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11
12 UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14 FRESNO DIVISION

15 RONALD NAPOLES, LAURINE NAPOLES,
16 RICK NAPOLES, MARK NAPOLES,
17 JAMES NAPOLES, DEBRA WILLIAMS
18 WADE WILLIAMS,

19 Petitioners,

20 v.

21 DESTIN ROGERS, BRIAN PONCHO,
22 EARLEEN WILLIAMS, WILLIAM BILL
23 VEGA [BISHOP PAIUTE TRIBAL
24 COUNCIL, IN THEIR INDIVIDUAL
25 CAPACITIES, BISHOP PAIUTE TRIBAL
26 COURT AND TRIBAL COURT JUDGE BILL
27 KOCKENMEISTER, IN HIS INDIVIDUAL
28 CAPACITY,

Case No. 1:16-AT-10150

**EX PARTE APPLICATION FOR
EMERGENCY INJUNCTIVE RELIEF-
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE; MEMORANDUM OF POINTS
AND AUTHORITIES; [PROPOSED]
ORDER**

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

29 Respondents

30 MOTION FOR EMERGENCY INJUNCTIVE RELIEF

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Rules

¹⁵ Federal Rules of Civil Procedure 65 et seq. 1

1 **COME NOW Petitioners RONALD NAPOLES, LAURINE NAPOLES, RICK**
2 **NAPOLES, MARK NAPOLES, JAMES NAPOLES, DEBRA WILLIAMS AND WADE**
3 **WILLIAMS** and, pursuant to Rule 65 of the Federal Rules of Civil Procedure, respectfully
4 submits this emergency motion and moves for this Court to enter a Temporary Restraining Order
5 against Respondents or, alternatively, after notice to Respondents and a hearing, enter a
6 Preliminary Injunction against Respondents.

7
8 The injunctive relief sought by Petitioners (*see Request for Relief infra*) is to enjoin the
9 continued prosecution of Petitioners in the Bishop Paiute Tribal Court(the "Tribal Court"), to
10 vacate and restrain Respondents from enforcing the Temporary Protection Order entered without
11 lawful authority by Respondent Kockenmeister on November 22, 2016 and extended indefinitely
12 on December 19, to enjoin Respondents from entering upon, altering or beginning construction or
13 development on Petitioners' land or otherwise fencing or restricting them from it, and to enjoin
14 the issuance of further citations, legal process, or the proceedings set to begin in Bishop,
15 California on or after March 21, 2017. Thus, Petitioners request an immediate hearing on their
16 request for injunctive relief before this Court. All statements of fact and supporting exhibits
17 contained in the *Petition for Writ of Habeas Corpus Under the Indian Civil Rights Act, 25 U.S.C.*
18 § 1303 are expressly incorporated for purposes of this emergency motion.

19
20 In support of their motion, Petitioners advise the Court as follows.

21
22 **I. INTRODUCTION**

23
24 If Respondents are not restrained immediately, Petitioners will suffer permanent
25 deprivation of their lawfully assigned tribal lands and, as a result of the erroneous terms of the
26 Temporary Protection Order entered by Respondent Kockenmeister, risk of physical arrest or

1 harm, interference with employment and ability to live and travel securely within and outside the
2 boundaries of the Bishop Paiute reservation. More specifically, Petitioners ask that the Court (a)
3 Issue an Order vacating and enjoining Respondents from enforcing the Temporary Protection
4 Order originally entered in November 22 and freezing Respondent's from further action with
5 regards to the disputed lands until the habeas corpus petition can be heard. A proposed order is
6 attached for the Court's convenience. Respondents are being punished and deprived of liberty
7 and property in retaliation for pursuing recovery of family land assignments that were rightfully
8 assigned to Petitioners through tribal custom, tradition and the mandates of the 1962 Ordinance
9 Governing Assignments on the Bishop, Pig Pine and Lone Pine Reservations (hereinafter, "1962
10 Ordinance"), the principal document upon which land assignments are governed within the
11 Owens Valley; and the decisions and authority of the Owens Valley Board of Trustees
12 (hereinafter "OVBT"), the governing entity with exclusive authority over recognition, approval
13 and changes of land assignment. The Petitioners have been ordered to vacate the assignments
14 and face criminal sanction, for trespass, which has been ordered by the Court. The punishment
15 Respondents imposed constitutes detention, as contemplated by ICRA.

16 Petitioners have exhausted all available tribal remedies by first challenging a Trespass
17 order to the Tribe's Appellate division, the Intra-Tribal Court of Southern California (ITCSC),
18 which reversed the lower court's finding of trespass and remanded the case back to the Tribal
19 Court to determine the underlying status of the land and Bishop Paiute Tribal Council's authority
20 over it. The Tribal court, however, ignored and continues to ignore and take steps to circumvent
21 the Appellate order. The Tribal Court first ordered the case dismissed at the request of the
22 Defendant, Bishop Tribal Council, entering the dismissal with prejudice.

1 Then immediately after entering the dismissal, Respondents immediately renewed their
2 efforts to punish Petitioners and force them off their land, instituting a variety of threats,
3 citations, and actions. Additionally, Respondent Kockenmeister entered, *sua sponte* and *ex*
4 *parte*, without trial, evidentiary presentation, or other elements of due process required under
5 ICRA and the laws of the Bishop Paiute Tribe, a Temporary Protection Order (hereinafter
6 “TPO”). The TPO completely restrains Petitioners from entering upon the land, threatens them
7 erroneously with federal criminal prosecution under the Violence Against Women Act (which
8 has no applicability to the underlying facts involved with this case), directs law enforcement
9 even outside the tribal boundaries to recognize and enforce the terms of said order under VAWA,
10 and denies other fundamental rights wholly unrelated and inappropriate to the nature of the
11 situation. Linking Petitioners with domestic violence creates a dangerous distortion of VAWA’s
12 provisions and the very real dangers present to those actually subjected to domestic violence
13 within Indian country and puts Petitioners at risk of harm, including but not limited erroneous
14 physical arrest or intervention and other problems that may be created by law enforcement who
15 could be misled by the Temporary Protection Order’s extraordinarily wrongful and egregious
16 terms.

17 In an effort to seek relief from the latest round of actions, Petitioners prepared and filed a
18 Petition for Writ of Mandamus for consideration by the Bishop Paiute Appellate Court. Upon
19 filing it, however, Petitioners were informed that the Council terminated its relationship with the
20 ITCSC following its decision on their earlier trespass action, rendering Petitioners without any
21 other forum or available remedies to challenge Respondents’ illegal actions. Although the
22 Bishop Paiute Appellate Court exists yet in name and law, and there are Rules of Appellate
23

1 Procedure, no judges presently constitute the court; no plan is in place for the appointment
2 of said judges; and Respondents themselves, who have demonstrated a persistent intention to
3 take Petitioners' land and restrain their liberty without adherence to any principles of federal or
4 tribal law, the authority of the ITCSC, the Bishop Paiute Appellate Court, the General Council or
5 the Owens Valley Board of Trustees, are exclusively in control of determining whether, when,
6 and how to reconstitute that court.

