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16 UNITED STATES DISTRICT COURT  
17 FOR THE EASTERN DISTRICT OF CALIFORNIA  
18 FRESNO DIVISION

19 RONALD NAPOLES, LAURINE NAPOLES,  
20 RICK NAPOLES, MARK NAPOLES,  
21 JAMES NAPOLES, DEBRA WILLIAMS  
22 WADE WILLIAMS,

23 Petitioners,

24 v.

25 DESTON ROGERS, JEFF ROMERO, BRIAN  
26 PONCHO, EARLEEN WILLIAMS, WILLIAM  
27 BILL VEGA, IN THEIR INDIVIDUAL AND  
28 OFFICIAL CAPACITIES AS  
REPRESENTATIVES OF THE BISHOP  
PAIUTE TRIBAL COUNCIL; BISHOP  
PAIUTE TRIBAL COUNCIL; BISHOP  
PAIUTE TRIBAL COURT AND TRIBAL  
COURT JUDGE BILL KOCKENMEISTER,  
IN HIS INDIVIDUAL OFFICIAL CAPACITY,

Respondents.

Case No. 2:13-cv-02101-TLN-CKD

PETITIONERS' OPPOSITION TO  
RESPONDENT WILLIAM  
KOCKENMEISTER'S MOTION TO DISMISS  
UNDER FEDERAL RULE OF CIVIL  
PROCEDURE 12(b)(1) & (6)

Date: June 20, 2017

Time: 9:30 a.m.

Judge: Dale Drozd

Courtroom: 5

Action Filed: December 29, 2016

Trial Date: TBD

PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION

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1       **I. INTRODUCTION**

2           This memorandum focuses on the argument and authority presented in the Motion to  
3 Dismiss filed by Respondent Kockenmeister (hereinafter “Kockenmeister Motion”) with regard  
4 to whether as tribal judge he enjoys immunity in either an official and/or individual capacity. A  
5 separate Opposition Memorandum has been submitted in response to Respondent Bishop Paiute  
6 Tribal Council (hereinafter “BTC”) and its members. It addresses in depth the issues of  
7 exhaustion and jurisdiction under the Indian Civil Rights Act (hereinafter “ICRA”), 25 U.S.C.  
8 Section 1303, as well as 28 U.S.C. Section 1331 and 1343, presented by both sets of parties.  
9 For the sake of efficiency, Petitioners reference and incorporate all facts and arguments  
10 contained in that response regarding jurisdiction and exhaustion under ICRA and focus this  
11 memorandum on the issues of immunity unique to Respondent Kockenmeister’s Motion.

12       **II. FACTUAL BACKGROUND**

13           Petitioners direct the court to the factual background provided in their Opposition  
14 Memorandum to BTC’s Motion. Facts specifically related to the issue of judicial immunity will  
15 be discussed in analyzing the legal arguments below.

16       **III. LEGAL STANDARD**

17           Respondent mounts a facial attack on the pleadings. Kockenmeister Motion at 1, citing  
18 *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Rule 12(b)(6) requires  
19 that the complaint present a cognizable legal theory and factual allegations enough to raise the  
20 right to relief above the speculative level are also not in dispute. *Balistreri v. Pacific Police*  
21 *Dept.*, 901 F.2d 696, 699 (9th Cir. 1988); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
22 (citations and footnotes omitted).

23           PETITIONERS’ OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER’S MOTION

1 **IV. ARGUMENT**

2 Respondent Kockenmeister is a critical actor in Petitioners' detention and the  
3 deprivation of their rights under ICRA. As detailed in the First Amended Complaint ("FAC")  
4 and accompanying exhibits, he relentlessly pursued a course of action against Petitioners that  
5 deviates from what is expected of a judge in any jurisdiction, compromises judicial  
6 independence and the integrity of the judicial process and fails in his duty to afford due process  
7 and other rights guaranteed by ICRA in the proceedings brought to the courts by the Bishop  
8 Paiute Tribal Council ("BTC") as well as in actions taken on his own initiative such as the  
9 issuance of the Temporary Protection Order ("TPO") . As judge of the tribal court, decisions  
10 and documents generated by him have an unusual force of authority that has actively restrained  
11 Petitioners and controlled their freedom and movement. Moreover, he has acted in clear  
12 derogation of jurisdiction and judicial authority, acting as a decisive and powerful advocate of  
13 the Bishop Tribal Council throughout the various proceedings and overtly refusing to apply the  
14 authority of the tribal appellate court as well as federal and even tribal law. Indeed, Respondent  
15 himself emphasizes many of the ways Judge Kockenmeister has violated Petitioners' rights  
16 under ICRA and caused their detention in his own Motion. Kockenmeister Motion at n. 1 and  
17 accompanying text.

