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UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF CALIFORNIA

Luwana Quitiquit, et al., Petitioners. vs. Robinson Rancheria Citizens Business Council, et al, Respondents	Case No.: C-11-00983 PJH **PETITIONERS' RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES** Date: June 22, 2011 Time: 9:00 a.m. Ctrm: 4 Judge: Honorable Phyllis J. Hamilton

Petitioners Luwana Quitiquit, Robert Qutitiquit, Karen Ramos, Inez Sands and Reuben Want, through their undersigned counsel, file this memorandum in opposition to the motion to dismiss filed by Respondents. For the reasons set forth below, Respondents' motion should be denied. This opposition is based on this memorandum, on the pleadings and records filed by Petitioners in this case, and the accompanying Declaration of Angélica M. Millán in Support of Petitioners' Response in Opposition to Respondents' Motion to Dismiss.

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INTRODUCTION

Petitioners reside on tribal land of the Robinson Rancheria Band of Pomo Indians (Tribe) in homes Petitioners contracted to purchase when they were members of the Tribe. As a result of a political dispute, the officers of the Robinson Rancheria Tribal Business Council (Respondents) disenrolled Petitioners from the Tribe. Shortly thereafter, Respondents established a tribal court with jurisdiction to hear only eviction cases, and commenced proceedings against Petitioners. These proceedings culminated in the issuance of a judgment that, when executed, will effectuate the immediate forcible removal of Petitioners from their homes on the reservation and from tribal land under threat of arrest and criminal trespass, causing a severe restraint on their liberty.

Stripped of their tribal membership and subject to an order of forcible removal under penalty of arrest, Petitioners filed a petition for writ of habeas corpus, asserting that Respondents' actions and eviction proceedings violate the American Indian Civil Rights Act's of 1968 ("ICRA"), 25 U.S.C. §§1301, 1302, and 1303, guarantees of due process and equal protection. These substantive guarantees of the ICRA may be enforced in federal court via a writ of habeas corpus to challenge the legality of a detention by a tribe. Since Respondents' actions against Petitioners cause a severe restraint on Petitioners' liberty, this Court has jurisdiction to hear this case; Respondents' motion to dismiss and/or for summary judgment should, thus, be denied.

STATEMENT OF FACTS

Petitioners Luwana Quitiquit, Robert Quitiquit, Karen Ramos, Inez Sands, and Reuben Want (Petitioners) are Native Americans who reside on the Robinson Rancheria reservation in Lake County, California. (Verified Habeas Petition, ¶1.) They reside in homes they contracted

to purchase through a federally-funded low-income housing program, known as the Mutual Help Homeownership Opportunity Program (Homeownership Program), when they were enrolled members of the Robinson Rancheria tribe. (Verified Habeas Petition, ¶¶1, 11.) The Homeownership Program was a program of the United States Department of Housing and Urban Development (HUD) created pursuant to the 1937 Housing Act (42 U.S.C. §§ 1437bb-ee (repealed 1996)), with the goal of providing low-income families and individuals the opportunity for homeownership by providing direct financial assistance to the tribes. (Verified Habeas Petition, ¶11.)

In November 2008, following Petitioners' public disapproval in October 2008 of a recent election for tribal chair, Respondents, lead by Respondent Avila, commenced disenrollment proceedings against Petitioners, which Petitioners opposed. (Verified Habeas Petition, ¶15.) Respondents disenrolled Petitioners in December 2008. *Id.* Petitioners are all descendants of ethnic Pomo Indians, but the disenrollment extinguished their rights to a variety of tribal benefits including voting rights, per capita payments, and elder assistance. *Id.*

Shortly after the disenrollment, on or about June 2009, Respondents passed an ordinance forming a tribal court. (Verified Habeas Petition, ¶16.) Respondents proceeded to give their tribal court jurisdiction to hear only eviction cases, and instructed that decisions of their summary eviction procedure would be final and not appealable. *Id.*

