NON-REMOVABLE MILLE LACS BAND OF OJIBWE INDIANS
COURT OF APPEALS

District of Nay-Ah-Shing

IN THE COURT OF APPEALS

No. 11-APP 06

Mille Lacs Band of Ojibwe Indians,
Plaintiff-Appellee

vs. MEMORANDUM DECISION

Darrick DeWayne Williams Jr.
Defendant-Appellant

Darrick Williams petitioned this Court for interlocutory review of the August 17, 2011 order of the Court of Central Jurisdiction, the Honorable Richard Osburn presiding, finding the Band's exclusion law constitutional under the Band and MCT Constitution and valid under the Indian Civil Rights Act. The Court notes that Judge Osburn also suggested interlocutory review of the order in order to expedite the resolution of the pending case before the lower court. Additionally, despite the fact that Williams filed his request for interlocutory review late, the Band did not object to the untimely filing or the interlocutory nature of the review.

This Court granted interlocutory review on October 14, 2011, ordered expedited briefing, and heard oral argument on the 2nd day of December 2011. Attorney Christopher Sailers argued for Williams and Assistant Solicitor Barbara Cole argued for the Band. Based upon this Court's review of the record and arguments made at oral argument this Court issues this memorandum decision.

The facts in this case have not yet been fleshed out because Williams opted to assert a "facial" challenge to the Band's Exclusion and Removal ordinance, codified at Chapter 4 of the Mille Lacs Band Code. A "facial" challenge is when a party seeks to vindicate not only his own rights, but those of others who may also be adversely impacted by the statute in question. This Court has never addressed the issue of when a party may mount a facial challenge to a Band ordinance. It is therefore appropriate to look for some guidance in federal court decisions that address the issue. In Forsyth County v. Nationalist Movement, 505 U.S. 123, 129, 120 L. Ed. 2d 101, 112 S. Ct. 2395 (1992) the United States Supreme Court held that a litigant may challenge a statute by showing that it substantially abridges first Amendment rights even if its application to the litigant would be "constitutionally unobjectionable."

Facial challenges are generally disfavored. See, e.g., Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 450, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008) (recognizing that courts should "[e]xercis[e] judicial restraint in a facial challenge"); Farrell v. Burke, 449 F.3d 470, 494 (2d Cir. 2006) ("Federal courts as a general rule allow litigants to assert only their own legal rights and interests, and not the legal rights and interests of third parties."). There are several rationales for limiting such third-party, or jus tertii, standing. First, doing so "serves institutional interests by ensuring that the issues before the court are concrete and sharply presented." Thibodeau v. Portuondo, 486 F.3d 61, 71 (2d Cir. 2007) (internal quotation marks omitted). Second, "[c]laims of facial invalidity often rest on speculation." Wash. State Grange, 552 U.S. at 450. Third, facial challenges "run contrary to the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of

deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." Id. (internal quotation marks omitted). Fourth, "facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner [*742] consistent with the Constitution." Id. at 451.

Despite courts' baseline aversion to facial challenges, the limitations on third-party standing that restrict such challenges are prudential, not jurisdictional. Courts are therefore permitted to recognize such standing and allow facial challenges in some cases. They have done so from time to time, particularly -- and perhaps only -- when the claims are based on the assertion of a First Amendment right. See Farrell, 449 F.3d at 495 n.11. [8] In such cases, the plaintiff is allowed to challenge a law that may be legitimately applied to his or her own expressive conduct if the law has the potential to infringe unconstitutionally on the expressive conduct of others. See, e.g., Forsyth County, Ga. v. Nationalist Movement, 505 U.S. 123, 129, 112 S. Ct. 2395, 120 L. Ed. 2d 101 (1992) ("It is well established that in the area of freedom of expression an overbroad regulation may be subject to facial review and invalidation, even though its application in the case under consideration may be constitutionally unobjectionable.").

