

1 Colin Bradley (NNBA 19-087)
Javier Torres (NNBA 19-499)
2 DesiRae A. Deschine (NNBA 21-612)
Rachel Carroll (NNBA 24-677)
3 **ZWILLINGER WULKAN PLC**
2020 North Central Avenue, Suite 675
4 Phoenix, Arizona 85004
Tel: (602) 609-3800
5 Fax: (602) 609-3800
Email: colin.bradley@zwfirm.com

6 *Attorney for Respondents*

7 **IN THE DISTRICT COURT OF THE NAVAJO NATION**
8 **JUDICIAL DISTRICT OF WINDOW ROCK, ARIZONA**

9 HON. SPEAKER CRYSTALYNE
CURLEY,

10 Petitioner,

11 v.

12 PRESIDENT BUU VAN NYGREN,

13 Respondent.

Case No. WR-CV-67-25
JW Case No. 25-6264

**PRESIDENT BUU VAN
NYGREN'S 1) EMERGENCY
MOTION TO QUASH
SUBPOENA 2) RESPONSE TO
PETITION FOR
ENFORCEMENT OF
SUBPOENA 3) RESPONSE TO
MOTION FOR ORDER TO
SHOW CAUSE HEARING**

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16 **I. INTRODUCTION**

17 President Buu Van Nygren hereby files this Motion to Quash Subpoena and
18 Response to Petition for Order to Show Cause Hearing. President Nygren accordingly
19 moves to quash the subpoena and for denial of the motion for an order to show cause as
20 follows:
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1 **II. LEGAL ARGUMENT**

2 **A. The Subpoena Is Moot Because President Nygren Provided A State of the**
3 **Nation Report to Council, Along With A Detailed 167-Page Report From**
4 **The Navajo Nation Executive Branch**

5 The Subpoena purports to order President Nygren to “*provide a Report* to the
6 Navajo Nation Council on the State of the Navajo Nation pursuant to 2 N.N.C. §
7 1005(C)(5).” *See* Ex. B. (emphasis added); *see also* 2 N.N.C. § 1005(C)(5) (“The
8 President shall have the following enumerated powers . . . 5. Report quarterly to the
9 Navajo Nation Council on the state of the Navajo Nation.”). The Subpoena (and the
10 Petition to Enforce and the Motion for Order to Show Cause) is moot because President
11 Nygren has already voluntarily done what was requested.

12 Black’s Law Dictionary defines a “report” as “[a] formal oral or *written*
13 presentation of the results of an investigation, research assignment, etc., often with a
14 recommendation for action.” REPORT, Black’s Law Dictionary (12th ed. 2024)
15 (emphasis added). On April 21, 2025 (the same date the Subpoena was issued), President
16 Nygren provided a ten-page State of the Nation Report to Council, along with a detailed
17 167-page Report From The Navajo Nation Executive Branch. *See* Ex. B.¹ As will be
18 discussed below in Section C, under the language of 2 N.N.C. § 1005(C)(5), President
19 Nygren has the power to, but is not obligated to, provide a report to the Council. But, to
20 the extent there *is* a duty for President Nygren to “report” to Council, he has *already done*
21 *so* by providing a written report totaling over one hundred and seventy pages. The
22 Subpoena is therefore moot.

23 **B. The Subpoena Violates Fundamental Fairness And Due Process And**
24 **Cannot Be Enforced.**

25 The Subpoena cannot be enforced because doing so would be fundamentally unfair
26 and violate core concepts of due process. “Diné bi beenahaz’áanii leads to fundamental

27 ¹ President Nygren respectfully asks this Court to take judicial notice of the April 21, 2025 “Statement from
28 President Buu Nygren Regarding the State of the Navajo Nation Address” Facebook post appearing on the
President’s official Facebook page, *available at*
https://www.facebook.com/story.php?story_fbid=1248545143939101&id=100063508804773, which discusses
the report.

