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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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10 Eli Francis, et al.

No. CV 06-2846-PHX-PGR

11 Plaintiffs,

12 vs.

**ORDER**

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14 the Navajo Nation, et al.

15 Defendants.

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17 On November 27, 2006, Plaintiffs filed a Complaint with this Court alleging  
18 jurisdiction pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b). The  
19 Defendants named in the Complaint include Joan Shonie, individually and in her capacity  
20 as

21 an employee of the Navajo Nation, along with the Navajo Nation itself. However, due to  
22 lack of subject matter jurisdiction, the Court must dismiss the Complaint.

23 According to section 1346(b) of the FTCA,

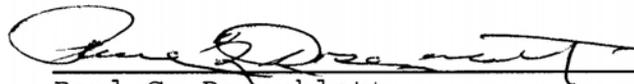
24 the district courts . . . shall have exclusive jurisdiction of civil  
25 actions on claims against the United States for money damages  
26 . . . or personal injury or death caused by the negligent wrongful  
27 act or omission of any employee of the Government while acting  
28 within the scope of his office or employment, under  
circumstances where the United States, if a private person,  
would be liable to the claimant in accordance with the law of the  
place where the act or omission occurred.

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1 Furthermore, 28 U.S.C. § 2671 states that a federal agency, as used in the act, includes "the  
2 executive departments, the judicial and legislative branches, the military departments,  
3 independent establishments of the United States, and corporations primarily acting as  
4 instrumentalities or agencies of the United States . . ." Accordingly, a cause of action under  
5 the FTCA properly lies only against the United States, and the Navajo Nation and its  
6 employee are not proper Defendants. The Plaintiffs have not alleged that the tribal  
7 Defendants were acting as federal officers or under color of federal law. Facially, this  
8 Complaint does not adequately allege a jurisdictional basis. Therefore,

9 IT IS ORDERED that Plaintiffs' Complaint (Doc. 1) is dismissed for lack of subject  
10 matter jurisdiction, and the Plaintiffs shall file an Amended Complaint properly alleging a  
11 jurisdictional basis for this action, if one exists, no later than **January 5, 2007**. The Plaintiffs  
12 are hereby advised that failure to timely comply with this order will result in the dismissal  
13 of this action without further notice.

14 DATED this 5<sup>th</sup> day of December, 2006.

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16 Paul G. Rosenblatt  
17 United States District Judge  
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