

Reported by: BELLE BALL, CSR #8785, RDR, CRR
Official Reporter, U.S. District Court

1 WEDNESDAY, SEPTEMBER 14, 2016 8:08 A.M.

2 P R O C E E D I N G S

3 THE COURT: Now we go to John, Sr. versus Brown,
4 Stephanie; Garcia, Agustin. Habeas corpus case.

5 MR. DURAN: Your Honor, Jack Duran appearing for the
6 Garcia Respondents.

7 THE COURT: All right. Okay.

8 MS. BOLAND: Good morning. Little Fawn Boland
9 appearing for the Petitioners.

10 THE COURT: Welcome to you. All right.

11 So here, I have got a preliminary question. And this is
12 going to be for -- I'm sorry, I can't find it now. Just a
13 minute.

14 Where's that declaration? It's not here anymore.

15 You didn't properly do your declaration on the defense
16 side. You were supposed to say that you have the original
17 somewhere. And, and that it was signed by the declarant.

18 That's the -- this declaration right here (Indicating).

19 MR. DURAN: From -- from Agustin Garcia?

20 THE COURT: Yeah. So you didn't do what the local
21 rules require. So can I see the original ink signature right
22 now?

23 MR. DURAN: I don't have that, Your Honor.

24 THE COURT: Where is it?

25 MR. DURAN: Back in my office.

3

1 THE COURT: You promise me that it exists, and you
2 have in your possession the original ink signature?

3 MR. DURAN: I do, Your Honor.

4 THE COURT: Next time, you should do it right. I
5 will tell you why. We have lawyers in this district -- I
6 guess you are not one of them -- who cheat and say that --
7 they get telephone okay. Or sometimes they don't even get
8 telephone okay. And then they file declarations that turn out
9 never to have been signed by the... So if I want to put
10 somebody in prison for perjury, I can't put them in prison
11 because they didn't sign it under penalty of perjury.

12 So you are telling me you have the original ink signature
13 on this declaration by Agustin Garcia.

14 MR. DURAN: Yes, Your Honor.

15 THE COURT: All right, I accept your word for it.

16 Okay. Let me tell you what I think is the problem with

17 this petition, which is: I don't think I have jurisdiction.

18 So that is your problem.

19 And you -- I'm going to give you a chance to argue me out
20 of this. But the -- you know, habeas corpus, you've got to be
21 in custody. Nobody's in custody here.

22 However, the Second Circuit has and the Ninth Circuit has
23 indicated maybe they would follow that if somebody was
24 banished from the reservation. Then that might constitute
25 custody within the meaning of the statute, so as to allow me

4

1 to have jurisdiction.

2 But you don't actually allow -- you don't allege
3 banishment, and nobody was been banished yet. According to
4 your petition. So I feel like I have to dismiss the petition
5 and give you a chance to amend if you think you can fix that.
6 But that is my problem.

7 So I'll give you a chance to argue me out of that
8 position. So the floor is yours.

9 MS. BOLAND: Thank you, Your Honor.

10 Well, first, two points. And we would like leave to
11 amend, because there have been changed circumstances since the
12 time we filed the original petition.

13 Since that time --

14 THE COURT: Somebody's in custody or been banished?

15 MS. BOLAND: Yes, they actually have received their

16 order of banishment, all of the petitioners --

17 THE COURT: Really.

18 MS. BOLAND: Yes, Your Honor.

19 THE COURT: You got that with you? Do you happen to

20 have --

21 MS. BOLAND: Well -- yes, it's the attachment to --

22 THE COURT: It was not in anything that you attached.

23 Is it?

24 (Off-the-Record discussion between the Court and Clerk)

25 THE COURT: It says "Disenrollment." It does not say

5

1 "Banishment."

2 MS. BOLAND: But the disenrollment ordinance defines

3 disenrollment as including banishment.

4 THE COURT: No, my law clerk says you're wrong on

5 that.

6 MS. BOLAND: Okay --

7 THE COURT: Read it to me. Maybe my law clerk is

8 wrong.

9 MS. BOLAND: We read banishment as being a lesser

10 included punishment.

11 THE COURT: That is irrelevant. I read that myself,
12 and I didn't see where it says if you are disenrolled you are
13 banished.

14 MS. BOLAND: Uh-huh.

15 THE COURT: Where does it say it?

16 MS. BOLAND: (As read):

17 "Banishment pursuant to this ordinance..."

18 Excuse me.

19 "Disenrollment may only be imposed by the General
20 Council pursuant to this ordinance and only if the
21 member is expressly found by the General Council to
22 warrant banishment pursuant to this ordinance."

23 So if somebody has been disenrolled, that means, pursuant
24 to the ordinance, that they have been -- banishment has been
25 warranted.

6

1 THE COURT: Well, no, warrants banishment, but they
2 haven't been banished. Warranting is not the same thing as an
3 actual order.

4 In other words, it's like they've got two remedies. One
5 is disenrollment, one is banishment. So it's got to be bad
6 enough to do either one, but so far they've only disenrolled
7 you. Not you, but your clients.

8 MS. BOLAND: Well, the legal consequences,
9 Your Honor, of banishment have flowed. The individuals,
10 everyone who is living on the reservation now cannot access
11 Indian health services, the food program, the tribal
12 assistance for needy families. So the legal consequences of
13 no longer being able to access services have flowed since the
14 time we filed the complaint. We can submit declarations to
15 that effect.

16 These individuals are currently in a legal no-man's land.
17 They don't have ability to be treated as tribal members or to
18 access any services that Native American tribal members are
19 able to access.

20 And, they're living on the reservation currently. We have
21 been told that the sheriff will not come in to enforce and
22 remove them from their homes, but that's purely a decision
23 that has been made, but we don't know -- you know, we are not
24 in direct communication with the sheriff at this time.

25 So we believe that the legal consequences of the act of

1 disenrollment, which we do believe includes banishment, have
2 now flowed from the actions that the Respondents have taken.

3 THE COURT: You are saying they can -- if the
4 Plaintiffs go to the medical clinic on the reservation, they

5 will be turned away?

6 MS. BOLAND: They are. They have been.

7 THE COURT: What else will they be turned away from?

8 MS. BOLAND: They can no longer access the Sherwood

9 Valley Food Program. They no longer have protections as

10 tribal members.

11 There's a whole range of services that tribal people have

12 access to that they no longer will be able to access.

13 THE COURT: What do you say to that?

14 MR. DURAN: Your Honor, as far as I understand it,

15 the interpretation of the ordinance, itself, has resulted in a

16 disenfranchisement which has provided them the -- they are

17 unable to vote on tribal matters. And they cannot receive the

18 revenue-sharing trust funds.

19 Other than that, they are free to attend Tribal Council

20 meetings, although they have to sit in a separate area. They

21 are free to petition the other non-disenfranchised members for

22 whatever -- to bring their case forward to the Tribal Council.

23 They also can receive benefits. This is the first that I

24 have heard that they haven't been able to receive any

25 benefits. TANF, any of the tribal benefits that they can

1 normally get through the Tribe.

2 THE COURT: You are saying they can or cannot get
3 those things?

4 MR. DURAN: They can apply for those benefits, and
5 they have been receiving those benefits --

6 THE COURT: Counsel just told me that they are turned
7 away at the door.

8 MR. DURAN: That is the first I have heard of that.

9 Now, the children also receive benefits as well. From those
10 folks that have been disenfranchised.

11 Now, the next step in the process -- let me step back.

12 With regards to the reservation, Your Honor, very few people
13 live on the reservation that are related to this particular
14 action.

15 The reservation, itself, is a Superfund site. Most of the
16 folks that are involved in this action do not live on the
17 reservation or on tribal lands.

18 THE COURT: Do any of them live on the reservation?

19 MS. BOLAND: 132 people, Your Honor. It is not a
20 small community.

21 I was there last Friday, and I attended the ceremonies
22 there. We had tables upon tables of hundreds of people eating
23 together.

24 THE COURT: You say 132 live on the --

25 MS. BOLAND: 132 people live on the reservation.

1 THE COURT: Of the Plaintiffs.

2 MS. BOLAND: And 100 percent of them are being told
3 that they are disenrolled.

4 THE COURT: Wait a minute. Are all 132 Plaintiffs in
5 this case?

6 MS. BOLAND: No, because most are children. So all
7 45 petitioners have been told that they are disenrolled. And
8 100 percent of the inhabitants of that reservation are
9 affected by this action, and are no longer considered tribal
10 members of the Elem Indian Colony.

