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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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. 3:16-cv-2368-WHA

AMENDED PETITION FOR WRIT OF  
HABEAS CORPUS

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

**I. INTRODUCTION**

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

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

3. Respondents are being punished and deprived of liberty for a litany of fantastical crimes in retaliation for the fact that all of the Petitioners participated in an alternate election. The punishment Respondents imposed constitutes detention, as contemplated by ICRA.

4. Petitioners lack any other forum or available remedies to challenge Respondents’ illegal actions.

**II. PARTIES**

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

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

### 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 “Constitution and Bylaws for the Elem Indian Colony of Pomo Indians” (“Constitution”) at Article VIII state that the “protections guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of a tribe in exercising its powers of self-government, shall apply to the Elem Indian Colony of Indians.” “A central purpose of [the Indian Civil Rights Act (“ICRA”)] was to ‘secur[e] for the American Indian the broad constitutional rights afforded to other Americans,’ and thereby to ‘protect individual Indians from arbitrary and unjust actions of tribal governments.’” *Santa Clara Pueblo v. Martinez*, 436 US 49, 61 (1978) (quoting S. Rep. No. 841, 90th Cong., 1st Sess., 5-6 (1967)).

9. The Court has jurisdiction because the Petitioners are being unlawfully detained, based on criminal punishment for alleged crimes such as treason, the Petitioners have exhausted all available tribal remedies, and the penalty of disenrollment restricts the physical freedom (geographic movement) of the Petitioners. *See Quair v. Sisco (Quair I)*, 359 F.Supp.2d 948 (E.D.Cal. 2004); *Quair v. Sisco (Quair II)*, 2007 WL 1490571 (E.D. Cal. May 21, 2007).

10. Venue is proper in the Northern District, as all the events giving rise to this action occurred in Lake County, California.

11. Petitioners have not applied for this Writ in any other Court.

**IV. INTRADISTRICT ASSIGNMENT**

12. This case was reassigned to Judge Alsup in the San Francisco Division.

**V. FACTS**

**A. General Background Prior to the Events Giving Rise to this Petition**

13. On October 13, 2012, thirty-seven (37) Tribal members received a “Disenfranchisement Notice of Default and Imposition of Sanctions.”

14. The thirty-seven (37) Tribal members were informed that the penalty of disenfranchisement includes the loss of the ability to make motions, the right to vote, or to collect per capita distribution of the \$1,100,000 California Revenue Sharing Trust Fund money distributed quarterly by the Tribe.

15. The disenfranchisement resulted in the affected Tribal members being denied services and they were prevented from attending tribal meetings. It also has affected their offspring. None of the disenfranchised Tribal members’ children who have turned 18 since the disenfranchisement have been able to be considered as voting members by the Respondents.

16. On February 1, 2015 the disenfranchised Tribal members lost the ability to access the Purchased / Preferred Care Program through Lake County Tribal Health and around the same time they also lost the ability to access the Sherwood Valley Food Program, and the Low Income Home Energy Assistance Program. None of the thirty (37) people or their children have received their share of the \$1,100,000 from the Tribe since October 1, 2012.

17. Notably, the disenfranchised people were given no due process and were not offered a hearing. The then Chairman Nathan M. Brown claimed that it was their failure to request a hearing that led to their supposed “default” and imposition of the disenfranchisement and revenue forfeiture penalties.

1           18.     Eighteen (18) of the thirty-seven (37) disenfranchised people were penalized  
2 with just 2 or less years of disenfranchisement which was to end on October 13, 2014. Despite  
3 this fact those eighteen (18) people were not permitted to vote in the last election held on  
4 November 8, 2014 and never had any benefits or distributions reinstated for them. The other  
5 people were given 10-year disenfranchisement terms.

6           19.     The Respondents are the dominant family in the Tribe with access to the Tribe's  
7 general treasury. The Respondents were in power when the disenfranchisements occurred in  
8 2012. Because of the disenfranchisements, none of the thirty seven (37) people were able to  
9 vote in the November 2012 election.

10           20.    The Respondents and their supporters do not live on the Tribe's land  
11 ("Reservation").

12           21.    The disenfranchisements, though lengthy, were designed to be temporary. The  
13 disenfranchisement had financial and political implications for those affected. While the  
14 disenfranchised have been excluded from meetings held by the Respondents and from entering  
15 to participate in the 2012 and 2014 elections, the disenfranchised Tribal members could at that  
16 time remain in their homes on the land, could come and go as they please, could access the  
17 roundhouses on the Reservation where Tribal members gather for religious ceremonies, and  
18 had access to the burial grounds, and other culturally significant sites.

