

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	MARGARET MIRANDA et al.,)	Case No. EDCV 14-00312-VAP
12	Plaintiffs,)	(DTBx)
13	v.)	ORDER: DENYING Plaintiffs'
14	SALLY JEWELL et al.,)	Motion for Summary Judgment
15	Defendants.)	and GRANTING Defendants'
16	_____)	Cross-motion for Summary
17)	Judgment
)	[Motion filed on August 28,
)	2014]

Margaret Miranda and nine of her relatives have asked the Court to review the federal Bureau of Indian Affairs' endorsement of the Santa Ynez Band of Chumash Indians' decision to deny them membership in the tribe. The parties filed cross-motions for summary judgment (Doc. Nos. 20, 25), and after considering the papers timely filed, the administrative record ("Record"), and the parties' arguments at the January 12, 2014 hearing, the Court DENIES Plaintiffs' motion for summary judgment and GRANTS the government's cross-motion for summary judgment.

I. BACKGROUND

A. The Complaint's Allegations

The Santa Ynez Band of Chumash Indians ("SYB" or "Tribe") requires prospective Tribe members to prove their consanguinity before admission to the Tribe. (See generally Compl. ¶ 3.) If an applicant's "blood degree" exceeds one quarter SYB, roughly meaning at least one of their grandparents is full-blood SYB, the Tribe shall approve their membership. (Id.) Plaintiffs have been seeking -- for over a decade -- recognition as SYB members.¹

Plaintiffs originally applied for SYB membership in April 2001. (Compl. ¶ 10.) Over the next six months they wrote letters to the Tribe and the federal Bureau of Indian Affairs ("BIA") in an effort to receive a response to their applications. (Compl. ¶¶ 11-15.) The BIA explained in a letter dated October 4, 2001 that the SYB "disapproved [the] applications on July 24, 2001 for insufficient blood degree." (Compl. ¶ 17.) In August 2002 the BIA responded to further correspondence from Plaintiffs, writing "[BIA] had completed reviewing all of the enrollment applications filed and that BIA Riverside agreed with the [Tribe's] decision that [Plaintiffs'] family did not meet the criteria for membership in the

¹ Some Plaintiffs are already SYB members and press a slightly different claim -- they want the Tribe to increase their recorded blood degrees. Both claims depend on the same questions of law, so the Court treats them together.

1 SYB." (Compl. ¶ 23.) After receiving notice from the
2 Tribe of its decision to deny the applications (see
3 Compl. ¶¶ 27, 28), Plaintiffs retained an attorney who
4 attempted in December 2002 to preserve their rights to
5 appeal the decision. (Compl. ¶ 30.)

6 In December 2012 Plaintiffs filed a federal lawsuit
7 "similar to the present action," which was dismissed for
8 failure to exhaust administrative remedies. (Compl.
9 ¶¶ 34, 35.) Plaintiffs went back to BIA in September
10 2013, formally appealing the Tribe's denial. (Compl.
11 ¶ 36.) In November 2013 BIA reviewed the Tribe's
12 decision on the merits, and agreed with its outcome and
13 reasoning. (Compl. ¶ 37.)

14 Plaintiffs brought this case under the Administrative
15 Procedure Act, 5 U.S.C. § 701 et seq., in February 2014,
16 asking the Court for a declaration that the Bureau's
17 recent denial of their appeals was arbitrary and
18 capricious because BIA allegedly applied an incorrect
19 legal standard and improperly considered certain
20 evidence.² (Compl. ¶ 63.)
21
22
23
24

25 ² Defendants in this action include Sally Jewell (in
26 her official capacity as Secretary of the Interior), and
27 the United States Department of the Interior. BIA is a
28 subagency within the Department of the Interior. This
Order refers to all Defendants collectively as "BIA" or
"Bureau."

1 **B. Plaintiffs**

2 Plaintiffs all descend from Rosie Pace, who was born
3 in 1906. Plaintiffs allege Rosie Pace was full-blood SYB
4 because she is listed as such on the Bureau's 1940 census
5 roll of the SYB ("1940 Census").³ (Compl. ¶ 6.)

6 Lead Plaintiff Margaret Miranda is Rosie Pace's
7 daughter. (Compl. ¶ 42.) Margaret Miranda married
8 Joseph Miranda (who himself is deceased but was half-
9 blood SYB), and gave birth to at least four children,
10 three of whom are Plaintiffs here: Clara Miranda, Rosanna
11 Delphina Miranda, Cyril Miranda (also now deceased), and
12 Cindy Griego. (Compl. ¶¶ 43-45.) Six of Rosie Pace's
13 great-grandchildren seek relief as well. Rosanna
14 Delphina Miranda has at least five children: Helen
15 Herrera, Rose Anna Herrera, Monica Herrera, Micki
16 Herrera, and Inez Alvarez; and Belinda Miranda is Cyril
17 Miranda's daughter. (See Compl. ¶¶ 46-51.)