11 THE COURT: How can that be? How could they just
12 kick everybody off the reservation?

13 MS. BOLAND: It is unprecedented in history,
14 Your Honor.

15 THE COURT: How could you -- can you say that
16 everybody that actually lives there is not a member of the
17 Tribe?

18 MR. DURAN: And that, Your Honor, is the reason for
19 our position that this case is not ripe, that is the process
20 has not been completed.

21 THE COURT: What process?

22 MR. DURAN: The process, as outlined in the

23 ordinance, that they have. Right now, what happened, letters
24 of disenrollment went out, with a requirement for answers to
25 be provided within a specified period.

10

1 It is our position that the answers were not provided on
2 time. Except for three, which hearings are pending on those
3 particular three individuals.

4 The tribal -- the General Council, not the Tribal Council,
5 therefore, has to take action to move forward with either
6 banishment or disenrollment. Even after the Tribal -- the
7 General Council makes that decision, there is an appellate
8 process in the ordinance that provides for that.

9 The fact of the matter is, Your Honor, is that there has
10 been an ongoing dispute between factions that dates back to
11 probably before the incidents that occurred in 1998 where
12 there were shootings and a burned-up casino.

13 But --

14 THE COURT: I didn't know; what was that all about?

15 MR. DURAN: This is the dispute between leadership
16 that has been going on for a very long time. It's unfortunate
17 that --

18 THE COURT: What is it? Tell me, just so I --

19 MR. DURAN: Well, one faction, Your Honor, the Brown

20 faction, the folks that are represented by opposing counsel,
21 disagrees that the Garcia faction, the folks that I represent,
22 are the true Tribal Council.

23 In the papers that I forwarded and in the request for
24 judicial notice, I provided the acknowledgment by the -- both
25 the central California agency of the Bureau of Indian Affairs

11

1 that recognized our council, the Garcia-faction council, in
2 November -- in -- they recognized in -- I believe it was
3 November of -- or October of 2015, an election that took place
4 in November of 2014.

5 Thirty days later, the Pacific Regional Director
6 reaffirmed that acknowledgment. And from that point on, this
7 is the result of the dispute between the two parties.

8 There is a -- myriad lawsuits going on. There were
9 formerly two IBIA appeals, one was dismissed. There is one
10 IBIA appeal pending before the Interior Board of Indian
11 Appeals.

12 There is also a case that was filed by opposing counsel's
13 clients in Lake County, accusing -- making various defamatory
14 claims and claims of false -- like privacy, against my Council
15 as individuals.

16 There was also an interpleader action back in 2014 where

17 the monies of the Tribe were -- were placed in interpleader
18 because there was an allegation of letters sent by opposing
19 counsel to Wells Fargo, claiming that they were the Council.
20 So Wells Fargo did naturally what they -- you know, what a
21 bank is going to do: They put those money up for
22 interpleader. And my clients had to pay a settlement of
23 around \$17,000 to get their money released.
24 So that's the background in this particular action. It's
25 messy; it is unfortunate. But with regards to this particular

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1 petition, my clients are working through this ordinance. We
2 even dispute the ordinance.
3 This is the first time I have seen this amended ordinance,
4 059215. I have another ordinance that was issued, I believe,
5 in 2012, that I'm working off of.

6 But --

7 THE COURT: Wait a minute. You're saying that the
8 one in the petition, quoted in the petition, you're saying
9 that that is not the one that you think is the right
10 ordinance?

11 MR. DURAN: All I'm saying, Your Honor, is this is
12 the first time that I have ever seen this amended ordinance.
13 However, I will say that the differences between the two

14 ordinances is that this one does include banishment, and it
15 also does include disenrollment.

16 But again, our Council represents that right now -- and
17 Little -- and Ms. Boland acknowledged this -- that they are in
18 a no-man's-land. That no-man's-land is disenfranchisement.
19 There has not been an action to disenroll or disenfranchise --
20 or to banish --

21 THE COURT: Wait a minute. Now you're confusing me.
22 I thought that they had been disenrolled.

23 MR. DURAN: They were given notices of disenrollment.
24 They failed -- in our opinion, they failed to answer, as
25 required by the ordinance, to provide an answer within a

13

1 specified period of time.

2 THE COURT: When have they been -- you mean you're
3 saying they -- it's in the process, but they haven't been
4 disenrolled yet?

5 MR. DURAN: Exactly. There has not been an action --
6 an official action taken on banishment or disenrollment.

7 THE COURT: So right now they can still get in on the
8 gravy train of the casino money?

9 MR. DURAN: Well --

10 THE COURT: Do you admit that much?

11 MR. DURAN: No, actually, I --

12 THE COURT: See, you don't. So --

13 MR. DURAN: No, I don't admit that, because that's

14 part of the revenue forfeiture that's included in both

15 ordinances. So they can attend Tribal Council meetings. They

16 can't vote.

17 THE COURT: Well, what is their remedy? Tell me,

18 every time somebody comes in here, they always -- they want to

19 say I don't have jurisdiction. So what is their remedy? If

20 they -- what should they do in order to stay on the gravy

21 train of the casino money?

22 MR. DURAN: Well, they need to go through the

23 process.

24 THE COURT: Well, what is that?

25 MR. DURAN: And the process is that the General

14

1 Council needs to take action on both -- on whether to

2 disenroll or banish, or do something in between. And that

3 hasn't occurred.

4 Now, with regards to the three that did perfect and file

5 their -- their answers within -- within the responsive time

6 period, I have been assured that the Council is going to act

7 on those shortly. I can't provide a date certain when that's

8 going happen.

9 But thereafter, the remainder of the folks that have not
10 been decided officially disenrolled or banished, the General
11 Council is going to take action on those.

12 Another thing, Your Honor, there has not been any
13 communications to the Interior -- Department of Interior to
14 take anybody off the rolls. There's been no notice.

15 THE COURT: You mean the Department of Interior has
16 to take them off the rolls?

17 MR. DURAN: There has to be a notice that they are no
18 longer tribal members. And there is no documentation here
19 that says that has occurred, because the Tribe hasn't acted on
20 that.

21 THE COURT: Well, then, why are they turning them
22 away at the medical center?

23 MR. DURAN: That's an allegation, Your Honor. I've
24 been -- I've been informed that that doesn't occur.

25 THE COURT: Where is this reservation?

15

1 MR. DURAN: It's in Lake County.

2 THE COURT: Which part?

3 MR. DURAN: Close to -- I believe it would be near
4 Clearlake Oaks.

5 THE COURT: Is that the part that was affected by the
6 fire this year, or last year?

7 MR. DURAN: I believe so.

8 THE COURT: All right. What do you have to say?

9 MS. BOLAND: I don't know where to begin, Your Honor.

10 THE COURT: Well, start somewhere.

11 MS. BOLAND: So many false statements.

12 First of all, there's no duty requirement for tribes to
13 submit their rolls to the BIA. They have no hand in tribal
14 membership. There is no action such as submitting something
15 to the BIA that would then remove people from the rolls.

16 I have fully briefed in my declaration, and provided
17 attachments. And for example, there was a notice sent,
18 Your Honor, telling people that they had a certain time frame
19 in which to respond to the allegations of criminal actions,
20 and the penalty for those criminal actions would be banishment
21 and disenrollment.

22 We then submitted an answer within the 35-day time frame.
23 It was ignored. I then resubmitted it, out of an abundance of
24 caution --

25 THE COURT: I didn't catch that. You've submitted

2 MS. BOLAND: An answer was required by all of the
3 petitioners. They had a 35-day time frame.

4 THE COURT: Somebody is back there hacking and
5 coughing.

6 Can you go out in the hallway? I can't hear when you do
7 that. I have cough drops if you would like one.

8 UNIDENTIFIED MAN: I'm fine, Your Honor.

9 THE COURT: Please, I can't hear when you are making
10 all that noise.

11 Start all over again about the 35-day thing. I missed
12 that.

13 MS. BOLAND: No problem, Your Honor.

14 So there was a 35-day time frame in which to file a
15 response. That was the process set forth to the allegations
16 of criminal -- there was six pages of boilerplate criminal
17 allegations against the petitioners.

