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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
AT EUREKA

John Sr., Adrian; Morinda, Barbara; Brown,
Batsulwin; Sloan, Bonnie; Sloan, Carrie;
Brown, Cecil; Mota Jr., Cliff; Brown, David;
Brown, Elvina; Sloan, Ermadina; Johnson,
Geraldine; Brown III, James P.; Wright, James;
Brown, Jessica; Brown, Kiuya; John, Ko-E-Ya;
Morinda, Martha; Brown, Marvin; Brown,
Michael; Sloan, Natasha; Appricio, Nickle;
Brown, Rose; Brown, Sharon; Brown, Piyaco;
Brown Jr., Ray; Geary, Robert; Morinda,
Roxann; Mota, Verdeana; Mota, Wah-Lia,

Petitioners,

v.

Brown, Stephanie; Garcia, Agustin; Garcia
Brown, Sarah; John, Leora; and Brown II,
Nathan, in their official capacities as the
purported members of the Executive Committee
of the Elem Indian Colony of Pomo Indians,

Respondents.

NO. 1:16-cv-2368

PETITION FOR WRIT OF HABEAS
CORPUS

Indian Civil Rights Act, 25 U.S.C. §
1303

I. INTRODUCTION

1
2 1. Petitioners hereby petition the Court for a Writ of Habeas Corpus pursuant to
3 the Indian Civil Rights Act (“ICRA”). 25 U.S.C. §§ 1301-1303.

4 2. Respondents are unlawfully restraining Petitioners by permanently convicting
5 Petitioners of crimes, including “treason,” without due process or equal protection of law.

6 3. Respondents are being punished and deprived of liberty for a litany of
7 fantastical crimes. The punishment Respondents are imposing is detention, as contemplated by
8 ICRA.
9

10 4. Petitioners lack any other meaningful forum to challenge Respondents’ illegal
11 actions. Respondents’ claimed administrative remedies are futile.

II. PARTIES

12
13 5. Petitioners (Adrian John Sr., Barbara Morinda, Batsulwin Brown, Bonnie Sloan,
14 Carrie Sloan, Cecil Brown, Cliff Mota Jr., David Brown, Elvina Brown, Ermadina Sloan,
15 Geraldine Johnson, James P. Brown III, James Wright, Jessica Brown, Kiuya Brown, Ko-E-Ya
16 John, Martha Morinda, Marvin Brown, Michael Brown, Natasha Sloan, Nickle Appricio,
17 Sharon Brown, Piyaco Brown, Ray Brown Jr., Robert Geary, Rose Brown, Roxann Morinda,
18 Verdeana Mota, Wah-Lia Mota) and Respondents (Agustin Garcia, Sarah Brown Garcia,
19 Stephanie Brown, Leora John and Nathan Brown II) are all members of the Elem Indian
20 Colony of Pomo Indians (“Tribe”), a federally recognized Indian Tribe headquartered in Lower
21 Lake, California.
22

23
24 6. Respondents purport to be the elected Executive Committee of the Tribe.
25

III. JURISDICTION

7. The District Court has jurisdiction over this action pursuant to federal law, including 25 U.S.C. § 1303, which dictates that 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.”

8. The Court has jurisdiction because the Petitioners are being unlawfully restrained based on criminal allegations. *See Quair v. Sisco*, 359 F.Supp.2d 948 (E.D.Cal. 2004).

9. Venue is proper in this district as all the events giving rise to this action occurred in Lake County, California.

10. Petitioners have not applied for this Writ pursuant to ICRA in any other Court.

IV. INTRADISTRICT ASSIGNMENT

11. The basis for assignment to the Eureka Division is that this civil action arises in Lake County, California. Civil L.R. 3-2(f).

V. FACTS

A. Detention of Petitioners

12. The Elem Indian Colony of Pomo Indians consists of approximately 52 acres of federal Indian trust land (“Colony”). Respondents and their nuclear and extended families constitute one hundred percent (100%) of the residents of the Colony.

13. Several of Petitioners own the homes they live in on the Colony. More specifically, they own the permanent improvements to federal Indian trust land.

1 14. On March 30, 2016, Petitioners learned that the Respondents are attempting to
2 permanently “disenroll” and “banish” Petitioners, along with many other Tribal members, who
3 Respondents see as political threats.