18
19 **C. The Motions for Summary Judgment**

20 As will be explained in greater detail below, SYB law
21 controls Tribal membership. The Tribe approves or denies
22 a membership application, and that decision may be
23

24 ³ The Record lists Rosie Pace by a variety of names,
25 all containing some combination of Rosa, Rosie, Pina, and
26 Pace. Rosie Pace's mother was a full-blood SYB named
27 Inez Pena. The identity of Pace's father, however, is
28 less clear, which muddies the inquiry into whether she is
in fact full-blood SYB, and ultimately affect whether
Plaintiffs meet the Tribal membership criteria (although
that is not the issue before the Court).

1 appealed to BIA. Federal regulations guide BIA's review
2 process. See 25 C.F.R. Part 62.

3 SYB law derives from at least two sources, the
4 Tribe's Articles of Organization ("Articles") and tribal
5 ordinances. Article III governs enrollment and refers to
6 the 1940 Census, but is drafted in broad terms. SYB
7 Ordinance 2 also deals with tribal enrollment, and
8 operates at a level of greater specificity than Article
9 III.

10 The 1940 Census lists Rosie Pace (recall Pace is the
11 matriarch of Plaintiffs' family) as "f"⁴ in the column
12 labelled "Degree of Blood" (R. 156), but the Tribe's 1965
13 membership roll records her "Santa Ynez Indian Blood" as
14 only "1/2." (R. 144.)

15 Plaintiffs' motion for summary judgment contends the
16 Tribe and the BIA may consult only the 1940 Census to
17 determine the blood degree of a prospective member
18 because Article III refers only to that document. (Pls.'
19 Mot. for Summ. J. at 6.) In Plaintiffs' view, BIA acted
20 unlawfully by upholding the Tribe's denial because both
21 the Tribe and the BIA considered evidence other than the
22 1940 Census to determine Plaintiffs' blood degrees.
23 (Id.) The BIA's cross-motion for summary judgment, in
24 contrast, argues the Tribe and the BIA properly took
25

26 ⁴ The parties do not dispute that "f" refers to a
27 person with full "Degree of Blood." The Court assumes
28 this is the correct interpretation of that notation as it
relates to the 1940 Census.

1 account of evidence beyond the 1940 Census to determine
2 Plaintiffs' eligibility. (Defs.' Cross-mot. for Summ. J.
3 at 13.) According to the Bureau, a holistic reading of
4 the Tribe's Articles and ordinances authorizes such a
5 result. (Id. at 10-12.)

6 The BIA did not act arbitrarily or capriciously when
7 it rejected Plaintiffs' appeals from SYB's denials of
8 their membership applications, because the SYB Articles
9 do not limit (to the 1940 Census) the evidence the Tribe
10 or BIA may permissibly consider when making membership
11 decisions.

12 13 **II. LEGAL STANDARD**

14 A court shall grant a motion for summary judgment
15 when there is no genuine dispute as to any material fact
16 and the moving party is entitled to judgment as a matter
17 of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty
18 Lobby, Inc., 477 U.S. 242, 247-48 (1986). The moving
19 party must show that "under the governing law, there can
20 be but one reasonable conclusion as to the verdict."
21 Anderson, 477 U.S. at 250.

22 Generally, the burden is on the moving party to
23 demonstrate that it is entitled to summary judgment.
24 Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998)
25 (citing Anderson, 477 U.S. at 256-57); Retail Clerks
26 Union Local 648 v. Hub Pharmacy, Inc., 707 F.2d 1030,
27 1033 (9th Cir. 1983). The moving party bears the initial
28

1 burden of identifying the elements of the claim or
2 defense and evidence that it believes demonstrates the
3 absence of an issue of material fact. Celotex Corp. v.
4 Catrett, 477 U.S. 317, 323 (1986).

5 The non-moving party must make an affirmative showing
6 on all matters placed in issue by the motion as to which
7 it has the burden of proof at trial. Celotex, 477 U.S.
8 at 322; Anderson, 477 U.S. at 252; see also Schwarzer,
9 Tashima & Wagstaffe, Cal. Prac. Guide: Fed. Civ. Pro.
10 Before Trial § 14:144 (2014).