18 We filed a timely response. Nonetheless --

19 THE COURT: Counsel just told me you did not file
20 anything.

21 MS. BOLAND: Well, it's all in the -- I don't --

22 THE COURT: Did they file anything, other than the
23 three people?

24 Beyond the three people, did anyone file anything

25 within --

17

1 MR. DURAN: On the first instance, no, Your Honor.

2 Then there was a refiling. And that's -- that's the filing
3 that we received after the time period expired.

4 THE COURT: Did you file it within the proper time?

5 MS. BOLAND: We did. And I've included the USPS
6 tracking in there.

7 Without question --

8 THE COURT: Is this a fair statement? One of you is
9 not telling me the truth?

10 MS. BOLAND: I feel that way.

11 MR. DURAN: No, Your Honor. No --

12 THE COURT: So you're saying both of you are telling
13 me the truth?

14 MR. DURAN: There -- this is very -- this is a very
15 complicated situation, Your Honor.

16 THE COURT: That means you're probably wrong. You
17 won't answer my question. She says flat out that one of you
18 is not telling me the truth.

19 MR. DURAN: And -- and I'll say yes, some -- there's
20 not -- there's not truth here, as well.

21 THE COURT: All right. Continue on.

22 MS. BOLAND: Thank you, Your Honor.

23 Subsequent to filing the answer that was required by the
24 process, we then received -- "we," I mean my clients -- an
25 order of disenrollment.

18

1 It says (As read):

2 "Loss of membership.. Disenroll from the Elem Indian
3 Colony as of June 2, 2006."

4 Prior to that it, describes the default that my clients
5 had engaged in. And so therefore they have -- contrary to
6 Mr. Duran's statements, they have received an order of
7 disenrollment.

8 That order, Your Honor, I then further responded to --

9 THE COURT: Wait a minute. I have it right here.

10 MS. BOLAND: Uh-huh.

11 THE COURT: Up at the top it's got a logo. It says

12 (As read):

13 "Elem Indian Colony, Disenrollment, Notice of
14 Default."

15 It's got an official number that goes into the trillions,
16 as if there would be that many notices.

17 MS. BOLAND: That was the tracking for USPS.

18 THE COURT: Okay. All right. Then it says

19 (As read):

20 "Elem Indian Colony versus Rozan Brown. Pursuant

21 to..."

22 Et cetera, et cetera, et cetera.

23 "...a copy of which was provided..."

24 Blah, blah.

25 "You were hereby notified that...punishment. You

19

1 were found guilty of the offenses. And your

2 punishment is loss of membership, disenrollment from

3 the Elem Indian Colony, as of June 2, 2016."

4 Now, you just got through telling me they hadn't been

5 disenrolled yet. But this says they have been disenrolled.

6 MR. DURAN: I was -- I was informed, Your Honor, that

7 the process -- the General Council has not acted on the

8 disenrollment or banishment.

9 THE COURT: Well, is this a forgery? This letter?

10 It's signed by someone named Agustin Garcia, the very guy that

11 signed your declaration.

12 MS. BOLAND: Your Honor, may I show you another item

13 that's in there --

14 THE COURT: Sure.

15 MS. BOLAND: -- that is contrary to Mr. Duran? It's

16 a notice that went out to all of my clients as well
17 (Indicating).

18 And it says (As read):

19 "Save the date. August 13th, 2016. Preliminary
20 notice of General Council hearing. In March, 2016,
21 48 members received notification of an impending
22 disenrollment or disenfranchisement order of
23 complaint issued by the Elem Indian Colony. Each
24 recipient was required to respond to these legal
25 notices within 35 days, which were sent by certified

20

1 mail. 45 members have defaulted to date. Three have
2 requested an appeal."

3 So it's clearly stating again that these 45 members, who
4 are the 45 petitioners, have been deemed to be defaulted, and
5 that they were not granted a hearing, despite my submitting an
6 answer and requesting due process.

7 THE COURT: Do you have that answer with you?

8 MS. BOLAND: I do. It's attached --

9 THE COURT: Can I see the answer that you submitted?

10 MS. BOLAND: And then it was resubmitted, just out of
11 an abundance of caution.

12 THE COURT: My law clerk is indicating that we've got

13 it here somewhere.

14 MS. BOLAND: Yes.

15 THE COURT: Just a minute.

16 MS. BOLAND: It's a thorough answer that satisfies
17 all of the requirements of the ordinance. Provides general
18 objections --

19 THE COURT: Is that part of your paperwork in this
20 motion?

21 MS. BOLAND: Yes. It's Exhibit C to Rozan --

22 THE COURT: I'm going ask counsel on the other side
23 to look at that.

24 MS. BOLAND: It is signed by all 45 petitioners. And
25 we have a tracking receipt showing it was delivered, again, a

21

1 second time.

2 And then I have multiple other proofs of service of hand
3 delivery. I e-mailed it to Mr. Duran, and I have submitted my
4 own proof of service that I e-mailed it to Mr. Duran.

5 So --

6 THE COURT: What do you say to that, Mr. Duran?

7 MR. DURAN: Well, I can say, Your Honor, that she did
8 e-mail me a notice.

9 But if you read what she just said, it is consistent with

10 what I have been saying. Forty-four or 43 members did not
11 meet the timelines. Three members did. We're going -- the
12 Tribe is committed to taking remedy on those three and
13 providing them hearings.

14 And the General Council is going to be making a decision
15 on the remaining folks that we allege didn't meet the
16 timeline.

17 MS. BOLAND: Your Honor, may I speak about --

18 THE COURT: Wait a minute.

19 MS. BOLAND: Sorry about that.

20 THE COURT: This document, Ms. Boland, it's your
21 signature, right?

22 MS. BOLAND: It is.

23 THE COURT: And you said that it was signed by all
24 these people. Looks like a lot of them did sign. And you did
25 this on April 29, 2016.

22

1 MS. BOLAND: That's correct.

2 THE COURT: And when did all these people sign?
3 Looks like they did it on April 28th. So, why wouldn't -- why
4 was this not timely?

5 MR. DURAN: Your Honor, I -- I am -- I was recently
6 -- um, entered into this case. I have -- I'm trying to get,

7 you know, up to speed on what had happened before I got here
8 with regards to these communications.

9 I'm not -- I am not sure what the interpretation or how
10 the interpretation was made that they were not timely. That
11 was not my -- that was not part of my decision-making.

12 THE COURT: What was the deadline? What day was the
13 deadline?

14 MR. DURAN: Well, if the decisions went out on -- I
15 believe it was March, on March 30th, I believe she said, on
16 her --

17 THE COURT: Well, the order -- the notice was on
18 March 28th.

19 MR. DURAN: Well --

20 THE COURT: If this was a month later, why wouldn't
21 that have been timely?

22 MR. DURAN: Again, Your Honor, that's not -- that
23 wasn't my decision, to determine whether or not that was
24 timely or not.

25 THE COURT: Well, you are here to speak for whoever

1 it was that made the decision. So you are just dodging. You
2 are bobbing and weaving and being as evasive as I have ever
3 seen a lawyer be.

4 When, when was the deadline? Ms. Boland, you seem to know
5 the facts of the case.

6 Mr. Duran, you don't seem to know the facts.

7 Ms. Boland, tell me what the deadline was.

8 MS. BOLAND: It was 35 days from March 28, which
9 would be, um, 31 -- bad math -- 35 days from March 28th would
10 have been May 4th, I believe.

11 THE COURT: So, did you --

12 MS. BOLAND: April 30th.

13 THE COURT: When did you deliver this document?

14 MS. BOLAND: It was delivered on April 30th, well
15 within the time frame.

16 THE COURT: How do you know it was delivered on
17 April 30?

18 MS. BOLAND: Yes, I do. And I've submitted the
19 tracking receipts.

20 THE COURT: Yes, I see that. Acceptance -- all
21 right. Looks like April 29th.

22 MS. BOLAND: And Your Honor, Mr. Duran's declaration,
23 the one that you complained about at the beginning that he
24 submitted without signature of Mr. Garcia, that declaration
25 never mentions anything about timely filing.

1 He says in there that the reason that they did not accept
2 the -- the answer. He had some other reasons written in
3 there. So if timeliness was the issue, it is not mentioned in
4 that unsigned declaration, Your Honor.

5 THE COURT: Sorry. The one that I asked about at the
6 first?

7 MS. BOLAND: Yeah. The one you complained about at
8 the very beginning.

9 THE COURT: Okay, where is that -- my law clerk is
10 going to have to come up here and find it. There's so much
11 paperwork.

12 MS. BOLAND: And Your Honor, I would like to talk
13 about the ordinance just for a moment.

14 THE COURT: Wait. I want to see what your last point
15 was.

16 All right, I've got the declaration from Mr. Agustin
17 Garcia that I asked about to begin with. All right.

18 MS. BOLAND: Uh-huh.

19 THE COURT: And your point about this is what?

20 MS. BOLAND: My point is that he's not making mention
21 of the fact that timeliness was the reason why they didn't
22 move forward. He's alleging that we didn't properly request a
23 hearing. So, this timeliness argument is the first I have
24 heard of this.

