No. 19-16885

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALTURAS INDIAN RANCHERIA AND WENDY DEL ROSA,

Plaintiffs-Appellants,

v.

DAVID BERNHARDT, Secretary of the United States Department of the Interior, et al.,

Defendants-Appellees.

On Appeal from the United States District Court
For the Eastern District of California
Case No. 2:17-cv-01750-TLN-DMC
The Honorable Troy L. Nunley

APPELLANTS' OPENING BRIEF

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INTRODUCTION

In bringing this action, the plaintiffs, Wendy Del Rosa, Secretary-Treasurer of the Alturas Indian Rancheria ("Tribe"), on her own behalf and on behalf of the Tribe (collectively "Wendy Del Rosa" or "Ms. Del Rosa"), are not requesting that the Court determine who is the lawful governing body of the Tribe, interpret tribal law to resolve an internal tribal leadership dispute, get involved in an inter-tribal dispute or overturn the Interior Board of Indian Appeals ("IBIA") decision recognizing the Tribe's 2012 Business Committee for the limited purpose of allowing the Bureau of Indian Affairs ("BIA") to contract with the Tribe, pursuant to the Indian Self-Determination, Education Assistance Act, 25 U.S.C. § 450 et seq. ("ISDEAA").

Instead, Ms. Del Rosa is requesting that this Court hold that the District Court had jurisdiction, pursuant to 28 U.S.C. § 1331, to recognize and enforce, under principles of comity, a decision ("Judgment") of the Tribe's General Council, sitting as a quasi-judicial body ("Tribal Court"), suspending, under tribal law, Phillip Del Rosa's ("Phillip Del Rosa") right to hold office or vote on tribal matters until he repaid to the Tribe the funds that he embezzled from the Tribe.

By refusing to give deference and comity to the Tribal Court's Judgment, the Appellees, Secretary of the Interior ("Secretary"), David Bernard, Pacific Regional Director of the BIA, Amy Dutschke ("PR Director"), and Superintendent of the

Northern California Agency ("Agency") of the BIA, Virgil Akins ("Akins") (collectively "Federal Officials") violated their own policies and decisions of the IBIA, by effectively overturning and reversing the Tribal Court's Judgment, and violated federal common law by refusing to recognize and enforce the Tribal Court's Judgment.

In doing so, the Federal Officials impermissibly involved themselves in the internal affairs of the Tribe and directly interfered with the ability of the Tribe to govern itself in violation of federal common law, which requires the BIA not to interfere in the internal affairs of an Indian tribe and to recognize and give comity to tribal court judgments.

In this brief, Ms. Del Rosa will show that the District Court had jurisdiction to: (1) order the Federal Officials to give deference to the Tribal Court Judgment in deciding to recognize Phillip Del Rosa as a voting member of the Tribe's Business Committee, and (2) was bound by the Tribal Court's Judgment finding that under Tribal law, Phillip Del Rosa was suspended from holding office and voting on Business Committee matters.

For these reasons, the District Court's order dismissing the complaint must be reversed.

STATEMENT OF JURISDICTION

1. The United States District Court for the Eastern District of California ("District Court") had jurisdiction over the Tribe's and Ms. Del Rosa's claims based upon:

(a) 28 U.S.C. § 1331, in that the Tribe's and Ms. Del Rosa's claims arise under the Constitution and laws of the United States; and

(b) 28 U.S.C. § 1361, in that the Tribe and Ms. Del Rosa seek to compel officers and employees of the United States and its agencies to perform duties owed to the Tribe, and its members, including Ms. Del Rosa.

2. The Court of Appeals has jurisdiction over this appeal based upon:

(a) 28 U.S.C. § 1291, in that the Tribe and Ms. Del Rosa are appealing a final judgment of the District Court;

(b) The District Court issued a minute order on August 27, 2019, granting the Appellee, Federal Officials motion to dismiss. ER, Vol. 1, pp. 2-3;

(c) The District Court issued a final judgment in this case on August 27, 2019, ER, Vol. 1, p. 1;

(d) The Tribe and Ms. Del Rosa filed a notice of appeal on September 20, 2019, pursuant to Fed. R. App. P. Rule 4(1)(B)(i). Because the Federal Officials are officials of the United States who are being sued in their

official capacities, the filing of the notice of appeal within sixty (60) days of the entry of the judgment was timely; and

(e) The judgment, issued pursuant to the District Court's order, constitutes a final judgment that disposed of all of the claims of all of the parties.