18 As Respondent also asserts, "a majority of the circuits 'look to the substance of the  
19 plaintiff's claim, the relief sought, and the course of proceedings to determine the nature of [a]  
20 suit when a plaintiff fails to allege capacity.'" Kockenmeister Motion at 3, citing *Biggs*, 66 F.3d  
21 at 59. Respondent agonizes rather unnecessarily about whether he should be considered to have  
22 been sued in his individual or official capacity. The distinction is really only relevant with  
23

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1 respect to claims for monetary damages, and there is no basis for immunity under any capacity  
2 or theory of this case.<sup>1</sup>

3       This is a federal habeas action brought under ICRA. The relief sought in Petitioners'  
4 Complaint is clearly that what may be afforded under habeas corpus. Although Respondents'  
5 Motion reminds Petitioners of the possibility of exploring legal action for damages in a separate  
6 action some point in the future, Petitioners do not at this stage of the proceedings articulate  
7 causes of action other than ICRA or seek relief in the form of monetary damages. The  
8 distinction is a red herring, as the operative issue that must be resolved at this point is whether §  
9 a cause of action exists under 1303 sufficient to invoke the court's jurisdiction.

10                   **A. Officials sued for prospective injunctive or declaratory relief are not protected  
11 by sovereign immunity.**

12       If the requirements of 1303 have been met, as Petitioners' pleadings and Oppositions to  
13 Respondents' Motions to Dismiss on that point establish that they do, then a cause of action  
14 exists under ICRA, any sovereign immunity attributable to the Tribe has been congressionally  
15 abrogated, and any tribal official or entity acting in derogation of its provisions may be subject  
16 to suit. *Santa Clara Pueblo v. Martinez*. 436 U.S. 49 (1978). That includes tribal judicial  
17 offers as well. For example, in *Means v. Navajo Nation*, 420 F.3d 1037 (2005) 432 F.3d 924

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24                   <sup>1</sup> Counsel's unnecessary reference to an email that Petitioners' attorneys apparently "refused  
25 meaningfully to respond [to]" invents meaning from silence on one particular point amidst a voluminous  
26 chain of emails and phone discussions exchanged between counsel over the past many months about a  
27 myriad of issues and is a disappointing professional choice. Counsel's efforts to bring private  
28 communications between counsel to the court's attention also violates expectations of privilege typically  
afforded to negotiation communications and basic standards of professionalism that call for restraint in  
this regard. The law of immunity and the pleadings of the case determine the outcome of this motion,  
not what may have been said or unsaid in counsel's email communication.

1 (9<sup>th</sup> Cir. 2005) the court determined that pretrial detention of Mr. Means was enough to invoke  
2 federal habeas jurisdiction under ICRA. That action, moreover, was brought against the Navajo  
3 Nation, the judge of the judicial district court, and the Chief Justice of the Navajo Nation. No  
4 issue was raised about the capacities of any of these Defendants, and the court found there to be  
5 habeas jurisdiction under 1303 by virtue of Mr. Means' conditions of pretrial release imposed  
6 by the Respondents. *Id.* There is no unique provision for a judge to get special exemption under  
7 ICRA, and, indeed, Respondent offers no authority in support of said proposition.  
8

9  
10 That Respondent Kockenmeister is being sued in this habeas action in his official  
11 capacity for declaratory and prospective injunctive relief necessary to effectuate habeas is not in  
12 dispute. Motion at 3. Clearly, a Petition for Habeas Corpus is most concerned about correcting  
13 the deprivations of liberty and underlying rights violations invoking declaratory and injunctive  
14 relief. As such, it is the kind of official capacity suit brought in other statutory contexts, such as  
15 42 U.S.C. Section 1983 (hereinafter, “§ 1983”), against those acting in derogation of  
16 fundamental civil rights with the aim of correcting the orders, conduct and procedure that  
17 creates the rights deprivations. Neither judicial immunity, nor sovereign immunity, apply in  
18 those circumstances.  
19