25 THE COURT: Says (As read):

25

1 "Plaintiffs failed to disclose that tribal
2 administrative remedies have been exhausted or
3 somehow excused. As of the date of this
4 correspondence, many of the members who have received
5 the ordinance..."

6 So, so --

7 "...GCORD08412 notices listed as Plaintiffs to this
8 litigation have refused to request a hearing or
9 recognize the tribal government and ordinance..."

10 So forth.

11 "Those members who have requested hearings have yet
12 to exhaust remedies because the hearings have not
13 been held yet."

14 All right. So did your document that you sent request a
15 hearing?

16 MS. BOLAND: It does, Your Honor.

17 THE COURT: Show me that.

18 MS. BOLAND: Actually, what it says, Your Honor, is
19 that -- "Please provide due process."

20 It doesn't appear that a hearing is permitted. As you
21 will see, it lays out that actually hearings aren't actually

22 offered in the original notice. But it says to the extent

23 that this Court --

24 THE COURT: Okay, hang on a minute. Says -- I'm

25 going back the -- where is the original notice in all of your

26

1 paperwork?

2 MS. BOLAND: All right, let's see. So that will be

3 attached to the original petition.

4 Starts at Page Appendix A-10.

5 THE COURT: All right. Where is the -- it says

6 (As read):

7 "Certified mail, return receipt requested, Elem

8 Indian Colony Order of Disenrollment, Answer

9 Required.

10 "Elem Indian Colony versus Ko-E-Ya John.

11 "Pursuant to..."

12 Such and such, such and such.

13 "...Banishment, and Enrollment (sic) Ordinance, a

14 copy of which is provided with this complaint, and to

15 the powers delegated to the Elem Executive Committee

16 by the General Council...you are hereby notified:

17 "Accusation: You are accused of violating the laws

18 of Elem in ways that were intended to or had the

19 result of interfering with the ability of the Tribe,
20 its elected officials, or the General Council to
21 freely, fully, and honestly exercise the sovereignty
22 of the Tribe in the best interest of the Tribe and
23 its membership...you are accused of the unlawful
24 actions or failures to act listed in Exhibit A to the
25 complaint."

27

1 And there is an Exhibit A that says (As read):
2 "Failed to uphold to Constitution and Bylaws...
3 Violated Elem Constitution...depriving members of due
4 process by punishing them for alleged insubordination
5 and taking away their voting rights..."
6 And so forth.
7 "Violated the Constitution...disenrolling members..."
8 It goes on and on in that vein.
9 So now we go back to the notice (As read):
10 "If you were found guilty...Right to Answer. You
11 have the right to provide a timely written response
12 to this Complaint. The answer must admit or deny
13 each accusation against you. Failure to deny an
14 allegation against you will be treated as an
15 admission that the allegation is correct. Your

16 Answer must be physically received by the
17 Secretary-Treasurer within 35 days after the
18 Secretary-Treasurer mailed the complaint to you as
19 indicated by the postmark..."
20 So forth. And then gives the address to send -- the post
21 office box to reply to.
22 "If you do not deny the allegations...your failure
23 will constitute an admission..."
24 So forth. I guess the -- is that it? Just this one page?
25 MS. BOLAND: That's correct, Your Honor.

28

1 THE COURT: All right. So, Mr. Duran, where on this
2 page does it say that you get a hearing?
3 MR. DURAN: It's not on that particular page,
4 Your Honor. It's actually -- excuse me --
5 THE COURT: I just want to say something.
6 MR. DURAN: Yes, Your Honor.
7 THE COURT: This document says "Right to Answer."
8 And tells you, you can answer. That's what you did. Right?
9 MS. BOLAND: We did.
10 THE COURT: Yeah. And it looks like it was timely.
11 And Ms. Boland is correct that your -- your own guy didn't
12 mention anything about being untimely. And you just have

13 blown it off. You've blown off the answer.

14 You didn't -- I don't know which side is correct in this,
15 this dispute, but to me, this stinks. You know that? I'm
16 just going to tell you: It stinks.

17 So here's what we're going to do. I'm not going to rule
18 on this. I'm going to let you (Indicating) file a new
19 petition, and you lay out all this in great detail.

20 MS. BOLAND: I will, Your Honor.

21 THE COURT: All right? And then we can have another
22 motion. And you ought to go back and tell those people --
23 maybe we're going to have an evidentiary hearing on the
24 jurisdiction of this Court to get into this mess, and see.
25 But this is -- this is -- this is not the way to run a

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1 railroad. One of these sides is not right.

2 Ms. Boland knows the facts. And she's kind of outdone you
3 left and right here. Next time you ought know the facts. And
4 bring witnesses that know the facts.

5 MR. DURAN: (Nods head)

6 THE COURT: Somebody here has not been telling me the
7 truth.

8 So, Ms. Boland, you go back. How many days do you need to
9 do the best job you can?

10 You still are going to have to convince me I got
11 jurisdiction. I'm not so sure of that. But, but you've
12 raised a lot of concerns, and I want to give you the absolute
13 fairest possibility.

14 And next time, Mr. Duran -- by the way, I'm ordering you
15 to send me a copy of that declaration.

16 MR. DURAN: I was going to do that today, Your Honor.

17 THE COURT: Because now I'm not so sure I trust what
18 you told me. I want to see a copy of that signed declaration.

19 I want you to send that to me. And when I see

20 Mr. What's-his-name, he's going to tell me when he signed it.

21 So you should put that to me in the mail tomorrow so I

22 receive it by Monday, next Monday.

23 MS. BOLAND: Your Honor, I would like -- is it

24 possible to get 30 days? Or is that too far?

25 THE COURT: Twenty-eight days. I'll give you 28 days

30

1 from today.

2 MS. BOLAND: Thank you, Your Honor.

3 THE COURT: If I do 30, that falls on the weekend. I

4 don't know why lawyers like 30 days or ten days. It's got to

5 be a multiple of seven.

6 MS. BOLAND: Got it, Your Honor. Your Honor, may I

7 make one other statement?

8 THE COURT: Yeah, go ahead.

9 MS. BOLAND: The ordinance, when he made the
10 statement that he's never seen it before --

11 THE COURT: Seen what?

12 MS. BOLAND: He had never seen the ordinance before.

13 THE COURT: Yeah.

14 MS. BOLAND: The banishment ordinance.

15 THE COURT: Right, yeah.

16 MS. BOLAND: The whole reason he was substituted as
17 counsel is because that ordinance was submitted to the IBIA.
18 And the former legal counsel, when he saw that it was amended
19 to include disenrollment and banishment, withdrew as counsel.
20 That ordinance has been fully briefed by Mr. Duran at the
21 IBIA. He has submitted multiple filings in regard to that
22 ordinance. That ordinance is attached to the communications
23 that his client sent my client.

24 That ordinance has come up repeatedly in other legal
25 addition actions. It is attached to everything I have in here

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1 from the petition --

2 THE COURT: The one you are talking about that he
3 says he's never seen?

4 MS. BOLAND: Yes. And it was attached to the
5 petition, and it is attached to the communications that come
6 from his own client. So that ordinance has -- also on their
7 website.

8 And that ordinance is the subject of a blog post of their
9 in-house general counsel who also withdrew as counsel, saying
10 that once he saw that ordinance shift, that he was pulling
11 out.

12 So that ordinance is famously --

13 THE COURT: What is the name of that lawyer?

14 MS. BOLAND: His name is Tony Cohen. And the other
15 lawyer is named Lester Marston.

16 THE COURT: Mr. Marston, I have had in here many
17 times.

18 MS. BOLAND: Yes, Lester Marston.

19 THE COURT: Mr. Marston withdrew?

20 MS. BOLAND: Yes, he did, Your Honor. And this
21 (Indicating) is the substitution of counsel.

22 And specifically, Mr. Marston filed a declaration to the
23 IBIA stating that he no longer wanted to represent them
24 because of the amendments to that ordinance.

25 So to say that this ordinance has never been seen before

1 is patently false, Your Honor.