STATEMENT OF ISSUES

1. Did the District Court err in ruling that it lacked jurisdiction to order the Federal Officials to consider and give deference to the Tribe's interpretation of its own laws suspending Phillip Del Rosa from holding office or voting on Business Committee matters, when it made its decision awarding the Tribe's 2016 and 2017, 638 Contracts?

2. Did the District Court err in ruling that it lacked jurisdiction to order the Federal Officials to recognize and enforce the Tribal Court's Judgment under principles of comity?

3. Did the District Court err in ruling that it lacked jurisdiction to give deference and comity to the Judgment because to do so would require it to resolve an inter-tribal dispute?

4. Did the District Court's failure to recognize and enforce the Judgment for lack of jurisdiction allow the Federal Officials to impermissibly interfere with the right of the Tribe to govern itself in violation of federal common law?

STATEMENT OF THE CASE

The relevant facts of this case are set forth in the allegations in the complaint, which, on a motion to dismiss, the Court is required to accept as true. *See*, *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds* by *Davis v. Scherer,* 468 U.S. 183 (1984); *Cruz v. Beto*, 405 U.S. 319, 322 (1972).

1. The Tribe is a federally recognized Indian tribe organized under the provisions of the Indian Reorganization Act, 25 U.S.C. § 5123, under a written Constitution ("Constitution"), which has been approved by the Secretary and which designates the Tribe's General Council as the governing body of the Tribe. ER, Vol. 2, p. 28, ¶ 10.

2. The Constitution also established a Business Committee consisting of three members, the Tribe's duly elected Chair, Vice-Chair and Secretary-Treasurer. Under the Constitution, a quorum of the Business Committee has the authority to conduct the day-to-day business affairs of the Tribe when the General Council is not in session. Under the Constitution, all decisions of the General Council are binding on the Business Committee. ER, Vol. 2, p. 28, ¶ 10.

3. On March 20, 2012, the Tribe, pursuant to its Constitution and through its General Council, enacted a Code of Conduct ("Code") that established punishable offenses for members of the Tribe who engaged in misconduct as defined by the Code. ER, Vol. 2, p. 28, ¶ 11.

4. On July 9, 2012, the Tribe, pursuant to its Constitution and the Code, by and through its General Council, sitting as a Tribal Court, gave notice to Phillip Del Rosa that the General Council had filed a petition with the Business Committee seeking the removal of Del Rosa from his position of Chairman of the Tribe. ER, Vol. 2, pp. 28-29, ¶ 12.

5. On October 22, 2013, the Tribe, pursuant to its Constitution and the Code, by and through its General Council, entered a judgment ("Judgment") affirming the Business Committee's July 9, 2012, decision suspending Phillip Del Rosa from holding any office with the Tribal Government, including the Business Committee, from voting in any Tribal elections and from voting in all Business Committee and General Council matters. ER, Vol. 2, p. 29, ¶ 13.

6. After entry of the Judgment the BIA recognized Darren Rose ("Rose"), Vice-Chair and Wendy Del Rosa, Secretary-Treasurer, as a quorum of the three-member Business Committee of the Tribe, with the authority, by a unanimous vote of the two, to govern the Tribe. ER, Vol. 2, p. 86.

7. On or about January 1, 2015, a dispute arose between Rose and Ms. Del Rosa, pursuant to which Rose took the position that Phillip Del Rosa was the Chairman of the Tribe with the right to vote in Business Committee matters. ER, Vol. 2, pp. 85-88.

8. On January 27, 2015, the Tribe, by and through its General Council, sent a letter to Akins, requesting that, for Fiscal Year 2015, the BIA enter into a 638 Contract ("638 Contract"), with the Tribe, pursuant to the provisions of the ISDEAA, ER, Vol. 2, p. 29, ¶ 14.

9. On April 3, 2015, the Agency, sent a letter to the Tribe declining to enter into a 638 Contract with the Tribe for the Fiscal Year 2015 and instead issued a decision ("2015 Decision") holding that the Business Committee elected on April 2, 2012, consisting of Phillip Del Rosa, Chairman, Darren Rose, Vice-Chair and Wendy Del Rosa, Secretary-Treasurer, was the group that the BIA, would enter into a 638 Contract with on behalf of the Tribe. The BIA, Agency, made this 2015, Decision, reinstating Phillip Del Rosa as the Chairman of the Tribe and recognizing Del Rosa's right to vote on items before the Business Committee, even though the General Council, sitting as a Tribal Court, had previously removed Phillip Del Rosa from the position of Chairman and had suspended his voting rights. ER, Vol. 2, p. 29, ¶ 15.