In late May and June 2010, Respondents brought unlawful detainer (eviction) actions against Petitioners in its newly established eviction court. (Verified Habeas Petition, ¶18.) Respondents did not initiate evictions against other homebuyers who were in similar alleged breach of the Homeownerhip Program, but targeted only Petitioners. (Verified Habeas Petition, ¶18.) Eviction trials were held in October 2010. (Verified Habeas Petition, ¶19.) On or about

January 20, 2011, the tribal court issued a decision for judgment against Petitioners. (Verified Habeas Petition, ¶21, Exhibit 6.) The tribal attorney submitted proposed findings of fact, conclusions of law, and judgments as requested by the tribal judge. *Id.* The proposed judgments required Petitioners and "anyone else occupying the Premises" to vacate their homes on the reservation within ten days, provided for removal of Petitioners by tribal law enforcement or by federal or local law enforcement personnel, and banned Petitioners from returning to the reservation and tribal land without prior written approval of Respondents, under threat of arrest for criminal trespass. *Id.* Petitioners filed multiple objections to these proposed orders. (Declaration of Angélica M. Millán, ¶3.)

The tribal judge adopted the proposed orders as prepared and submitted by the tribal attorney. (Verified Habeas Petition, ¶21, Exhibits 1-5, 7.)[1] Respondents requested the tribal court review the eviction proceedings for ICRA violations; however, the tribal judge instructed that Respondents had not given him or the tribal court the authority to review such violations. (Verified Habeas Petition, ¶¶20, 21, Exhibit 6.) Respondents shut off Petitioners' garbage service shortly thereafter. (Declaration of Angélica M. Millán, ¶5.)

On March 3, 2011, Petitioners filed a petition for writ of habeas corpus against Respondents, on grounds that Respondents' actions violated Petitioners' rights to equal protection and due process of law under the ICRA.[2] Upon filing the petition for writ of habeas

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[1] In Footnote One of their motion papers, Respondents surreptitiously request that the Court take Judicial Notice of these judgments pursuant to Federal Rules of Evidence 201. Petitioners object insofar as Respondents are asking this Court to recognize these judgments as lawful judgments or otherwise register these judgments in the federal court system; to establish this, Respondents must establish, among other things, that Petitioners were afforded due process under the principles of comity. *See Wilson v. Marchington*, 127 F.3d 805, 809-813 (9th Cir. 1997).

[2] Respondents do not address the underlying due process and equal protection violations in their motion. (Motion to Dismiss, p.4: 2-11.) Once permitted to try this case on its merits, Petitioners will show Respondents' egregious violations under the ICRA.

corpus, Petitioners simultaneously filed an Application for a Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction for an order restraining and enjoining Respondents from further causing the detention and restraint on Petitioners' liberty by executing on the judgments issued by the tribal court against Petitioners for their eviction and removal from their homes and the reservation. (Declaration of Angélica M. Millán, ¶4.) On March 8, 2011, the Court signed an Order pursuant to stipulation of the parties that resolved the application for injunctive relief. *Id.* Under this Stipulation and Order, Respondents agreed not to take any steps to enforce the tribal court judgments entered against Petitioners until final resolution of this case. *Id.* Petitioners have performed their part under the Stipulation and Order. (Declaration of Angélica M. Millán, ¶6.) Garbage service was only restored after execution of the Stipulation and Order, and after Petitioners' counsel made repeated requests to opposing counsel asking that Respondents comply with said Stipulation and Order. (Declaration of Angélica M. Millán, ¶5.)

On April 12, 2011, Respondents filed a motion to dismiss the petition, or in the alternative, a motion for summary judgment. Respondents argue that the Petition should be dismissed for failure to state a claim under Federal Rules of Civil Procedure 12(b)(1), or in the alternative, move for summary judgment. Petitioners file this memorandum in opposition to Respondents' motion(s).