11 A genuine issue of material fact will exist "if the
12 evidence is such that a reasonable jury could return a
13 verdict for the non-moving party." Anderson, 477 U.S. at
14 248; Scott v. Harris, 550 U.S. 372, 380 (2007). In
15 ruling on a motion for summary judgment, a court
16 construes the evidence in the light most favorable to the
17 non-moving party. Scott, 550 U.S. at 380 (2007); Barlow
18 v. Ground, 943 F.2d 1132, 1135 (9th Cir. 1991); T.W.
19 Elec. Serv. Inc. v. Pac. Elec. Contractors Ass'n, 809
20 F.2d 626, 630-31 (9th Cir. 1987).

21 22 **III. FACTS**

23 No material facts are in dispute in this case;
24 rather, the outcome turns on whether the BIA correctly
25 interpreted and applied the Tribe's laws. All facts are
26 taken from the Record.

A. The Tribe's Membership Laws

Two sources of SYB tribal law bear on Plaintiffs' claims to membership, the Tribe's Articles and SYB ordinances.⁵

1. SYB Articles of Organization

Article III of the SYB Articles governs membership in the Tribe, and provides:

Section 1: Membership in the Band shall consist of:

A. Those living persons whose names appear on the January 1, 1940 Census Roll of the [SYB],
 . . .

B. Living descendants of those persons described in Section 1A regardless of whether those persons listed on the census roll are living or deceased, provided that such descendants have one-fourth (1/4) or more degree of Indian blood of the Band.

⁵ The SYB Articles of Organization (promulgated in 1963 and approved by BIA in 1964) provide a foundational source of tribal law, and are analogous to a constitution. See Cohen's Handbook of Federal Indian Law § 4.05[3] (2012). SYB ordinances are more specific and fill the gaps left by the general language of the SYB Articles -- more like a statute or regulation. See id. § 4.05[5]. The difference between the two, however, may be only a formality because the requirements for amending the Articles and passing an ordinance appear materially similar. Compare Article VI Sections 3-4 (ordinance enacted by majority vote of General Council where at least 51% of eligible voters cast ballots), with Article IX (Articles may be amended by majority vote of General Council and ratified "in the same manner as" the Articles, which according to Article II of the SYB bylaws means majority vote at a special election called by the Secretary of the Interior and approved by the Secretary) (See R. 205-206, 208, 210.)

1 Section 2: The Business Council, as provided for in
2 Article IV, shall keep the membership roll
3 current at all times . . . by adding the names
4 of persons eligible under Article III, Section
5 1B.

6 (R. 201.)

7 Article VIII lists the General Council's⁶ "powers and
8 responsibilities." (R. 207.) Article VIII, Section 1.B
9 states the General Council shall have the power to
10 "establish rules or procedures for the conduct of its
11 affairs," including the authority to enact ordinances or
12 resolutions to "control future membership, loss of
13 membership and the adoption of members." (R. 207-208.)

14 **2. SYB Ordinance 2**

15 SYB Ordinance 2 (adopted in 1965) establishes
16 "regulations and procedures governing the enrollment into
17 the Band and to maintain the roll on a current basis."
18 (R. 215.) It further explains the official membership
19 roll should be prepared "in accordance with the Articles
20 of Organization." (R. 215.)

21 Section 1 of Ordinance 2 defines relevant terms,
22 including:

23 (F) "January 1, 1940 Census roll of the Santa Ynez
24 Band," as used in Article III, Section 1.A, of the
25

26
27 ⁶ The General Council is the Tribe's governing body,
28 as provided by Article VI, and comprises "all adult
members twenty-one years of age or older." (R. 202.)

1 Articles of Organization, shall be the census roll of
2 the Band prepared by [BIA] as of January 1, 1940;
3 (G) "Indian Blood of the Band" as used in Article
4 III, Section 1.B., . . . means the total percentage
5 of Indian blood derived from an ancestor or ancestors
6 who were listed on the Santa Inez 1940 Census Roll.
7 (R. 216.)

8 Section 3.A of Ordinance 2 explains "[p]ersons who
9 are determined eligible for membership in accordance with
10 the provisions of Article III, Section 1.A, and B," of
11 the SYB Articles "shall have their names placed on the
12 initial membership roll." (R. 216.)

13 Section 6 of Ordinance 2 delineates the Enrollment
14 Committee's⁷ process for deciding whether to approve or
15 deny an application for membership, and it states: "[t]he
16 Enrollment Committee shall review and arrive at a
17 perliminary [sic] decision as to the eligibility of the
18 applicant based upon tribal records, information
19 presented in the application or other sources of
20 information." (R. 218.) The Enrollment Committee then
21 must "refer the application" to BIA for a "review of the
22 Bureau records for any additional data which would either
23

24 ⁷ The Enrollment Committee is a five-member group
25 appointed by the Business Council, which in turn is a
26 five-member group of elected SYB members. (R. 202, 216.)
27 Under Article IV, the General Council delegates manifold
28 duties to the Business Council, such as "effectuat[ing]
all tribal approved ordinances," dealing with the federal
government, retaining legal counsel on SYB's behalf, and
calling General Council meetings. (R. 202, 203.)