10. On October 15, 2015, the BIA, PR Director, affirmed the 2015 Decision of the Agency, holding that the Business Committee elected on April 2, 2012, including Phillip Del Rosa, as Chairman, would be the group the BIA, Agency, would 638 Contract with on behalf of the Tribe, pursuant to the provisions of the ISDEAA. ER, Vol. 2, p. 29, ¶ 16.

11. On April 19, 2016, the BIA, Agency, issued a new written decision ("Decision I") reversing its prior 2015 Decision and refusing to recognize any tribal members as representing the government of the Tribe for the purpose of carrying on the United States government-to-government relationship with the Tribe or for purposes of entering any 638 Contract under the ISDEAA with the Tribe for Fiscal Year 2016. ER, Vol. 2, pp. 29-30, ¶ 17.

12. On January 13, 2017, the BIA, PR Director, affirmed Decision I of the Agency, issued on April 19, 2016. This decision ("Regional Director's Decision I") of the PR Director was not appealed by any member of the Tribe and became a final BIA, Department of the Interior ("DOI") decision. ER, Vol. 2, p. 30, ¶ 18.

13. On February 28, 2017, the BIA, Agency, issued yet another decision ("Decision II") affirming its prior Decision I, refusing to recognize any group or individual as the Tribe's governing body or enter into a 638 Contract, pursuant to the ISDEAA, with the Tribe for both the Fiscal Years 2016 and 2017. Decision II was not appealed to the PR Director and is now a final non-appealable decision of the BIA, DOI. ER, Vol. 2, p. 30, ¶ 19.

14. On June 30, 2017, the IBIA, for the DOI, sitting on behalf of the Secretary, upheld the PR Director's Decision I of October 15, 2015, recognizing the Tribe's Business Committee elected in 2012, for the limited purpose of entering into a 638 Contract with the BIA, Agency, for Fiscal Year 2015. The

IBIA's June 30, 2017, decision ("IBIA Decision") recognized Phillip Del Rosa as the Chairman of the Tribe for purposes of 2015, 638 Contracting. In its Decision, the IBIA affirmed that the Agency's Decision II, refusing to recognize a tribal government for purposes of 638 contracting for Fiscal Years 2016 and 2017, and was a final and binding decision of the DOI. ER, Vol. 2, p. 30, ¶ 20.

15. On July 6, 2017, Rose and Phillip Del Rosa, purporting to represent the Business Committee, sent a letter to Akins requesting that the Agency, allow them [Del Rosa and Rose] to ". . . drawdown funds for Fiscal Years 2016 and 2017, under the [proposed 638] contract between the BIA and the Tribe . . ." ER, Vol. 2, p. 31, ¶ 21.

16. On July 24, 2017, Rose, and Phillip Del Rosa, purporting to represent the Business Committee, sent a letter to the Agency requesting that the Agency "release the first quarter of contract funds [to Rose and Del Rosa] for 638 Contract Fiscal Year 2015. . ." ER, Vol. 2, p. 31, ¶ 22.

17. On July 26, 2017, Atkins for the Agency, issued another decision ("Decision III") and reversed its prior decision stating ". . . in response to the Tribe's . . . letter of July 24, 2017, . . . the Agency will be conducting business in its government-to-government relationship with the Alturas Indian Rancheria through the Tribe's Business Committee elected April 2, 2012." The April 2, 2012, Business Committee consisted of Phillip Del Rosa as the Chairman of the Tribe.

ER, Vol. 2, p. 31, ¶ 23. In Decision III the Agency never considered or addressed the General Council's Judgment and how it impacted the Agency's Decision III.

18. On August 1, 2017, the General Council of the Tribe, by and through Ms. Del Rosa, sent a letter to Akins, requesting clarification of the BIA's July 26, 2017, Decision III. In the letter, Ms. Del Rosa requested that the BIA clarify whether the IBIA Decision only authorized the BIA to recognize the 2012 Business Committee for the limited purpose of contracting for 638 Contract funds for Fiscal Year 2015 and for no other purpose. ER, Vol. 2, p. 31, ¶ 24.

19. On or about August 16, 2017, Wayne Smith, Tribal Administrator for the Tribe, recognized as such by Ms. Del Rosa and a majority of the Tribe's General Council, telephoned and spoke with Akins. In the call, Akins advised Mr. Smith that, based upon the IBIA Decision, the BIA, Agency, was going to recognize, for the purpose of the United States maintaining its government-to-government relationship with the Tribe, the Tribe's 2012 Business Committee, including Phillip Del Rosa, as Chairman of the Tribe. Akins' decision to interpret the IBIA's Decision as authorizing the BIA to recognize Phillip Del Rosa as the Tribe's Chairman, was made with the knowledge that the General Council had previously removed Phillip Del Rosa from the office of Chairman and had suspended Del Rosa's right to vote in all General Council and Business Committee matters. On August 16, 2017, the BIA also executed a 638 Contract for Fiscal Year

2016 and 2017 ISDEAA funds with Rose and Philip Del Rosa. ER, Vol. 2, pp. 31-32, ¶ 25.