7
8 On December 19, 2016, Respondent Kockenmeister issued an order continuing the
9 December 20, 2016, hearing and staying the proceedings of the tribal court "pending the
10 empanelment of the Appellate Court." Order of Continuance and Stay Pending Appeal. The
11 order acknowledges that the Appellate Court has yet to be empaneled. Although the initial TPO
12 was scheduled to expire on December 20, 2016, well beyond the 10-day period authorized for Ex
13 Parte Orders to stay in effect by law, Respondent Kockenmeister extended its provisions, thereby
14 continuing the deprivation of liberty and taking of Petitioner's land without due process,
15 jurisdiction, adherence to the laws of the Bishop Paiute Tribe or Indian Civil Rights Act.
16 Petitioners presently have no remaining remedy within the Bishop Paiute legal system and will
17 continue to suffer irreparable harm if the relief sought in this proceeding is not granted in
18 expedited fashion. Respondent Kockenmeister continued the December 2016 hearing on the
19 TPO until March 21, 2017.

20
21
22
23
24 **II. THE COURT IS THE CORRECT VENUE FOR RESOLVING THIS DISPUTE**
25 **JURISDICTION AND VENUE**

26 This Court has subject matter jurisdiction over this action pursuant to 1303 et seq.

1 Petitioners, all tribal members, hereby file the accompanying "Petition" alleging causes of
2 action against Respondents and therefore is informed, believes, and thereon alleges that
3 Respondent have sufficient contact with the events herein alleged.
4

5 Venue is also proper here as the property, parties, and legal issues which are the subject of
6 this action are located on and inextricably tied with the Tribe and its sovereign territory. See
7 Tribal Land Ordinance, (Ex A to the Petition); *International Shoe v Washington*, 326 U.S. 310,
8 (1945); *Montana v United States*, 450 U.S. 544, 565-566 (1980).

10
11 **III. THE PARTIES**
12

13 1. Petitioners Ron Napoles, Laurine Napoles, Rick Napoles, Mark Napoles, James
14 Napoles, Debra Williams, and Wade Williams are all enrolled members of the Bishop Paiute
15 Indian ("Bishop Tribe"), a federally recognized Indian Tribe headquartered in Bishop,
16 Inyo County, California.
17

18 2. Respondents, Bishop Tribal Council, are the elected Executive Committee of the Tribe.
19 Respondents located within the Tribe's exterior reservation boundary, in Bishop California, Inyo County.
20

21 3. Respondent, Bishop Tribal Court is the Tribe's court, a court of general
22 jurisdiction. The Court is located in Bishop, California, Inyo County.
23

IV. FACTS
24

A. General Background Prior to the Events Giving Rise to this Emergency Motion
25

26 1. Petitioners are direct descendants of Ida Warlie who received in or about July of
27 1941, a family assignment of 11 lots in exchange for her agreement to relocate with her family to
28

1 the Bishop Paiute Reservation. Ida Warlie Community Land and Building Assignment, July 22,
2 1941 (Habeas Corpus Petition, Exhibit A).

3 2. Following discussions with agents of the federal government, heads of households
4 like Ida Warlie gave up interests in land, homes and improvements in Sunland, Inyo County,
5 California in exchange for family assignments of land located within the present boundaries of
6 the Bishop Paiute Reservation. See Ida Warlie Community Land and Building Assignment, July
7 22, 1941 (Exhibit A to Habeas Corpus Appendix). Family land was assigned according to
8 household size, and the purpose was to provide a means of livelihood and eligibility for housing
9 funds for the benefit of individual members of the Bishop Paiute Tribe. 1937 Act. See also 1962
10 Ordinance Governing Assignments on Bishop, Big Pine and Lone Pine Reservations ("In the
11 past, the size of assignments on the Bishop, Big Pine and Lone Pine Reservations generally were
12 determined by the size of the assignee's family. The assignments were granted for the purpose
13 of providing a home and acreage to aid in supporting a family.").

14 3. Through these land exchanges and grants of family and individual assignments,
15 the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony was founded and
16 located within the present boundaries of the Bishop Paiute Reservation.

17 4. The land was and is held in trust by the United States for the livelihood, welfare
18 and benefit of the members of the Bishop Paiute community, never for the development or
19 business purposes interests of the Bishop Paiute Tribal Council or other entity claiming
20 governmental authority. Indeed, the Tribal Council did not even exist at the time these original
21 individual and family assignments were granted and consolidated into the land base that lies
22 within the boundaries of Bishop Paiute reservation.

1 5. Like other California Tribes, the Bishop Community was and continues to be
2 governed by consensus through its General Council of all members.
3

4 6. Despite their recent efforts to assert themselves to the contrary, under the custom,
5 tradition and laws of the Bishop Paiute Tribe, the powers of the Tribal Council are limited and do
6 not extend to decisions about whether to start or expand particular economic development
7 projects, or the granting, transfer, rescission or other decision-making with respect to family
8 and/or assigned land.
9

10 7. Petitioner, Laurine Napoles, was listed on the original assignment for the purpose
11 of determining its household size, as was her sister Geraldine Pasqua, who is now deceased, and
12 four other siblings.
13

14 ///

15 8. In 1962, a land assignment ordinance was enacted by the members of the Bishop,
16 Big Pine, and Lone Pine Reservations “in order to promote the general welfare, safeguard our
17 interests, conserve and develop our lands and resources.” Preamble, Ordinance Governing
18 Assignments on Bishop, Big Pine and Lone Pine Reservations (1962).

20 9. That ordinance validated all existing assignments like that of Ida Warlie.
21 Ordinance, Article I, Section A(1). It also provided procedures for other tribal members to apply
22 for assignments of “unassigned tribal land,” to exchange or relinquish land for reassignment to
23 another tribal member as well as for land to be passed down through the generations through
24 designation by assignees of those they would like to receive the assignment upon death and
25 preference rights for those who are named as beneficiaries or represented in the original
26 assignment. 1962 Ordinance II(D)(5)(6), (9) & (10)(d).
27

1 10. Well-established principles of custom and tradition extending from the inception
2 of the Bishop Paiute Community to the present recognize family land and its orderly passing on
3 through the generations to qualified family members, and the tribal court record in the first
4 trespass action is replete with examples where such family land has been recognized and passed
5 on to surviving family members throughout the Bishop Paiute community. See Habeas Corpus
6 Appendix, Ex C, *Bishop Paiute Tribal Council v. Bouch et al.*
7