1 substantiate or refute the preliminary decision of the
2 Committee." (R. 218.) BIA must respond to the
3 Enrollment Committee via written statement with
4 "information found in Bureau records relative to the
5 eligibility of the applicant," and after the Enrollment
6 Committee receives BIA's statement it shall "on the basis
7 of the evidence thus accumulated, approve or disapprove
8 the application." (R. 218.)

9 The Enrollment Committee must advise a "person
10 disapproved for enrollment . . . in writing of the
11 reasons for the action," and that the decision "may be
12 appealed" to the regional "Director"⁸ of the BIA (but
13 such an appeal must be made "within thirty (30) days
14 following receipt of a rejection notice"), and may be
15 further appealed, if necessary, to the "Commissioner" of
16 the BIA, according to Ordinance 2, Section 7. (R. 218.)
17 Ordinance 2 does not specify the criteria by which BIA
18 ought to evaluate appeals of disapprovals of membership.

19 Ordinance 2's Section 10 instructs the Business
20 Council "to keep the membership roll current by
21 . . . [m]aking corrections to the roll, such as
22 correcting dates of birth, degree of Indian blood, family
23
24

25 ⁸ Ordinance 2 defines "Director" as the "Area
26 Director, Bureau of Indian Affairs, Sacramento Area
27 Office," and "Commissioner" as the "Commissioner of
28 Indian Affairs." (R. 215.) Both definitions correspond
with the meanings given to those terms by the Code of
Federal Regulations. See 25 C.F.R. § 62.1.

1 relationship, etc., provided such corrections are
2 supported by satisfactory evidence." (R. 219, 220.)

3

4 **B. Other Relevant Tribal Documents**

5 SYB Article III instructs the initial membership roll
6 for the Tribe to consist of the individuals listed on the
7 1940 Census (which was prepared by the BIA). The 1940
8 Census counts Rosie Pace among the Tribe's members, and
9 lists her "Degree of Blood" as "f." (R. 156.)

10 In July 1965, two years after the Tribe enacted its
11 Articles, Rosie Pace applied for membership in the Tribe
12 in accordance with SYB Ordinance 3. (R. 164.) Rosie
13 Pace wrote on her application that her father is Mike
14 Valencia, but left blank the space available to indicate
15 Valencia's "Total Santa Ynez Blood." (R. 164.) On the
16 line immediately below the Valencia entry, Pace marked
17 her mother's total SYB blood as "F." (Id.) The
18 application received preliminary approval on July 18,
19 1965, and bears a notation stating "Blood degree is wrong
20 -- should be 1/2," and was finally approved on September
21 28, 1965.

22 The BIA approved the Tribe's 1965 initial "Official
23 Membership Roll" in November 1970 (R. 136); the 1965 roll
24 records Rosie Pace's "Santa Ynez Indian Blood" as "1/2."
25 (R. 144.)

26

27

28

1 **C. BIA's Denial of Plaintiffs' Appeals**

2 The Bureau denied Plaintiffs' appeals in a four-page
3 letter to their lawyer dated November 21, 2013.⁹ (R. 1.)
4 The denial letter begins by quoting Article III's two
5 sections (listing membership criteria), and then recites
6 SYB Ordinance 2's definition of "Indian Blood of the
7 Band." (R. 2.) The BIA next agrees that Plaintiffs
8 descend from Rosie Pace, and that Pace "appeared on the
9 [1940 Census], which lists her degree of Indian blood as
10 'f' (4/4)." (R. 2.) The Bureau's denial letter then
11 advised: "[t]he appeals before this office stem from the
12 preparation and approval of the 1965 Base Roll of the
13 Santa Ynez Reservation, wherein it was determined by the
14 Santa Ynez Enrollment Committee, and approved by the
15 Sacramento Area Director, that Rosa Pena (Valencia) Pace,
16 was 1/2 Santa Ynez Indian Blood," and thus Plaintiffs'
17 claims to membership or increased blood quanta fail. (R.
18 2.)

19 The BIA canvassed the Record to determine the
20 identity of Rosie Pace's father, and found (in agreement
21 with the Tribe's enrollment committee), that her father
22 was Michael Valencia, who was non-Indian. (R. 2.) The
23 evidence weighed by the BIA includes: (1) a 1928 Roll of
24

25 ⁹ The Record contains a great deal of additional
26 correspondence among Plaintiffs, tribal officials, and
27 BIA officials. The Court focuses on the final denial
28 letter to Plaintiffs from the Bureau because that
document constitutes the final agency action for which
Plaintiffs' seek APA review in this lawsuit.