20  
21 The cases relied upon by Respondent as a means of suggesting that Respondent  
22 Kockenmeister enjoys some kind of special sovereign immunity protection by virtue of him  
23 being a tribal judge are inapplicable to the circumstances of this case. The key case cited by  
24 him for this proposition is *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989).  
25 *Will* is a case involving statutory interpretation of § 1983. It addresses whether a state official is  
26 a “person” for the purposes of that act. The court concludes that it is not a person based on an  
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1 interpretation of that Congressional legislation in light of the state's immunity from suit under  
2 the 11<sup>th</sup> Amendment. Accordingly, it holds that in a suit for monetary damages under § 1983, a  
3 suit against a state official in his or her official capacity will be construed as a case against the  
4 state as a sovereign entity.

5 This case, obviously, is not a § 1983 action, nor is it one for monetary damages. *Will*  
6 and its progeny, therefore, are wholly inapposite to it. The 11<sup>th</sup> Amendment protects  
7 governments from suits for damages impacting their financial treasuries, not suits for  
8 prospective injunctive relief. It has been established by the Supreme Court in the context of  
9 state sovereign immunity that injunctive and declaratory relief against state officials does not  
10 violate the Eleventh Amendment, but that the Constitution only prohibits retroactive monetary  
11 damages. *Edelman v. Jordan*, 415 U.S. 651 (1974); *Ex Parte Young*, 209 U.S. 123 (1908).  
12 The Supreme Court even recognized this principle in *Santa Clara*: “As an officer of the Pueblo,  
13 petitioner Lucario Padilla is not protected by the tribe's immunity from suit. . . . We must  
14 therefore determine whether the cause of action for declaratory and injunctive relief asserted  
15 here by respondents, though not expressly authorized by the statute, is nonetheless implicit in its  
16 terms.” *Santa Clara, supra*, at 59.

17 This exception for declaratory and prospective injunctive relief has been applied with  
18 respect to other sovereignties as well. For example, in a suit involving whether an official  
19 capacity suit could be brought against an official of the territory of Guam, the 9<sup>th</sup> Circuit held:

20 Even if Guam enjoys sovereign immunity, of whatever sort, from the Taxpayers' § 1983  
21 claim, that claim was not brought against Guam itself, but only against its officers in  
22 their official capacities, and only for declaratory and injunctive relief. Under the  
23 principle of *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908)

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28 PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION

1 [redacted], ‘official-capacity actions for prospective relief are not treated as actions  
2 against’ Guam itself.

3 *Paeste v. Government of Guam*, 798 F.3d 1228, 1234-35 (9<sup>th</sup> Cir. 2015) quoting *Guam Soc. of*  
4 *Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1371 (9th Cir.1992) (internal quotation  
5 marks omitted).

6 Similarly, as the 9<sup>th</sup> Circuit affirmed in *Means*, the exception has been widely  
7 acknowledged with respect to tribal officials, including judges. *See, Means v. Navajo Nation*,  
8 *supra*, as well. For example in upholding a federal district court’s enjoining of a tribal judge  
9 from enforcing restraining orders he had entered, the 9<sup>th</sup> Circuit unequivocally stated: “His  
10 status as a tribal judicial officer does not confer immunity against injunctive relief.” *U.S. v.*  
11 *Yakima*, 794 F.2d 1402 (9th Circuit 1986), citing *United States v. Blackfeet Tribe*, 369 F.Supp.  
12 562, 565 (D.Mont.1973). Furthermore, stated the court: “That defense [of judicial immunity]  
13 does not bar injunctive relief against a judicial officer acting in his judicial capacity.” *Id.* citing  
14 *Pulliam v. Allen*, 466 U.S. 522, 541-42, 104 S.Ct. 1970, 1980-81, 80 L.Ed.2d 565 (1984);  
15 *Ashelman v. Pope*, 793 F.2d 1072 (9th Cir.1986) (en banc).