2 THE COURT: What do you say to that, Mr. Duran?

3 MR. DURAN: I -- Your Honor, um, I -- I -- I'm having
4 a bad day.

5 THE COURT: Well, you are. But I want you to -- I'm
6 giving you a chance to amend what you have said.

7 MR. DURAN: Yeah, it is possible that I have seen
8 that ordinance.

9 THE COURT: That's the best you can do?

10 MR. DURAN: I have seen the ordinance, Your Honor.

11 THE COURT: Well, why did you tell me otherwise?

12 MR. DURAN: Because I was looking at the other
13 ordinance from 2012.

14 THE COURT: You are up against a good lawyer,
15 Mr. Duran.

16 MR. DURAN: I -- I know that, Your Honor.

17 THE COURT: She is not going to let you get away with
18 BS.

19 MR. DURAN: Yes, sir.

20 THE COURT: And normally I would refer you for this
21 conduct to the committee that determines whether or not you
22 can even be a member of the bar of this Court, but I won't do
23 that yet. But if this kind of stuff happens again, you are

24 going to get referred.

25 MR. DURAN: (Nods head)

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1 THE COURT: Thank you for your diligence in this

2 case. I want you to go back and tell -- look. These, these

3 fights, I'm getting so many of these. These fights over the

4 casino money, they are very unseemly.

5 And it disturbs me that the -- really, the majesty of what

6 we used to call Indian law -- a term that developed with

7 attorney -- he was very respected guy -- named Cohen in the

8 Department of Interior, back in the thirties, forties, he

9 wrote the best book on this -- has been perverted to -- to

10 fight over casino money.

11 Now, you're telling me that your people all live on the

12 actual reservation. How long have they been there?

13 MS. BOLAND: They do. I'm sorry I'm getting

14 emotional, Your Honor, because I've been really invested with

15 these people for four years. And I was there on Friday. And

16 what's happening to -- by these people is just wrong.

17 I apologize, Your Honor.

18 THE COURT: Well, we're going to get to the bottom of

19 it. If I've got jurisdiction, we're going to get to the

20 bottom of it.

21 MS. BOLAND: I was there on Friday. There's 132
22 people, tribal people, who live on the reservation. They are
23 very poor. They don't get the casino -- they are not getting
24 any money. These people are living there without services.
25 And they are being -- at any moment, this order could be

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1 enforced. Just because the sheriff right now isn't enforcing
2 it, who knows what could change?

3 THE COURT: Why -- why is this habeas corpus? Why
4 isn't this like some kind of 1983 case? Subsection 42, 1983,
5 the denial of due process and taking away property rights and
6 all that.

7 Does the law say you can't do that? Or is that already on
8 file somewhere else?

9 MS. BOLAND: There isn't sufficient case -- there's
10 better case law -- the decision we made was that there's
11 better case law under 1303 to support protecting these
12 individuals.

13 And Your Honor, this -- this is the only forum available
14 at this point for these people --

15 THE COURT: You mean a 1983 case won't work?

16 MS. BOLAND: I will look into it, Your Honor.

17 THE COURT: Maybe it's not state action. "State

18 action" may not mean Indian action. It may mean -- maybe it's
19 like a different universe. All right.

20 MS. BOLAND: I will research it, Your Honor, to
21 see -- make sure we run down every potential legal theory.

22 MR. DURAN: Your Honor, if I may?

23 THE COURT: Yes.

24 MR. DURAN: It is -- it is tragic. I do not -- do
25 not deny that. And, and -- but this is unfortunately the

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1 world that --

2 THE COURT: But, you've got to tell me something.
3 She answered on time. And that piece-of-crap declaration that
4 you submitted doesn't come to grips with that. She answered
5 on time. The notice said "Answer." She answers on time. All
6 of them do. And they get disenrolled anyway.

7 And then you tell me the -- still in progress. But it's
8 been -- an order that says they're disenrolled. You know, you
9 know, I'd say your people -- your side's in a lot of trouble.
10 What do you want?

11 MR. BARKER: Your Honor, may I pass a note to
12 Ms. Boland?

13 THE COURT: What are you here for? Who are you?

14 MR. BARKER: I'm counsel for Ms. Boland's firm in a

15 related case.

16 MS. BOLAND: Mr. Duran is suing me --

17 THE COURT: Come up here, just come up here and
18 whisper in her ear.

19 MR. BARKER: Okay, Your Honor.

20 MS. BOLAND: Mr. Duran has filed a lawsuit against my
21 firm for a RICO -- for racketeering. It's coming up on
22 October 6th in front of you, Judge.

23 THE COURT: Me?

24 MS. BOLAND: Yes, he filed a racketeering case
25 against my law firm and says that I have orchestrated all of

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1 this, too. And he also has filed multiple threats of Rule 11
2 sanctions against me. I have multiple bar complaints they
3 have filed against me.

4 And so this has been an ongoing issue, just because I'm
5 helping these individuals.

6 MR. DURAN: Your Honor --

7 MS. BOLAND: So that October 6th RICO action that you
8 will be hearing, this is my legal counsel that I have had to
9 retain in order to defend against that case.

10 (Off-the-Record discussion between counsel)

11 MR. DURAN: Your Honor, if I may, I have nothing do

12 with the bar complaints. That is not my -- that occurred
13 before I was involved in this particular case.

14 With regard -- so the RICO, the RICO claims were filed
15 related to the activities that occurred after the -- after the
16 election of -- in November, 2014, where the bank accounts were
17 shut down, letters went out to various agencies to stop the
18 flow of money to go to my clients, who were the recognized --
19 who were elected, and were the recognized government.

20 MS. BOLAND: Your Honor, Mr. Barker pointed out to me
21 that it's only -- only habeas is the only statutorily
22 permitted way for a Federal Court to intercede in intertribal
23 matters. Therefore, 1303 is our only avenue of relief in this
24 matter.

25 THE COURT: What other cases are in our Federal Court

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1 that relate to this?

2 MS. BOLAND: That -- currently pending?

3 THE COURT: Yeah.

4 MS. BOLAND: The October 6th case is relat- -- it's
5 called Elem Indian Colony versus Ceiba Legal, LLP.

6 THE COURT: All right. But other than that case, are
7 there any other --

8 MS. BOLAND: No, there are not. That's the only

9 case, Your Honor.

10 THE COURT: Are there cases in state court?

11 MS. BOLAND: There is a case in state court that my
12 clients filed for defamation and false light. Those six pages
13 of boilerplate allegations don't have any facts.

14 I have clients who are -- a BART official; I have a client
15 who is a Highway Patrol Officer. I have a client who sits on
16 a board of a nonprofit. I have a client who works in a
17 hospital clinic, in administration. And to have these six
18 pages of embezzlement allegations, all sorts of
19 unsubstantiated allegations put out there is very detrimental
20 to my clients.

21 And so we have sought a defamation and false light claim
22 against those individuals in their individual capacities. We
23 have not had a ruling as of yet on the motion to dismiss filed
24 by Mr. Duran, there. And that case is currently pending in
25 Lake County.

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1 THE COURT: So you -- you are telling me that this
2 dispute does not -- your clients are not receiving any casino
3 money. Let's start there.

4 MS. BOLAND: That's correct.

5 THE COURT: What's motivating this, though? Are they

6 after the casino money?

7 MS. BOLAND: No.

8 THE COURT: They are not.

9 MS. BOLAND: My clients haven't been getting any

10 money from the Tribe for over five years. My clients

11 literally are people who are poor, living in trailers on the

12 reservation, who don't have access to medical care.

13 I was originally retained -- the way I've got to know

14 these people is I was brought in for eviction proceedings.

15 They were trying to kick them all out of the their homes. And

16 they were cutting off electricity and water to their houses.

17 So I got brought in by somebody that I knew, and I was able to

18 defend against that.

19 It then turned to them being disenfranchised. So they

20 have not been receiving money for many, many, many years.

21 It's been at least four years. And I can provide a

22 declaration on that.

23 THE COURT: Is that -- at the root, is that what they

24 are after, is the casino money?

25 MS. BOLAND: Can I speak?

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1 THE COURT: Go ahead.

2 MS. BOLAND: I'm a Native American. And I am from a

3 tribe that's very poor. I have never received a cent from my
4 tribe for education, for anything. But I am -- I'm a native
5 person.

6 To be told that I can't be a member of my tribe when I --
7 I know the language of my tribe, I sing for my tribe, I dance
8 for my tribe. That is my tribe. And to be told from one day
9 to the next that I can't be those people, and I can't live
10 where my family's from?

11 That is -- that is what's at the core. It's the culture
12 and the spirit of these people. It's not about money. And
13 these people (Indicating) are about money. They -- the way --
14 the way --

15 THE COURT: Well, how will it benefit them to kick
16 your clients off the reservation?

17 MS. BOLAND: It's a pool of money. \$1.1 million
18 comes in every year. If there are less people to per-cap it
19 to, then everybody who stays gets more.

20 THE COURT: I don't understand how that works.

21 MS. BOLAND: There's a pool of money. \$1.1 million
22 comes in from the California -- it's called the CGCC. It's
23 called a revenue sharing trust fund.