1 California Indians (contains no information); (2) the
2 BIA-prepared 1940 Census (contains no information); (3)
3 Rosie Pace's 1965 SYB enrollment application (identifies
4 Michael Valencia as Pace's father); (4) Rosie Pace's
5 application for the 1968 California Judgment Fund Roll of
6 California Indians, completed and signed by Pace
7 (identifies Michael Valencia as Pace's father); (5)
8 Pace's 1982 baptismal certificate (identifies Michael
9 Valencia as Pace's father); (6) Pace's 1993 baptismal
10 certificate (contains no information); (7) a second 1993
11 baptismal certificate (identifies Michael Valencia as
12 Pace's father); (8) a 1996 Pace affidavit (identifies
13 Guillermo Cordona as Pace's father); (9) 1999 Delayed
14 Registration of Birth for Rosie Amelia Pina-Valencia,
15 issued by the California Department of Health and Human
16 Services (identifies Guillermo Cordona as Pace's father,
17 relying on 1993 baptismal certificate that bore no
18 paternal identifier, 1940 Census, and a Social Security
19 document not in the Record). (R. 3.)

20 The Bureau's denial letter then explains why the BIA
21 does not credit evidence provided by Pace or her
22 descendants that purports to show Pace's father was an
23 Indian (SYB or otherwise), mainly stating "[t]here have
24 been no documents submitted by people with an obvious or
25 inferable knowledge of Rosa Pena (Valencia) Pace's
26 parentage." (R. 3.) The BIA also justifies its use of
27 evidence extrinsic to the 1940 Census: "there is no
28

1 requirement in the [SYB Articles or Ordinance 2]
 2 . . . for the Enrollment Committee to utilize the degree
 3 of Indian blood listed for any individual on any document
 4 prepared by the United States for the purpose of
 5 determining an individual's degree of Indian blood for
 6 enrollment." (R. 3.)

7 The BIA's letter concludes by noting "BIA gives
 8 deference to tribes' reasonable interpretations of their
 9 own laws,"¹⁰ and states SYB "made a reasonable
 10 interpretation of its own laws in determining the degree
 11 of Indian blood for Rosa Pena (Valencia) Pace." (R. 4.)
 12

13 IV. DISCUSSION

14 A. Review of BIA Action Under the Administrative 15 Procedure Act

16 Chapter 7 of the Administrative Procedure Act
 17 ("APA"), 5 U.S.C. §§ 701-706, provides a limited waiver
 18 of sovereign immunity to litigants seeking review of
 19 final federal agency action. The APA requires a
 20 reviewing court to "hold unlawful and set aside agency
 21 action . . . found to be -- (A) arbitrary, capricious, an
 22 abuse of discretion, or otherwise not in accordance with
 23 law." 5 U.S.C. § 706(2)(A); Citizens to Preserve Overton
 24

25 ¹⁰ The BIA cites Cahto Tribe, 715 F.3d at 1231, to
 26 support its argument for deference to the Tribe's
 27 decision. That proposition actually occurs at 715 F.3d
 28 at 1230 n.9 ("The agency concedes that the BIA gives
 deference to tribes' reasonable interpretation of their
 own laws.").

1 Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). Section
2 706(2)(A)'s standard of review is "highly deferential."
3 Nw. Ecosystem Alliance v. U.S. Fish & Wildlife Serv., 475
4 F.3d 1136, 1140 (9th Cir. 2007). "Agency action is
5 presumed to be valid and must be upheld if a reasonable
6 basis exists for the agency decision." Peck v. Thomas,
7 697 F.3d 767, 772 (9th Cir. 2012). An agency need only
8 "consider[] the relevant factors and articulate[] a
9 rational connection between the facts found and the
10 choices made." Ranchers Cattlemen Action Legal Fund
11 United Stockgrowers of Am. v. U.S. Dept. of Agric., 415
12 F.3d 1078, 1093 (9th Cir. 2005). An agency must support
13 its action based only on the administrative record, and
14 may not substitute "[p]ost hoc explanations . . . by
15 appellate counsel . . . for the agency's own articulation
16 of the basis for its decision." Arrington v. Daniels,
17 516 F.3d 1106, 1113-14 (9th Cir. 2008) (citing Motor
18 Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463
19 U.S. 29, 50 (1983); Fed. Power Comm'n v. Texaco, Inc.,
20 417 U.S. 380, 397 (1974)).