16 In *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984), plaintiffs  
17 brought suit under §1983, claiming that a magistrate’s practice of imposing bail was  
18 unconstitutional. They sought injunctive relief. The Supreme Court addressed the “fundamental  
19 question [of] whether a judicial officer acting in her judicial capacity should be immune from  
20 prospective relief,” *id.* at 528, 104 S.Ct. 1970, and held that “judicial immunity is not a bar to  
21 prospective injunctive relief against a judicial officer [redacted] { “pageset”: “S6b” } acting in her judicial  
22 capacity.” *Id.* at 541–42, 104 S.Ct. 1970.

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1       In response to this decision, Congress enacted the Federal Courts Improvement Act of  
2       1996 (“FCIA”), Pub.L. No. 104–317, 110 Stat. 3847, which amended the language of § 1983 so  
3       as to bar injunctive relief against a judicial officer in a § 1983 action “for an act or omission  
4       taken in such officer's judicial capacity ... unless a declaratory decree was violated or  
5       declaratory relief was unavailable.” *Id.* at § 309(c). Not only is the scope of this Act in dispute,  
6       courts consistently have clarified that it does not apply beyond the scope of § 1983 to other  
7       types of actions against judicial officers. There is no argument that it applies to tribal judges  
8       either. See *Crowe & Dunlevy, P.C. v. Stidham*, 609 F.Supp.2d 1211 (U.S. D.Ct., N.D.  
9       Oklahoma, 2009), affirmed by *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140 (10<sup>th</sup> Cir.  
10      2017).

11      Thus, the general principal that judicial immunity is not a bar to prospective injunctive  
12      relief against judges acting in an official capacity remains intact, and there is no authority for  
13      exempting tribal judges from this rule. It is clearly and unequivocally possible for a tribal judge  
14      to be sued in his official capacity for declaratory and prospective injunctive relief, and the court  
15      should accordingly deny Respondents' Motion on that ground. If Petitioners' have been  
16      detained under Section 1303 of ICRA, which they contend that they have been, a cause of  
17      action exists under ICRA, and the common law sovereign immunity generally enjoyed by the  
18      Bishop Paiute Tribe and its officials, including judicial officers, would be abrogated.

19      **B. Absolute judicial immunity only applies to claims other for monetary damages.**

20      Absolute judicial immunity is a defense that exists only in the context of suits for  
21      monetary damages based upon wrongful actions taken by a judge under color of law. Indeed,  
22      and this point must be emphasized, the cases cited by Respondent on the proposition of judicial  
23      immunity do not support Respondent's position.

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1 immunity are all about whether a judge may be liable in a civil suit for damages, a fundamental  
2 prerequisite to the defense. Claims for prospective injunctive relief or other non-monetary  
3 forms of relief, like habeas proceedings, are not eligible for the absolute immunity defense for  
4 judicial officers.

5 The cases cited by Respondent in arguing for judicial immunity do not contradict this  
6 fundamental legal point. Motion at 5-6. *Cadena v. Perasso* surely does not. Although it is not  
7 about a tribal judge, the case clarifies that judicial immunity only applies to claims for damages.  
8 498 F.2d 383 (9<sup>th</sup> Circuit 1974) (“498 F.2d 383 (“A judicial officer is clearly immune from  
9 liability for damages for his judicial actions.”) (emphasis added). In *Brunette v. Dann*, 417  
10 F.Supp. 1382 (D. Idaho 1976), a summary judgment decision in a case for civil liability for  
11 damages, the court stated: “No direct authority for judicial immunity as applied in a tribal  
12 setting has been found or cited. However, the general doctrine and the reasoning and policy  
13 therefor as applied in s 1983 actions would appear to be applicable. The rule is that judges are  
14 immune from civil liability for damages for acts committed within their judicial jurisdiction.”