19           22.    The current purported Chairman Agustin Garcia stated in a recent declaration that  
20 he has the authority to "cull[...] from the active membership voting list tribal members who are  
21 alleged to have conducted crimes against the Tribe." It so happens that the alleged criminals,  
22 the Petitioners, are the exact people who elected a different government than his in the last  
23 election held on November 8, 2014.

1           23. On November 8, 2014 the Petitioners and their supporters arrived at the lobby of  
2 the Best Western El Grande Inn in Lakeport for the Tribe's election at the time stated in the  
3 Tribe's election notice. They were told by private security guards hired by the then-existing  
4 Executive Committee made up of the Respondents' family members that the people waiting in  
5 the lobby would be allowed to enter but only through the back door of the banquet hall.  
6 Ultimately, guards would not open the banquet hall for them and then local police forced the  
7 Petitioners and their supporters out of the hotel lobby and the hotel parking lot at the direction  
8 of the Respondents. The Petitioners and their supporters continued the election in the nearest  
9 public place available to all adult tribal members, specifically, the park contiguous to the  
10 parking lot of the hotel. The Respondents proceeded with their election behind closed doors.  
11 The Petitioners proceeded to hold a public election open to all adult tribal members in the park.  
12

13           24. David Brown (elected Chairman by the Petitioners) met with the Bureau of Indian  
14 Affairs ("BIA") and provided an Election Report showing that sixty (60) adult tribal members  
15 unanimously elected David Brown, Adrian John, Natalie Sedano Garcia, Paul Steward, and  
16 Kiuya Brown to serve on the Tribe's Executive Committee. The Election Report generated by  
17 the Respondents showed only 56 votes cast in their election and that none of the candidates  
18 received a unanimous vote.  
19

20           25. An administrative process is still ongoing before the Interior Board of Indian  
21 Appeals ("IBIA"). It is reviewing whether the Pacific Regional Director of the BIA rendered  
22 the right decision when it formally recognized the Respondents as the Tribe's government in  
23 December of 2014.  
24  
25

**B. The Respondents Have Unlawfully Detained the Petitioners**

26. Respondents sent an “Order of Disenrollment,” dated March 28, 2016, to Petitioners and other Tribal members as retaliation for the alternate election as part of a history of targeting the Petitioners. The “Order of Disenrollment” (“Order”) i.e., an “order of an Indian tribe” per 25 U.S.C. § 1303, accused Petitioners of violating “the laws of Elem” and stated that: “[i]f you are found guilty by the General Council of these offenses against the Tribe, you may be punished by: a. DISENROLLMENT – loss of membership.”

27. On June 2, 2016, the Petitioners were sent the “Disenrollment Notice of Default.” It stated that the time to file an answer passed, and that the recipient was in default and was considered to have admitted all allegations levied against him or her. It informed the recipient that there would be no hearing. It continued, “Punishment: you are therefore found guilty of the offenses against the Tribe charged against you in the Complaint and your punishment is a) Loss of Membership: disenrolled from the Elem Indian Colony as of June 2, 2016.”

28. Subsequently, a “Preliminary Notice of General Council Hearing” was sent out on June 27, 2016 stating that forty-eight Tribal members received notification of an impending disenrollment, forty-five members defaulted to date, and that three would receive an appeal hearing. Those three people are not Petitioners.

29. The Respondents are purporting to act pursuant to a tribal law entitled “Tribal Sanctions Of Disenfranchisement, Banishment, Revenue Forfeiture, and Disenrollment And the Process for Imposing Them Ordinance No. GCORD08412” (“Ordinance”) dated May 9, 2015.

1           30.     The Constitution states at Article II, Section 4, that any rules or regulations  
2 established regarding membership, including the “loss of membership,” must be approved by  
3 the Secretary of the U.S. Department of the Interior, by and through the Bureau of Indian  
4 Affairs (“BIA”) and its Superintendent in Sacramento, California.

5           31.     The Ordinance establishes regulations addressing the loss of membership, but it  
6 was not submitted to the BIA Superintendent for approval.

7           32.     On April 4, 2016, the BIA Superintendent, Troy Burdick, acknowledged in  
8 writing that the BIA has not approved the Ordinance.