This Court is somewhat confused why Williams wishes to assert a facial challenge to the removal ordinance rather than an “as applied” challenge. At oral argument his attorney noted that he is a Band member living on the Mille Lacs reservation. He has a small child whom lives with him and he has expressed a desire to learn and practice the cultural and spiritual ways of the Anishinabe. He appears to have substantial rights that would be impaired by the application of the removal ordinance to

him. This Court notes that the lower court held that he could not present a facial challenge to the removal ordnance because he has not asserted first amendment rights that would be impaired or impacted by his removal from the Mille Lacs reservation. This Court does not necessarily agree with this assessment.

Of course the first amendment to the United States Constitution has no applicability in this Court or the lower court because the United States Constitution in no way restrains the exercise of sovereign tribal powers, but it would be appropriate for this Court to analyze this facial challenge by examining whether the Band's Exclusion and Removal ordinance abridges the rights preserved Band members and others under the provision of the Indian Civil Rights Act most comparable to the First amendment to the United States Constitution. That provision is 25 U.S.C. §1302 which provides in relevant part:

§ 1302. Constitutional rights

(a) In general. No Indian tribe in exercising powers of self-government shall--

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances.

This Court also notes that this same right is preserved Band members in the Band's Civil Rights Code at Title I, Section 1 and the language there mirrors the language in the Indian Civil Rights Act.

The question thus becomes whether the removal of a Band member or other person from the Mille Lacs Indian reservation, pursuant to the Band's Exclusion and Removal Ordinance, may potentially impair the exercise of this right. The answer to that

question appears obvious to this Court- it could certainly potentially impair a Band member's rights to participate in the exercise of his "religion" if he was desirous of learning the traditional ways of the Anishinabe and his access to the patrimony necessary for practicing these ways was defeated by his inability to come on to the reservation. The Court also believes that the right of a person to live with his child and raise his child is that type of intimate relationship that many Courts have recognized as being within that core group of persons whom a person has a first amendment right to live with and associate with. See Moore v. City of East Cleveland, 431 U.S. 434 (1976).

The Court therefore concludes that the Band's removal ordinance potentially impacts fundamental rights similar to those protected by the First amendment to the United States Constitution and is therefore subject to a facial challenge.

That said the Court does not conclude that the Band is denied the right to enact and enforce an Exclusion and Removal ordinance merely because it may impair a fundamental right to practice one's religion or raise one's child. Every right that the Band must extend to its members or non-members is subject to forfeiture by any person who fails to comport himself with the standards expected of them while interacting with the Band and its members.

The federal courts have recognized the inherent rights of Indian tribes to exclude non-members from their reservations. See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 144-45, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982) (recognizing a tribe's inherent authority to exclude non-Indians from tribal land, without applying Montana); see also Atkinson Trading Co. v. Shirley, 532 U.S. 645, 654, 121 S. Ct. 1825, 149 L. Ed. 2d 889 (2001) (holding that the Navajo Nation's power to tax, derived in part from its power to

exclude, should be considered under Montana because, unlike in Merrion, the incidence of the tax fell "upon non-members on non-Indian fee land"); Bourland, 508 U.S. at 689 (noting that Montana established that "when an Indian tribe conveys ownership of its tribal lands to non-Indians, it loses any former right of absolute and exclusive use and occupation of the conveyed lands"); Merrion, 455 U.S. at 144-45 ("Nonmembers who lawfully enter tribal lands remain subject to the tribe's power to exclude them. . . . When a tribe grants a non-Indian the right to be on Indian land, the tribe agrees not to exercise its ultimate power to oust the non-Indian as long as the non-Indian complies with the initial conditions of entry." (emphasis in original)); Montana, 450 U.S. at 557 (recognizing a tribe's inherent authority to condition the entry of non-Indians on tribal land as a separate matter from whether a tribe may condition the entry of non-Indians on non-Indian land); Cohen's Handbook of Federal Indian Law § 4.01[2][e], 220 (Nell Jessup Newton et al. eds., 2005) [hereinafter Cohen] (explaining that "[b]ecause the exclusionary power is a fundamental sovereign attribute intimately tied to a tribe's ability to protect the integrity and order of its territory and the welfare of its members, it is an internal matter over which the tribes retain sovereignty"); cf. Atkinson Trading Co., 532 U.S. 645, 121 S. Ct. 1825, 149 L. Ed. 2d 889 (holding that the Navajo Nation's power to exclude did not allow it to tax non-Indians on non-Indian fee land (emphasis added); see also Hardin v. White Mountain Apache Tribe, 779 F.2d 476 (9th Cir. 1985).

