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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LUWANA QUITIQUIT, et al., Petitioners, vs. ROBINSON RANCHERIA CITIZENS BUSINESS COUNCIL; et al. Respondents.	Case No. C 11-00983 PJH RESPONDENTS' REPLY TO THE OPPOSITION TO THEIR MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS DATE: June 22, 2011 TIME: 9:00 a.m. CTRM.: 4 JUDGE: Honorable Phyllis J. Hamilton

INTRODUCTION

Petitioners' Response in Opposition to Respondents' Motion to Dismiss ("Opposition") is a remarkably disingenuous document. Petitioners portray themselves as the victims of a political witch hunt. They claim that they are subject to "detention," to "severe restraints on their liberty," to "banishment." This dispute is an eviction action that Petitioners are attempting to recharacterize as a civil rights violation. Petitioners recognize that the applicable case law does not support them. Petitioners are attempting to distract the Court from the fundamental issues in this case.

Petitioners' entire argument is dependent on their effort to tie their evictions to their December 2008 disenrollment from the Tribe. Those disenrollments were effected through unrelated proceedings of the Tribe's Business Council, where they were provided with full due process rights. The disenrollments were appealed to the Secretary of the Interior's

("Secretary") designated representative, the Acting Pacific Regional Director of the Bureau of Indian Affairs who upheld the disenrollments. Any challenge to that decision would have to be made through a federal court action against the Secretary pursuant to the Administrative Procedures Act, 5 U.S.C. § 701 et seq. ("APA"). The disenrollments have nothing to do with the judgments ("Judgments") evicting Petitioners from their homes issued by the Robinson Rancheria Tribal Court ("Tribal Court"). As the Petitioners well know, the Tribal Court has no jurisdiction over membership disputes, and the disenrollment of the Petitioners was not addressed in the Judgments.

Petitioners assertion, that they are subject to "severe restraint on Petitioners' liberty" (Opposition, p. 1), because they could be subject to removal from the homes located on Robinson Rancheria trust land is sheer nonsense. Any potential threat of removal arises only if the Petitioners refuse to abide by the lawful order of the Tribal Court and force the Tribe to seek the assistance of law enforcement officers in carrying out the order. That is precisely what would happen if Petitioners were delinquent tenants in a state court eviction action. Petitioners portray themselves as under threat of "banishment," because, after the evictions are completed, they will have to seek the Tribe's permission before returning to the Robinson Rancheria. A requirement that Petitioners seek the Tribe's permission before entering the Reservation hardly constitutes banishment.

Petitioners fail to recognize that if you breach your rental agreement, fail to pay rent for years, and refuse to voluntarily vacate the premises that belongs to your landlord, you will get sued and the Court will order that you vacate the premises.

I.

THE ENROLLMENT STATUS OF THE PETITIONERS IS NOT RELEVANT TO THIS CASE

The only way that Petitioners can even begin to argue that they are subject to detention, is to characterize the Tribal Court proceedings as similar to the actions taken by tribes whose actions have been found to constitute detention for habeas corpus proceedings, such as *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir. 1996). The argument set forth in

the Opposition is, therefore, dependent on the repeated claim that the 2008 disenrollment of Petitioners is relevant to the present proceedings. Nearly every page of the brief makes reference to the disenrollment of the Petitioners from the Tribe. Petitioners' entire argument is summarized in their introduction:

> As a result of a political dispute, the officers of the Robinson Rancheria Tribal Business Council . . . 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.

Opposition, p. 1.

This portrayal of events ties the disenrollment, the creation of the Tribal Court, and the eviction proceedings together as one process. This characterization is inaccurate.

