo,” in which wheels turned lining up various graphics and, in subordinate view, electronic bingo cards were displayed. One play resulted in an instantaneous complete bingo game across several cards—one corresponding to each slot wheel—and, depending on whether it was a win or not, a concomitant spin and line up of the wheel icons, accompanied by flashing lights and sound effects and a notification of the amount won.

15. The Tribe offered this illegal lottery in a dim, casino-like atmosphere with a bar and bar tables extending down at least one row of slot machines, to the sound of electronic bells, whistles, and other auditory effects emitted from thousands of colorful, flashing slot machines. The machines announced their maximum respective jackpots in blinking, marquis-style lights, some ranging as high as 40-plus thousands of dollars.

16. The Tribe’s slot machines operating so-called “electronic bingo” involved the payment of cash consideration into a game of chance which pays out cash prizes. This constitutes an illegal lottery under Texas law. *See* TEX. PENAL CODE § 47.01(7); TEX. CONST. art. III § 47(a).

17. By operating such a lottery via “electronic bingo” slot machines the Pueblo is engaged in, at minimum, the following activities illegal under Texas law: gambling under Texas Penal Code § 47.02; operating a

gambling promotion under Texas Penal Code § 47.03(a)(1) and (a)(5); keeping a gambling place under Texas Penal Code § 47.04(a); and possessing gambling devices, equipment, or paraphernalia under Texas Penal Code § 47.06(a) and (c), and/or under Texas Penal Code § 47.06(a) (with respect to the servers owned by the vendors, which are a “subassembly or essential part of a gambling device.”).

18. Because the Restoration Act federalizes Texas gambling law on the Pueblo’s reservation, each of the aforementioned violations of Texas law is also a violation of the Restoration Act.

19. Further, the Pueblo’s card minder and paper-based bingo violate Texas’s Bingo Enabling Act. These violations of Texas law, as noted above, equate to breaches of federal law.

20. Both the Tribe’s slot machines purporting to offer “electronic bingo,” and its paper and card minder-based bingo, involve the elements of an illegal lottery in Texas: chance, prize, and consideration. TEX. PENAL CODE § 47.01(7); TEX. CONST. art. III § 47(a).

21. The Bingo Enabling Act establishes parameters for certain qualified Texas operators to obtain licenses from the Lottery Commission and lawfully offer approved types of bingo. *See Dep’t of Tex., Veterans of Foreign Wars of U.S. v. Tex. Lottery Comm’n*, 760 F.3d 427, 431 (5th Cir. 2014); TEX. OCC. CODE § 2001.001 *et seq.* (Bingo Enabling Act).

22. The Pueblo's card minder and paper-based bingo, as observed by Texas's representatives on May 17, 2017, violate these legal parameters, in—at minimum—the following ways:

- The Tribe does not possess a license from the Texas Lottery Commission to conduct its card minder or paper-based bingo activities.
- The Tribe conducts its card minder and-paper based bingo activities 24 hours a day, seven days a week.
- The Tribe's card minders exceeded the allowed number of cards under the Bingo Enabling Act.
- The Tribe's pull-tab bingo does not appear to have been approved by the Texas Lottery Commission.

23. *See* TEX. OCC. CODE §§ 2001.401; 2001.419; 16 TEX. ADMIN. CODE § 402.322(r); 16 TEX. ADMIN. CODE § 402.300. Accordingly, the Tribe's card minder and paper-based bingo violate the Texas Penal Code because they are not being played in accordance with the requirements of the Bingo Enabling Act, and are not licensed by the Texas Lottery Commission.

24. Through its card minder and paper-based bingo operations, the Pueblo is engaged in, at minimum, the following activities illegal under Texas law: gambling under Texas Penal Code § 47.02; operating a gambling promotion under Texas Penal Code §§ 47.03(a)(1) and (a)(5); keeping a gambling place under Texas Penal Code § 47.04(a); and possessing gambling devices,

equipment, or paraphernalia under Texas Penal Code. §§ 47.06(a) and (c).