20. The BIA's Decision III, recognizing Phillip Del Rosa as the Chairman of the Tribe, with the right to vote in all matters that come before the Business Committee, is contrary to the Judgment of the General Council that removed Phillip Del Rosa from office and suspend Del Rosa's voting rights. ER, Vol. 2, p. 32, ¶ 26.

21. On August 21, 2017, Ms. Del Rosa, as Secretary-Treasurer of the Tribe and on behalf of the Tribe, filed suit in the District Court against the Federal Officials, asserting that by refusing to give deference and comity to the General Council's October 12, 2013 decision suspending Philip Del Rosa from the office of Chairman and from voting in all General Council and Business Committee matters and approving Rose and Phillip Del Rosa's 638 Contract for Fiscal Years 2016 and 2017, the Federal Officials violated federal common law, the Administrative Procedure Act, 5 U.S.C. § 701 et seq. and the BIA's trust obligations owed to the Tribe. ER. Vol. 2, pp 26-35.

22. The Federal Officials filed a motion to dismiss Ms. Del Rosa's and the Tribe's complaint for lack of jurisdiction and the District Court, on August 27, 2019, issued an order granting the Federal Official's motion to dismiss. ER, Vol. 1, pp. 2-3.

23. On August 27, 2019, the District Court entered a final judgment in the case. ER, Vol. 1, p. 1.

24. On September 20, 2019, Ms. Del Rosa and the Tribe filed a timely notice of appeal appealing the judgment. ER, Vol. 2, pp. 23-24.

SUMMARY OF ARGUMENT

On October 22, 2013, the Tribe acting through its General Council, sat as a tribal court and entered a final, non-appealable Judgment finding Phillip Del Rosa guilty of embezzling tribal funds and suspending Phillip Del Rosa from holding tribal office or voting in any Business Committee and General Council matters until he repaid the stolen funds to the Tribe.

On July 26, 2014, the BIA, Agency office issued a decision holding that the Agency would be conducting business in its government-to-government relationship with the Alturas Indian Rancheria through the Tribe's Business Committee elected on April 2, 2012, consisting of Phillip Del Rosa as the Chairman of the Tribe.

In making its July 26, 2017 decision the BIA, Agency office did not take into consideration the General Council's October 22, 2013 Judgment.

On August 21, 2017, Secretary-Treasurer of the Business Committee, Wendy Del Rosa filed suit on her own behalf and in the name of the Tribe requesting that the District Court issue an order directing the Federal Officials

named as defendants to give deference to the General Council's findings set forth in the Judgment and recognize and enforce the Judgment in its' dealings with the Tribe.

On August 27, 2019, the District Court issued an order and final judgment granting the Federal Officials' motion to dismiss and dismissing the complaint for lack of jurisdiction. The District Court held that it did not have jurisdiction over the case because to grant the relief the Tribe and Ms. Del Rosa was requesting would require the District Court to insert itself "into the tribal governance dispute and further require the Court to recognize Plaintiffs' faction over the Rose faction." In support of its decision, the District Court cited *Picayune Rancheria v. Henriquez*, 213 WL 6903750, which generally stands for the proposition that federal courts do not have jurisdiction to resolve inter-tribal disputes because to do so would require the Court to interpret tribal law, and the interpretation of tribal law does not arise under federal law for purposes of 28 U.S.C. § 1331 jurisdiction.

The District Court errored in holding that it did not have jurisdiction over the causes of action alleged in the complaint because the Tribe and Ms. Del Rosa never asked the Court to interpret tribal law, resolve a tribal enrollment or election dispute or decide who was the lawful governing body of the Tribe. Instead, the Tribe and Ms. Del Rosa requested that the District Court order the Federal Officials to give deference to the findings that the General Council made in its

Judgment and recognize and enforce the Judgment in all of its dealings with the Tribe.

As a matter of federal law, the Federal Officials have an obligation to give deference to the General Council's Judgment. *Paula Brady, Leta K. Jim, and Patricia Stevens v. Acting Phoenix Area Director*, 30 IBIA 294, 299 (1997).

Likewise, the District Court had jurisdiction, under federal law, as a matter of comity, to recognize and enforce the General Council's Judgment, sitting as a tribal court, against the Federal Officials. *Wilson v. Marchington*, 127 F.3d 805, 809-810 (9th Cir. 1997).