8 11. There is no lawful provision for assigned land to be converted into land for
9 economic development or any other purpose at the hands of the Bishop Paiute Council or any
10 other government entity. All provisions provide for and regulate the validation, exchange,
11 relinquishment, availability and assignment of land from one tribal member to another. When
12 land becomes unavailable to or is relinquished by one head of household or individual, it
13 becomes available for reassignment to another family member or individual (where there are no
14 family members eligible to receive the assignment). See Petition Ex. B, 1962 Ordinance.
15

16 12. There is no provision in the 1962 ordinance or any other authority for land to
17 escheat to the Tribal Council or other entity of the tribe. Id.
18

19 13. Decisions over these actions are exclusively within the authority of the Owens
20 Valley Board of Trustees, not the Bishop Paiute Tribal Council or any entity of the Bishop Paiute
21 Tribe. (Id. 1962 Ordinance, Governing Body). The OVBT was created and recognized by the
22 Trust Agreement for Relief and Rehabilitation Grant to Unorganized Bands, approved April 17,
23 1939, by the Acting Commissioner of Indian Affairs. "It was to this recognized governing body
24 and their successors in office that the Commissioner granted and conveyed the said funds in
25
26
27
28

1 trust, subject to specified conditions stated in the Trust Agreement. Therefore, the recognized
2 governing body of the Owens Valley Indian Bands is the Owens Valley Board of Trustees.” Id.
3

4 14. Even where surviving family members are not available or do not qualify for
5 assignment, the land does not escheat to the Tribal Council or other tribal entity. Provides the
6 ordinance: “In the event those individuals in the above categories do not qualify for an
7 assignment under terms of this ordinance, the available acreage may be reassigned to any eligible
8 member of the Owens Valley Paiute Shoshone Bands.” Id at 1962 Ordinance II(D)(10).

9 15. Following the adoption of the 1962 Ordinance, Ms. Warlie’s family assignment
10 was validated by resolution of the Owens Valley Board of Trustees. The assignment included
11 Lots 4-11 of Block 3, including the Lots 6 and 7 that are at issue in numerous proceedings before
12 the Bishop Tribal Court and Court of Appeals, and Lots 2-4 of Block 9, as mapped by the Bureau
13 of Indian Affairs in 1960. See Appendix at Ex.D,

14 16. Prior to and after Ms. Warlie’s death, the OVBT recognized and validated its
15 assignment to several of her children.

16 17. In or around 1969, Josephine Paradise, daughter of Ms. Warlie, was granted by
18 resolution of the OVBT an assignment in her name of Block 3, Lot 4 and 5.

19 18. On or about April 14, 1975, and in accordance with the custom and tradition
20 regarding succession, Karen Gail Manuelito, one of Ms. Warlie’s grand-daughters and the
21 daughter of Josephine, was granted by resolution of the OVBT an assignment in her name of
22 Block 3, Lots 4 and 5, in her name.

1 19. In or around 1965, Petitioner, Laurine Napoles, daughter of Ms. Warlie and
2 mother of Ronald, Rick and Mark Napoles and Debra Williams, was granted by resolution of the
3 OVBT an assignment in her name of Block 9, Lots 2 and 3.
4

5 20. Geraldine Pasqua, another of Ms. Warlie's daughters, who was also listed on the
6 original assignment, became the head of household for Assignment 40, Block 3, Lots 6, 7, 8, 9,
7 10, 11, and Block 9 Lot 4. Her interest in the family assignment was officially recognized by the
8 Owens Valley Board of Trustees on November 15, 1977. Resolution No. 127, November 15,
9 1977. Appendix Ex. E..
10

11 21. Prior to her death in 2016, Ms. Pasqua executed an intent to relinquish interest in
12 certain of her lots to various of the Petitioners, her great nieces and nephews and the next
13 surviving relatives who would be eligible for said land.
14

15 22. Pursuant to that relinquishment, Petitioner Rick Napoles applied for the transfer
16 of Lots 10 and 11 to his name.
17

18 23. Petitioner Debra Williams applied for Lots 8 and 9.
19

20 24. Petitioner Ronald Napoles applied for Lots 6 and 7.
21

22 25. The applications for Debra Williams and Rick Napoles were moved forward by
23 the Assignment Committee and Bishop Paiute Council, and approved by the OVBT.
24

25 26. The application for Ronald Napoles on Lots 6 and 7 was not advanced, as it
26 should have under the laws and customs of the tribe.
27

28 27. In 2006, members of the Tribal Council unilaterally and against all lawful
29 authority decided to seize land located in Block 3, Lots 4 and 5, 6 and 7 for economic
30 development, putting into motion the circumstances ultimately necessitating the filing of this
31

1 action. Specifically, the proposal was for the expansion of the casino and parking and
2 construction of a hotel.

3 28. On or about July 3, 2007, the Bishop Tribal Council took action to cancel the
4 assignment of Karen Gail Manuelito, and the OVBT officially cancelled it. Resolution No.
5 OVBT-2007-41. July 27, 2007. Upon cancellation, under the terms of the 1962 Ordinance the
6 land should have become available for assignment to another family member. Petitioners Ron
7 Napolis, James Napolis, and Wade Williams are among those who would be eligible.

8 29. On May 7, 2013, then Chairman Chad Delgado informed Petitioners and Ms.
9 Pasqua that surveyors would be working on establishing boundaries and fencing for expanded
10 casino parking and events. Letter from Chad Delgado, May 7, 2013. Appendix at Ex. F.

11 30. Petitioners and the late Geraldine Pasqua responded on May 29, 2013 denying
12 access to surveyors for the purpose of said activity. ("Please be advised that access for surveying
13 the assignments comprising Block 3 Lots 4-10 for the intent of fencing is denied. Additionally,
14 use in whole or part of any of the aforementioned lots for any casino/tribal related activities up to
15 and including additional casino parking and special event promotions is also denied.") *Id* at Ex.
16 G, Letter from Geraldine Pasqua et al. to Bishop Paiute Council, May 29, 2014.

17 31. Petitioners' correspondence also indicated that "the fact that the casino has never
18 required additional land for any past 'events,' and the timing of this sudden need for fence
19 'separation,' indicates that this action may be an attempt to enforce the tribe's bogus land claim
20 prior to a upcoming vote on casino expansion." *Id*.