ARGUMENT

I. THIS COURT HAS SUBJECT MATTER JURISDICTION OF PETITIONERS' HABEAS PETITION UNDER SECTION 1303 OF THE ICRA

Petitioners bring their ICRA claims via a petition for writ of habeas corpus under the ICRA, 25 U.S.C. §1303 (1968). In 1968, the United States Congress passed the ICRA, in response to growing complaints about tribal governments violating the civil rights of their

members. According to the Supreme Court, with the ICRA, "Congress acted to modify the effect of *Talton*[3] and its progeny by imposing certain restrictions on tribal governments similar, but not identical, to those contained in the Bill of Rights and the Fourteenth Amendment…a central purpose of the ICRA and in particular Title I was to 'secur[e] for the American Indian the broad constitutional rights afforded to other Americans' and thereby to 'protect individual Indians from the arbitrary and unjust actions of tribal governments.'" *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 61 (1978).

It was the conflict between ICRA and tribal sovereign immunity that was the issue in *Santa Clara Pueblo v. Martinez*. "While the Court acknowledged Congress's authority to impose restrictions on tribal autonomy, it held that federal enforcement of the substantive provisions of § 1302 is limited to those cases in which the remedy sought is a writ of habeas corpus." *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 879 (2d Cir. 1996). Since the issue in *Santa Clara Pueblo*, was whether ICRA provided for a civil cause of action in federal courts against tribes under 28 U.S.C. §1343(4), the case did not directly address the scope of Section 1303's habeas provision.[4] *Id.* at 886-87. *Santa Clara Pueblo*, thus, does not resolve the jurisdictional issue raised here. *See Id.* at 887.

The Ninth Circuit has recently framed a more helpful analysis; it has instructed that federal courts have jurisdiction to hear a claim for habeas corpus against a tribe under Section 1303 if (1) the petitioner is in custody, and (2) the petitioner has first exhausted tribal remedies. *Jeffredo v. Macarro,* 599 F.3d 913, 918 (9th Cir. 2010).

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[3] In *Talton v. Mayes*, 163 U.S. 376 (1896), the Supreme Court held that the U.S. Constitution did not apply to tribes because the tribes' authority did not come from the U.S. Constitution.

[4] 28 U.S.C. §1343(4)(1957) gave district courts "jurisdiction of any civil action authorized by law to be commenced by any person…to secure equitable or other relief under any Act of Congress providing for the protection of civil rights."

In the case at hand, the threat of confinement is imminent. A judgment has been issued calling for the immediate confinement of Petitioners outside tribal land. Under the terms of this confinement, Petitioners, having already been stripped of their Indian citizenship and tribal membership, are now facing an order of immediate expulsion from their residences on the reservation and expulsion from tribal lands under imminent threat of arrest and criminal prosecution. Petitioners have been subjected to Respondents' eviction proceedings, and there is no tribal appellate review, thus all tribal remedies have been exhausted.

A. DISENROLLED PETITIONERS ARE SUBJECT TO DETENTION PURSUANT TO THE JUDGMENT PROVIDING FOR THEIR FORCIBLE REMOVAL FROM THEIR HOMES AND THE RESERVATION

Section 1303 of the ICRA provides: "The privilege of the writ of habeas corpus shall be available to any person in a court of the United States to test the legality of his detention by order of an Indian tribe." 25 U.S.C. §1303 (1968) (Section 1303). Actual physical custody is not a jurisdictional prerequisite for federal habeas review. *Poodry v. Tonawanda Band of Seneca Indians*, *supra*, 85 F.3d at 893 (citing *Jones v. Cunningham*, 371 U.S. 236, 239-240 (1963)); *Edmunds v. Won Bae Chang*, 509 F.2d 39, 40 (9th Cir. 1975) (courts have expanded the scope of the term "custody" to cover circumstances that "fall outside conventional notions of physical custody"); *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973) (extending habeas corpus relief to petitioner who was released on his own recognizance because the state could restrict his movement at any time). Rather, for purposes of habeas corpus, a person is in detention or custody when severe actual or potential restraints are imposed upon a person's liberty. *Jeffredo v. Macarro, supra*, 599 F.3d at 919, citing *Poodry v. Tonawanda Band of Seneca Indians*, *supra*, 85 F.3d at 880 (providing that stripping of petitioners' tribal membership and imposition of a sentence of "permanent banishment" was sufficiently severe to constitute detention for purposes of § 1303).

