

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, et al.,         )  
  Appellees,                         )         No. 03-5262 and  
  )         No. 03-5314  
  v.   )  
  )   )  
GALE A. NORTON, as Secretary of         )  
the Interior, et al,                         )  
  Appellants                                 )  
  )   )  
  )   )  
  )   )  
  )   )  
\_\_\_\_\_)   )

**MOTION TO CONSOLIDATE RELATED APPEALS**

Appellants, the Secretary of the Interior, et al., hereby move to consolidate the two above-captioned appeals, which arise from the same district court case and involve related issues. No briefing schedule has yet been issued in either matter, and we respectfully ask that a single briefing and argument schedule govern the matter as consolidated.

1. The district court case underlying both appeals arises out of claims for an accounting of funds held in trust for the benefit of individual Indians. The case has previously been before this Court in Cobell v. Norton, 334 F.3d 1128 (D.C. Cir. 2003), and Cobell v. Norton, 240 F.3d 1081 (D.C. Cir. 2001).

2. At issue in No. 03-5262 is a preliminary injunction requiring the Department of Interior to disconnect from the Internet all Information Technology Systems that house or access Individual Indian Trust Data. The ruling did not require immediate disconnection, however, and it provided that the court would not require disconnection if the government certifies to

the court's satisfaction that a system is essential for the protection against fires or threats to life or property, or that a system either (a) does not house or access Individual Indian Trust Data, or (b) is secure from Internet access by unauthorized users.

The district court entered this preliminary injunction on July 28, 2003. The court has not yet evaluated the certifications submitted by the government pursuant to the preliminary injunction or ordered the Department of Interior to disconnect systems from the Internet. We have not to this point sought a stay of the preliminary injunction order.

3. At issue in No. 03-5314 is a sweeping "structural injunction" issued in the same case on September 25, 2003. The 18-page structural injunction was accompanied by a 272-page opinion addressing historical accounting and a 79-page opinion addressing trust reform generally. The injunction precludes implementation of the historical accounting plan developed by the Department of Interior, and asserts judicial control over virtually all aspects of the management of Individual Indian Money accounts. On November 10, 2003, we moved to stay the September 25 order pending appeal; on November 12, 2003, this Court granted an administrative stay of the structural injunction pending further order of the Court.

4. The two appeals not only arise from the same proceeding but involve closely related issues. In the government's view, the two injunctions reflect a fundamental misunderstanding of the nature of the claims before the district court and the court's authority to exercise control over executive branch functions. Both appeals will also require the Court to consider the impact of legislation recently signed by the President that bears directly on the duties at issue in this case. See FY 2004 Department of Interior Appropriations Act, HR 2691 (signed Nov. 10, 2003). That legislation is discussed in some detail in the motion for a stay filed in No. 03-5314. Separate briefing of the two appeals would involve duplicative filings and would waste the resources of the parties and the Court.

**CONCLUSION**

For the foregoing reasons, the appeals in No. 03-5262 and No. 03-5314 should be consolidated.

Respectfully submitted,

PETER D. KEISLER  
Assistant Attorney General

GREGORY G. KATSAS  
Deputy Assistant Attorney  
General

ROSCOE C. HOWARD, JR.  
United States Attorney

ROBERT E. KOPP  
MARK B. STERN  
THOMAS M. BONDY  
CHARLES SCARBOROUGH  
ALISA B. KLEIN  
(202) 514-5089  
Attorneys, Appellate Staff  
Civil Division, Room 9108  
Department of Justice  
601 D Street, N.W.  
Washington, D.C. 20530

NOVEMBER 2003

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of November, 2003, I caused copies of the foregoing motion to be sent to the Court and to the following by hand delivery:

The Honorable Royce C. Lamberth  
United States District Court  
United States Courthouse  
Third and Constitution Ave., N.W.  
Washington, D.C. 20001

Keith M. Harper  
Native American Rights Fund  
1712 N Street, N.W.  
Washington, D.C. 20036-2976  
(202) 785-4166

and to the following by federal express, overnight mail:

Elliott H. Levitas  
Law Office of Elliott H. Levitas  
1100 Peachtree Street  
Suite 2800  
Atlanta, GA 30309-4530  
(404) 815-6450

and to the following by regular, first class mail:

Dennis Marc Gingold  
Law Office of Dennis Marc Gingold  
607 14th Street, N.W., Box 6  
Washington, D.C. 20005

Earl Old Person (pro se)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417

---

THOMAS M. BONDY