21 32. On or about July 9, 2013, and in accordance with the laws, tradition and customs
22 of the Bishop Paiute Tribe, the matter of the building of a hotel and casino expansion that

1 Respondent Tribal Council is now pushing to build on Block 3 Lots 4 and 5, 6 and 7 was put to a
2 referendum vote of the General Council, the governing entity bestowed with authority for such
3 decisions. The majority voted against the proposal. Sample Ballot and Vote. Id at Ex. H.
4

5 33. No other votes of the General Council have taken place since then regarding the
6 casino and hotel expansion or other activity on the land in question.
7

8 34. Until these efforts of recent contingents of the Bishop Paiute Tribal Council to
9 build the hotel and casino expansion upon their land began and Petitioners were forced off or
10 fenced out of their land, Ida Warlie, her children, grandchildren and great grandchildren have
11 continuously occupied the family land described above since it was originally granted to them in
12 1941.
13

14 35. Petitioners have had at all times possessed under well-established principles of the
15 law applicable within the boundaries of the Bishop Paiute Tribe the lawful right to use and
16 occupy the land in question. They are the rightful occupants of Lots 4 and 5, and 6 and 7, just as
17 they are on the remaining lots of Ida Warlie's family assignment that are not at issue in this case,
18 as direct descendants to Ida Warlie with interest in a family assignment existing since the
19 inception of the creation of the Bishop Paiute Reservation, passing properly through the
20 generations based on the terms of the 1962 Ordinance, the decisions of the Owens Valley Board
21 of Trustees, and tribal law and custom.
22

23 36. By no law or custom applicable within the Bishop Paiute Tribe, does Respondent
24 Tribal Council have proper authority to exercise dominion over Block 3, Lots 4 and 5, Lots 6 and
25 7, or any other family or assigned land issued for the welfare, homes, and sustenance of tribal
26 members. Like other federally recognized tribes in California, the Tribal Council has limited
27

1 administrative functions. The entity did not exist at the time the original family assignment was
2 granted to Ms. Warlie or in close proximity to the formation of the Bishop Paiute Community.
3 Exclusive governance authority over these matters lies with the General Council, that has the
4 primary governance authority over matters internal to the Bishop Paiute Community, and the
5 Owens Valley Board of Trustees that has exclusive authority over land assignments existing
6 within the Bishop, Big Pine and Lone Pine Paiute bands.
7
8

9 37. The land in question, in particular Block 3 Lots 6 and 7, and Petitioner's right to
10 their use and occupancy rights of said land was the subject of earlier trespass citations that
11 resulted in decisions of this court in *Bishop Paiute Tribal Council v. Bouch et al.*, B-AP-1412-6-
12 12. Appendix at Ex. C.
13

14 38. In that case, there was an extensive factual presentation and record established in
15 the tribal court on the issue of who had use and occupancy rights to the land in question and
16 whether the Tribal Council had authority, thereby, to trespass Petitioners and other family
17 members and guests from this land.
18
19

20 39. Petitioners Ron, Rick, Debra and Laurine Napoles were parties in that earlier
21 action. Petitioners Mark and James Napoles and Wade Williams are brothers and nephews of
22 Ron and Rick, descendants also of Ida Warlie, possessing their own interest in being upon the
23 land in question and invited by other authorized members of the Ida
24 Warlie/Pasqua/Napoles/Williams family to be upon it too.
25
26

27 40. In that action, Respondent Kockenmeister issued a decision on June 19, 2014
28 affirming citations for Trespass against several Petitioners and other friends and family members

1 for their presence and activities on their family land. Appendix Ex. I Findings of Fact,
2 Conclusions of Law and Judgment, June 19, 2014.

3 41. From the inception of the first trespass action against Petitioners, Respondent
5 Kockenmeister has demonstrated a significant confusion of roles and inability to act as an
6 impartial and independent judicial officer. In the first decision on the matter, he took the
7 position the tribal court lacked jurisdiction to adjudicate land disputes but nonetheless affirmed
8 the citations for trespass in deference to what the Bishop Paiute Tribal Council had asked him to
9 do. Appendix at Ex. I, *Bishop Paiute Tribal Council v. Bouch* et al., Findings of Fact,
10 Conclusions of Law and Judgment at 2-3. In the hearing, he explained to Petitioners and their
11 family, “Once again I cannot, if the Tribal Council tells me it’s their land, there’s nothing I can
12 do about that. Let me say that, and I’m not disagreeing with you, I’m telling you I have no
13 authority to make that determination. . . And I have to accept the Tribal Council’s position that
14 it’s their land at this point in time. . . [I]f the Tribal Council comes and tells me this is our land I
15 can’t say no it’s not, I don’t have that kind of authority.” Transcript, at 4-5, Bishop Paiute Tribal
16 Court, June 17, 2014. He conducted no reasonable fact-finding about the elements of trespass,
17 applied no valid legal principle or authority, but nonetheless issued the relief requested by Tribal
18 Council. In that regard, he acted more as an advocate for and enforcer of the Tribal Council, not
19 an impartial judicial tribunal.

20 42. The Bishop Paiute Court of Appeals, reversed said decision, in *Bishop Paiute*
21 *Tribal Council v. Bouch*, B-AP-1412-6-12, remanding the matter to the lower court for the
22 purpose of receiving further evidence and argument and issuing findings of fact and conclusions
23

1 of law about the core issue: namely, use and occupancy rights to the land in question. See Ex. C,
2 to Habeas Corpus Appendix, Decision BP Appellate Court.
3

4 43. Instead of exercising its option to do that, however, Respondent Tribal Council
5 moved to dismiss its claims against Petitioners and their family and guests.
6

7 44. Petitioners opposed said motion and argued, in the event the court granted
8 dismissal, that such dismissal should be without prejudice, given the stage of the proceedings and
9 the extensive factual and legal argument that had occurred in the case.
10

11 45. Respondent Kockenmeister has persisted in advocating on the side of Bishop
12 Tribal Council and attempting to circumvent the appellate court's decision and authority
13 regarding the need to determine the status of the land prior to taking action against Petitioners.
14 Additionally, he has consistently rejected the authority and determinations of the Owens Valley
15 Board of Trustees, the decisions and authority of the General Council, and the clearly articulated
16 and longstanding laws of the Bishop Paiute Tribe in order to effectuate the unlawful aims of
17 representatives of the Bishop Paiute Tribal Council with respect to the proposed development.
18

19 46. In a Pretrial Hearing held on October 18, 2016, purportedly for the purpose of
20 discussing the next steps in scheduling an evidentiary hearing following remand from the court
21 of appeals, Respondent Kockenmeister indicated **he would not be resolving the land issue as**
22 **directed by the appellate court** as it was "beyond my comprehension of anything that an
23 appellate court has ever done in my 35 years as an attorney." October 18 Hearing Record. ("I
24 don't care, I don't care. Hold on. I don't care what the appellate court said quite frankly. Okay
25 they had what appeared to me almost an evidentiary hearing in the appellate court. It was an
26 outrageous action on their part and at this point in time I'm prepared to dismiss the citation with
27
28

1 prejudice. If that's what you want to do Miss Kimber you are the counsel for the tribe who
2 brought the citations.”)