4 15. “Disenrollment” is defined as “[t]he penalty by which a member of Elem is
5 permanently removed from the membership roll of Elem for all purposes,” in the “Tribal
6 Sanctions Of Disenfranchisement, Banishment, Revenue Forfeiture, and Disenrollment And
7 the Process for Imposing Them Ordinance No. GCORD08412” (“Ordinance”) of May 9, 2015.
8 *See* Ordinance § 1.d.
9

10 16. Critically, the penalty of “Disenrollment” is defined in the Ordinance as
11 including “Banishment.”

12 17. “Disenrollment may only be imposed by the General Council pursuant to this
13 Ordinance and only if the member [i]s expressly found by the General Council to warrant
14 Banishment pursuant to this Ordinance, but the General Council specifically finds that
15 Banishment is inadequate to protect the members, resources, or sovereignty of Elem from the
16 behavior of the accused Tribal member under the specific circumstances of that person’s case.
17 Disenrollment of an individual for these reasons shall only be used as a last resort.” Ordinance
18 § 1.d(3).
19

20 18. In other words, “Banishment” is a lesser-included punishment of disenrollment.
21 Disenrollment also includes permanent banishment.

22 19. Respondents served an “Order of Disenrollment,” i.e., an “order of an Indian
23 tribe” per 25 U.S.C. § 1303 (“Order”), which accuses Petitioners of violating “the laws of
24 Elem” and states that: “[i]f you are found guilty by the General Council of these offenses
25

1 against the Tribe, you may be punished by: a. DISENROLLMENT – loss of membership,”
2 which, again, includes permanent “Banishment.”

3 20. The Order includes six pages of outlandish criminal allegations under the
4 heading “Exhibit A Order to Disenroll.” None of the allegations are true.

5 21. The allegations are each defined as a “Forfeiture Offense,” which is “[a]ny
6 violation of the criminal laws of Elem, California or the United States, and any other violation
7 of the laws of Elem that is intended to or has the result of interfering with the ability of the
8 Tribe, its elected officials, or the General Council to freely, fully, and honestly exercise the
9 sovereignty of the Tribe in the best interest of the Tribe and its membership or to protect the
10 members, resources, or sovereignty of Elem.” *See* Ordinance § 1.e.

12 22. The Order does not comply with the requirements for a “Forfeiture Complaint.”
13 Ordinance § 1.f. The Order is not signed by the Tribal Chair, was not approved by a motion
14 duly made and passed at a properly noticed and called General Council meeting, does not give
15 specific accusations for each person but instead has boilerplate accusations for every person,
16 does not identify any specific laws that were violated, does not provide any information about
17 the right to a hearing, and does not state that if the accused person does not request a hearing
18 the opportunity will be waived.

20 23. Respondents are relying solely upon the Ordinance to accomplish the
21 disenrollments *qua* banishments.

22 24. Tribal members were not on notice that the Ordinance existed until it was
23 distributed with the Order. The Ordinance was amended secretly on May 15, 2015. It was not
24 distributed to Tribal members. As of April 26, 2016, an older version of the tribal law, one
25

1 without disenrollment as a penalty, is available on the Tribe's website. The Ordinance is not
2 legal and cannot be relied upon to authorize any governmental activity.

3 25. The Tribe's "Constitution and Bylaws" states at Article II, Section 4 that any
4 rules or regulations established regarding membership, including the "loss of membership,"
5 must be approved by the Secretary of the U.S. Department of the Interior, by and through the
6 Bureau of Indian Affairs ("BIA") and its Superintendent in Sacramento, California.

7 26. The Ordinance establishes regulations addressing the loss of membership, but it
8 was not submitted to the BIA Superintendent for approval.
9

10 27. On April 4, 2016, the BIA Superintendent, Troy Burdick, acknowledged in
11 writing that the BIA has not approved the Ordinance.

12 28. Despite the lack of approval, Respondents are attempting to use the Ordinance
13 to prosecute and forever banish the Petitioners.

14 29. If Respondents are successful, several Petitioners will be banished from the
15 lands upon which their homes sit—dwellings to which they hold title.
16

17 30. If Respondents are successful, one hundred percent (100%) of the residents of
18 the Colony will be permanently exiled from their homelands—an unprecedented act in United
19 States history. The United States will literally be holding a vacant reservation, in trust.

20 **B. Lack of Due Process and Meaningful Administrative Remedies.**

21 31. The Order, styled by Respondents as an "Order to Disenroll," is effectively
22 final.
23

24 32. The Order does not provide any right to demand an opportunity to be heard—
25 the hallmark of due process. It contemplates simply a written answer in response.