9           33.     That being said, the Respondents have acted under the color of authority  
10 pursuant to the Ordinance.

11           34.     The plain text of the Order of Disenrollment also shows it was an order of  
12 banishment. There are three independent penalties available as criminal sanctions in the  
13 Ordinance: banishment, disenfranchisement and revenue forfeiture. One is the loss of physical  
14 access to all tribal land and property, one is the loss of political participation rights, and one is  
15 the loss of distributions from tribal funding streams. The three penalties can each be imposed  
16 for a specific period of time independently of one another. The fourth penalty, disenrollment,  
17 subsumes all of the aforementioned penalties and adds being “permanently removed from the  
18 membership roll of Elem for all purposes.” *See* Ordinance at § 1.d.

19           35.     “Disenrollment may only be imposed by the General Council pursuant to this  
20 Ordinance and only if the member [i]s expressly found by the General Council to warrant  
21 Banishment pursuant to this Ordinance, but the General Council specifically finds that  
22 Banishment is inadequate to protect the members, resources, or sovereignty of Elem from the  
23 behavior of the accused Tribal member under the specific circumstances of that person’s case.  
24  
25



1 Disenrollment of an individual for these reasons shall only be used as a last resort.” Ordinance  
2 at § 1.d(3).

3 36. Thus, if a Tribal member is convicted the options are: 1) disenfranchisement,  
4 forfeiture or banishment, 2) a combination of two or three of the penalties, or 3) disenrollment,  
5 which combines all three and adds permanent removal from the roll. In other words,  
6 disenfranchisement, forfeiture and banishment are lesser-included punishments of  
7 disenrollment.  
8

9 37. There is no way, pursuant to the Ordinance, to impose the penalty of  
10 disenrollment and then to later separately impose banishment. According to the Ordinance,  
11 after the imposition of the disenrollment penalty, there are no other rights to take away.

12 38. The manner in which the Respondents set up the Ordinance is unusual, perhaps  
13 unprecedented. Other tribes approach disenrollment and banishment separately. The Tribe  
14 does not have exclusion, eviction, or non-member access ordinances like other tribes. That is  
15 because disenrollment is a process by which a person proves or disproves their lineal  
16 descendency.  
17

18 39. For Respondents disenrollment is not based on a failure to establish a lineal  
19 right to membership. According to the Respondents’ Ordinance, disenrollment is a punishment  
20 for 1) having fraudulently gained a position on the tribal roll, 2) having impermissibly enrolled  
21 in two tribes at once, or 3) having done something so bad that banishment is inadequate as a  
22 penalty. Generally, tribes do not tie, at least not overtly, their disenrollment decision to a  
23 criminal act. Membership is typically a very delicate topic that tribes at least pretend to review  
24 with due process separate and apart from any criminal sanction, exclusion, eviction, etc...  
25

1           40. Many tribes in the United States have developed legal systems and a large body  
2 of law. Elem is not want one of them. The Tribe has the Constitution, the purported  
3 Ordinance and Ordinance 71-1 (related to the assignment of land). The Tribe has no  
4 enrollment ordinance, which most tribes use to set forth their loss of membership process.

5           41. If Respondents are successful, one hundred percent (100%) of the residents of  
6 the Reservation will be permanently exiled from their homelands—an unparalleled act in  
7 United States history. The United States will literally be holding a vacant reservation, in trust.  
8

9           42. Petitioners are not challenging their loss of status as enrolled tribal members or  
10 the corresponding loss of services and access to tribal facilities. Petitioners are challenging a  
11 detention because they are challenging the physical restrictions that the unique Elem-style  
12 disenrollment means for them. Under the Tribe's laws the on-Reservation Petitioners and their  
13 families and the off-Reservation Petitioners who come onto the Reservation are now  
14 trespassers.  
15

16           43. The Elem Indian Colony of Pomo Indians consists of an approximately 52 acre  
17 Indian reservation which is held in trust by the United States for the Tribe. Petitioners and  
18 their nuclear and extended families constitute one hundred percent (100%) of the residents of  
19 the Reservation.