The failure of the District Court to recognize and enforce the Judgment allowed the Federal Officials, rather than the Tribe, to determine under tribal law, whether Phillip Del Rosa was suspended from serving on the Tribe's Business Committee, resulted in the District Court engaging in the very conduct it was trying to prevent, involving itself in the internal affairs of the Tribe. *Ransom v. Babbitt*, 69 F. Supp. 2d 141, 150 (D.D.C. 1999); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978); *Williams v. Lee*, 358 U.S. 217, 223 (1959).

STANDARD OF REVIEW

The Court reviews de novo the District Court's decision to dismiss for lack of subject-matter jurisdiction. *United States ex rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d 1121, 1126 (9th Cir. 2015) (en banc). "Where the district court

relied on findings of fact to draw its conclusions about subject-matter jurisdiction, we review those factual findings for clear error." *Id*. at 1126-27. Additionally, the Court must accept as true all factual allegations in the operative complaint and "construes them in the light most favorable to Plaintiff as the non-moving party." *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 981 (9th Cir. 2017). "We review de novo the district court's decision to grant a motion to dismiss a claim under Rule 12(b)(6)." *Id.* at 982. "To survive a motion to dismiss, the claim must be plausible on its face." *Id.* "We must uphold a district court's decision to dismiss either if a cognizable legal theory is absent or if the facts alleged fail to suffice under a cognizable claim." *Id.* (emphasis in original).

ARGUMENT

I. THE DISTRICT COURT HAS JURISDICTION PURSUANT TO 28 U.S.C. § 1331 TO RECOGNIZE AND ENFORCE THE TRIBE'S TRIBAL COURT JUDGMENT.

Title 28 of the United States Code Section 1331 grants to the district courts jurisdiction to hear any claims arising under the **Constitution**, treaties and **laws** of the United States. The **laws** of the United States include the Indian Commerce Clause, Article I, § 8, cl. 3, and the decisions of the federal courts interpreting the Indian Commerce Clause as requiring federal agencies to recognize the right of Indian tribes to govern themselves and to recognize and enforce tribal laws under principles of comity. *Worcester v. Georgia*, 31 U.S. 515 (1832); *Attorney's*

Process & Investigation Services, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa, 609 F. 3d 927, 943 (8th Cir. 2010) ("*Attorney's Process*").

It is a fundamental principle of Federal Indian Law that Indian tribes retain the right to self-government and that "the sovereignty retained by tribes includes 'the power of regulating their internal and social relations.'" *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332 (1983) (quoting *United States v. Kagama*, 118 U.S. 375, 381-82 (1886)). This authority includes "the power to make their own substantive law in internal matters and to enforce that law in their own forums." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (citations omitted); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 n.14 (1982); *United States v. Wheeler*, 435 U.S. 313, 322 (1978); *Ex parte Crow Dog*, 109 U.S. 556, 572 (1883); *Bowen v. Doyle*, 880 F. Supp. 99, 113 (W.D.N.Y. 1995). It is equally well-settled that tribal authority over internal matters is exclusive. *Talton v. Mayes*, 163 U.S. 376 (1896); *Bowen v. Doyle*, 880 F. Supp. at 113; *United States v. Charles*, 23 F. Supp. 346, 348 (W.D.N.Y. 1938). A decision by an agency or official of the federal government that a quasi-judicial decision of the governing body of a tribe suspending a tribal official from voting or holding public office, based on criteria selected by an official of the federal government, without any authority under tribal law to do so, constitutes an impermissible infringement of the "right of the Indians

to govern themselves." *Williams v. Lee*, 358 U.S. at 223; *Winnemucca Indian Colony*, 837 F. Supp. 2d 1184, 1191 (D. Nev. 2011).

In the present case, the General Council of the Tribe, sitting as a quasi-judicial body, entered a final, non-appealable decision, based entirely upon tribal law, that Phillip Del Rosa had embezzled money from the Tribe and, as punishment for engaging in such conduct, should be stripped of his right to hold office and to vote in Tribal elections until he made restitution and repaid the money to the Tribe. ER, Vol. 2, p. 29, ¶ 13. By subsequently recognizing the 2012 Business Committee composed of Phillip del Rosa, Darren Rose, and Wendy Del Rosa for purposes of entering into a 2016 and 2017 638 Contract with the United States, the PR Director expressly overruled the General Council's Judgment and unilaterally reinstated Phillip Del Rosa as the Chairman of the Tribe with the authority to vote on the Business Committee and to administer the Tribe's 638 Contract funds. This the PR Director cannot do consistent with the facts of this case and federal court precedent. *Winnemucca Indian Colony*, 837 F. Supp. 2d at 1191.