21 Federal courts normally play no part in the
22 adjudication of tribal disputes because "Indian tribes
23 are distinct, independent political communities,
24 retaining their original natural rights in matters of
25 local self-government." Santa Clara Pueblo v. Martinez,
26 436 U.S. 49, 55 (1978) (internal quotation marks
27 omitted). This federal hands-off policy extends to
28

1 controversies over tribal membership. Alto v. Black, 738
2 F.3d 1111, 1115 (9th Cir. 2013) ("In view of the
3 importance of tribal membership decisions and as part of
4 the federal policy favoring tribal self-government,
5 matters of tribal enrollment are generally beyond federal
6 judicial scrutiny."); see also Cohen's Handbook of
7 Federal Indian Law § 3.03[3] (2012) ("Courts have
8 consistently recognized that one of an Indian tribe's
9 most basic powers is the authority to determine questions
10 of its own membership.").

11 The APA empowers federal courts indirectly to review
12 tribal enrollment decisions, however, by authorizing
13 scrutiny of BIA action that in turn reviews a tribe's
14 membership determination. The BIA examines tribal
15 enrollment decisions only when tribal law explicitly
16 permits such review. Cahto Tribe of Laytonville
17 Rancheria v. Dutschke, 715 F.3d 1225, 1228 (9th Cir.
18 2013); 25 C.F.R. § 62.2(b)(2) (allowing the BIA to
19 consider an appeal only when one "is provided for in the
20 tribal governing document"). According to the Code of
21 Federal Regulations, "Tribal governing document" means
22 "the written organizational statement governing a tribe,
23 band or group of Indians and/or any valid document,
24 enrollment ordinance or resolution enacted thereunder."
25 25 C.F.R. § 62.1. Courts construe narrowly a tribe's
26 governing document when determining whether it permits an
27 applicant to appeal to BIA. See Cahto Tribe, 715 F.3d at
28

1 1239 (holding BIA lacked authority to review tribe's
2 disenrollment decisions, notwithstanding tribal
3 document's provision of right to appeal adverse
4 enrollment decisions).

5
6 **B. The Bureau's Action was not Arbitrary or Capricious**

7 This Court has jurisdiction to review the BIA's
8 endorsement of the Tribe's denial of Plaintiffs'
9 membership applications because SYB Ordinance 2
10 explicitly grants an applicant the right to appeal to the
11 federal government from an adverse decision by the Tribe.
12 (See R. 218-19.) The BIA's approval of the Tribe's
13 decision amounts to final agency action, see 25 C.F.R.
14 § 62.10 ("[t]he Director shall make a decision on the
15 appeal which shall be final for the Department"), so the
16 Court may review that action under the APA. 5 U.S.C.
17 § 704.

18 **1.The BIA's Reasons for Denying Plaintiffs' Appeal**

19 The Bureau's denial letter offers two reasons for its
20 support of the Tribe's decision. First, the BIA surveyed
21 the Record for evidence of Rosie Pace's parentage and
22 found the Record does "not show her father to be of
23 Indian descent." (R. 3.) And because "there is no
24 requirement" in the SYB Articles for the Tribe to rely
25 only on a "document prepared by the United States for the
26 purpose of determining an individual's degree of Indian
27 blood for enrollment," SYB law counseled the BIA to
28

1 consider evidence apart from the 1940 Census. (R. 3.)
2 The BIA's letter provides a second and independent ground
3 for upholding the Tribe's decision: the agency deferred
4 to the Tribe's "reasonable interpretation of its own laws
5 in determining the degree of Indian blood" for Rosie
6 Pace. (R. 4.) Neither rationale was arbitrary or
7 capricious.

8 **2. The BIA Reasonably Deferred to SYB's Decision**

9 The Bureau stated it deferred to the Tribe's
10 decision¹¹ because it was a reasonable one. The Tribe
11 referenced its internal tribal records (the 1965
12 membership roll) and compared them to the standard in SYB
13 Article III (requiring at least 1/4 SYB blood degree),
14 and found Plaintiffs came up short of that benchmark.
15 The Tribe's Enrollment Committee considered Plaintiffs'
16 evidence and explained in a written response that they
17 did not qualify for membership based on data contained in
18 foundational tribal documents. In the BIA's view, that
19 finding was reasonable, so it deferred to the Tribe's
20 judgment. Where such deference is based on a reasonable
21 application of tribal law, as will be explained below,
22 the Bureau's deference hardly indicates caprice. Rather,

23

24

25

26 ¹¹ The Tribe based its rejection on Plaintiffs'
27 inability to provide sufficient evidence in support of
28 the required blood quantum. (See, e.g., R. 47.) The
Tribe's Enrollment Committee relied on the blood quanta
recorded on the Tribe's 1965 membership roll, and did not
limit its inquiry to the 1940 Census. (Id.)