20           44. Most of the Petitioners live on the Reservation. The Petitioners live in homes  
21 owned by the Tribe and a handful of Petitioners live in homes that they purchased with their  
22 own money. Regardless, of the ownership status of the home, to live on the Reservation one  
23 must possess a valid land assignment of Indian trust land pursuant to "Ordinance 71-1."  
24

25           45. According to Ordinance 71-1, to be eligible for a land assignment the land user  
must "be a member of the Elem Band of Pomo Indians." The land assignment "does not vest

1 title to the assigned land in the assignee, but is a use right only, which right cannot be sold or  
2 inherited and which terminates upon cancelation, relinquishment of the assignment, or upon the  
3 death of the assignee.”

4 46. Ordinance 71-1 goes on to state that any improvements built upon the land with  
5 tribal funds are tribal property. It also states that houses built by the Tribe will be assigned to  
6 “eligible members.”

7 47. Ordinance 71-1 is consistent with the Constitution. Article VII, Powers of the  
8 Governing Body, Section 1(g) and (h) show that the governing body has the power to make  
9 and revoke land assignments and that housing is only intended for the general welfare of the  
10 band. It also says that the governing body enforces laws regarding “the licensing of non-  
11 members coming onto the rancheria for purposes of hunting, fishing, trading or other  
12 business.”

13 48. The threat of being removed from their land, from their homes, or for off-  
14 Reservation Tribal members from being prevented to go to the roundhouses, their burial  
15 grounds, or cultural sites is real. The threat is not attenuated because there is no subsequent  
16 exclusion or eviction process available. Some tribes even allow non-members certain rights to  
17 challenge denials of access or residency within the subject reservation. There is no other due  
18 process available to Petitioners to keep them in their homes. The Constitution and Ordinance  
19 71-1 are broad and provide no checks and balances for the Petitioners to rely upon.  
20 Petitioners’ disenrollment has physically banished them as a matter of the Tribe’s law.  
21

22 49. As alleged non-tribal members, the Petitioners need to be invitees of the Tribe  
23 and per the Constitution are subject to physical removal. As of June 2, 2016, the Petitioners  
24 are trespassers under the Respondents’ purported orders. Their removal can come anytime.  
25

1           50.     The Order and Notice of Default unmistakably and presently affect the  
2 geographic movement of the Petitioners in light of the plain language of the Ordinance, the  
3 Constitution, Ordinance 71-1, and the pattern and practice of the Respondents in handling  
4 eviction and trespass.

5           51.     On December 5, 2011 a letter was sent to Robert Geary stating that the  
6 Chairman of the Tribe had the right to determine that Mr. Geary was not lawfully allowed to  
7 possess lot number 31. Mr. Geary was informed he had to immediately remove his  
8 manufactured home.  
9

10          52.     On October 14, 2013, a letter sent to Reservation residents by the Chairman at  
11 the time stated that he had issued a "Notice to Quit" to end possession of tribal property of the  
12 Elem Indian Colony and such notice was sent to the Lake County Sheriff's Department. No  
13 process was utilized other than the Chairman simply deciding to end the affected individuals'  
14 land possession right. The letter goes onto warn Reservation residents that "should any  
15 resident member knowingly provide or offer refuge, shelter, or harbor evicted trespasser(s),  
16 shall show cause to be subject to immediate revocation of the tribal lot assignment(s) and shall  
17 be removed from the Elem Indian Colony [sic]." This further illustrates that there is no check  
18 on the power to decide who may have an assignment and remain on the Reservation and such  
19 use right is revocable without due process at anytime.  
20

21          53.     On October 18, 2013 a Notice of Trespass Violation was sent to a woman  
22 named Brenda Crawford (aka Brenda Geary) who was disenrolled in 2007. She came home  
23 one day to find the notice on her door and private security guards there. They stood on her  
24 yard and attempted to intimidate her. The Notice of Trespass Violation provided no due  
25

1 process. It cited to various California laws and made no reference to any tribal laws on it  
2 (because there are no Elem tribal laws to cite to for eviction).

3 54. On January 6, 2014, Anthony Cohen sent a letter to Little Fawn Boland, legal  
4 counsel to the three people being evicted at the time, which stated “Brenda Geary has no right  
5 to occupy any property on the Elem Rancheria because she is not a member of Elem and  
6 therefore cannot receive a land assignment.”