In *Jeffredo v. Macarro*, *supra*, 599 F.3d 913 (9th Cir. 2010), the petitioners, disenrolled members of the tribe that resided on the reservation, brought a petition for writ of habeas corpus based on their disenrollment and resulting denial of access to certain facilities, including the

tribe's senior center, health clinic, and school. *Id.* at 919. The Ninth Circuit affirmed the dismissal of the petition for habeas corpus under ICRA, finding that denial of access to certain facilities "does not pose a several actual or potential restraint" on liberty. *Id.* The court noted that the petitioners had not been evicted from their homes, and their movements had not been restricted on the reservation. *Id.* The petitioners argued that as non-members of the tribe, they were under a "continuing threat of banishment/exclusion." However, the court found that the potential threat of future eviction was not sufficient to satisfy the detention requirement of §1303. *Id.* at 920.

The situation in *Jeffredo v. Macarro* is distinguishable from the situation in this case; Petitioners in this case have identified severe restraints on their liberty. Unlike the petitioners in *Jeffredo*, Petitioners *have* been issued orders for eviction authorizing their forcible removal from their homes by tribal law enforcement or other federal or local law enforcement personnel, and the taking of their personal property. (Verified Habeas Petition, ¶21.) Under the judgment, Respondents can withhold permission at their discretion from Petitioners to enter the reservation, thus restricting Petitioners' movements on the reservation. (Verified Habeas Petition, ¶21.) Failure to comply subjects Petitioners to immediate arrest and removal at any time. (Verified Habeas Petition, ¶21.) Indeed, shortly after execution of the judgment, Respondents quickly sought to interfere with Petitioners' peaceful life by removing Petitioners' garbage service. (Declaration of Angélica Millán, ¶4.) The service was restored only after execution of the Stipulation and Order on Petitioners' Application for a Temporary Restraining Order. *Id.*

That Petitioners have not been removed "thus far does not render them 'free' or 'unrestrained.'" *See Poodry v. Tonawanda Band of Seneca Indians*, *supra*, 85 F.3d at 895. The eviction judgment directs that after 10 days of its issuance, Petitioners will be forcibly removed from their homes by law enforcement, their personal belongings will be deemed property of Respondents, and Petitioners will not be allowed on the reservation without express permission of Respondents under penalty of arrest. (Verified Habeas Petition, ¶21, Exhibits 1-5.) All these conditions are restraints on Petitioners' liberty.

The plain language of Section 1303 does not limit the court's habeas jurisdiction to criminal proceedings. In *Poodry*, the Second Circuit did not have to resolve the question of whether habeas review must be limited to criminal proceedings since it found that the banishment "arose in a criminal context." *Poodry v. Tonawanda Band of Seneca Indians*, *supra*, 85 F.3d at 895. The Ninth Circuit, in *Jeffredo v. Macarro*, did not limit habeas review to "criminal" matters. *Jeffredo v. Macarro*, *supra*, 599 F.3d at 918. Thus, ICRA's Section 1303 is not restricted to cases of a "criminal" nature.

While Section 1303 is not limited to matters of a criminal nature, this case would nonetheless satisfy any such limitation since the resulting order of forcible removal by law enforcement and finding of criminal trespass include aspects of a criminal nature. Notably, the eviction judgment provides that Petitioners cannot be on the reservation without the express approval of Respondents, and subjects Respondents to arrest without such approval. (Verified Habeas Petition, ¶21, Exhibits 1-5.) The order also calls for their forcible removal from their homes by tribal law enforcement or any federal or local enforcement personnel. *Id.*

Jurisdiction is asserted based on Section 1303, not 28 U.S.C. §1331, thus *All Mission Indian Housing Authority v. Magante*, 526 F.Supp.2d 1112 (S.D. Cal. 2007), and *Round Valley Indian Housing Authority v. Hunter*, 907 F.Supp.1343 (N.D. Cal. 1995) are not on point. Unlike these cases, Petitioners' petition for writ of habeas corpus requires resolution of a federal right-their rights and substantive guarantees under the ICRA. *See All Mission Indian Housing Authority v. Magante*, *supra*, 426 F.Supp.2d at 1116.