33. The only administrative remedies available are in the complete control of the Respondents. The remedies are futile and lack any semblance of due process.

34. The Ordinance, which is—again—invalid, provides, “[t]he Tribal Chair *may* notice a special General Council meeting for the purpose of conducting a hearing in which the General Council will determine whether or not the person or person accused of Forfeiture Offenses is guilty, and if so, what the punishment shall be. In the alternative, the Tribal Chair *may* add such hearing to the agenda of a regularly scheduled General Council meeting.” Ordinance § 6 (emphasis added). The holding of a hearing is purely discretionary by the Tribal Chair. (The Tribal Chair appears to have elected not to offer any hearings because the Order does not offer a right to a hearing.)

35. The Tribe’s General Council meets only quarterly. On April 13, 2016, Tribal members received a letter stating that the purported Executive Committee intended to cancel the May and August General Council meetings in order to prevent the Petitioners from attending the meetings to protest the disenrollment actions. The one venue, the General Membership meeting, contemplated by the Ordinance as a place for challenging the “Forfeiture Offenses” is being taken away by action of the purported government.

VI. CAUSES OF ACTION

A. First Cause of Action: Unlawful Restraint on Personal Liberty in Violation of ICRA Due Process

36. Petitioners hereby incorporate and reallege the foregoing Paragraphs.

37. 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.”

1 38. ICRA provides that “[n]o Indian tribe exercising the powers of self-government
2 shall . . . deprive any person of liberty or property without due process of law.” 25 U.S.C. §
3 1302(8).

4 39. The Tribe’s Constitution and Bylaws adopts and applies ICRA.

5 40. Respondents have denied petitioners due process of law.

6 41. Petitioners received no meaningful notice. The six pages of boilerplate
7 allegations have nothing to do with Petitioners and provide no means to understand what
8 Respondents are talking about or to whom the allegations could even apply.
9

10 42. Respondents have offered no legal or factual justification for banishment.

11 43. Disenrollment *qua* banishment constitutes restraint for purposes of ICRA
12 habeas “detention.”

13 44. As applied, Petitioners have received no opportunity to be heard.

14 45. There is no Tribal Court forum or other means to contest the criminal charges or
15 to protest the Order. The opportunity to use the General Membership meeting as a place to be
16 heard is being taken away.
17

18 46. Respondents’ banishment of Petitioners is a criminal punishment and violates
19 Petitioners’ right to be free from arbitrary restraints on liberty as guaranteed by ICRA and the
20 Tribe’s Constitution.
21
22
23
24
25

B. Second Cause of Action: Unlawful Restraint on Personal Liberty in Violation of Federal ICRA Equal Protection

47. Petitioners hereby incorporate and reallege the foregoing Paragraphs.

48. ICRA provides that “[n]o Indian tribe exercising the powers of self-government shall . . . deny any person within its jurisdiction the equal protection of its laws” 25 U.S.C. § 1302(8).

49. The Tribe’s Constitution adopts and applies ICRA.

50. Respondents have discriminatorily applied purported Tribal laws against Petitioners and therefore denied Petitioners equal protection.

51. The purported Executive Committee specifically targeted a class of persons, all Tribal members who live on the Colony and practice traditional Elem ways and culture.

52. The purported Executive Committee specially targeted a class of persons, the Tribal members who voted against them in the November 2014 election.

53. There is no compelling interest that would justify treating the Petitioners differently than the other Tribal members.

V. RELIEF

WHEREFORE, Petitioners pray that the Court:

A. Issue the Writ of Habeas Corpus or an order to show cause why a Writ of Habeas Corpus should not be entered.

B. Declare that Respondents’ Order is a criminal punishment for which a Writ of Habeas Corpus is available.

C. Declare that Respondents’ Order is a sufficiently severe potential or actual restraint on liberty to warrant habeas review.

1 D. Declare that Respondents have violated and are violating ICRA.

2 E. Order Respondents to discharge Petitioners from the restraints on Petitioners'
3 personal liberty.

4 F. Issue an Order vacating Petitioners' proposed disenrollment and banishment.

5 G. Award Petitioners reasonable attorneys' fees and costs.

6 H. Grant Petitioners such other and further relief as the Court deems just and
7 proper.
8

9 Petitioners reserve the right to amend this Complaint to plead new parties, claims
10 and/or allegations.

11 EXHIBITS - Appendix A attached hereto.

12 DATED this 30th day of April, 2016.

13
14 /s/ Little Fawn Boland

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