1 it furthers the federal policy that encourages tribal
2 self-government.

3 The Bureau's deference accords with the general
4 jurisdictional rule that allocates to tribes near-
5 absolute primacy to make membership determinations. See
6 Santa Clara Pueblo, 439 U.S. at 56-57; Cahto Tribe, 715
7 F.3d at 1226. The BIA's deference to the Tribe gains
8 further support from the Bureau's longstanding policy to
9 respect tribal membership decisions. See Cahto Tribe,
10 715 F.3d at 1230 n.9 (citing formal BIA adjudication
11 United Keetowah Band of Cherokee Indians in Oklahoma v.
12 Muskokee Area Director, 22 IBIA 75, 80 (June 4, 1992)).

13 **3. It was Reasonable for the BIA to Consider**
14 **Evidence Extrinsic to the 1940 Census**

15 Even if the BIA did not defer to the Tribe's
16 decision, it did not violate SYB law by considering
17 evidence other than the 1940 Census in its review of
18 Plaintiffs' appeals.

19 The rationale underlying both the Tribe's and the
20 BIA's denials of Plaintiffs' applications and appeals --
21 that is, tribal eligibility determinations may consider
22 evidence apart from the 1940 Census -- flows from both a
23 strict textual reading of the SYB Articles as well as a
24 broader, more integrated application of the Tribe's laws.

25 Plaintiffs propose a literal interpretation of SYB
26 Article III. Their theory goes like this: Section 1.A
27 states that the individuals on the 1940 Census embody the
28

1 Tribe's foundational membership, Section 1.B admits all
2 descendants of individuals listed on the 1940 Census (as
3 long as the descendant has adequate "Indian Blood of the
4 Band"), therefore an applicant's blood degree must be
5 measured by only the values listed on the 1940 Census.
6 But that conclusion does not follow.

7 Section 1.B requires two distinct conditions be met
8 for membership beyond those persons listed on the 1940
9 Census. First, the applicant must descend from a "person
10 described in Section 1 A," and second, she must possess
11 1/4 SYB blood. Article III provides no method for
12 measuring Indian blood of the Band -- the 1940 Census
13 supplies the standard for the first criterion but not the
14 second. In other words, the 1940 Census starts the
15 membership inquiry but does not end it. If the Articles
16 drafters wanted the 1940 Census to provide the sole basis
17 for an applicant's blood degree they could have written
18 "Indian blood of the Band, according to the 1940 Census."
19 Instead, they left open the approach to determine blood
20 quanta for membership purposes. Rather than leading to
21 their desired result, Plaintiffs' theory of strict
22 interpretation points in the opposite direction.

23 A broader view of the Tribe's legal documents, which
24 makes good sense in light of Article III's unmodified
25 "Indian blood of the Band," suggests that SYB Ordinance 2
26 regulates the process for establishing an applicant's
27
28

1 blood quantum.¹² Enacted roughly contemporaneously with
2 the Tribe's Articles, Ordinance 2 offers a detailed set
3 of procedures to govern "the enrollment of members into
4 the Band and to maintain the roll on a current basis."

5 Ordinance 2's definitions section takes care to
6 define "Indian Blood of the Band," which provides
7 evidence that the same Tribe members who enacted the
8 Articles thought it necessary to give meaning to the
9 potentially opaque term. The definition it provides does
10 not rely on the listed blood quanta from the 1940 Census,
11 although, to be sure, it does plainly say the relevant
12 SYB blood must derive from an ancestor listed on it. (R.
13 216.) Section 6 directs the Enrollment Committee to
14 consider all relevant tribal records or "other sources of
15 information." (R. 218.) Taken together, the SYB
16 Articles and ordinances require the Enrollment Committee,
17 and the Bureau, to look at all relevant evidence when
18 making a membership determination. Any reading of
19 Article III, Section 1.B to the contrary ignores the
20 structure of SYB law and imposes an extra-textual
21 bureaucratic limit on matters that properly fall under
22 the exclusive province of tribal decision-making.

23 Plaintiffs rely on Allery v. Swimmer, 779 F. Supp.
24 126 (D.N.D. 1991), to support their argument that the
25 Tribe or the Bureau may only consider the 1940 Census.

26
27 ¹² The BIA's own definition of "Tribal governing
28 document" counsels such a broad approach. See 25 C.F.R.
§ 62.1.