To the extent, therefore, that Williams may have standing to assert a facial challenge to the exclusion of non-members the Band's ordinance is clearly valid. It is the fact that the Band ordinance also applies to its own members that causes some concern. There have been few federal court decisions discussing the inherent rights of Indian tribes

to banish their own members. Several courts that have taken jurisdiction over such challenges in habeas corpus actions have held that banishment is a type of "detention" that authorizes a person to challenge his "banishment" in federal court under the provisions of 25 U.S.C. §1303, permitting federal court review of tribal court actions under the Indian Civil Rights Act. The first court to rule such was the United States Court of Appeals for the Second Circuit in Poodry v. Tonawanda Band of Seneca Indians, 85 F.3d 874 (2d Cir. 1996) in which the federal court of appeals reversed a lower court's order dismissing a habeas corpus challenge to a banishment of certain Seneca Indians. The Court did not address whether a Tribe could banish its own members consistent with the Indian Civil Rights Act, but only that federal courts could review such banishments. In one unreported federal court decision, Sweet v. Hinzman, 2009 U.S. Dist. LEXIS 36716 (W.D. Wash. 2008) a federal court held that the banishment and disenrollment of certain tribal members violated the Indian Civil Rights Act. However, that case seems to turn on procedural due process violations and not on the ground that the Tribe involved therein had no right to banish its own members. The fact that the Court ruled that banishment could only be accomplished when due process is afforded, however, is relevant to the analysis this Court undertakes later in this decision relevant to the particular notice provisions of the banishment ordinance being reviewed herein.

Nothing in the Minnesota Chippewa Tribe's Constitution expressly grants to the respective Bands the right to banish its members. Conversely, nothing in the MCT Constitution prohibits the Bands from banishing its own members. Judge Osburn found that banishment is an inherent right of Indian tribes and this Court can certainly agree with that concept. Banishment is a traditional form of punishment many Indian tribes

have resurrected in an attempt to deal with a burgeoning crime problem in their communities. See Kunesh, Patrice, Banishment as Cultural Justice in Contemporary Tribal Justice Systems, New Mexico Law Review, Vol. 37, No 85 (2007). In certain circumstances, especially vis a vis non-members, Indian tribes have been preserved in treaties the right to remove certain persons from their reservations, oftentimes with the promised assistance of the United States government. These treaty provisions, oftentimes referred to as "bad man" clauses, implicitly permit Indian tribes to remove those nonmembers who violate tribal norms or values and are also require the Tribes to turn over to the United States those tribal members who violate the rights of non-members in the Community. Those members who were turned over to the United States were essentially "banished" from the tribal communities. Neither party has pointed the Court to any provision of the 1855 Treaty between the United States and the Band that addresses "banishment" - although Article 9 of that Treaty does bind Band members to certain lawful conduct on the reservation - but merely because the right is not expressly preserved by treaty does not mean that the right did not exist prior to the treaty being executed.

The Court therefore concludes that the Mille Lacs Band has the inherent right to banish members and non-members from its lands, provided it does so in accordance with the Indian Civil Rights Act and the Minnesota Chippewa Tribal Constitution. The question thus becomes whether the ordinance enacted by the Band and which it being utilized as the basis for the requested banishment of Williams passes ICRA and constitutional muster. This Court concludes that it does not.

This Court acknowledges that it is the responsibility of this Court and the lower court to make every attempt to reconcile Band law with the ICRA and the MCT Constitution and to interpret Band law so as to avoid constitutional problems. Judge Osburn attempted to do just that when he held that the Band Solicitor could proceed with banishment efforts against Mr. Williams under the current ordinance. Judge Osburn also held that the ordinance should not be assessed under the due process rules Courts utilize to assess whether a "criminal" statute is void for vagueness grounds because banishment is a civil proceeding. Although that may be correct under procedural rules it is clear under federal court rulings that banishments are being considered as quasi-criminal proceedings subject to federal court review under 25 U.S.C. 1303. Banishment penalties can be just as severe as criminal penalties, especially since the penalty apparently for violating a banishment order would be incarceration.