3 47. Upon Ms. Kimber's confirmation that she did indeed wish to dismiss the citations,
4 Respondent Kockenmeister indicated that he would be dismissing them with prejudice “which
5 means that for the particular incident in question it cannot come before the court if there's
6 another trespass issue then we'll just go from there. Thank you very much.” Id.
7

8 48. On October 28, 2016, the tribal court dismissed the matter WITH PREJUDICE,
9 thereby precluding the parties from relitigating the matter of trespass from the land in question.
10 Order of Dismissal, *Bishop Paiute Tribal Council v. Bouch et al.*, October 28, 2016 (Exhibit D).
11 The written entry of that decision states: “By requesting dismissal Plaintiff has indicated that it
12 does not seek any relief from the court and the matter is moot. . . . Dismissal of this matter is
13 therefore appropriate. For these reasons, IT IS HEREBY ORDERED that this matter is
14 Dismissed With Prejudice.” Appendix at Ex. J, Order of Dismissal, October 28, 2016.
15 Respondent Tribal Council did not appeal the court's decision to dismiss with prejudice.”
16

17 49. Petitioners, having prevailed in the previous suit on the matter, resumed use and
18 occupancy of the land in question, restoring livestock and fencing and moving a trailer that had
19 been stored elsewhere on their family land upon the land in question.

20 50. In September 2016, Respondents published notice of a comment period on an
21 Environmental Assessment describing the casino and hotel expansion development planned for
22 Block 3, Lots 4 and 5, 6 and 7. Appendix at Ex. K, Bishop Paiute Casino Project Tribal
23 Environmental Assessment, September 2016,
24
25 http://www.bpdcorp.org/images/PublicReviewDraftTribal-EA_Casino.pdf

1 51. That Environmental Assessment indicates that the plans were underway to break
2 ground in March of 2017. (“2.3 CONSTRUCTION SCENARIO Construction of the proposed
3 project is expected to begin in March 2017. Construction would involve typical activities
4 including site preparation, excavation and grading for the expansion area, foundation building,
5 framing, electrical and mechanical work, finishing and paving. Infrastructure upgrades would
6 occur simultaneously with building construction and it would take approximately 22 months to
7 complete the construction of the expanded facilities and the modernization of the Casino.”E.A. at
8
9 4). Id. at sec. 2.3

11 52. On or about November 15, 2016, notwithstanding their decision to dismiss the
12 case with prejudice rather than establish their lawful authority to eject the
13 Warlie/Pasqua/Napoles/Williams family from the land in question, Respondents Bishop Tribal
14 Council and Deston Rogers issued a press release. Press Release, November 15, 2016.
15 Appendix at Ex. L, Not only does the release contain multiple personal and defamatory attacks
16 on Petitioner Ronald Napoles, but it erroneously construes the meaning of dismissal with
17 prejudice. States the release: “The most recent dismissal by the Bishop Paiute Tribal Court of
18 the 2014 trespass claims against Mr. Napoles and his family was done at the request of Tribal
19 Council. The fact that the claims were dismissed with prejudice does not limit the Tribal
20 Council’s authority to bring trespass charges against Mr. Napoles in the future if he chooses to
21 once again violate the Tribe’s laws.” Id. at 2. This is a false characterization of the law that
22 grossly misleads the community about the legal status of Petitioners’ assignment and the
23 previous trespass action and circumvents the authority and decisions of the General Council and
24 Owens Valley Board of Trustees.

1 53. Petitioner Ronald Napoles and other of the Petitioners have at all times taken
2 pains to utilize the legal processes and laws of the Bishop Paiute Tribe.
3

4 54. The Respondents, not Petitioners, on the other hand, have refused to honor the
5 laws applicable within the Bishop Paiute reservation and misconstrued and misused the judicial
6 process to achieve their aims.
7

8 55. On or about November 19, 2016, Respondent Deston Rogers accompanied by
9 officers of the Bishop Paiute Tribal Police and the Inyo County Sheriff's office entered
10 Petitioner's land without authority and issued trespass and nuisance citations once again against
11 Petitioners Ron, Rick, Mark and James Napoles and Wade Williams, who were the ones present
12 and working on the property at that time. See, e.g., citations to Ron and Rick Napoles, case
13 numbers 1280 and 1284, November 19, 2016, (Appendix at Ex. M). They approached
14 Petitioners on more than one occasion on that day. At the time they were apprehended,
15 Petitioners were working on Lots 6 and 7. Respondents crossed Lots 4 and 5 to get to them.
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18 56. When asked to leave by Petitioners, Respondent Rogers replied that he would stay
19 there as long and whenever he wanted and that Petitioners did not have the authority to tell the
20 Tribal Council when to leave. Respondent Rogers threatened to issue citations every day until
21 they left the property and told them they would be tearing out Petitioners' fencing, livestock and
22 property.
23

24 57. Tribal Police returned on November 20 and 21, 2016, and issued the same
25 citations, each commanding Petitioners to appear to court on December 20, 2016. See, e.g.,
26 citations 1282, 1284, 1285, 1286, 1289, 1290 issued to James and Rick Napoles. Id at Ex.N
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1 58. There was not then, nor has there ever been, any breach of the peace by
2 Petitioners or their guests or invitees.

3 59. Petitioners' personal liberty and security as well as right to quiet enjoyment of
4 their land, however, was breached by Respondents Rogers and Bishop Tribal Council and
5 accompanying law enforcement officers, who entered upon the land in question on multiple
6 occasions and confronted the Petitioners, using the threat of criminal charges and the force of
7 law enforcement from two jurisdictions to intimidate Petitioners and attempt to remove them
8 from their land.

9 60. On or about November 21, 2016, Respondents Tribal Council and Rogers caused
10 to be served on Petitioner Ron and Rick Napoles a directive to remove their property within 24
11 hours. See, e.g., Notice to Appear and Complaint (sic) ("24 hours to remove fence and other
12 property. Hearing by 11/23/16") (Appendix Exhibit O.)

13 61. Also on or about November 21, 2016, in the evening, Respondents Tribal Council
14 and Rogers caused an officer of the Bishop Paiute Police to serve upon Petitioners Ron and Mark
15 Napoles at their homes a notice that there would be a proceeding in court the following day,
16 November 22, 2016 at 2:30 p.m. Appendix Ex. P.

17 62. The time and manner of service violated the Petitioners' personal security. The
18 officer pounded on the doors indicated gruffly that the proceeding would go on the next day
19 whether or not everyone was notified.

20 63. The notice did not include reference to any legal authority or remedy, nor did it
21 state the reason for the proceeding. It simply directed Petitioners to bring whatever evidence or
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1 witnesses they wished to present at this mysterious event. See Appn. Ex. P Notice of Hearing.
2 November 21, 2016.

3 64. Respondents caused Petitioners James Napoles and Wade Williams to be served
4 at work the following day, November 22, causing embarrassment and intimidation and
5 perpetuating a hostile environment with respect to their employment.

6 65. Respondent Rick Napoles was never served with said notice.

