

## **Ninth Circuit Rules Fair Labor Standards Act Applies to Tribes**

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By William Aloe

Yesterday, in *Solis v. Matheson*, No. 07-35633, the Ninth Circuit Court of Appeals ruled that the overtime requirements of the Fair Labor Standards Act (“FLSA”) apply to a retail cigarette business owned by a tribal member and located on trust land within an Indian reservation.

The Court rejected a Puyallup tribal business owner’s argument that FLSA is inapplicable under the intramural affairs and treaty rights exceptions set forth in *Donovan v. Coeur d’Alene*, 751 F.2d 1113, 1116 (9th Cir. 1985).

While acknowledging that Congress did not expressly make the FLSA applicable to Indian tribes, the Ninth Circuit explained that Indians and their tribes are subject to federal statutes of general applicability that are silent as to applicability to Indians, unless the statute implicates one of the three *Donovan* exceptions: (1) the law touches exclusive rights of self-governance in purely intramural matters; (2) the application of the law to a tribe would abrogate rights guaranteed by Indian treaties; or (3) there is legislative history or some other proof that Congress intended the law to be inapplicable to Indians on their reservations.

Having rejected the argument that the FLSA was inapplicable to the Puyallup cigarette retailer based on the intramural and treaty rights exceptions, the *Solis* Court held the FLSA applicable to the business and found that the business owed \$31,354.87 in overtime wages to current and former employees.

Perhaps of even more consequence to Indian Country, the Ninth Circuit further ruled that the Secretary of the U.S. Department of Labor has the authority to enter lands and buildings on a reservation that is not subject to a *Donovan* exception, in order to inspect a tribal enterprise’s books and records and thereby enforce the FLSA.