First, the disenrollment proceedings are unrelated to the Tribal Court Judgements. In December, 2008, the Business Council disenrolled forty-five members of the Tribe, including the Petitioners, because they did not meet the eligibility requirements for tribal membership under the Tribe's constitution and were enrolled in error in the first instance. Those disenrollment were ordered by the Business Council, based on a majority vote of the members of the Business Council, after notice of the proposed disenrollment was given to the affected tribal members and after a hearing was held on each proposed disenrollment by the Business Council. Declaration of Lester J. Marston in Support of Motion to Dismiss Marston Declaration, p. 1, ¶ ¶ 2-3.[1] At those hearings, each potential disenrollee was permitted to offer evidence and argument to show that he/she qualified for enrollment under tribal law. *Id.* The disenrollees appealed the Business Council's decision to the Superintendent of the Central California Agency of the Bureau of Indian Affairs ("Superintendent"), who forwarded the

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[1]As was discussed in Respondents' Memorandum, a court addressing a motion filed pursuant to Rule 12(b)(1) can consider evidence outside the pleadings that bears on the issue of jurisdiction. "On a motion to dismiss for lack of subject matter jurisdiction under *Fed. R. Civ. P. 12(b)(1)*, proof of jurisdictional facts may be supplied by affidavit, declaration, or any other evidence properly before the court, in addition to the pleadings challenged by the motion." *Greene v. United States*, 630 F.3d 1245, 1248 (9th Cir. 2010); *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007).

appeals to the Acting Regional Director, Pacific Regional Office of the BIA ("Regional Director"). *Id.*, at 2, ¶ 4. On April 9, 2010, the Acting Regional Director affirmed the Business Council's decision to disenroll the forty-five members of the Tribe. *Id.*, at p. 2, ¶ 5. No suit has been filed challenging the Acting Regional Director's decision pursuant to the APA. *Id.*, at p. 2, ¶ 6.

Second, the Tribe has long been attempting to address the failure of occupants of tribally owned housing to meet their obligations under their leases or other tenant agreements. Numerous tenants, including the Petitioners, have failed to pay the minimal administration fee imposed by their tenant agreements for, in some cases years.[2] Delinquent tenant were repeatedly offered repayment agreements and other methods for bringing their accounts current. Marston Declaration, p. 2, ¶ 8.

Neither federal courts nor state courts have jurisdiction over eviction actions relating to tribal tenants occupying housing on tribal trust land. *Round Valley Indian Housing Authority v. Hunter*, 907 F. Supp. 1343, 1346. (N.D. Cal. 1995); *All Mission Indian Housing Authority v. Magante*, 526 F. Supp. 2d 1112, 1116-1117 (S.D. Cal. 2007); *Boisclair v. Superior Court*, 51 Cal. 3d 1140 (Cal. 1990). In order to address the tenant issues, the Tribe's Business Committee established the Tribal Court in 2009 and delegated to it jurisdiction over unlawful detainer actions against tenants occupying tribal housing on tribal land. Marston Declaration, p. 2, ¶ 9. The Tribal Court has no jurisdiction over enrollment issues. *Id.* The Tribal Court has no jurisdiction over the Superintendent or Regional Director or any of their administrative decisions. *Id.*

After providing notice of delinquency, an opportunity to enter into a payment agreement, and after hearings on the termination of Petitioners' lease agreements, which Petitioners failed to attend, the Tribe's Housing Department issued Three-Day Notices to Quit to Petitioners. *Id.*, p. 2, ¶ 10. None vacated the tribal housing they occupied. *Id.* The Tribe, therefore, brought the unlawful detainer actions in Tribal Court. After a separate trial for each

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[2] All of the Petitioners have been delinquent for at least eight years. Marston Declaration, p. 2, ¶ 7.

tenant, post trial briefing, and post trial motions, the Tribal Court issued the Judgments, which are the basis for these proceedings. *Id.*, p. 3, ¶ 11. The Tribal Court did not address the issue of enrollment in the Judgments. *Id.* The Judgments evicting Petitioners were not based on or a consequence of the disenrollment of Petitioners. *Id.*

The only reason why disenrollment is being discussed is because the only way that Petitioners can argue that they are subject to detention is by drawing parallels with the cases, such as *Poodry, supra*, *Quair v. Sisco*, 359 F. Supp. 2d 948, 963 (E.D. Cal. 2004) ("*Quair I"*) *and Quair v. Sisco*, 2007 U.S. Dist. LEXIS 36858 (E.D. Cal 2007) ("*Quair II*"), where a tribe took a range of actions that *together* constituted detention. No case decision supports the proposition that eviction orders from tribal housing alone constitute detention.