7 66. On or about December 5, 2016, Petitioners Mark Napoles, James Napoles and
8 Wade Williams, who were employed by the Bishop Paiute Tribe, each in different departments,
9 were suspended without pay and subjected to certain conditions of a Performance Improvement
10 Plan in direct retaliation for their involvement in the proceedings involving their family land. On
11 December 20, James Williams was terminated from his employment.

12 67. On November 22, 2016, despite the absence of any filed petition or other
13 documents, Respondent Kockenmeister convened a proceeding in the tribal court.

14 68. Respondent Kockenmeister indicated that notice had been provided simply as "a
15 courtesy" to Petitioners, as he was issuing an ex parte temporary restraining order. He prohibited
16 Petitioners from presenting any evidence, which would have been necessary to determine that a
17 trespass had occurred and that such trespass had created an emergency risk to health or safety,
18 the requirements under the Bishop Paiute Trespass Ordinance necessary for issuing a valid
19 temporary restraining order. Recording, November 22, 2016, Proceeding. Specifically, he
20 explained: "With respect to the restraining order it can be made ex parte, meaning that you don't
21 get to receive notice of the restraining order until after it is issued. So, you don't have any due
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1 process rights. You don't have any rights to actually say anything what we have here today is a
2 courtesy to you." Id.

3 69. During that proceeding, Responding Kockenmeister also indicated his ongoing
4 disregard for the previous order and mandate of the appellate court from the earlier proceeding,
5 reiterated his position that he would never determine the status of the underlying land as directed
6 by the court no matter what the appellate court had directed, and reverted generally to the
7 position he used as the basis for his June 13, 2014 decision that was reversed by the court of
8 appeals. Id.

9 70. On November 23, 2016, Petitioners were served with a written version of that
10 Temporary Restraining Order that is attached in its entirety to this Petition. Temporary
11 Protection Order, *Bishop Paiute Tribe v. Napoles et al.* Case Number BT-CV-RO-2016-0062 et
12 seq. November 22, 2016 Appx, Petition Exhibit Q.

13 71. That TPO falsely includes reference to the federal Violence Against Women's
14 Act and threatens federal criminal penalties should Petitioners violate it. Temporary Protection
15 Order, November 22, 2016 at 1 Id. .

16 72. It falsely states that Petitioners have sought protection "against any acts of
17 violence, threats, harassment and/or causing emotional distress" and erroneously concludes "it
18 appearing to the satisfaction of the Court from specific facts shown by a verified application that
19 an act of violence, threats, harassment and/or causing emotional distress has occurred or there
20 exists a threat of violence, threats, harassment and/or causing emotional distress and good cause
21 appearing for issuing such Order without hearing." Id at 2.

1 73. It includes the following warning: "WARNING: Possession of a firearm or
2 ammunition while this Order is in effect may constitute a felony under federal law punishable by
3 fines and/or a prison sentence." Id. Not only is such language wholly unwarranted in light of the
4 circumstances of the instant matter, but it infringes upon traditions and livelihoods regarding the
5 hunting of rabbits and other wild game that exist within the Bishop Paiute community and that
6 certain of Petitioners adhere to during this time of year.
7

8 74. It advises law enforcement outside the tribe to give full faith and credit to the
9 order, as they would only have authority to do under the Violence Against Women Act. After all
10 that, it types in on the box designated on the form order for determining whether the perpetrator
11 of domestic violence may enter or occupy a family home, that Petitioners: "YOU MAY NOT
12 ENTER AND OCCUPY Bishop Paiute Tribal Lands - Block 3, Lots 6 & 7." The facts
13 underlying this action have nothing to do with domestic violence and Respondents' associating
14 Petitioners with domestic violence works a serious harm on their reputations and livelihoods
15 within the communities and work environments, and puts them at high risk for arrest or harm
16 from law enforcement who may be misled about the true nature and enforceability of this order.
17 Furthermore, there is no dwelling or structure to enter upon on the lots in question, as the Order
18 suggests. The land in question is pasture land that exists for Petitioners' livelihood as part of
19 their total family assignment. The use of an order derived from the context of domestic violence
20 creates a severe distortion of the circumstances, placing Petitioners' security and livelihood at
21 risk within and outside of the community.
22

23 75. Not only was this order issued without the filing of a petition or affidavit or any
24 establishment of a legal or factual basis for its issuance, it creates a serious and imminent threat
25

1 to Petitioners' liberty, inviting law enforcement agencies outside the Bishop Paiute Tribe to
2 arrest or charge Petitioners with major crimes, even federal ones.

3 76. On November 11 and December 6, 2016, the court issued Notices of Hearing to
4 Petitioners in case numbers BT-CV-RO-2016-0062, BT-CC-NS-2016-0051 et seq. and BT-CC-
5 TP-2016-0068 et seq. announcing a hearing set for December 20, 2016 at 11:00 a.m. but
6 including no petition or details regarding that event.

7 77. In response to the threats contained in the TPO and persistent acts of intimidation
8 and harassment by Respondents and law enforcement they directed to enforce their power,
9 Petitioners removed their livestock, fencing and property and have stayed off the land.

10 78. On December 13, 2016, Petitioners Ron, Rick, Mark and James Napoles and
11 Wade Williams filed a Petition for Writ of Mandamus in the Bishop Paiute Appellate Court,
12 contesting the actions of all respondents and seeking the same relief requested in the instant
13 Petition, serving it upon all parties.

14 79. On December 12, 2016 when seeking to file the Petition with the ITCSC, which
15 had been retained and constituted in the previous action to serve as the Bishop Paiute Court of
16 Appeals, Petitioners learned that Respondents had cancelled their contract with that appellate
17 entity following the decision against them rendered in the court in the first proceeding, *Bishop*
18 *Paiute Tribal Council v. Bouch et al.*

19 80. Upon filing the Petition the following day, the clerk of the Bishop Paiute Tribal
20 Courts, Joyce Alvey, confirmed that the contract had indeed been cancelled and that there were
21 presently no judges to proceed in appellate proceedings. She indicated that she would be
22 forwarding the Petition to Respondent Kockenmeister for him to determine how to proceed.