Pursuant to Article VII, Section 2(b) of the Tribe's Constitution, the Business Committee enacted a Code of Conduct Ordinance. ER, Vol. 2, p. 28, ¶ 11. Pursuant to the Code of Conduct Ordinance, the General Council, on September 21, 2013, served Phillip Del Rosa with a "Notice of Hearing and Order

to Appear" giving Del Rosa notice that he was being charged with violating the Tribe's Code of Conduct Ordinance, specifically, theft of Tribal funds, misuse of Tribal credit cards and theft of Tribal equipment. The Notice set October 22, 2013, at the Tribal Offices for the hearing. The General Council served Phillip Del Rosa with a second Notice on October 7, 2013, changing the location of the hearing to the Peppermill Hotel in Reno, Nevada. Phillip Del Rosa acknowledged receipt of both notices. ER, Vol. 2, pp. 28-29, ¶ 12.

Prior to the hearing, Phillip Del Rosa notified the General Council that he "would not be attending" the hearing. Despite his failure to attend, the General Council went forward with the hearing. Based upon the substantial evidence presented at the hearing, the General Council found Phillip Del Rosa guilty of the charges and punished him by terminating his right to vote in all Tribal elections and to hold any tribal office until he repaid all of the money he embezzled to the Tribe. ER, Vol. 2, p. 29, ¶ 13.

Under the Code of Conduct Ordinance, Phillip Del Rosa, had the right to be present at the hearing, to be represented by legal counsel, to call and cross-examine witnesses, to present documents in support of his position and to appeal any decision entered against him. ER, Vol. 2, pp. 28-29, ¶ 12, Exhibit C. As such, the Phillip Del Rosa hearing met all of the requirements of due process of the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq. ER, Vol. 2, pp. 28-29, ¶¶ 12-13,

Exhibits C and D. Not only did Phillip Del Rosa not attend the hearing, but he also did not appeal the judgment entered against him. *Id*.

The hearing conducted by the General Council against Phillip Del Rosa, was a quasi-judicial proceeding in which the General Council acted as a Tribal Court.[1] The General Council's Judgment was, therefore, binding on the Federal Officials. *Attorney's Process*, 609 F.3d at 943.

The awarding of the 638 Contract in this case did not require the Federal Officials to resolve the Tribe's internal leadership dispute. The Tribe must resolve its own internal disputes. Neither the DOI, nor any federal court, has jurisdiction to resolve those disputes. "[A] federal agency or court should not address the merits of a tribal election dispute, so long as there is a functional tribal court that can sort out the dispute internally." *Winnemucca Indian Colony*, 837 F. Supp. 2d at 1191.

A final judgment of a tribal tribunal interpreting and applying tribal law to resolve an internal tribal dispute among members of a tribe is binding on the federal government and the federal courts. Once a final tribal court judgment has

[1] Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians. *See, e. g., Fisher v. Dist. Court of sixteenth Judicial Dist.*, 424 U. S. 382 (1976); *Williams* v. *Lee*, 358 U.S. 217 (1959). *See also Ex parte Crow Dog*, 109 U.S. 556 (1883). Nonjudicial tribal institutions have also been recognized as competent law-applying bodies. See *United States* v. *Mazurie*, 419 U.S. 544 (1975). Thus, the General Council Judgment is the equivalent of a Tribal Court judgment. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978).

been entered settling a leadership dispute, the federal government and federal courts must recognize the tribal tribunal's determination. *Attorney's Process*, at 943 ("The rule is clear that federal courts do not conduct de novo review over tribal court rulings under tribal law . . . ."); *Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983) (upholding BIA determination to recognize the last undisputed government as a matter of necessity until tribal court addressed the matter).

The issue of whether Phillip Del Rosa had the right to vote in Tribal elections and to hold tribal offices was addressed and decided by the General Council sitting as a judicial tribunal or court. The General Council, based upon substantial evidence in the record, including an outside audit report conducted at the Tribe's request, found Phillip Del Rosa guilty of stealing Tribal money, misusing Tribal credit cards and misusing Tribal property. ER, Vol. 2, p. 4, ¶ 13, Exhibit D.

Phillip Del Rosa refused to appear at the hearing and did not challenge the General Council's authority to hear the case, despite notice of the proceedings and service of the charges against him. *Id*. After the decision was rendered, Phillip Del Rosa did not seek reconsideration of the judgment or file a notice of appeal of the decision to an independent arbitrator or court of competent jurisdiction. *Id*. The General Council's Judgment is, therefore, a final, non-appealable judgment. The issue of whether Phillip Del Rosa can vote or hold office has been decided by a

tribal tribunal of competent jurisdiction, and that judgment is now final, *res judicata,* and binding on the Federal Officials and the District Court.