7 55. Importantly, the Order does not just exclude the Petitioners from their specific  
8 land assignments or homes. The effect of the disenrollment is to keep all Petitioners from their  
9 roundhouses, burial grounds and culturally significant areas on the Reservation. They practice  
10 their religion in the roundhouses. They regularly dance and have ceremonies in the  
11 roundhouses. Petitioners’ banishment separates them from their ceremonial and cultural home  
12 and prevents them from enjoying, maintaining, and protecting the culturally significant sites on  
13 the Reservation.  
14

15 56. Recently, the United Pomo Nations Council, made up of 16 tribal chairs from  
16 Elem’s neighboring Pomo tribes declared “Elem’s Historic Sites and Roundhouses as  
17 culturally and historically significant Pomo areas and pledge[d] to use its best efforts to help  
18 protect the Historic Sites and Roundhouses from destruction and desecration.” It further  
19 declared itself “an interested party with the ability to provide comments and recommendations  
20 for avoidance or mitigation in the case of destructive activity on the Historic Sites and  
21 Roundhouses with advisement and recommendation from the traditional and cultural  
22 roundhouse leaders living on the land.”  
23  
24

25 57. The history shows that for Respondents eviction is immediate, simply ordered  
by the Chairman, and requires no due process. Land assignments are revocable anytime. All it

1 takes is for a Sheriff or a private security force to enforce the banishment. Moreover, the Tribe  
 2 has made clear that non-tribal members, including disenrolled former Tribal members, are not  
 3 permitted to live on the Reservation.

4 58. The Order is a criminal sanction not shared by the general tribal public. Tribal  
 5 members can live on the Reservation and come and go as they please. Non-tribal members  
 6 cannot. The Order effects detention whether or not any Petitioner is physically removed. The  
 7 Order is a severe restriction on the Petitioners that Tribal members are not generally subject to.  
 8

9 59. As long as the Order is in place the Petitioners lack the right to remain in their  
 10 homes or on the Reservation. There is no way to predict when each family will be told they  
 11 have to leave or when private security will show up on their doorstep to remove them.

12 **C. The Disenrollment (and Lesser Included Banishment) Penalty is a Criminal**  
 13 **Sanction Lacking Due Process and Meaningful Administrative Remedies.**

14 60. The Disenrollment is criminal in nature. The Order includes six pages of  
 15 outlandish criminal allegations under the heading “Exhibit A Order to Disenroll.”  
 16

17 61. The allegations are each defined as a “Forfeiture Offense,” which is “[a]ny  
 18 violation of the criminal laws of Elem, California or the United States, and any other violation  
 19 of the laws of Elem that is intended to or has the result of interfering with the ability of the  
 20 Tribe, its elected officials, or the General Council to freely, fully, and honestly exercise the  
 21 sovereignty of the Tribe in the best interest of the Tribe and its membership or to protect the  
 22 members, resources, or sovereignty of Elem.” *See* Ordinance § 1.e.  
 23

24 62. The Order does not comply with the requirements for a “Forfeiture Complaint.”  
 25 Ordinance § 1.f. The Order is not signed by the Tribal Chair, was not approved by a motion  
 duly made and passed at a properly noticed and called General Council meeting, does not give

1 specific accusations for each person but instead has boilerplate accusations for every person,  
2 does not identify any specific laws that were violated, does not provide any information about  
3 the right to a hearing, and does not state that if the accused person does not request a hearing  
4 the opportunity will be waived.

5         63.     The boilerplate accusations appear to be resurrected from a lawsuit filed by the  
6 Garcia Faction in 2010 entitled *Elem Indian Colony v. Brown, et. al.* under case number CV  
7 409489 filed in the Superior Court of California in the County of Lake against Batsulwin  
8 Brown, Geraldine Johnson and Robert Geary. The case was ultimately voluntarily dismissed by  
9 the Garcia Faction's former legal counsel, Anthony Cohen on May 22, 2013 without prejudice  
10 after the Respondents and their predecessors were unable to marshal sufficient evidence of  
11 wrongdoing after years of legal wrangling. The boilerplate accusations also closely track with  
12 the alleged crimes that led to the disenfranchisement and revenue forfeitures that took effect in  
13 2012.  
14

15         64.     Respondents are relying solely upon the Ordinance to accomplish the  
16 disenrollments *qua* banishments.  
17

18         65.     Tribal members were not on notice that the Ordinance existed until it was  
19 distributed with the Order. The Ordinance was amended secretly on May 15, 2015. It was not  
20 distributed to Tribal members. As of April 26, 2016, an older version of the tribal law, one  
21 without disenrollment as a penalty, is available on the Tribe's website. The Ordinance is not  
22 legal and cannot be relied upon to authorize any governmental activity.  
23

24         66.     The Order, styled by Respondents as an "Order to Disenroll," was effectively  
25 final when sent.