1 fairness for the whole.” *In re Saenz*. “[T]he Navajo people have an established custom of
2 notifying all involved parties in a controversy and allowing them, and even other
3 interested parties, an opportunity to present and defend their positions.” *See Begay v.*
4 *Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988). “This is Navajo customary due
5 process and it is carried out with fairness and respect.” *Id.* “The heart of Navajo due
6 process, thus, is notice and an opportunity to present and defend a position.” *Id.* at 24-25.
7 A court of the Navajo Nation must implement service of process requirements in light of
8 these concepts. *Kang v. Chinle Fam. Ct.*, No. SC-CV-37-18, slip op. at 6 (Nav. Sup. Ct.
9 Sept. 21, 2018). Furthermore, the Navajo Nation Supreme Court has recognized “the
10 primary principle that informs . . . interpretation of procedural due process is *k’e*, which
11 fosters fairness through mutual respect. *See Office of the Navajo Nation President v.*
12 *Navajo Nation Council*, 9 Nav. R. 325, 342 (Nav. Sup. Ct. 2010).

13 Here, the Subpoena cannot be enforced because doing so would violate
14 fundamental fairness and due process for two important reasons.

15 **1. The Subpoena Was Not Personally Served on President Nygren.**

16 First, the Subpoena cannot be enforced because the Subpoena was not personally
17 served on President Nygren. The Subpoena which Petitioner attached to her Petition does
18 not include a certificate of service or any indication that it was ever personally served on
19 President Nygren. *See Ex. A*. This Court cannot enforce a subpoena under these
20 circumstances. *C.f.* 7 N.N.C. § 604 (“No judgment shall be given on any suit unless the
21 defendant has been served notice....”); *see also* Navajo Rule of Civil Procedure Rule
22 45(d) (stating that a subpoena “shall be served by delivering a copy to the person.”).
23 Doing so would violate the principle that “[t]he heart of Navajo due process . . . is notice
24 and an opportunity to present and defend a position.” *Begay v. Navajo Nation*, 6 Nav. R.
25 20, 24 (Nav. Sup. Ct. 1988).

26 **2. The Subpoena Issued Mere Hours Before The Purported Time For**
27 **Attendance.**

28 The Subpoena cannot be enforced because even if it had been properly served (and

1 it was not), it was issued on such a short notice that enforcement would be fundamentally
2 unfair. *See e.g. In re Malyugin*, 310 F. Supp. 3d 3, 5 (D.D.C. 2018) (holding that two
3 days' notice of a subpoena was unreasonable, and the subpoena was quashed); *see also*
4 *United States v. Philip Morris Inc.*, 312 F. Supp. 2d 27, 36–37 (D.D.C. 2004) (holding
5 that three business days' notice of a subpoena was unreasonable, and the subpoena was
6 quashed). The Subpoena was dated April 21, 2025. *See* Ex. A. It purported to demand
7 that President Nygren “appear before the [Council] . . . on April 21, 2025 at the hour of
8 10:00 a.m.” *Id.* Thus, even assuming that the Subpoena was issued at 12:01 a.m. on April
9 21, it was issued ***less than ten hours*** before the time that President Nygren was “ordered
10 to appear” before the Council. Such an unrealistic (and unfair) timeline fails to respect
11 the principle of *k'e* and the notion of “fairness through mutual respect.” *See Office of the*
12 *Navajo Nation President v. Navajo Nation Council*, 9 Nav. R. 325, 342 (Nav. Sup. Ct.
13 2010). In fact, Petitioner’s decision to issue a Subpoena shortly before the time for
14 attendance strongly suggests that the present dispute is not actually about a subpoena, and
15 is likely due to Petitioner “disagree[ing] with [President Nygren’s] policies or because of
16 a personality conflict between these officials.” *In re Certified Questions II*, 6 Nav. R.
17 105, 116 (Nav. Sup. Ct. 1989). This Court cannot enforce a such a subpoena and cannot
18 allow its power to be used to further political games.