In their memorandum of points and authorities in support of the present motion ("Respondents' Memorandum"), Respondents discussed in detail the cases that have addressed the issue of what constitutes detention under the Indian Civil Rights Act, 25 U.S.C. § 1301, et seq. ("ICRA"). Courts have rarely concluded that the actions of a tribal official in the tribal housing context constitute detention. See *Jeffredo v. Macarro*, 599 F.3d 913 (9th Cir. 2010); *Shenandoah v. Halbritter*, 275 F. Supp. 2d 279, 285 (N.D.N.Y. 2003); *Alire v. Jackson*, 65 F. Supp. 2d 1124, 1127 (D. Ore. 1999): *Moore v. Nelson*, 270 F.3d 789, 790-791 (9th Cir. 2001) [tribal action not sufficiently severe to qualify under Section 1303]; *Poodry*, *Quair I* and *II*, [tribal action qualified as detention]. Courts have found that tribal action constitutes detention only in the cases involving the most extreme punishments, gross violations of the defendant's due process rights, and only in cases involving criminal charges. *Poodry* involved an intertribal dispute which lead the Tribal Council of the Tonawanda Band to summarily find the petitioners guilty of a crime: treason. The Tribal Council stripped the defendants of their tribal membership and ownership of any tribal lands, and permanently banished them from the Band's reservation, without meeting even minimal due process standards.

> We deal here not with a modest fine or a short suspension of a privilege--found not to satisfy the custody requirement for habeas relief--but with the coerced and peremptory deprivation of the petitioners' membership in the tribe and their social and cultural affiliation. To determine the severity of the sanction, we need only look to the orders of banishment themselves, which suggest that

> banishment is imposed (without notice) only for the most severe of crimes: murder, rape, and treason.

Poodry, 85 F.3d at 895.

In *Quair v. Sisco*, 359 F. Supp. 2d 948, 963 (E.D. Cal. 2004) ("*Quair I*") *and Quair v. Sisco*, 2007 U.S. Dist. LEXIS 36858 (E.D. Cal 2007) ("*Quair II*"), the court's conclusion that the tribe's summary disenrollment and banishment of the defendants based on charges of, among other things, treason and embezzlement constituted detention under the ICRA.

Clearly, the severity of the punishments imposed in Poodry, *Quair I*, and *Quair II* bear no resemblance to the remedies imposed in this case: eviction from tribally owned housing and the payment of back rent. These are clearly civil remedies. They are also precisely the same remedies that a state court would impose in an unlawful detainer action.

Petitioners attempt to distinguish all of the cases in which federal courts have found that the tribal actions did not constitute "detention." As was discussed in the Respondents' Memorandum, the Ninth Circuit in *Jeffredo v. Macarro*, 599 F.3d 913 (9th Cir. 2010), concluded that the denial of access to tribal programs and services, such as the tribal health clinic and school, potential exclusion from the tribe's reservation, and the loss of membership did not constitute detention for the purposes of the ICRA. Petitioners argue that this decision can be distinguished from this case because the petitioners in that case had not been evicted. Opposition, p. 7. Nothing in the *Jeffredo* decision supports the claim that Ninth Circuit concluded that eviction equates to detention for the purposes of the ICRA.

Petitioners attempt to distinguish the Second Circuit's decision in *Shenandoah v. Halbritter*, 366 F.3d 89 (2nd Cir. 2004) is even less compelling. As was pointed out in Respondents' Memorandum, the facts in *Shenandoah* are the most similar to the present dispute of any case addressing the detention requirement under the ICRA. If there is a distinction, it is that the remedies imposed in *Shenandoah* were significantly more sever that those in the present case. *Shenandoah* involved the enactment and enforcement of a housing ordinance. The enforcement of the ordinance included the demolition of the houses of some of the petitioners, and the arrest and incarceration of a tribal member arising from her opposition to

the enforcement of the ordinance. The *Shenandoah* court, nevertheless, concluded, "enforcement of their housing ordinance did not constitute a sufficiently severe restraint on liberty to invoke this Court's habeas corpus jurisdiction." *Shenandoah*, 366 F.3d at 92. As the *Shenandoah* court further concluded, even the destruction of the homes is an economic restraint, rather than a restraint on liberty. *Id.*