1 81. On December 15, 2016 Petitioners moved Respondent Kockenmeister to
2 disqualify himself and moved to continue and stay the December 20, 2016 hearing and all further
3 proceedings in the matter until such time as the court could be reconstituted and rulings made on
4 the Petition for Writ of Mandamus. Petitioners also moved for the disqualification of
5 Respondent Kockenmeister. Since the terms of the original TPO were set to expire on
6 December 20 and no additional pleadings or documentation had been submitted by Respondents
7 in the interim seeking its extension or a basis for it, Petitioners anticipated that the TPO would be
8 terminated should the court continue and stay the proceedings.
9
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11 82. On or about December 16, 2016, pursuant to the direction of Respondents, an
12 impermeable chain link fence was placed contiguously around the perimeter of Block 3, Lots 4
13 and 5; and Block 3, Lots 6 and 7, excluding Petitioners from these pieces of family land.
14
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16 83. On December 19, 2016, Respondent Kockenmeister issued an order continuing
17 the December 20, 2016 hearing and staying the proceedings “pending the empanelment of the
18 Appellate Court.” Order of Continuance and Stay Pending Appeal.
19
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21 84. The order acknowledges that the Appellate Court has yet to be empaneled.
22 Although the initial TPO was scheduled on its face to expire on December 20, 2016, well beyond
23 the 10-day period authorized for Ex Parte Orders to stay in effect by law, Respondent
24 Kockenmeister summarily and sua sponte extended its provisions, thereby continuing the
25 deprivation of liberty and taking of Petitioner’s land without due process, jurisdiction, adherence
26 to the laws of the Bishop Paiute Tribe or Indian Civil Rights Act.
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1 85. Significantly, the order staying the proceedings sets a review hearing for March
2 21, 2017, and March 2017 is the date the Environmental Impact Statement announced that Tribal
3 Council would begin construction on Petitioners' land. Environmental Assessment, September
4 2016.

5 86. Thus, no timely relief is available to Petitioners within the Bishop Paiute court
6 system. Moreover, their unlawful detention, effectuated by Respondents without due process
7 and against the decisions of the ITCSC and both tribal and federal law, remains in effect unless
8 and until such time as the Respondents decide whether, when, and who to empanel for the
9 appellate court. Given the Respondents' persistent and serious disregard for the laws and
10 process of the Bishop Paiute Tribe and the Indian Civil Rights Act, including their decision to
11 terminate the contract with the ITCSC without designation of an alternative, it is unlikely an
12 alternative forum will be constituted prior to Respondents' advancing the development project to
13 the construction phase.

14 87. The actions of Respondents work a severe and wholly unjustified restraint on
15 Petitioners' liberty and personal security.

16 88. The actions of Respondents infringe upon Petitioners' rights to due process
17 guaranteed under ICRA and the laws of the Bishop Paiute Tribe, including those governing ex
18 parte and temporary restraining orders and trespass.

19 89. The actions of Respondents effectuate an unlawful a taking of land with respect to
20 which Petitioners enjoy the right to exclusive use and occupancy rights in violation of ICRA and
21 the law of the Bishop Paiute Tribe.

1 90. The actions of Respondents violate the valid and lawful determination by
2 referendum of the General Council of the Bishop Paiute tribe opposing the development
3 proposed by Respondents Tribal Council.
4

5 91. The actions of Respondent violate the right to equal protection and freedom of
6 expression guaranteed under ICRA.

7 92. The actions of Respondent have caused extreme emotional distress, defame and
8 injure Petitioners and other descendants of Ida Warlie, undermine the sovereignty and effective
9 governance of the Bishop Paiute Tribe, and create an intolerable and extreme state of lawlessness
10 and instability within the community.
11

12 **B. The Respondents Have Unlawfully Detained the Petitioners**
13

14 1. Petitioners reference and incorporate the preceding paragraphs.

15 2. Through their actions over the past years and in a steadfast effort to take
16 Petitioner's land for development purposes that were rejected by the General Council,
17 Respondents have individually and collectively used force, intimidation, harassment, citations;
18 and they have abused legal process to force Petitioners off their land, impeding their liberty and
19 security and detaining Petitioners.
20

21 3. These efforts have continued and, indeed, intensified, despite a decision by the
22 Court of Appeals reversing the lower court's June 17, 2014 trespass convictions, and the lower
23 court's dismissal of the matter with prejudice on remand.
24

25 4. Tribal police and Inyo County Sheriffs accompanied Respondent Deston Rogers
26 onto the land on November 19 and Tribal Police returned on November 20, and 21, surrounding
27 Respondents while Respondent Rogers ordered them to remove their property and threatened
28

1 them with further citations. All officers were armed, and at least one held his hand on his gun
2 during the interaction.

3 5. Tribal officers further invaded Petitioners personal security in their homes and
4 work places, serving additional notices on November 21 and 22, 2016.

6 6. The TPO, issued by Respondent Kockenmeister on November 22 "ex parte" and
7 without the filing of a petition, affidavit invoking the court's jurisdiction, or any factual evidence
8 and entered against Respondents, without a vestige of due process, prohibits them from entering
9 or moving upon their land and creates a condition of imminent arrest and deprivation of liberty,
10 potentially even by law enforcement located in jurisdictions outside the tribe, should they choose
11 or be misled into enforcing the terms of the Order.

14 7. Although the original ex parte order was scheduled to expire on December 20,
15 2016, Respondent Kockenmeister extended it *sua sponte* and indefinitely in the December 19,
16 2016 order continuing and staying the proceedings. These conditions, wholly unwarranted by
17 law and without any of the legal steps required by Bishop Paiute Law and federal due process,
18 create an actual and imminent threat of deprivation of liberty for Petitioners.

20
21
22 **C. The Trespass Penalty is a Criminal Sanction Lacking Due Process and
Meaningful Administrative Remedies**

23 8. Petitioners reference and incorporates the proceeding paragraphs of this
24 Emergency Motion.

9. The BTC has criminalized trespass and nuisance through the implementation of two ordinances. Bishop Paiute Trespass Ordinance, No. 2000-02; Bishop Paiute Nuisance Ordinance, No. 2000-03.(Habeas Corpus Petition Appendix Ex. S)

10. These ordinances authorize citations to be filed by persons authorized by Bishop Paiute Tribal Council, as de facto prosecutors, and carry sanctions in the form of fines and other restrictions on the movement and liberty of those charged and convicted by the court.

11. Despite the fact that the ordinances have legal elements that must be established, including that the Respondents unlawfully trespassed on land that did not belong to them or with respect to which they did not enjoy use and occupancy rights, Respondent Kockenmeister has convicted them of trespass and issued a TPO simply because the Tribal Council demanded it, refusing to determine the status of the underlying land even though that was deemed essential by the court of appeals.

12. This has had the effect of criminalizing Petitioners without the benefit of notice, a hearing to present and refute any legal or factual basis for the citations and TPO, an impartial tribunal, or other requirements of due process.