24 If one day you have 100 tribal members, then it's
25 distributed in a per-capita basis, then everyone would get,

1 let's say, \$100,000.

2 THE COURT: But you were telling me that your clients
3 don't want any of that money.

4 MS. BOLAND: That's true. But you asked me: How
5 does it benefit these individuals (Indicating) to keep them
6 out.

7 THE COURT: How does it benefit them?

8 MS. BOLAND: They, if now there's 45 less adults,
9 they all now get double the amount of money that they would
10 have received. And that's, in fact, what has happened.

11 THE COURT: Well, what is currently happening with
12 the money that should be going to your clients?

13 MS. BOLAND: They have now enriched themselves by now
14 giving themselves more money than they originally were
15 receiving.

16 THE COURT: But you told me that your clients didn't
17 get any money anyway, ever.

18 MS. BOLAND: My clients haven't gotten any money
19 since they were disenfranchised. I'll have to go back, but I
20 believe that occurred in 2011. And I'll provide a declaration
21 from my clients. So they haven't received money in over five
22 years.

23 And what's motivating this, Your Honor, is truly being

24 told from one day to next that: You cannot live where you
25 live, or receive any healthcare. You cannot be part of the

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1 Tribe. You cannot purport to be an Elem tribal member.

2 THE COURT: Well, what's happened to that money in
3 the meantime? The money that should have gone possibly to
4 your clients?

5 MS. BOLAND: It's called "per-capping," Your Honor.
6 It's called "per-capita distribution." Per-capping is done to
7 distribute the money in a per-capita basis based on the total
8 population of individuals.

9 So they have given themselves more money over the last
10 five years to account for the fact that more money is now
11 available to them because these 45 adults aren't receiving it.

12 THE COURT: Is any -- is that where Wells Fargo comes
13 in?

14 MS. BOLAND: I sent letters to various banks, asking
15 them to freeze the bank accounts. I did not attempt to access
16 funds. And this will be briefed in our RICO case.

17 My letters clearly state that there is a dispute, and
18 there's an administrative process that needs to be followed.
19 "Please do not distribute money to either faction until this
20 dispute can be heard through the IBIA."

21 THE COURT: And your faction are your clients in this
22 case.

23 MS. BOLAND: That's correct.

24 THE COURT: So it sounds like there is a dispute
25 about the money.

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1 MR. DURAN: Your Honor, if I may --

2 THE COURT: No, I want to hear -- Ms. Boland, it
3 sounds like there is a dispute about the money.

4 MS. BOLAND: Yes. My thinking, when I sent the
5 letter to various federal agencies, I also sent the letter to
6 HUD, IHS, EPA, BIA, because if this group of individuals are
7 limiting who is a member of the Tribe, and they believe they
8 have access to all the capital and programs, they will
9 continue to be emboldened, and they will never help my clients
10 who are tribal members.

11 And so I sent letters to all these various agencies,
12 saying: Please don't distribute money. Please hold off.
13 Please maintain the status quo until the administrative
14 process can run its course.

15 And that's the letter that he is talking about.

16 THE COURT: And what administrative process was that?

17 MS. BOLAND: The Bureau of Indian affairs is

18 reviewing the election of Respondents. The superintendent
19 found for Respondents.

20 We appealed to the Pacific Regional Director, who again
21 found for the Respondents.

22 And then we appealed to the IBIA, which is the Interior
23 Board of Indian Appeals, where the case is now pending. The
24 IBIA is considering on appeal whether the election was not --
25 not whether the election was proper, but actually whether the

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1 decision made by the Pacific Regional Director was proper.

2 And that case has been pending for some time.

3 Mr. Duran is the attorney of record in that IBIA case, and
4 is very aware of that case. And at issue in that case is the
5 ordinance that we are talking about here.

6 THE COURT: Is there an administrative proceeding
7 going on with respect to the money in escrow?

8 MS. BOLAND: No, there is not. Wells Fargo
9 determined, as Mr. Duran pointed out (Indicating), that they
10 would go ahead and -- I actually did not ask for the
11 interpleader action. It was their clients, asked for the
12 interpleader action. They were asking Wells Fargo to bring
13 that action. And then they settled that action, and they paid
14 \$17,000 in legal fees to have the money released.

15 So there's no -- they're fully funded; they are able to
16 pay for legal counsel, and able to distribute the money as
17 they please. We have no access to it or any ability to
18 challenge it any further beyond what we had tried to do.

19 THE COURT: All right.

20 Yes, Mr. Duran?

21 MS. BOLAND: That was a year and a half ago, by the
22 way.

23 MR. DURAN: Your Honor, what precipitated the
24 interpleader action was the letter that went -- basically said
25 that the folks that Ms. Boland represents were the Council.

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1 It was right at the top of the -- of the letterhead. Said
2 they were the Council, representing that my clients were the
3 interlopers. So that's what precipitated Wells Fargo to go
4 ahead and interplead the money.

5 As Ms. Boland said, the Central California agency of the
6 Bureau of Indian Affairs has recognized my client. The
7 Pacific Regional Director of Indian Affairs has recognized my
8 client.

9 In 2011, the culmination of eight separate appeals by both
10 the Browns and the Garcias is the Pacific Regional Director
11 issued another acknowledgment of the Garcia faction, not with

12 -- not with Agustin Garcia, but another Garcia, as the
13 recognized body of the Tribe.

14 I don't disagree with you, Your Honor. It is messy. I am
15 of Indian descent, myself. I am not proud of these -- of
16 these battles between tribal factions, whatsoever.

17 THE COURT: Did the Plaintiffs used to be in charge
18 of the Council?

19 MS. BOLAND: No.

20 THE COURT: Well, what -- well, then, what do you
21 mean -- who do you think should be on the Council, then? Who
22 do you think is the rightful Council?

23 MS. BOLAND: I believe that I represent -- so in the
24 RICO -- so this has 45 petitioners here (Indicating) but in
25 the RICO case, my co-defendants are the individuals who I

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1 believe were elected on November 8, 2014. A majority of the
2 tribal members elected them. Sixty individuals. That is
3 fully briefed in the RICO case. But those individuals I
4 believe are the rightful Executive Committee.

5 But as you will see when you get to that action, in fact,
6 I did not, as Mr. Duran has stated, did not write a letter
7 saying -- not acknowledging that there is another group and
8 that there is a dispute that needs to be administered by

9 administrative process.

10 I never said that: We are the sole group; please send the
11 money to us. That is absolutely patently false.

12 MR. DURAN: I'm not representing that she said that,
13 Your Honor. I'm representing that she represented to a
14 banking institution that they were the Council.

15 MS. BOLAND: Your Honor, these issues are a
16 distraction, I feel, because at the end of the day, the habeas
17 case should be in this court, under 1303.

18 The issues with regard to leadership that -- that is at
19 the IBIA. That's the appropriate forum. And we have appealed
20 appropriately to the IBIA in regards to that election.

21 Doesn't matter who the elected body is.

22 Under 1303 under the Poodry case and the cases we have
23 briefed, so long as there are a group of individuals who are
24 acting under the color of authority as the government of the
25 Tribe, and are attempting to detain based on alleged criminal

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1 action an Indian individual, this is the appropriate forum for
2 that.

3 THE COURT: Well, there is no detention yet. That's
4 why --

5 MR. DURAN: And under Poodry, Your Honor, looking at

6 the face of her complaint and looking at Clause 14, again, she
7 is saying that they are attempting to disenroll. The fact --
8 the facts --

9 THE COURT: That is true. I mean, I --

10 MR. DURAN: And we don't disagree with that. We
11 don't -- we've never disagreed -- we don't disagree that there
12 is an attempt. There's a disagreement --

13 THE COURT: I got a flat-out order from the -- she
14 showed me the order.

15 MR. DURAN: And the ordinance --

16 THE COURT: That's more than an attempt. That's a
17 done deal.

18 MR. DURAN: And the ordinance, itself, provides other
19 due process, Your Honor.

20 THE COURT: Well, you don't even know which one the
21 ordinance is. You're going to get your chance to -- I want
22 you to plead a very strong -- the strongest you can do, under
23 Rule 11.

24 MS. BOLAND: I will, Your Honor.

25 THE COURT: All right? And then we'll come back

1 here. So I'm going to put all this on hold until we -- not
2 hold, but you do that. I'm not going to make a ruling on

3 this, this petition.

