

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**PASSAMAQUODDY TRIBE,**  
*Plaintiff-Appellant,*

v.

**UNITED STATES**  
*Defendant-Appellee.*

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2008-5110

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Appeal from the United States Court of Federal  
Claims in 06-CV-942, Judge Lynn J. Bush.

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**ON MOTION**

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Before BRYSON, LINN, and PROST, *Circuit Judges.*  
PROST, *Circuit Judge.*

**ORDER**

The United States moves to summarily affirm the judgment of the United States Court of Federal Claims in this case. The Passamaquoddy Tribe responds and does not oppose affirmance. The United States replies.

The Tribe filed a complaint in the Court of Federal Claims seeking damages against the United States for the alleged breach of its trust responsibilities. On the same day, the Tribe filed a similar complaint in the United States District Court for the District of Columbia. The Court of Federal Claims dismissed the complaint, finding the Tribe's suit barred pursuant to 28 U.S.C. § 1500. The Tribe appealed to this court.

This court stayed the briefing schedule in this appeal pending the United States Supreme Court's disposition in *United States v. Tohono O'odham Nation*, 131 S.Ct. 1723 (U.S.,2011). In its decision, the Supreme Court reversed this court's decision in *Tohono O'odham Nation v. United States*, 559 F.3d 1284 (Fed. Cir. 2009), concluding that under § 1500, the Court of Federal Claims lacked jurisdiction over a suit when a suit based on substantially the same operative facts, regardless of the relief sought, is pending in a district court.

Summary affirmance of a case "is appropriate, *inter alia*, when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists." *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994). In the present case, it is clear that summary affirmance is warranted.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion is granted.
- (2) Each side shall bear its own costs.

FOR THE COURT

AUG 17 2011

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Keith M. Harper  
Aaron P. Avila, Esq.

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**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

AUG 17 2011

JAN HORBALY  
CLERK