1           67.     The Order did not provide any right to demand an opportunity to be heard—the  
2 hallmark of due process. It contemplates simply a written answer in response.

3           68.     The only administrative remedies that were available were in the complete  
4 control of the Respondents. The remedies were futile and lacked any semblance of due  
5 process.

6           69.     The Ordinance, which is—again—invalid, provides, “[t]he Tribal Chair *may*  
7 notice a special General Council meeting for the purpose of conducting a hearing in which the  
8 General Council will determine whether or not the person or person accused of Forfeiture  
9 Offenses is guilty, and if so, what the punishment shall be. In the alternative, the Tribal Chair  
10 *may* add such hearing to the agenda of a regularly scheduled General Council meeting.”  
11 Ordinance § 6 (emphasis added). The holding of a hearing is purely discretionary by the Tribal  
12 Chair. (The Tribal Chair elected not to offer any hearings because the Order does not offer a  
13 right to a hearing.)  
14

15           70.     The Tribe’s General Council meets only quarterly. On April 13, 2016, Tribal  
16 members received a letter stating that the purported Executive Committee intended to cancel  
17 the May and August General Council meetings in order to prevent the Petitioners from  
18 attending the meetings to protest the disenrollment actions. The one venue, the General  
19 Membership meeting, contemplated by the Ordinance as a place for challenging the “Forfeiture  
20 Offenses” was taken away by action of the purported government before the time period to the  
21 file an answer had even ran.  
22

23           71.     Despite the cards being stacked against the Petitioners, they nonetheless filed an  
24 answer on April 29, 2016, containing a written response denying each allegation and seeking  
25 due process (the “Answer”) in accordance with the requirements of the Order. The Answer



1 was signed by each Petitioner and was submitted within 35-days of the date of the Order. The  
2 Answer was timely received by the Respondents on April 30, 2016, as shown on a tracking  
3 certificate.

4 72. Petitioners were sent a “Disenrollment Notice of Default” dated June 2, 2016. It  
5 alleges that the Petitioners did not respond to the March 28, 2016 “Order to Disenrollment.”  
6 The Petitioners were informed that the time to file an answer passed, the person was in default  
7 and was considered to have admitted all allegations levied against him or her. Notably, it  
8 stated there will no hearing and contained the following text: “Punishment: you are therefore  
9 found guilty of the offenses against the Tribe charged against you in the Complaint and your  
10 punishment is a) Loss of Membership: disenrolled from the Elem Indian Colony as of June 2,  
11 2016.”  
12

13 73. The “Order to Disenrollment” made clear there are no more processes available.  
14 The Disenrollment Notice of Default is not a member eligibility determination but rather a  
15 punishment.  
16

17 74. After learning that the Petitioners received the “Disenrollment Notice of  
18 Default” permanently banishing them from the Tribe, out of an abundance of caution,  
19 Petitioners resubmitted their answers showing a tracking receipt proving the original delivery  
20 on April 30, 2016 (the “Second Answer”). A tracking receipt shows the Second Answer was  
21 delivered on June 23, 2016.  
22

23 75. The Second Answer clearly explained that the Answer was timely filed for each  
24 Petitioner. The Second Answer again implored the Tribe to provide due process.

25 76. The Second Answer was sent by electronic mail on June 22, 2016 by Christina  
Snider, of Ceiba Legal, LLP, to Jack Duran, legal counsel to Respondents.

1           77.     The Second Answer was hand-delivered by Rose Brown on June 23, 2016 to the  
2 offices of the Tribe located at 16170 Main St, Suite I, Lower Lake, CA 95457.

3           78.     Respondents received the Second Answer. However, a few days later, the  
4 Respondents sent out a "Preliminary Notice of General Council Hearing" on June 27, 2016  
5 stating "Save the Date: August 13, 2016, Preliminary Notice of General Council Hearing, In  
6 March 2016 (48) members received notification of an impending disenrollment or  
7 disenfranchisement order of complaint issued by the Elem Indian Colony. Each recipient was  
8 required to respond to these legal notices within 35 days, which were sent by certified mail;  
9 (45) members have defaulted to date, (3) have requested an appeal. Therefore the general  
10 council will need to convene a legal quorum to establish a 'Hearing Council' in order to  
11 conduct the 'Appeals' in accordance with tribal law. You shall receive official notice with (30)  
12 days of the scheduled meet on or about July 13, 2016. The official notice will contain more  
13 instructions and the time frame to address each appeal."