Also, because this Court has found that banishment may also potentially deny free expression of religious rights under the ICRA this Court finds that it is appropriate to assess the Band's ordinance using the same level of judicial scrutiny that Courts pay to criminal statutes.

Williams argues that the Band's ordinance should be struck down because it is so vague that it does not apprise Band members and others of what conduct may lead to banishment and also fails to give the fact-finder, the Tribal Court, any standards for assessing whether banishment is the appropriate penalty. This is oftentimes referred to as the void for vagueness doctrine, which permits Courts to strike down laws that relate to speech or conduct that the government attempts to punish. Consistent with that approach, the United States Supreme Court has steadfastly applied the void-for-vagueness doctrine

only to statutes or regulations that purport to define the lawfulness of conduct or speech. See, e.g., Kolender v. Lawson, 461 U.S. 352, 75 L. Ed. 2d 903, 103 S. Ct. 1855 (1983) (applying the doctrine to a California statute requiring an individual to present "credible and reliable" information when requested by a police officer who has reasonable suspicion of criminal activity); Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 71 L. Ed. 2d 362, 102 S. Ct. 1186 (1982) (applying the doctrine to village ordinance requiring a business to obtain a license if it sells any items that are "designed or marketed for use with illegal cannabis or drugs"); Papachristou v. City of Jacksonville, 405 U.S. 156, 31 L. Ed. 2d 110, 92 S. Ct. 839 (1972) (applying the doctrine to a vagrancy ordinance); Kunz v. New York, 340 U.S. 290, 95 L. Ed. 280, 71 S. Ct. 312 (1951) (applying the doctrine to an ordinance making it unlawful to hold public worship on the streets of New York City without first obtaining a permit from the police commissioner); Herndon v. Lowry, 301 U.S. 242, 81 L. Ed. 1066, 57 S. Ct. 732 (1937)(applying the doctrine to a Georgia statute defining criminal offense of attempting to incite an insurrection).

Ordinances that may have a chilling effect on the exercise of free speech or religious freedom rights, or those that attempt to punish conduct, must clearly define that conduct which may result in penalties being imposed, or rights denied, in order to satisfy due process of law. Otherwise persons are not put on notice of what behavior may result in the denial of their freedoms or rights. In addition, if no standards are laid out in the law persons may be subjected to arbitrary enforcement of the law based upon the personal predilections of each Judge that may hear a case. One Judge may feel, for example, that drug use is having such a deleterious impact on the tribal community that

such use justifies banishment, while another may feel that such a remedy is an overreach for drug activity. It is therefore up to the Band Assembly to define for the Tribal Court when banishment would be appropriate to avoid conflicting value judgments.

This doctrine is referred to as the “overbreadth” or void for vagueness doctrine. Although they are distinct concepts, overbreadth and vagueness challenges are closely related in the principles they vindicate, and courts often discuss them together. See, e.g., Kolender v. Lawson, 461 U.S. 352, 358 n.8, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983) (explaining that courts have "traditionally viewed vagueness and overbreadth as logically related and similar doctrines"); NAACP v. Button, 371 U.S. 415, 432-33, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963); Adamian v. Jacobsen, 523 F.2d 929, 933 (9th Cir. 1975) ("The closely related first amendment doctrines of vagueness and overbreadth permit a defendant to assert the invalidity of a statute because of its potential encroachment on first amendment freedoms, even in cases where the defendant's conduct itself is unprotected by the first amendment.").