4 MR. DURAN: And Your Honor, I will have Chairman
5 Garcia at any hearing, to -- to talk this over.

6 THE COURT: I think this is a case -- an unusual case
7 where we may wind up taking some -- but I have seen a number
8 of these cases, and it kind of has this pattern.

9 One group gets in control of the Council. And then in
10 order to stay in control, they disenroll as many of their
11 opponents as they can, for political reasons. And they fire
12 them from the jobs and the -- to cut off the money from the
13 casino. And it -- it -- that kind of looks like what's going
14 on here.

15 Your people (Indicating) got in charge, step number one,
16 just like -- I won't say that, but -- but step number one,
17 they get rid of the opponents. So they can't vote in the next
18 election. Then they're in for good, and the money, they've
19 got control of the money.

20 What would be wrong with me asking the Department of the
21 Interior through the Justice Department to help me sort this
22 out? In other words, they're bigger-picture experts on this.
23 I'm learning it as I go. What would be wrong with getting,
24 like, an amicus brief?

25 MS. BOLAND: I have no concerns with that,

1 Your Honor. I think as long as the amicus brief is clear as
2 to whether habeas relief can attach here, I think that would
3 be helpful.

4 And I have to be honest with regard to banishment. I'm
5 having a hard time seeing, because of the way the ordinance
6 defines banishment as a lesser included offense, unless and
7 until the people are actually kicked out of their home, is
8 that the point that banishment has, in fact, occurred.

9 And so I think -- I think there is a question. I do, I
10 believe that they have received an order of banishment
11 pursuant to the ordinance. And that beyond this order,
12 there's nothing further that needs to come for a sheriff to
13 act.

14 THE COURT: Well, I'm not sure you're right about
15 that.

16 MS. BOLAND: Right. I know.

17 THE COURT: But earlier -- I don't think you should
18 rest on that. I think you should make the stronger case. But
19 earlier, you said that they had been turned down for --

20 MR. BARKER: They have.

21 THE COURT: -- for medical services.

22 MS. BOLAND: They have. Uh-huh.

23 MR. DURAN: Your Honor, Respondent would not be
24 opposed to that, either. But I -- I do not think that -- I
25 think the -- the Justice Department may not want to -- may

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1 look at this as one of those situations where they don't want
2 to --

3 THE COURT: Well, it won't hurt for me to ask. Maybe
4 I'll ask. All right.

5 MR. DURAN: But we don't oppose that.

6 THE COURT: All right. I'm going to wind it up here.

7 You have 28 days from today to file your petition.

8 How many days after that do you want to file a renewed
9 motion to dismiss?

10 MR. DURAN: Well, Your Honor, right around that time
11 I'm leaving the country for -- I am going to be gone from the
12 17th of October to the 1st of November. So if I could have an
13 opportunity, an equal time --

14 THE COURT: All right, you have 28 days, so it will
15 be 56 days from today to file your motion to dismiss.

16 MR. DURAN: Thank you, Your Honor. And I will get
17 you your -- your declaration.

18 THE COURT: Please do. All right, good day.

19 MS. BOLAND: Thank you so much, Your Honor.

20 (Off-the-Record discussion between the Court and Clerk)

21 THE COURT: Actually, 50. I'm going to give you --

22 give you 29 days, because I want to get it back on a Thursday

23 track. And then 28 days on this side (Indicating).

24 MS. BOLAND: Your Honor, we did have a CMC scheduled,

25 as well.

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1 THE COURT: Yeah. We're not going to do anything on

2 that until we get the pleadings arranged. We're going to skip

3 the CMC for now, and put that off until I decide if I keep the

4 case or not. I don't know that yet.

5 MS. BOLAND: Thank you, Your Honor.

6 MR. DURAN: Thank you, Your Honor.

7 THE COURT: Yep.

8 (Proceedings concluded)

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CERTIFICATE OF REPORTER

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I, BELLE BALL, Official Reporter for the United

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States Court, Northern District of California, hereby certify

7

that the foregoing is a correct transcript from the record of

8

proceedings in the above-entitled matter.

9

10

/s/ Belle Ball_____

11

Monday, October 3, 2016

12

Belle Ball, CSR 8785, CRR, RDR

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Pages 1 - 12

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

ELEM INDIAN COLONY OF POMO)
INDIANS OF THE SULPHUR BANK)
RANCHERIA, A FEDERALLY)
RECOGNIZED INDIAN TRIBE,)

)
Plaintiff,)

)
VS.) NO. CV 16-03081-WHA

)
CIEBA LEGAL, LLP, ET AL.,)

)
Defendants.)

)
San Francisco, California
Thursday, October 6, 2016

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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Reported By: Pamela A. Batalo, CSR No. 3593, RMR, FCRR
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(Appearances continued on the next page)

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BY: MICHAEL V. BRADY, ESQUIRE

1 Thursday - October 6, 2016 12:00 p.m.

2 PROCEEDINGS

3 ---000---

4 THE COURT: All right. Now we're going to go to the
5 Elem Indian Colony vs. Ceiba Legal, 16-3081.

6 THE CLERK: Counsel, please state your appearances.

7 MR. DURAN: Jack Duran appearing for the Elem Indian
8 Colony.

9 MR. BARKER: Good morning, Your Honor. Ian Barker for
10 Ceiba Legal, and also here is Little Fawn Boland, who is a
11 principal of Ceiba Legal and also counsel for the petitioners
12 in the related case. As Your Honor observed a couple weeks
13 ago, there is reason to believe --

14 THE COURT: Who is this?

15 MR. BRADY: Good morning, Your Honor. Michael Brady.
16 I represent the individual defendants.

17 MR. DURAN: And also, Your Honor, Augustin Garcia,
18 chairman of the Elem.

19 THE COURT: All right. Welcome to you. You're one of
20 the parties?

21 MR. GARCIA: Yes, sir.

22 THE COURT: Any other parties present?

23 MR. BARKER: Your Honor, I just wanted to mention

24 that --

25 THE COURT: Other than Ms. Boland. She's a party.

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1 MR. BARKER: She is a party. She is prepared to
2 present on -- as you might have learned a couple weeks ago, she
3 knows as much about the background of this case as probably all
4 three of us combined, so she is prepared to come forward and
5 address any of the background matters if it would assist the
6 Court.

7 THE COURT: All right. It's your motion. Go ahead.

8 MR. BARKER: Well, Your Honor, I think our papers and
9 our reply briefs address what -- all the arguments that
10 Mr. Duran has brought forward. So unless Your Honor has any
11 particular questions, I think that covers it.

12 THE COURT: All right. Thank you.

13 Mr. Duran.

14 MR. DURAN: Yes, Your Honor.

15 First thing -- and I apologize for my -- the first thing
16 with regards to jurisdiction --

17 THE COURT: Last time Ms. Boland -- you had to talk
18 fast because she caught you in a number of misstatements, so be
19 careful this time.

20 MR. DURAN: Yes, Your Honor.

21 With regards to 12(b)(1) jurisdiction, the tribal dispute

22 doctrine does not apply in this particular issue because what
23 we're looking at is we're looking at RICO and Lanham and state
24 claims, and there is case law out there from Miccosukee that
25 basically says that the -- you look at pure issues of tribal

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1 law, and if it's a pure issue of tribal law, then that is
2 something that would be amenable to the tribal dispute
3 doctrine.

4 We're also looking at tribal sovereign immunity as not a
5 part of liability. Any immunity that defendants possess can be
6 stripped, and there are also non-members that are also parties
7 to this matter that would not have immunity.

8 THE COURT: How about on -- I'm talking about RICO
9 now -- on Noerr-Penninton.

10 MR. DURAN: On Noerr-Penninton, Your Honor,
11 Noerr-Pennington -- from our understanding of Noerr-Pennington,
12 Noerr-Pennington is a case that provides the opportunity for
13 individuals to assert their rights and provides protection from
14 them.

15 Our underlying case, with regards to the Noerr-Pennington
16 doctrine, is that the Noerr-Pennington doctrine doesn't apply
17 because the underlying litigation or the matter which sent
18 out -- which Ms. Boland sent out these letters to originated
19 from a tribal or a membership dispute related to an ordinance
20 that was instituted by the tribe in, I believe, 2015 or 2014.

21 And therefore, that underlying litigation -- we've
22 provided cases that demonstrate that the litigation and the
23 appeal process under the IBIA, as well as the intra-tribal
24 dispute doctrine, do not provide a remedy with the Department
25 of Interior --

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1 THE COURT: Let me ask you this. Somebody goes to
2 court to seek an order to impound funds until a dispute can be
3 resolved. So the party goes to the court. That's going to the
4 government to seek redress of grievance.

