

DEPARTMENT OF JUSTICE

Motion No. 1 Re: Reform of 28 U.S.C. Section 1500, Committee on Judicial Review Proposed Recommendation

As detailed in the Department's longer narrative summary, 28 U.S.C. § 1500 serves a clear and important purpose: protecting Federal agencies and courts from the burdens of duplicative litigation. To the extent that the statute has previously imposed procedural difficulties and substantive unfairness on plaintiffs bringing suit against the United States, the Supreme Court's recent decision in *United States v. Tohono O'odham Nation*, 131 S. Ct. 1723 (2011), may eventually resolve many if not all of those concerns by providing plaintiffs with an incentive to litigate suits with separate claims against the government sequentially (rather than simultaneously) within the statute of limitations. The Department expects that such sequential litigation will be possible in the mine run of cases. The Administrative Conference of the United States should therefore defer proposing sweeping reforms to section 1500 until the impact of *Tohono* on section 1500 jurisprudence and practice is clear.

Motion

The Department of Justice moves to table the Proposed Recommendation for Reform of 28 U.S.C. Section 1500 until the ACUS winter plenary session in 2013, at which time the Assembly can again consider whether to move forward with the proposed changes to the existing statute.