25. Because the Restoration Act federalizes Texas gambling law on the Tribe's reservation, each of the aforementioned violations of Texas law is also a violation of the Restoration Act.

IV. CLAIMS FOR RELIEF

COUNT I: DECLARATORY JUDGMENT

26. Texas incorporates Paragraphs 1-25 above as though fully set forth herein.

27. Declaratory relief is available under the federal Declaratory Judgments Act to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” 28 U.S.C. § 2201(a).

28. As described above, the operation of “electronic bingo” slot machines and the Tribe's card minder and paper-based bingo violate Texas law's prohibition of illegal lotteries, in addition to other gambling prohibitions found in Chapter 47 of the Texas Penal Code. More specifically, the Tribe is currently violating Texas Penal Code §§ 47.01(7) (prohibition on lotteries); 47.02 (gambling); 47.03(a)(1) and (a)(5) (operating a gambling promotion); 47.04(a) (keeping a gambling place); and 47.06(a) and (c) (possessing gambling devices, equipment, or paraphernalia).

29. Under the Restoration Act, those provisions are federalized, and all Defendants are therefore engaged in violations of both Texas and federal law.

30. Accordingly, Texas seeks a declaratory judgment that the Tribe's gambling activities described herein violate the Restoration Act.

COUNT II: INJUNCTIVE RELIEF

31. Texas incorporates Paragraphs 1-30 above as though fully set forth herein.

32. For the reasons set out above and in the Application for Preliminary Injunction, this Court should enter a preliminary injunction pursuant to FED. R. CIV. P. 65, *et seq.*, to enforce the gambling prohibitions in the Restoration Act because (1) there is a substantial likelihood that Texas will prevail on the merits; (2) there is a substantial threat of irreparable injury if an injunction does not issue; (3) the threatened injury outweighs any possible harm to Defendants; and (4) the public interest weighs in favor of issuing the requested injunction. *See Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

33. A permanent injunction should be entered following trial on the merits of this case to prohibit the Pueblo Defendants from violating federalized Chapter 47 Texas Penal Codes prohibitions on illegal lotteries.

PRAYER

Texas respectfully requests the following relief:

A. A declaratory judgment that the Tribe's gambling activities described herein violate the Restoration Act;

B. A preliminary and a permanent injunction holding that all Defendants are violating the Restoration Act; requiring Defendants to cease all electronic and paper bingo activities on their reservation that violate Texas law, to remove all illegal gambling devices from the facility, and to refrain from any gambling activities that violate the Restoration Act prohibitions against gambling;

C. The award of attorney's fees and costs from the date of the May 17, 2017 physical inspection until the date of the Court's final judgment; and

D. Such further relief to which it may be justly entitled.

Respectfully submitted.

KEN PAXTON

Attorney General of Texas

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

STATE OF TEXAS, §
Plaintiff, §
v. §
YSLETA DEL SUR §
PUEBLO, the TRIBAL §
COUNCIL, and the §
TRIBAL GOVERNOR §
MICHAEL SILVAS or his §
SUCCESSOR, §
Defendants. §

YSLETA DEL SUR §
PUEBLO, the TRIBAL §
COUNCIL, and the §
TRIBAL GOVERNOR §
MICHAEL SILVAS or his §
SUCCESSOR, §
Counter-Plaintiffs, §

EP-17-CV-179-PRM

v. §
KEN PAXTON, in his §
official capacity as §
Texas Attorney General, §
Counter-Defendant. §

PERMANENT INJUNCTION

(Filed Mar. 28, 2019)

On this day, the Court issues a permanent injunction in the above-captioned cause, in accordance with the reasons for its issuance provided in the “Memorandum Opinion and Order” (ECF No. 183), entered on February 14, 2019.¹ Specifically, therein, the Court found that the Tribe’s bingo activities violate Texas gaming laws and regulations, which are federalized by the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (“Restoration Act”), Pub. L. No. 100-89, 101 Stat. 666 (1987).