19 **C. The Subpoena Has No Valid Legal Basis And Cannot Be Enforced.**

20 The Subpoena was titled “In Re The State of the Navajo Nation Address” and
21 purported to be a “Subpoena for Attendance.” *See* Ex. A. The Subpoena further stated
22 that it was issued pursuant to “2 N.N.C. § 185(B)” and “2 N.N.C. § 1005(C)(5).” *Id.* As
23 will be shown below, neither of these two sections of the Navajo Nation Code provide a
24 valid basis for the Subpoena, and therefore it is legally meritless and must be quashed.

25 **1. 2 N.N.C. § 185(B) Relates to Subpoenas for Furnishing of**
26 **“Information, Suggestions, Estimates, and Statistics,” Not Attendance.**

27 The Subpoena purports to rely in part on 2 N.N.C. §185(B) as its source of legal
28 authority. *See* Ex. A. This section reads as follows:

1 B. The committees, boards and commissions shall have the power to subpoena and
2 acquire from any executive department, bureau, agency, board, commission,
3 office, independent establishment or instrumentality, *information, suggestions,*
4 *estimates, and statistics* necessary for execution of the purposes and authorities.
5 Each such department, bureau, agency, board, commission, office, establishment
or instrumentality is authorized and directed to *furnish* to the extent permitted by
law such *information, suggestions, estimates and statistics* directly to the
committee, board or commission upon request by the Chairperson.

6 2 N.N.C. §185(B) (emphasis added). The plain language of 2 N.N.C. §185(B) shows that
7 it provides only for the power to “subpoena and acquire . . . information, suggestions,
8 estimates, and statistics.” *Id.* This language relates to production of information, not to
9 the attendance of persons. This conclusion is bolstered by additional language in 2 N.N.C.
10 §185(B) which states that the responding party is “authorized and directed to *furnish*”
11 the information “*directly* to the committee, board or commission.” *Id.* (emphasis added).
12 This section only authorizes and directs the responding party to directly provide
13 information, not to testify *regarding* the information. 2 N.N.C. §185(B) is simply
14 irrelevant and does not provide a legal basis for the Subpoena.

15 **2. 2 N.N.C. § 1005(C)(5) Provides The President A “Power,” Not A**
16 **“Duty,” And Cannot Be Used By Council To Demand His Attendance.**

17 The other purported legal basis for the Subpoena is 2 N.N.C. § 1005(C)(5). *See*
18 Ex. A. However, this section of the Code does not provide a legal basis for the Subpoena.
19 Section 2 N.N.C. § 1005 is titled “Powers and Duties” and reads as follows:

20 A. The President of the Navajo Nation *shall serve* as the Chief Executive Officer
21 of the Executive Branch of the Navajo Nation government with full authority to
22 conduct, supervise, and coordinate personnel and programs of the Navajo Nation.
He/she shall have fiduciary responsibility for the proper and efficient operation of
all Executive Branch offices.

23 B. The President *shall represent* the Navajo Nation in relations with governmental
24 and private agencies and create favorable public opinion and good will toward the
Navajo Nation.

25 C. The President shall have the following *enumerated powers*:

- 26 1. Faithfully execute and enforce the laws of the Navajo Nation.
- 27 2. *Negotiate and execute contracts* subject to applicable laws.
- 28 3. Appoint supervisory executive personnel subject to applicable laws.

1 4. Appoint members of boards, commissions, and other entities subject to
2 applicable laws.

3 5. Report quarterly to the Navajo Nation Council on the state of the Navajo
4 Nation.

5 6. Recommend to the Budget and Finance Committee an annual operating
6 budget or amendments thereof for the Executive Branch and advise the
7 Navajo Nation Council on the annual budget recommended by the Budget
8 and Finance Committee.

9 7. Recommend to the Navajo Nation Council supplemental appropriations
10 for the Executive Branch.

11 8. Recommend legislation, rules or regulations to the Navajo Nation
12 Council or its Committees.