The issue of whether the Federal Officials and District Court must give deference to the General Council's decision, sitting as a Tribal Court, and recognize and enforce the Judgment of the General Council is a matter of comity arising under the Indian Commerce Clause and the common law of the United States, and therefore, the District Court had jurisdiction over that issue. *AT&T Corp. v. Coeur D'Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002) (citing *Wilson v. Marchington*, 127 F.3d at 809-810).

The District Court held it did not have jurisdiction in this case because to give deference and comity to the General Council's Judgment would require the Court to "insert itself into what's been a long-running governance dispute between two factions, and essentially must choose sides." ER, Vol. 2, p. 18, lls. 9-12.

Nothing could be further from the truth. The relief sought by Ms. Del Rosa and the Tribe did not require the District Court to interpret tribal law, decide who is a member of the Tribe, decide an election dispute or determine who the lawful governing body of the Tribe was. Instead, Ms. Del Rosa requested that the District Court recognize and enforce a Tribal Court Judgment that was rendered prior to the current inter-tribal dispute. ER, Vol. 2, pp. 28-29.

After the Tribal Court rendered the Judgment, the Business Committee, composed of Darren Rose, as the Vice-Chair and Wendy Del Rosa, as the Secretary-Treasurer was recognized by the BIA as the lawful governing body of the Tribe. ER, Vol. 2, p. 86. By recognizing Darren Rose and Wendy Del Rosa as a quorum of the Business Committee and their jointly approved motions and actions as the legitimate actions of the Tribe, the BIA implicitly recognized the Judgment of the General Council as a valid Judgment, entered under Tribal law, removing Phillip Del Rosa from Office. It was not until Darren Rose and Wendy Del Rosa submitted competing 638 Contracts and Darren Rose sided with Phillip Del Rosa against Wendy Del Rosa, that the BIA subsequently, in recognizing the 2012 Business Committee as being the last duly elected Business Committee, ignored the General Council's Judgment and re-recognized Phillip Del Rosa's eligibility to hold office and vote. ER, Vol. 2, pp. 31-32, ¶¶. 22-26.

But even as to this issue, Ms. Del Rosa is not requesting that the District Court overturn the BIA's decision recognizing the 2012 Business Committee. Rather, Ms. Del Rosa is requesting that the District Court order the Federal Officials to recognize the Judgment of the General Council, sitting as a Tribal Court, disqualifying Phillip Del Rosa from serving and voting on the Business Committee, and returning the Business Committee to the status quo as it existed immediately prior to the occurrence of the current inter-tribal dispute.

The General Council, sitting as a Tribal Court, has already interpreted Tribal law, and has rendered a Judgment removing Phillip Del Rosa from office. This Judgment, as show below, is entitled to recognition and enforcement under federal common law, pursuant to principles of comity, and the District Court has jurisdiction under 28 U.S.C. § 1331 to order the BIA to comply with the Tribal Court Judgment.

II. THE BIA WAS REQUIRED TO RECOGNIZE AND COMPLY WITH THE GENERAL COUNCIL'S DECISION SUSPENDING DEL ROSA FROM OFFICE AND SUSPENDING HIS RIGHT TO VOTE IN BUSINESS COMMITTEE AND GENERAL COUNCIL MATTERS.

The fundamental issue in this case is whether the BIA was required to recognize the Judgment of the Tribe's General Council sitting as a judicial body. This Court has held that federal courts should analyze the deference afforded to tribal court judgments under the doctrine of comity. *Wilson v. Marchington*, 127 F.3d at 809-810 ("*Marchington*").

The doctrine of comity is not a rule of law, but rather is grounded in equitable considerations of respect, goodwill, cooperation, and harmony among courts. *See Danforth v. Minnesota*,552 U.S. 264, 278-280, n. 15 (2008).

"As a general rule, federal courts must recognize and enforce tribal court judgments under principles of comity." *AT&T Corp. v. Coeur D'Alene Tribe*, 295 F.3d at 903 (citing *Marchington*, 127 F.3d at 809-810). "As a general policy,

'[c]omity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.'" *Marchington*, 127 F.3d at 809 (citing *Somportex, Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F. 2d 435, 440 (3d Cir. 1971)). Federal agencies are similarly compelled to respect tribal court decisions. *Winnemucca Indian Colony v. United States ex rel. Dep't of Interior*, 837 F. Supp. 2d at 1193.