Accordingly, **IT IS ORDERED** that the Ysleta del Sur Pueblo; the Tribal Council; the Tribal Governor; and all agents, employees, persons, or entities acting in privity with the aforementioned parties are hereby **ENJOINED** from engaging in, permitting, or conducting certain violations of the Restoration Act; Chapter 47 of the Texas Penal Code; the Bingo Enabling Act, TEX. OCC. CODE § 2001.001 *et seq.*; and/or Chapter 402 of the Texas Administrative Rules, 16 TEX. ADMIN. CODE § 402.100 *et seq.* Specifically, the following activities are enjoined:

¹ In determining the terms of the injunction, the Court considered “Plaintiff Texas’s Proposed Injunction” (ECF No. 185), filed on March 1, 2019; “Pueblo Defendants’ Response to Court’s Invitation to Submit Draft Proposed Permanent Injunction Language” (ECF No. 186), filed on March 1, 2019; and “Pueblo Defendants’ Response to Plaintiff Texas’s Proposed Injunction” (ECF No. 191), filed on March 8, 2019.

1. Conducting any bingo activities—including live-called bingo as well as bingo conducted on a machine—that:
 - a. Exceed three bingo occasions per week,
 - b. Exceed two bingo occasions in one day, and/or
 - c. Exceed four hours per bingo occasion.
2. Conducting any bingo activities outside the days and times listed on a valid license from the Texas Lottery Commission.
3. The use of any cardminding device—including, but not limited to, one-touch machines—as a receptacle for the deposit of tokens or money in payment for playing the bingo card played with the device’s assistance.
4. The use of any cardminding device—including, but not limited to, one-touch machines—as a dispenser for the payment of a bingo prize; including currency, coins, vouchers, or other things of value.
5. The use of any cardminding device which allows players to monitor more than sixty-six bingo cards at one time.
6. The use of any bingo equipment that has not been supplied by a licensed manufacturer or distributor.
7. The use of any cardminding device that has not been tested by either an independent testing facility or the Texas Lottery Commission’s testing lab to evaluate the machine’s

compliance with the standards articulated in 16 TEX. ADMIN. CODE § 402.324.

IT IS FURTHER ORDERED that this injunction applies on the territory of the Ysleta del Sur Pueblo's reservation, Speaking Rock Entertainment Center, Socorro Tobacco Outlet, and any other property owned or controlled by the enjoined parties or persons or entities acting in privity with the enjoined parties within the State of Texas.

IT IS FINALLY ORDERED that this Permanent Injunction shall become effective ninety (90) days after entry or ninety (90) days after the expiry of a stay, whichever comes later.

SIGNED this 28 day of **March, 2019**.

/s/ Philip R. Martinez
PHILIP R. MARTINEZ
UNITED STATES
DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
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STATE OF TEXAS, §
Plaintiff, §
v. §
YSLETA DEL SUR §
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Counter-Plaintiffs, §

v. §
KEN PAXTON, in his §
official capacity as §
Texas Attorney General, §
Counter-Defendant. §

EP-17-CV-179-PRM

FINAL JUDGMENT

(Filed Mar. 28, 2019)

On this day, the Court entered a Permanent Injunction, in accordance with its Memorandum Opinion and Order granting summary judgment in the above-captioned cause. The Court now enters Final Judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

Accordingly, **IT IS ORDERED** that the above-captioned cause is **DISMISSED WITH PREJUDICE** with each party to bear its own costs.

IT IS FURTHER ORDERED that all settings in this matter are **VACATED**.

IT IS FURTHER ORDERED that all pending motions in this cause, if any, are **DENIED AS MOOT**.

FINALLY, IT IS ORDERED that the Clerk shall **CLOSE** this case.

SIGNED this 28 day of **March, 2019**.

/s/ Philip R. Martinez
PHILIP R. MARTINEZ
UNITED STATES
DISTRICT JUDGE