ANALYSIS AND ARGUMENT

V. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER

Federal Rule of Civil Procedure 65 (a)(1)(a), permits a temporary restraining order only if. . . specific facts in an affidavit or verified complaint clearly show that immediate, irreparable injury, loss or damage, will result to the movant if the adverse party were to be heard in opposition.” As such the Court may only grant such relief “on a clear showing that Plaintiff’s

1 are entitled to such relief. . ." *Winter v Nat'l Res. Def. Council Inc.*, 555 U.S. 7, 20 (2008). To
2 prevail, the moving party must show (1) a likelihood of success on the merits (2) a likelihood
3 the moving party will suffer irreparable harm in the absence of relief; (3) the balance of the
4 equities tips in the movants favor and (4) that the relief is in the public interest. *Winter v Nat'l*
5 *Res. Def. Council Inc.*, 555 U.S. 7, 20 (2008). In considering the four factors the Court must
6 balance the competing claims of injury, and must consider the effect on each party of the
7 granting or withholding of the relief. *Id.* at 23. [i]njunctive relief [i]s an "extraordinary remedy"
8 that may only be awarded upon a clear showing that plaintiff is entitled to such relief. *Id* at 23.
9
10

11 ***A. Likelihood of Success on the Merits***

12 Petitioners are likely to be successful on the merits of their claims. Petitioners are the
13 descendants of Ida Warlie, who received possession of several assignments ("The Lots") in
14 accord with the custom and tradition of the Bishop Paiute Tribe and in accordance with the
15 Owens Valley Land Ordinance. Mrs. Warlie's request for the assignments upon the death of her
16 mother was approved by the Owens Valley Land Ordinance Board of Trustees in 1941. Mrs.
17 Warlie and her daughter Geraldine Pasqua (now deceased), and other family members, have
18 been in continuous possession of the lots since on or about 1941 and were among those families
19 that relocated to the present location within the Bishop Paiute Reservation when it was first
20 created and recognized under federal law. The assignment predates the formation of the Bishop
21 Paiute Tribe and the Owens Valley Board of Trustees. No entity of the Tribe, and surely not the
22 Tribal Council, has authority to take the disputed land assignments and utilize them for Tribal
23 purposes. The Tribe's Own Appellate division overturned the finding of Trespass against
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1 Petitioners and remanded the case back to Respondent Tribal Court. The record in that case and
2 the Appellate Court's two opinions in the matter clearly document Petitioners' rightful claim to
3 the land in question, and nothing has transpired to extinguish Petitioners' claim to the land in
4 question.

6
7 The Tribal Court refuses to properly determine the trespass issue as requested by the
8 Tribal Appellate Court. Rather, it has acted as an enforcement arm of the Bishop Paiute Tribal
9 Council, entering process and decisions totally outside the bounds of law and in violation of the
10 clearly established principles of judicial independence and impartiality required of a judge.
11

12 The laws of the Bishop Paiute Tribe, the history of its creation, the 1962 Land
13 Assignment Ordinance, the clearly document customs and traditions of the tribe regarding land
14 assignment and its passage upon death to other family members, and all other authority clearly
15 establish Petitioners ongoing right to use and occupancy of the land in question and the
16 Respondents lack of authority to take, utilize, or otherwise convert the land to other use. Those
17 laws also establish the wrongfulness of the Tribal Court's actions in this case, entering the TRO
18 and otherwise finding against the Petitioners simply because the Tribal Council wishes the
19 project to go forward and the court to issue those orders.
20
21

22 ***B. Likelihood of Irreparable Harm***

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24 *Winter* tells us that plaintiffs may not obtain a preliminary injunction unless they can
25 show that irreparable harm is likely to result in the absence of the injunction. Petitioners allege
26 that irreparable harm, of varying degrees, will result if Respondents are not restrained from
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1 further taking of the land assignments at issue. Petitioners further posit that the Tribe intends to
2 begin construction on the Casino expansion in mid-2017, with an Environmental Assessment
3 Report indicating that construction will begin in late March 2017, with the review hearing on the
4 TPO conveniently set by Respondent Kockenmeister for March 21, 2017. Petitioners request the
5 Court order Respondents Tribe, Court and Judge Knockenmeister, to refrain from taking further
6 action against Petitioners, including the Court's issuing further orders in the Tribal Court matter.
7 Thus, if Defendant's are not restrained, the tribal member assigned lands will be converted to
8 lands owned by the Tribe and Petitioners will likely never be able to hold Respondent Tribe
9 accountable for this wrongful acts and omission of due process. Additionally, the ongoing
10 existence of the TPO and all the erroneous language included therein, including findings linking
11 the case to a VAWA matter and urging law enforcement outside the boundaries of the Tribe,
12 even at the federal level, to recognize full faith and credit, creates a risk of false arrest or
13 prosecution or other harm to Petitioners' safety and wellbeing within and outside the boundaries
14 of the reservation.
15

16 **C. *Balance of Hardships***

17 The balance of hardships between the parties tips sharply in favor of the Petitioners. If
18 Petitioners are denied relief, their lands will be gone forever, destroyed and converted to Tribal
19 use, a Casino expansion, that they did not consent to and of which the Tribe has no express
20 authority, in any document, to do. The most that can come of denying Respondent's ability to
21 move forward with the taking of their land, is time. Time that could be best used to provide
22 Petitioner's due process rights.
23

D. Public Interest

The issuance of injunctive relief is in the public interest. In addition to the Petitioners, the Tribe's General Council, all voting members of the Tribe, object to the Casino expansion project, which continues to move forward at the request of the Tribe's Council. Additionally, the future assignment rights of Bishop Paiute members will be put at substantial risk if this taking is authorized in the absence of due process. The purpose of the land assignments is to provide housing and land to support tribal members. If the Tribal Council and Court are allowed to take land in this way and deny Petitioners due process, all tribal members who hold assignments are at risk for losing their assignments at the whim or will of the Tribal Council. Additionally, the surrounding non-tribal community, also benefits from the resolution of this dispute and one can think of no greater interest that meets the public interest than to provide a TRO that obviates the ability for the Tribe to, unilaterally and without due process, take member assignments in the absence of lawful authority. The means and manner of Respondents' taking of said land and abuse of legal process to do so further creates a state of lawlessness and instability within the Bishop Paiute Tribe for Petitioners and all other tribal members, denigrates the sovereignty of the tribe, the integrity of the judicial system, and the ability of the federal government to exercise its trust responsibility to protect the land for the benefit and livelihood of its members.

E. Bond

According to Federal Rule of Civil Procedure Rule 65, a bond may be required however, Ninth Circuit precedent has been lenient when it comes to the bond requirement. In *Friends of the Earth, Inc. v. Brinegar*, 518 F.2d 322, 323 (9th Cir. 1975), the Ninth Circuit overturned the

1 district court's requirement of a \$4,500,000 bond and held that "[a] bond in the amount of \$1,000
2 is reasonable and we order that such bond be imposed." If a bond is required by the Court,
3 Petitioners request that it is reasonable and is not so high that it chills Petitioners ability to seek
4 relief in this public interest case.

6 **V. CONCLUSION**

8 For all the forgoing reasons, Petitioners respectfully request the Court issue the injunctive
9 relief in the form of an Emergency Temporary Restraining Order (ETRO) against the defendants
10 in the above entitled case.

12 Respectfully Submitted this December 28, 2016.

14 DURAN LAW OFFICE

16 By: /s/ Jack Duran
17 JACK DURAN
18 Attorney for Petitioners