15 In *Penn v. U.S.*, 335 F.3d 786, 789 (8<sup>th</sup> Cir. 2003), a suit for damages under the Federal Tort  
16 Claims Act and other causes of action arising out of various official’s enforcement of a tribal  
17 court order, the 8<sup>th</sup> Circuit also clarified that a tribal court judge is entitled to the same absolute  
18 judicial immunity that shields state and federal court judges, citing *Sandman v. Dakota*. 816  
19 F.Supp. 448, 452 (W.D. Mich. 1992).<sup>2</sup> That protection, of course, is absolute immunity from  
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28 <sup>2</sup> Interestingly, Penn also recognizes the authority and responsibility of federal review of tribal court  
orders under Section 1303: Explains the court: “As Penn’s petition demonstrates, however, an order  
excluding a nonmember from a reservation is subject to review in federal district court under the habeas  
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1 civil damages suits. *See also, U.S. v. Blackfeet Tribe of Blackfeet Indian Reservation*, 369  
2 F.Supp. 562 (D. Montana 1973) ("I have considered the claim of judicial immunity. It applies  
3 only when judges are faced with damage suits arising out of the performance of official duty.  
4 The fact is that courts may be and are restrained from acting in excess of jurisdiction. At the  
5 federal level the main problem encountered in the injunctive relief area is the federal Anti-  
6 Injunction Act, 28 U.S.C. § 2283. Where that act is not controlling, and it does not control here  
7 because it is state courts, not tribal courts, which are protected by it, federal court injunctions do  
8 issue to restrain court actions. *See Mitchum v. Foster*, 407 U.S. 225, 92 S.Ct. 2151, 32 L.Ed.2d  
9 705 (1972), and *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967).")

12 Petitioners also allege facts sufficient to demonstrate how absolute judicial immunity  
13 would not apply even if a claim for damages was involved, i.e., (1) that at least certain of his  
14 actions were in complete absence of jurisdiction and/or (2) outside of a judicial capacity or  
15 function. For example, Respondent Kockenmeister issued the TRO after previously dismissing  
16 the identical action with prejudice and without anyone filing a Petition, Affidavit, or any other  
17 legal action initiating a cause of action before the court or its jurisdictional authority.  
18 Moreover, his order references VAWA and threatens Petitioners with federal prosecution  
19 should they violate it. FAC at paragraphs 94-103 and accompanying attachments. And he had  
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25 corpus provisions of 25 U.S.C. § 1303. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 67–68, 98 S.Ct.  
26 1670, 56 L.Ed.2d 106 (1978). We have recognized "the long-standing federal policy supporting the  
27 development of tribal courts" for the purpose of encouraging tribal self-government and self-  
28 determination. *Gaming World Int'l, Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 850  
(8th Cir.2003). *Id.*

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1 no case or action filed in the court to resolve. In doing so, he clearly acted in a complete  
2 absence of jurisdiction, not merely in excess of it. He also departed from his role as a judicial  
3 officer, abdicating responsibility for applying and rendering decisions based upon law and fact  
4 submitted by the parties in an impartial way to an approach of advocacy for the BTC.  
5

6 However, since damages are not on the table at this point in time, there is no need to  
7 address or resolve (1) whether absolute immunity applies or should apply to tribal judges to the  
8 same extent as it does with other judges and/or (2) whether Respondent Kockenmeister would  
9 be entitled to absolute immunity, if it did.  
10

11 **V. Conclusion**  
12

13 This case involves a habeas action under Section 1303 of the Indian Civil Rights Act.  
14 The key issue is whether the court has jurisdiction under 28 U.S.C. Section 1331, 1343, and  
15 Section 1303, which requires determining that Petitioners have been detained and was briefed  
16 extensively in Petitioners' Opposition to BTC's Motion. The distinction made by Respondent  
17 Kockenmeister in his Motion regarding official and individual capacity is largely irrelevant.  
18 Neither sovereign immunity nor absolute judicial immunity applies to judicial officers outside  
19 of suits for monetary damages. Those seeking prospective injunctive relief have long been  
20 authorized against the individual officers of sovereign entities who would otherwise be entitled  
21 to sovereign immunity. Furthermore, as long as 1303 grants a claim for habeas relief, which  
22 Petitioners contend that it does in this case, then common law sovereign immunity is abrogated  
23 for the Tribe and all of its officers, including its judicial officers.  
24

25 Finally, there is no special immunity that applies to judges in actions of this nature.  
26 Absolute judicial immunity only applies to suits for damages. Therefore, because this is a  
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1 federal habeas action under ICRA and the requirements for detention and exhaustion have been  
2 met, there is no basis to dismiss Petitioners' claims against any party, nor is there a special basis  
3 to dismiss Respondent Kockenmeister from this action based upon his position as tribal judge.  
4

5  
6 Dated: June 5, 2017

DURAN LAW OFFICE

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8 JACK DURAN

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11 By: /s/ Andrea Seielstad  
12 Attorneys for Petitioners

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PETITIONERS' OPPOSITION TO RESPONDENT WILLIAM KOCKENMEISTER'S MOTION