14  
15           79.     Respondents denied each Petitioner a hearing despite Petitioners having  
16 submitted a written answer pursuant to the Order of Disenrollment. Thus, the Orders against  
17 the Petitioner were summarily issued without any due process and there are no other tribal  
18 administrative remedies that have yet to be exhausted.

19  
20           80.     At oral argument legal counsel for Respondents stated the reason the Answer  
21 was ignored was because it was not timely. He spent significant time arguing this point, as  
22 reflected in the transcript. However, a declaration filed by Agustin Garcia on July 17, 2016  
23 does not mention anything about untimeliness in its 5 pages. It states in Paragraph 15 that the  
24 "Plaintiffs to this litigation have refused to request a hearing or recognize the Tribal  
25 government and Ordinance GCORD080412."

**VI. CAUSES OF ACTION**

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

81. Petitioners hereby incorporate and reallege the foregoing Paragraphs.

82. 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.”

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

84. The Tribe’s Constitution and Bylaws adopts and applies ICRA.

85. Respondents have denied petitioners due process of law.

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

87. Respondents have offered no legal or factual justification for their banishment and disenrollment.

88. Disenrollment *qua* banishment constitutes restraint for purposes of ICRA habeas “detention.”

89. The unique Elem-style disenrollment includes detention because banishment has been ordered against the Petitioners. As applied, Petitioners have received no opportunity to be heard.

1           90.     The Order and Notice of Default clearly affect the geographic movement of the  
2     Petitioners in light of the plain language of the Ordinance, the Constitution, Ordinance 71-1 in  
3     regards to non-tribal members, and the pattern and practice of the Respondents in handling  
4     eviction and trespass.

5           91.     There is no Tribal Court forum or other means to contest the criminal charges or  
6     to protest the Order. No hearings have or will be granted to the Petitioners.

7           92.     Respondents' banishment of Petitioners is a criminal punishment and violates  
8     Petitioners' right to be free from arbitrary restraints on liberty as guaranteed by ICRA and the  
9     Tribe's Constitution.  
10

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

13           93.     Petitioners hereby incorporate and reallege the foregoing Paragraphs.

14           94.     ICRA provides that "[n]o Indian tribe exercising the powers of self-government  
15     shall . . . deny any person within its jurisdiction the equal protection of its laws . . . ." 25  
16     U.S.C. § 1302(8).  
17

18           95.     The Tribe's Constitution adopts and applies ICRA.

19           96.     Respondents have discriminatorily applied purported Tribal laws against  
20     Petitioners and therefore denied Petitioners equal protection.

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

23           98.     The purported Executive Committee specially targeted a class of persons, the  
24     Tribal members who voted against them in the November 2014 election.  
25

          99.     There is no compelling interest that would justify treating the Petitioners

1 differently than the other Tribal members.

2 **V. RELIEF**

3 WHEREFORE, Petitioners pray that the Court:

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

6 B. Declare that Respondents' Order of Disenrollment and Disenrollment Notice of  
7 Default impose a criminal punishment for which a Writ of Habeas Corpus is available.

8 C. Declare that Respondents' Order of Disenrollment and Disenrollment Notice of  
9 Default are sufficiently severe potential or actual restraint on liberty to warrant habeas review.

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

11 E. Order Respondents to discharge Petitioners from the restraints on Petitioners'  
12 personal liberty.

13 F. Issue an Order vacating Petitioners' disenrollment and banishment.

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

15 H. Grant Petitioners such other and further relief as the Court deems just and  
16 proper.

17  
18 Petitioners reserve the right to amend this Complaint to plead new parties, claims  
19 and/or allegations.

20 EXHIBITS - Appendix A attached hereto.

21 DATED this 13th day of October, 2016.

/s/ Little Fawn Boland

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**PROOF OF SERVICE**

I, Little Fawn Boland, hereby declare:

I am employed by Ceiba Legal, LLP in the City of Mill Valley and County of Marin, California. I am a resident in the City of Mill Valley. I am over the age of eighteen years and not a party to the within action. My business address is CEIBA LEGAL, LLP, 35 Madrone Park Circle, Mill Valley, California, 94941.

I hereby certify that on October 13, 2016, I electronically filed the foregoing with the Clerk of the Court using the ECF system.

**AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 13, 2016 in Mill Valley, California.