13 9. Exercise such powers as may be lawfully delegated to the Office of the
14 President of the Navajo Nation.

15 10. Sign legislation passed by the Navajo Nation Council into Navajo law
16 within ten calendar days after the certification of the legislation by the
17 Speaker or Speaker Pro Tem.

18 11. *Veto legislation* passed by the Navajo Nation Council subject to an
19 override of the veto by two-thirds (2/3) vote of the membership of the
20 Navajo Nation Council. The veto shall be exercised by the President by a
21 letter to the Speaker specifying the reasons for the veto. The President's veto
22 shall not be subject to an override by the Navajo Nation Council after the
23 end of the next regular session of the Navajo Nation Council following the
24 session in which the legislation was first passed by the Council.

25 12. The President's authority to sign into law or veto legislation shall be
26 deemed to be waived if not exercised within ten calendar days after
27 certification of the legislation by the Speaker or Speaker Pro Tem and the
28 legislation shall be deemed enacted and become effective pursuant to 2
N.N.C. § 221.

13 13. Speak and act for the Navajo Nation on any and all matters relating to
14 the Navajo-Hopi land dispute subject to applicable laws.

15 14. Issue executive orders for the purpose of interpreting, implementing or
16 giving administrative effect to statutes of the Navajo Nation in the manner
17 set forth in such statutes. Executive orders shall have the force of law upon
18 the recipient.

19 D. The Vice-President of the Navajo Nation, during the absence of the President,
20 *shall exercise the powers and execute the duties* of the President of the Navajo
21 Nation.

22 2 N.N.C. § 1005 (emphasis added).

23 Petitioner's Subpoena states that it was issued "[p]ursuant to 2 N.N.C. §
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1 1005(C)(5)” and further states that pursuant to the Subpoena, President Nygren is
2 “ordered” to “provide a Report to the Navajo Nation Council on the State of the Navajo
3 Nation, pursuant to 2 N.N.C. § 1005(C)(5).” *See* Ex. A. In other words, Petitioner’s
4 Subpoena rests on the assumption that 2 N.N.C. § 1005(C)(5) creates an enforceable *duty*
5 for President Nygren to “provide a Report,” and thus provides her with the authority to
6 order his appearance.² As will be discussed below, the Subpoena improperly relies on 2
7 N.N.C. § 1005(C)(5) – this section gives President Nygren the *power* to “provide a
8 Report” should he choose to do so, but *nothing* in 2 N.N.C. § 1005(C)(5) requires him to
9 do so, nor does it empower Petitioner to “order” him to do so.

10 First, it is important to establish that 2 N.N.C. § 1005 creates both “powers” and
11 “duties” for the President. This fact is shown in multiple ways. First, the fact that 2 N.N.C.
12 § 1005 creates both “powers” and “duties” for the President is evident from the title of 2
13 N.N.C. § 1005 itself – “Powers *and* duties.” (emphasis added). Thus, the title of this
14 section makes clear that it will define *both* powers *and* duties. Second, subsection (D),
15 which relates to the Vice President, states that “The Vice-President of the Navajo Nation,
16 during the absence of the President, shall *exercise the powers* and *execute the duties* of
17 the President of the Navajo Nation.” (emphasis added). This language further confirms
18 that there are *both* powers and duties set forth in 2 N.N.C. § 1005, and that they are
19 separate concepts.

20 Powers and duties are two entirely distinct concepts. Black’s Law Dictionary
21 defines a “power” in part as “[t]he legal right or authorization to act or not act[.]”
22 POWER, Black’s Law Dictionary (12th ed. 2024). On the other hand, a “duty” is defined
23 as “[a] legal obligation that is owed or due to another and that needs to be satisfied; that
24 which one is bound to do[.]” DUTY, Black’s Law Dictionary (12th ed. 2024). Put simply,
25 a “power” is thing that a person *can* do, and a “duty” is a thing that a person *must* do.