5 Redress of grievance comes from the First Amendment. That
6 is Noerr-Pennington. That's what you're suing over. You're
7 suing over their petitioning the government for redress of
8 grievance. All day long that is protected activity under
9 Noerr-Pennington. Seven days a week, all day long.

10 That's the essence of your case; right?

11 MR. DURAN: That is the --

12 THE COURT: That's the essence of your case, and it's
13 all protected by Noerr-Pennington. You say it's a sham.

14 MR. DURAN: I'm not saying the doctrine is a sham.

15 THE COURT: No. You're saying what they did was a
16 sham, but it's hard to see how that was a sham. They might not
17 have won in every turn, but they -- it's hard to see how you
18 could say going to court to try to get a stay of the status quo
19 until the thing could be sorted out was a sham.

MR. DURAN: Well, Your Honor, under the IBIA

regulations, intra-tribal disputes are not within the jurisdiction of the IBIA. And there is Pacific Regional Directors memo upon which Ms. Boland appealed on and appealed to the IBIA that basically said that those particular issues that encompass more than just the enrollment issue, including

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the federal acknowledgment of the Elem, including the denial of her attorney contract concerning the approval of the 638 contract for my client, the Elem, those were -- that was an intra-tribal dispute, and they had no jurisdiction over it.

And that's the -- and that's the -- that's the order --

THE COURT: Who does have jurisdiction over those claims?

MR. DURAN: Over intra-tribal disputes?

THE COURT: Yes.

MR. DURAN: The Elem tribe.

THE COURT: That's what she's saying about this lawsuit, and you're saying it doesn't apply. She's made that very point, that your RICO lawsuit should be brought in the tribal court, but then you're saying for that purpose, it does not apply.

MR. DURAN: Well, what we're saying, Your Honor, is that the tribe doesn't have a court right now. But what we're saying with regards to the intra-tribal dispute piece, that

19 remains with the tribe. And that goes all the way back,
20 Your Honor, to the alleged implementation of the ordinance and
21 the alleged disenfranchisement under the ordinance. Those are
22 all again with the Elem.
23 The RICO case is a case that is asking the Court to take
24 action and request damages for certain acts that were taken
25 apart from the intra-tribal dispute.

8

1 THE COURT: You get the last word.
2 MR. BRADY: Real quick, on the sham proceeding
3 argument, BI -- counsel is conflating two different concepts.
4 Disenrollment, which occurred in 2016, and disenfranchisement,
5 which occurred in 2014. BIA, the regulation he referred to,
6 does not get involved in the disenrollment side. It does get
7 involved in the disenfranchisement side.
8 And, in fact, the -- it's in our request for judicial
9 notice. It's the letter that goes to BIA that begins this
10 process. Here we are --
11 THE COURT: What is the point you're trying to make?
12 MR. BRADY: Pardon me?
13 THE COURT: Just tell me the point you're trying to
14 make.
15 MR. BRADY: The point is that BIA does have
16 jurisdiction to resolve disenfranchisement issues, and those
17 are what were tied up in the 2014 election.

18 THE COURT: Do you want to say something, Ms. Boland?

19 MS. BOLAND: Yes.

20 THE COURT: You've got to come up here so that
21 everyone can hear you.

22 MS. BOLAND: The March 1st, 2016, IBIA docket notice
23 and order setting briefing schedule states, "The IBIA will
24 address the Pacific Regional director's decision to affirm the
25 superintendent's decision to recognize the Garcia Faction."

9

1 That's the issue before the IBIA as stated in their notice of
2 docketing, and it's not about membership or disenrollment.
3 It's about review --

4 THE COURT: Is that in response to something you filed
5 or the other side filed?

6 MS. BOLAND: We filed the appeal and then the court
7 set it for docketing, and it identified the issue it would be
8 reviewing. So that's the issue before that court.

9 THE COURT: All right. Thank you.

10 MR. DURAN: Your Honor, if I may?

11 THE COURT: Yes.

12 MR. DURAN: I would like to point out that in
13 Ms. Boland's pleading before the IBIA, she has several pages
14 related to disenrollment in the actual pleading. So it is
15 intertwined with the other issues that she has raised before --

16 THE COURT: Let's say she puts in Issue A and Issue B,

17 and let's say only Issue A is properly there. You're saying

18 that the whole thing can be treated as a sham because part of

19 it is not recognized by the BIA?

20 MR. DURAN: Well, what we have to look at, Your Honor,

21 is the sequence of events here. Okay. And I don't want --

22 THE COURT: You should answer my question. I don't

23 think that is what Noerr-Pennington refers to as a sham. It

24 has to be totally baseless, not partially baseless.

25 So, see, you're dodging the issue. Ms. Boland comes up

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1 here to make a good point, and once again, you run off to some

2 stray issue.

3 All right. Go ahead. I'm going to let you make your

4 point, but I recognize -- it's just like those presidential

5 debates. No one ever answers the question. I wish somebody

6 would answer the question.

7 MR. DURAN: Your Honor, everything is connected. The

8 enrollment ordinance was issued in 2014. The enrollment

9 ordinance allegedly led to the disenfranchisement. The

10 disenfranchisement led to the non-voting --

11 THE COURT: What then is it that the BIA said they

12 would entertain?

13 MR. DURAN: They're looking at these issues,

14 Your Honor.

15 THE COURT: Well, then how can it be a sham?

16 MR. DURAN: Well, because the case law that I provided
17 shows that when there are individuals that have been
18 disenrolled or punished -- and right now we're talking about
19 disenfranchisement. They're characterizing it as a complete
20 disenrollment, and we're not characterizing it as that because
21 the tribal -- the general counsel has not made a final decision
22 on either banishment or disenrollment, and that's our position.
23 They have a different position, Your Honor.
24 And what we're saying is that because it is an
25 intra-tribal dispute and a punishment was put in by the tribe

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1 itself, that the IBIA -- neither the Pacific Region or the IBIA
2 has jurisdiction, and that jurisdiction rests again with Elem.

3 THE COURT: All right.

4 Did you want to say anything more, Ms. Boland.

5 MS. BOLAND: Yes. I just want to make one last
6 comment, Your Honor. The mention of disenrollment in the IBIA
7 case was in regards to --

8 THE COURT: The mention -- you got to say -- who is
9 it -- is that you talking?

10 MS. BOLAND: Yes. In the appeal, he said that --

11 THE COURT: Or is this somebody else talking?

12 MS. BOLAND: Yes. He said that we submitted a brief
13 in regards to disenrollment when I just read you what the
14 notice of docketing has stated. The only mention of

15 disenrollment in that document is in regards to the effect of
16 the automatic stay that the appeal had taken. It's not asking
17 that court to review any membership issues, which we concede is
18 not within the pursue of the IBIA. It only reviews recognition
19 decisions by regional directors. And so we concede that.

20 And, Your Honor --

21 THE COURT: Did you give me a copy of this thing?

22 MS. BOLAND: Yes. It's in the record.

23 THE COURT: Is it in the paperwork?

24 MS. BOLAND: Yes, it is.

25 THE COURT: I don't need to see it. I just want to

12

1 know that we got it.

2 MS. BOLAND: It's absolutely there, Your Honor. And
3 it's -- it was one of the exhibits to my declaration. I can't
4 remember the exhibit number right now.

5 THE COURT: All right. I want to just say something.

6 Mr. Duran, I have been -- I've practiced for a long time
7 and then I've been in this job a long time. Ms. Boland is a
8 good lawyer. I don't like it when someone sues a good lawyer
9 over RICO like you have done. It's not right. Lawyers in this
10 district don't do things like that. And your client shouldn't
11 have done a thing like this. You're in some hot water with me.

12 I don't know when I'm going to get a ruling out on this.

13 I've got some things to study. I'm going to give you maybe a

14 couple of weeks to get this -- I understand you're trying to

15 settle this case; is that right?

16 MR. DURAN: We're trying to do it, Your Honor.

17 THE COURT: I urge you to settle this case; otherwise,

18 I'm going to get a ruling out that you may not like, Mr. Duran.

19 MR. DURAN: Thank you, Your Honor.

20 THE COURT: All right. That's all for today. Thank

21 you.

22 (Proceedings adjourned at 8:46 a.m.)

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3 CERTIFICATE OF REPORTER

4 I certify that the foregoing is a correct transcript

5 from the record of proceedings in the above-entitled matter.

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7 DATE: Friday, October 14, 2016

8

9 /s/ Pamela A. Batalo

10 Pamela A. Batalo, CSR No. 3593, RMR, FCRR
11 U.S. Court Reporter

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