The case of *Shenandoah v. Halbritter*, 366 F.3d 89 (2d Cir. 2004), is inapposite and/or should not be followed. In *Shenandoah*, the petitioners sought habeas corpus relief to challenge a housing ordinance, which called for the inspection of homes on certain lands of the Oneida tribe, required rehabilitation of homes if possible, and called for removal and/or demolition of homes which could not be repaired or rehabilitated. *Shenandoah v. Halbritter*, *supra*, 366 F.3d at 90. The Oneida Chief Tribal Court Judge upheld the ordinance as consistent with the ICRA, and the Oneida Appellate Court affirmed the decision. *Id.* at 91. One petitioner, Danielle Patterson, had been arrested and then released after resisting compliance with an inspection after

assaulting a tribal officer. *Id.* One year later, her home was demolished. *Id.* In finding that it lacked jurisdiction to hear the claim, the court remarked that the destruction of the home was an economic restraint, not a restraint on liberty, and Patterson's arrest for alleged physical assault on a tribe's officers was "too tenuously connected to the housing ordinance to provide habeas jurisdiction."

Unlike the situation in *Shenandoah*, the threat of arrest and forcible removal are directly connected to the judgments. There is no tribal court review of the ICRA available. In addition, in *Shenandoah*, there was no disenrollment and no other imminent orders otherwise restricting Patterson's movements. Here, Petitioners, now stripped of their tribal membership, are faced with an order that imminently places severe restrictions on their movements. The Ninth Circuit's framework and analysis set forth in *Jeffredo v. Macarro*, *supra*, 599 F.3d 913, as discussed above, not *Shendandoah*, should be followed. In *Jeffredo v. Macarro*, the court suggested that actual eviction proceedings could constitute detention. *Jeffredo v. Macarro*, *supra*, 599 F.3d at 920.

This case is similar to the case of *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir.1996) in which the Second Circuit found that a banishment order of the tribe did constitute detention. In so finding the court noted that the consequence of the order was more than a "modest fine or a short suspension of a privilege....but [involved] the coerced and peremptory deprivation of the petitioners' membership in the tribe and their social and cultural affiliation." *Poodry v. Tonawanda Band of Seneca Indians*, *supra,* 85 F.3d at 895.

The disenrollment of Petitioners, which stripped them of tangible tribal benefits, in conjunction with the order calling for their forcible removal from their homes and the reservation, thereby depriving Petitioners of their cultural and social ties to the land and its people, constitutes detention under Section 1303.

B. PETITIONERS HAVE EXHUASTED ALL TRIBAL REMEDIES

Exhaustion of tribal remedies is required before bringing a petition for writ of habeas corpus. *Jeffredo v. Macarro, supra*, 599 F.3d at 918 (citing *Selam v. Warm Springs Tribal Corr. Facility*, 134 F.3d 948, 953-954 (9th Cir. 1998)). However, the exhaustion requirement is

relaxed where exhaustion would be futile or the tribal court offers no adequate remedy. *Id.* (citing *Selam v. Warm Springs Tribal Corr. Facility*, 134 F.3d at 953) In *Jeffredo v. Macarro*, *supra*, 599 F.3d 913 (9th Cir. 2010), in finding that the petitioners had not exhausted all tribal remedies, the court noted that petitioners had not been subjected to the exclusion or eviction proceedings of the tribe. *Jeffredo v. Macarro*, *supra*, 599 F.3d at 921. The court thus, found that it lacked jurisdiction over petitioners' claims for exclusion and eviction because petitioners had not exhausted their claims for exclusion under the tribe's exclusion and eviction regulations. *Id.*