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27 ² Even if this Court finds that it is a duty, President Nygren has absolute immunity from subpoenas regarding his
28 official duties under 1 N.N.C. § 553(f). Thus, even if the Court finds that this is a duty, President Nygren cannot
be compelled to testify regarding his duties *at all*.

1 Having established that 2 N.N.C. § 1005 creates *both* powers *and* duties for the
2 President and that they are two distinct concepts with entirely different meanings, the
3 question becomes: does the “Report quarterly”³ language relied on by Petitioner’s
4 Subpoena relate to a “power” or to a “duty”? If it relates to a “power” which the President
5 has, but not a “duty,” it is something that the President “can” do, but not something which
6 the President “must” do. A plain reading of 2 N.N.C. § 1005 as a whole shows that the
7 “Report quarterly” language contained in 2 N.N.C. § 1005(C)(5) relates to a “power” of
8 the President, and not a “duty.”

9 This conclusion is supported by a plain reading of subsections A and B, which
10 clearly show that they relate to “duties” of the President. Subsection A states that the
11 “President of the Navajo Nation *shall serve* as the Chief Executive Officer” and “*shall*
12 *have* fiduciary responsibility...” (emphasis added). 2 N.N.C. § 1005(A) (emphasis
13 added). Similarly, subsection B states that the “President *shall represent* the Navajo
14 Nation in relations with governmental and private agencies *and create* favorable public
15 opinion and good will toward the Navajo Nation.” 2 N.N.C. § 1005(B) (emphasis added).
16 Both of these subsections use the word “shall” to state that the President “must” do certain
17 things, as Black’s Law Dictionary states that shall is “generally imperative or mandatory.”
18 Thus, these sections state that it is imperative or mandatory that the President “serve as
19 the Chief Executive Officer,” “have fiduciary responsibility,” “represent the Navajo
20 Nation,” and “create favorable public opinion and good will.” Subsections A and B
21 (which are not relied on by Petitioner’s Subpoena) thus create “duties.”

22 However, does subsection (C)(5), which Petitioner’s Subpoena relies on, similarly
23 create a mandatory “duty” for the President? The answer is no, which is shown for
24 multiple reasons.

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26 ³ What’s more, a “report” is undefined in the law. However, Black’s Law Dictionary defines a “report” as “[a] formal
27 oral or written presentation of the results of an investigation, research assignment, etc., often with a recommendation
28 for action.” REPORT, Black’s Law Dictionary (12th ed. 2024) (emphasis added). President Nygren provided a
written State of the Nation report to the Council the day of the subpoena. Clearly, even if President Nygren *could* be
subpoenaed, he already complied with its terms by providing a written report.

1 First, this subsection (C)(5) is part of 2 N.N.C. § 1005(C). This section states “C.
2 The President shall *have* the following *enumerated powers*.” Thus, any of the following
3 subsections (including 2 N.N.C. § 1005(C)) are, by definition, “*powers*” of the President,
4 and not duties. Although 2 N.N.C. § 1005(C) does use the word “shall,” it is used to grant
5 the “following” powers to the President, not to create a mandatory duty, as it states that
6 the President “shall have” the enumerated powers, as opposed to any other language
7 suggesting a mandatory duty to act.

8 Second, a plain reading of the other subsections within 2 N.N.C. § 1005(C) show
9 that those subsections, like 2 N.N.C. § 1005(C)(5), create “powers” of the President, and
10 not mandatory duties. For example, 2 N.N.C. § 1005(C)(11) reads: “Veto legislation
11 passed by the Navajo Nation Council...” It is common sense that a President has the
12 “power” to veto legislation, and that it is not a duty. It would be illogical to read 2 N.N.C.
13 § 1005(C)(11) as stating that the President has a “mandatory duty” to veto all legislation
14 – such a reading would lead to an ineffective and dysfunctional Council, a result which
15 no one would want. Similarly, subsection (C)(2) reads “Negotiate and execute contracts
16 subject to applicable laws.” This subsection cannot be read as *requiring* the President to
17 “execute” all contracts placed on their desk. Such a result would lead to outside parties
18 abusing the Navajo Nation, presenting one-sided contracts to the President for signature,
19 knowing that execution of the contacts is mandatory. The only plausible reading of (C)(2)
20 is that negotiating and executing contracts is one of the “enumerated powers” of the
21 President, and not a mandatory duty. Thus, by reading the language of 2 N.N.C. § 1005(C)
22 in conjunction with the specific language of the subsections, it is clear that these
23 subsections create powers – not duties – of the President.