1 In Allery the court reviewed the BIA's "recalculat[ion]"
2 of the tribe's foundational 1940 membership roll for the
3 Turtle Mountain Band of Chippewa Indians, which the
4 Bureau undertook to distribute judgment funds to
5 individual tribe members in accordance with the Act of
6 December 31, 1982, Pub. L. 97-403, 96 Stat. 2022.
7 Allery, 779 F. Supp. at 127.¹³ The BIA created an
8 original roll for the Turtle Mountain Band in 1940,
9 pursuant to the Act of 1940, Pub. L. 76-520, 54 Stat.
10 219.¹⁴ Id. In 1983 the BIA went back and altered entries
11 on the original 1940 membership roll to make its judgment
12 fund distributions as accurate as possible. Id. The
13 court ruled the BIA's alterations impermissible, because
14 the 1982 "Act in no way [gave] the Bureau the authority
15 to re-prepare the [1940] roll." Id. at 128. In so
16 holding, the judge also wrote that all blood-degree
17 calculations by the BIA related to keeping the Turtle

18
19
20 ¹³ The reported decision of the Allery case does not
21 indicate which statute provided the cause of action, but
22 it does explain the plaintiffs "allege[] that [BIA] does
not have the authority to alter the tribal roll
established in 1940, pursuant to the Act of 1940." 779
F. Supp. at 127.

23 ¹⁴ The Turtle Mountain Band adopted the 1940 roll as
24 its foundational document: its constitution provides the
25 band's membership would be composed of: "(a) All persons
whose names appear on the roll prepared pursuant to
26 Section 2 of the Act of May 24, 1940 (54 Stat. 219), and
approved by the Secretary of the Interior on March 15,
1943" and "(b) All descendants of persons whose names
27 appear on the roll defined in Section 1(a) of this
article, provided that such descendants possess one-
28 fourth or more Indian blood," 779 F. Supp. at
128.

1 Mountain roll current must respect the blood degrees
2 listed on the 1940 roll.¹⁵ Id. at 129-30.

3 Plaintiffs argued at the hearing that affirming the
4 BIA's action in this case risks creating tension with
5 Allery's holding. Not so. Allery is different from this
6 case for a number of reasons, but the one that matters
7 most is that in Allery the court reviewed the BIA's
8 application of a federal statute; in contrast, the Court
9 here reviews (for reasonableness) the BIA's review of the
10 Tribe's interpretation of their own law, for which the
11 Bureau has a long-standing policy of deference.¹⁶ The
12 difference in procedural posture is no mere technicality.
13 Allery subjected the Bureau's action to exacting
14 scrutiny. Here the Court's standard of review is highly
15 deferential. And, in addition, the BIA treads lightly
16 when reviewing any tribe's interpretation of its own
17 membership laws -- especially when the Bureau has no
18 clear standard upon which to base its decision.

19 _____
20 ¹⁵ Importantly, the Turtle Mountain constitution
21 delegated to the BIA the responsibility to keep its
22 membership roll current. See 779 F. Supp. at 128.

22 ¹⁶ Two other relevant distinctions are worth
23 mentioning. First, in Allery the BIA attempted to
24 reconstruct the entire 1940 census roll, in direct
25 conflict with the Turtle Mountain Band's constitution;
26 here, the BIA is not trying to alter the 1940 Census,
27 instead it looked outside the 1940 Census at relevant
28 evidence in order to review effectively the Tribe's
enrollment decision. Second, the Turtle Mountain
constitution delegates authority to the BIA to keep its
roll current, but the SYB Articles assign that authority
to the Tribe itself, compare 779 F. Supp. at 128, with R.
202, which supports the view that the federal government
should respect the Tribe's decision.

1 In the absence of a clear directive in the SYB
2 Articles that blood degree of prospective members should
3 be determined based only on the blood degree of an
4 ancestor as listed on the 1940 Census, the Court declines
5 to second guess the Bureau's reasonable decision to apply
6 SYB law in the same manner in which the Tribe applied it.

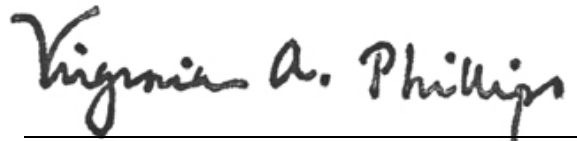
7 The BIA correctly considered the entire Record when
8 denying Plaintiffs' appeals, so its decision was not
9 arbitrary or capricious.

10
11 **V. CONCLUSION**

12 The Bureau's action was reasonable. Accordingly, the
13 Court DENIES Plaintiffs' motion for summary judgment, and
14 GRANTS Defendants' cross-motion for summary judgment.

15
16 **It is so ordered.**

17
18
19 Dated: January 15, 2015

20 
21 VIRGINIA A. PHILLIPS
22 United States District Judge
23
24
25
26
27
28