Unlike the petitioners in *Jeffredo*, the Petitioners in this case *have* been subjected to eviction proceedings, and have exerted every effort to appeal the tribal court process. (Verified Habeas Petition, ¶16; Declaration of Angélica M. Millán, ¶3.) The tribal court ordinance enacted by Respondents declares that decisions of the tribal court are final and not appealable. (Verified Habeas Petition, ¶16.) Notwithstanding, Petitioners objected to the proposed judgments against them, but the tribal judge signed the judgment exactly as submitted by the tribal attorney. (Verified Habeas Petition, ¶21; Declaration of Angélica M. Millán, ¶3.) Petitioners also requested the tribal judge review the eviction proceedings for ICRA violations, but the tribal judge found that Respondents had not given him or the tribal court the authority to review such violations. (Verified Habeas Petition, ¶¶20, 21, Exhibit 6.) Respondents disingenuously suggest that Petitioners should have asked for a "rehearing"; when Respondents know that the summary eviction ordinance that they enacted provides for no such relief; decisions of Respondents' eviction court are final and not appealable. (Verified Habeas Petition, ¶16.) Petitioners have exhausted all remedies available to them under the tribal court rules; the habeas petition is ripe for review.

II. SOVEREIGN IMMUNITY DOES NOT BAR THIS CASE SINCE IT IS BROUGHT WITHIN THE SCOPE OF THE ICRA'S HABEAS CORPUS REVIEW

While Indian tribes retain aspects of sovereignty and the powers of self-government, they are nonetheless subject to Congressional limitation. *Poodry v. Tonawanda Band of Seneca Indians*, *supra*, 85 F.3d at 880-81. ICRA's Section 1303 is one such limitation. *Id.* at 881. The

proper respondent in a federal habeas corpus petition is the petitioner's immediate custodian. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992). However, "[a]s the 'custody' requirement has expanded to encompass more than actual physical custody, so too has the concept of a custodian as a respondent in a habeas case. *Poodry v. Tonawanda Band of Seneca Indians*, *supra*, 85 F.3d at 899. A 'custodian' under Section 1303 is someone "who has both an interest in opposing the petition if it lacks merit, and the power to give the petitioner what he seeks if the petition has merit." *Id.* at 899.

Respondents, as evidenced by their agreement not to enforce the judgments until resolution of this case, have the power *not* to enforce the judgments. (Declaration of Angélica Millán, ¶¶4, 6.) The tribal council is the governing body of the tribe; Respondents have an interest in opposing this petition. (Verified Habeas Petition, ¶¶1, 8.) As noted by Respondents in their motion to dismiss/motion for summary judgment, the issue of sovereign immunity turns on whether a claim under Section 1303 can be stated (Respondent's Motion, p.10: 6-9.). As discussed above, Petitioners have stated a claim for detention under Section 1303. Accordingly, Respondents are the proper parties, and Petitioners' claims are not barred by sovereign immunity.

CONCLUSION

This case is not a "simple" unlawful detainer action, as Respondents would have this Court believe. As Petitioners will show once permitted to try this case on its merits: this case is about the unlawful and unequal treatment and disenfranchisement of Petitioners at the hands of Respondents. This Court has subject matter jurisdiction over Petitioners' claims under Section 1303. Stripped of their tribal membership and social and cultural affiliation, and now subjected to orders calling for their forcible removal from their homes and tribal land by law enforcement under penalty of criminal trespass, they have been subjected to a severe restraint on liberty similar to banishment. Petitioners have exhausted their tribal remedies, and Respondents' tribal

court has refused to review any ICRA violations because Respondents have not given it the authority to do so. Accordingly, Respondents' motion should be denied.

RESPECTUFLLY SUBMITTED BY:
LEGAL SERVICES OF NORTHERN CALIFORNIA

DATED: June 1, 2011

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CERTIFICATE OF SERVICE

I, Angélica M. Millán, hereby certify that on June 1, 2011, I electronically mailed the foregoing document to:

Lester Marston
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marston1@pacbell.net

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 1, 2011 in Ukiah, California.

Angélica M. Millán