24 Given the above, several issues are clear. First, 2 N.N.C. § 1005, which is titled
25 “Powers and duties,” creates both powers *and* duties for the President, which are distinct
26 concepts – powers are something the President can do, duties are something the President
27 must do. Second, the internal structure of 2 N.N.C. § 1005 and use of “shall” language in
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1 sections (A) and (B) shows that *those two sections* create duties for the President. Third,
2 the plain language of 2 N.N.C. § 1005(C) shows that everything in that section is an
3 “enumerated power,” a fact which is confirmed by a plain reading of the subsections
4 under 2 N.N.C. § 1005(C).

5 With all of this in mind, there is only one conclusion: 2 N.N.C. § 1005(C)(5)
6 creates a “power” for the President, and not an enforceable mandatory duty. Reading 2
7 N.N.C. § 1005(C)(5) in conjunction with the language in 2 N.N.C. § 1005(C) makes this
8 result even clearer:

9 C. The President shall have the following *enumerated powers*:

10 5. Report quarterly to the Navajo Nation Council on the state of the Navajo Nation.
11 2 N.N.C. § 1005(C)(5) (emphasis added). The President thus has the *power* to “[r]eport
12 quarterly,” but does not have a “duty” to do so – it is not “a thing due;” it is not a thing
13 “that which is due from [the President];” it is not a thing “which [the President] owes to
14 another;” nor is there an “obligation to do a thing.” Just like with choosing whether or not
15 to veto legislation or choosing whether to sign a particular contract, the President can
16 choose to do or not do; the President can choose to “report quarterly,” but there is no
17 mandatory duty to do so, and 2 N.N.C. § 1005(C)(5) does not provide a legal basis for
18 Petitioner’s Subpoena.

19 III. CONCLUSION

20 In conclusion, for all the reasons set forth above, the Court should quash the
21 subpoena issued for President Buu Van Nygren, deny any request for an order to show
22 cause, and immediately vacate any hearing for an order to show cause.
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1 RESPECTFULLY SUBMITTED this 2nd day of May 2025.

2 ZWILLINGER WULKAN PLC

3
4 By: 

Colin Bradley

Javier Torres

Rachell Carroll

DesiRae Deschine

Attorneys for President Nygren

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8 **CERTIFICATE OF SERVICE**

9 I hereby certify that a true copy of the foregoing **PRESIDENT BUU VAN**
10 **NYGREN'S 1) EMERGENCY MOTION TO QUASH SUBPOENA 2) RESPONSE**
11 **TO PETITION FOR ENFORCEMENT OF SUBPOENA 3) RESPONSE TO**
12 **MOTION FOR ORDER TO SHOW CAUSE HEARING** was filed by U.S. Mail on
this 2nd day of May 2025 to:

13 Window Rock District Court
14 P.O. Box 5520
15 Window Rock, Arizona 86515
16 Fax: (928) 871-7560
17 nnwrcourt@navajo-nsn.gov

18 And copies were mailed via U.S. mail this same date to:

19 G. Michelle Espino, Chief Legislative Counsel
20 Office of Legislative Counsel
21 Navajo Nation Legislative Branch
22 Post Office Box 3390
23 Window Rock, Arizona 86515
24 espino@navajo-nsn.gov

25 *Counsel for Petitioner*

26
27 By: 

Dana Martin