The Petitioners argue that *Shenandoah* can be distinguished from the present case because "Unlike the situation in Shenandoah, the threat of arrest and forcible removal are directly connected to the judgments. . . . 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." Opposition, p. 9. That is absurd. First, as has been repeatedly pointed out, the Tribal Court judgments do not involve disenrollment, so that issue is not a basis for claiming that detention is occurring. Second, the threat of arrest and forcible removal could only arise if Respondents refuses to abide by the lawful orders of the Tribal Court. As would be the case in any eviction action in California state court, where a court issues an order of eviction and the tenant nevertheless refuses to leave the premises, the tenant is subject to arrest and removal from the premises. Thus, Petitioners have a choice. They can abide by the Judgments and peacefully vacate the premises and take their possessions with them. If they chose to violate the lawful order of a court, they will, indeed, like any other person who chooses to do so, face some form of action by law enforcement officials. If they wish to return to the Robinson Reservation, they can peacefully seek the permission of the Tribe. They can also enter the Reservation without permission and thereby justify the conclusion that they have no intention to respect tribal law and the desire of the members of the Robinson Rancheria for a peaceful community. Once again, they would be subject to the actions of law enforcement officials as a result of their actions.

The provisions of the Judgments, whether considered separately or together, do not qualify as detention as that term is used in 25 U.S.C. § 1303.

CONCLUSION

If this dispute had occurred on land outside of an Indian reservation, Petitioners would have long since been removed from the housing by the County Sheriff. Petitioners' attempt to convince the Court that the Tribe should not be permitted to evict them for their repeated and long standing violations of their tenant agreements relating to tribal trust land is particularly ironic in the context of the history of California Indian tribes.

Land is the most precious resource of any Indian tribe. "Land forms the basis for social, cultural, religious, political, and economic life for American Indian nations." COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (2005 Ed.), § 1502, p. 965. Without a land base, a tribe has no territorial jurisdiction and is a tribe in name only. Federal law specifically grants to Indian tribes the exclusive authority to control their tribal trust lands. 25 U.S.C. § 476(e) ("In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: . . . to prevent to sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe."). The Robinson Rancheria is seeking to control the use and possession of its tribal trust land against the claims of people who have refused for years to meet the minimal requirements imposed on them by their tenant agreements. That limited amount of tribal trust is all that the Tribe has been able to reacquire after all of its aboriginal lands were stolen, their tribal structures destroyed, the ancestors of the present tribal members were randomly disbursed to isolated parcels of land around the State of California, and their tribal status terminated. *Duncan v. Andrus*, 517 F. Supp 1 (N.D. Calif. 1977); *Duncan v. United States*, 597 F.2d 1337 (Ct. Cl. 1979); *Duncan v. United States*, 667 F.2d 36 (Ct. Cl. 1981), *cert. denied*, 463 U.S. 1228 (1983). To take that control away from the Tribe would be yet another outrage. To take it away in the name of protecting deadbeat tenants from the consequences of their refusal to pay their rent or meet the minimal requirements of their tenant agreements would be a travesty of justice.

The Respondents therefore respectfully request that their motion to dismiss be granted and the Petition be dismissed or, in the alternative, denied.

Respectfully submitted,

DATED: June 8, 2011

RAPPORT AND MARSTON

/s/ Lester J. Marston

By: _____

Lester J. Marston
Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of June, 2011, my office electronically filed the foregoing Respondents' Reply to the Opposition to Their Motion to Dismiss Petition for Writ of Habeas Corpus and Declaration of Lester J. Marston in Support of Respondents' Reply to the Opposition to Their Motion to Dismiss Petition for Writ of Habeas Corpus using the ECF System for the United States District Court, Northern District of California, which will send notification of such filing to the following:

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/s/ Lester J. Marston

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