The void-for-vagueness doctrine is rooted in the basic guarantees of due process, a concept incorporated both into the Indian Civil Rights Act and the underlying premise of fairness set out in the Mille Lacs Band Code. This Court notes that Band law directs this Court and the lower court to:

> "Section 1. Purpose. The Purpose of this Act is to promote the general welfare, preserve and maintain justice and to protect the rights of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians consistent with a judicial philosophy of a search for truth and justice. MLBSA Title V, Section 1

The void for vagueness doctrine requires that a statute punishing conduct define the conduct with sufficient definiteness that ordinary people can understand what conduct

is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. . . . Although the doctrine focuses both on actual notice to citizens and arbitrary enforcement the United States Supreme Court has] recognized . . . that the more important aspect of vagueness doctrine is not actual notice, but the other principal element of the doctrine - the requirement that a legislature establish minimal guidelines to govern judicial officers attempting to enforce them. See Kolender v. Lawson, 461 U.S. 352, 357-58, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983); Williams, 128 S. Ct. at 1845; Smith v. Goguen, 415 U.S. 566, 572-73, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974).

The void-for-vagueness doctrine is premised on the notion that [v]ague laws offend several important values. First, because we assume that a person is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

With those concepts in mind this Court must examine the Band's Exclusion and Removal Ordinance to determine if it establishes minimal guidelines to govern judicial officers attempting to enforce them. In the findings and determinations section of the Ordinance the Band Assembly states that the reason for the law is to "provide a means to exclude or remove such persons from said lands in the event that they violate Band law or do other acts harmful to the Band, its members or other residents…" This is certainly

laudable and within the authority of the Band to enact. It is somewhat vague, however, for the judiciary to enforce.

The real gist of the Ordinance is Section 3004, laying out the grounds for exclusion and removal. That section lays out 14 grounds for potential exclusion and removal with one ground specified even more with five descriptive subtitles (Section 3004(e)). Ground one allows this Court to exclude and remove any person who commits a crime as defined under Band law or federal law. Ground two allows this Court to exclude and remove any person who causes physical loss or damage to a Band member, his property, or to a non-Band member or his property. The remaining grounds are more specific as they describe particular conduct which would clearly apprise a Band member or non-member of conduct that may subject them to removal.

Williams argued at hearing that Section 3004(1) is so broad that it could permit a person to file a removal petition against a person who, for example, litters on the reservation or commits a speeding infraction. Section 3004(2) would allow a person to file a removal complaint against someone, for example, who accidentally backs into a person's vehicle at the Casino.

The Ordinance is extremely broad also with regard to who has standing to bring a removal petition. Section 3005 allows any "member, officer, agent or employee of the Band" to bring a complaint and the only requirement for its prosecution is that its execution be attested to by a Judge, Clerk or law enforcement officer. There is no requirement that the petition be screened by the Solicitor's office or law enforcement and it appears that once filed the matter is prosecuted by the individual filing it. In addition the Ordinance does not permit the Court to review it and summarily deny it if the Court

were to find that it is frivolous because Section 3006 states that upon receipt of the exclusion petition the Court "shall" cause notice to be served upon the person who the petition seeks to exclude. The hearing must also be held "no less than three days after the time of the of service or mailing."

Potentially this ordinance permits Band employees who feel aggrieved by the actions of other employees to take their dispute to Court and seek removal instead of working through the personnel policies and procedures of the Band and its economic enterprises. Nothing in the Removal ordinance would permit the lower court to merely dismiss the removal petition based on that ground as all petitions must be heard by the Court.

This Court does not point out these concerns out of disrespect to the Band Assembly or the Solicitor's office, which ultimately is charged with defending the laws of the Band. This Court is also appreciative of the efforts of the Court of Central Jurisdiction to craft the ordinance in a way to preserve its constitutionality. This Court also gave serious consideration to the Solicitor's request at oral argument- that this Court and the lower Court essentially "rewrite" the Ordinance in a way that it felt would survive Indian Civil Rights Act scrutiny- but ultimately this Court feels that rewriting the law so as to render the ordinance enforceable would subject this Court to criticism by Band members and the Band Assembly. This Court has been criticized in the past for interfering into the prerogative of the Band Assembly, see Benjamin v. Weyaus, 08-APP-07(Solicitor's Office -not the present Solicitor however- advises Court during oral argument on case involving Court's stay of removal proceedings against Melanie Benjamin that Band Assembly had created the Court and could dissolve it if the Court

interfered in the removal efforts of Benjamin), and is mindful that the separation of powers between this Court and the Band Assembly goes both ways. The Bands' laws clearly stipulate that there is a separation of powers and the law-making branch is the Band Assembly:

> "Section 1. Purpose. The purpose of this act is to promote the general welfare of the Non-Removable Mille Lacs Bands of Chippewa Indians and its members by establishing duties, purposes and procedures for the conduct of domestic and external affairs of the Band by a form of government based upon the principle of division of powers. This statute is enacted by the authority vested in the Mille Lacs Reservation Business Committee under Article VI, Section 1 of the Constitution of the Minnesota Chippewa Tribe. MLBSA Title 2

In order for the present Ordinance to clearly give direction to this Court on when a person, especially a Band member, should be excluded from the lands under the Band's jurisdiction the law should define which crimes would warrant removal and exclusion. For example, the Fort MacDowell Tribal Code, which permits the exclusion of non-members only, allows exclusion for the following crimes:

> Commission of criminal offenses classified as a felony in the State of Arizona or a misdemeanor involving injury or damages or threats to persons or property in violation of Federal, State or Tribal law, regardless of whether such offense has been expunged or otherwise forgiven.

Section 15.2(B)

The Ordinance before this Court would permit the exclusion of Band members from the reservation for far less than that required to exclude a non-member from the Fort MacDowell reservation. It appears to the Court that the Mille Lacs Band Ordinance permitting removal and exclusion was based upon the removal ordinances of other Tribes that addressed the removal of non-members only, whereas the Band here has expanded those who can be excluded to Band members. There has to be a heightened standard for removal of Band members from their home because they possess unique interests in

remaining on the Mille Lacs reservation that non-members may not possess. To allow Band members to be excluded from the reservation on the same grounds as non-members strikes this Court as potentially violative of the rights of Band members who have familial and spiritual interests on the reservation that non-members may not possess.

The few Tribes that do permit exclusion of their own members have a much heightened standard for removal than that contained in the Band's exclusion ordinance. For example the Fort Peck Tribal Code permits the exclusion of all persons for the following reasons:

> **Chapter 7. Exclusion from the Fort Peck Reservation**
>
> Sec. 701. Grounds for Exclusion.
> Any person may be excluded from the Reservation for:
> (a) Conduct which substantially threatens the life, the physical health or the safety of an Indian or Indians residing on the Reservation.
> (b) Conviction in Tribal Court of at least three felonies or Class A Misdemeanors which involve acts of violence against persons under the laws of the Tribes.

In addition most Tribal Exclusion Codes require the screening of a complaint by some agency of the Tribe before the matter can be filed in the Court. Again the Fort Peck Tribal Code is instructive:

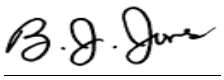
> Sec. 702. Initiation of Exclusion Proceedings.
> (a) Exclusion proceedings shall be initiated by written charges of specific conduct justifying exclusion made by the Tribal Civil Prosecutor or a member of the Tribal Executive Board. Such charges shall also include the text of a proposed exclusion order. The charges and order must then be adopted by a majority vote of the Tribal Executive Board at a meeting at which a quorum is present.

This Court points out these ordinances not because the Court believes that the Band should merely mimic what other Tribes have done, but to point out that most Indian Tribes that have implemented the sovereign right of exclusion have treated their members differently than non-members. The Band's Ordinance does not do that.

In conclusion this Court finds that because the present Exclusion Ordinance gives too much discretion to the lower court to decide what crimes or other conduct warrants exclusion, that because the exclusion ordinance does not distinguish between Band members and non-members, and because the Ordinance does not provide for any screening of exclusion petitions by any entity of the Executive branch of government, that the current Ordinance violates the due process provision of the Indian Civil Rights Act. This Court will remand this matter back to the lower court to stay the removal petition against Mr. Williams until such time as a revised Exclusion Ordinance is enacted by the Band Assembly that addresses the issues raised in this case.

So determined this ____ day of January 2012.

_____
Chief Justice Rayna J. Churchill-Mattinas



BJ Jones
Special Magistrate

_____
Clarence Boyd
Associate Justice

ATTEST: _____
Clerk of Courts