Two factors preclude recognition of a tribal court judgment[2]: "Federal and state courts must neither recognize nor enforce tribal judgments if: (1) the tribal court did not have both personal and subject matter jurisdiction; or (2) the defendant was not afforded due process of law." *Marchington*, 127 F.3d at 810. "[U]nless a federal court determines that the tribal court lacked jurisdiction, . . . the proper deference to the tribal court system precludes re-litigation of issues raised . . . and resolved in the tribal courts." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 19 (1987).

[2] Federal courts have also concluded that they may refuse to recognize tribal court judgments on the following discretionary grounds : (1) the judgment was obtained by fraud; (2) the judgment conflicts with another final judgment that is entitled to recognition; (3) the judgment is inconsistent with the parties' contractual choice of forum or (4) recognition of the judgment, or the cause of action upon which it is based is against the public policy of the United States or the forum state in which recognition of the judgment is sought." *Marchington*, 127 F.3d at 810. The Federal Officials have not raised any of these factors as a basis for denying the Judgment comity and rightfully so, since based on the record, none of these factors are present in this case.

When the *Marchington* criteria are applied to the present case, it is evident that none of the circumstances that would support denial of the recognition of the Judgment by the Federal Officials or the District Court exist.

First, there is no question that the General Council had subject matter and personal jurisdiction over Phillip Del Rosa. ER, Vol. 2, p. 28, ¶ 12, Exhibit C. In deciding whether the General Council had jurisdiction over Phillip Del Rosa, this Court reviews findings of fact by the tribal courts for clear error, and reviews questions of law de novo, except for questions of tribal law to which the Court defers to the Tribal Court's interpretation. *FMC v. Shoshone-Bannock Tribes,* 905 F. 1311, 1313-14 (9th Cir. 1990).

Here, Phillip Del Rosa could not object to any of the findings or conclusions reached by the General Council in rendering its Judgment because Phillip Del Rosa was required by law to exhaust his tribal court remedies prior to contesting the jurisdiction of the Tribal Court in another forum. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians* 471 U.S. 845 (1985); *Bowen v. Doyle*, 880 F. Supp. 99 (W.D.N.Y. 1995). Phillip Del Rosa never appeared in the case, filed a timely appeal from the decision, or in any other fashion challenged the General Council's jurisdiction. ER, Vol. 2, p. 29, ¶ 13, Exhibit D. Because Phillip Del Rosa failed to exhaust his tribal court remedies in his case, he is now precluded from challenging the jurisdiction of the General Council or its Judgment. *Nat'l Farmers Union Ins.*

Cos. v. Crow Tribe of Indians, 471 U.S. 845 (1985) supra; *Tillett v. Hodel*, 730 F. Supp. 381, 384 (W.D.O. 1990) ("federal courts should not entertain a challenge to the jurisdiction of a tribal court until tribal court remedies have been exhausted.").

Second, there is no doubt that the General Council afforded Phillip Del Rosa due process. The General Council adopted the Federal Rules of Civil Procedure under its Code of Conduct. Phillip Del Rosa was served with the charges and the notice of hearing and was given adequate notice prior to the hearing being held. ER, Vol. 2, pp. 28-29, ¶ 12, Exhibit C and ¶ 13, Exhibit D. This Court has stated that: "concerns for respecting a sovereign's procedures and avoiding paternalism are reduced when tribal court laws and procedures governing trials … track those of our federal courts." *Bird v. Glacier Electric Cooperative, Inc.*, 255 F.3d 1136, 1143 (9th Cir. 2001). Furthermore, the record shows that the General Council provided Phillip Del Rosa notice, the opportunity to present evidence, the opportunity to submit arguments and respond to arguments and the opportunity to be represented by legal counsel. The record demonstrates that the Tribal Court followed its rules of procedure or otherwise acted in a manner that afforded Phillip Del Rosa due process. ER, Vol. 2, pp. 28-29, ¶¶ 12-13.

Third, if Phillip Del Rosa was dissatisfied with the Judgment, he could have appealed the decision to a fair and impartial arbitrator. *Id.*

Fourth, as noted above, none of the discretionary bases for denying recognition of the General Council's Judgment are present here. There is no basis for concluding that the Judgment was obtained by fraud. The General Council relied on an audit report prepared by an independent auditing firm as evidence that Phillip Del Rosa was guilty of the charges. There was, therefore, substantial evidence in the record to support the Judgment. *Id.*

Fifth, recognition of the Judgment is not against the public policy of the United States. On the contrary, it is the longstanding policy of the federal government, as expressed through statutes such as 25 U.S.C. § 3601 (5) and 25 U.S.C. § 3651 (6), to "recognize tribal justice systems as the most appropriate forums for the adjudication of disputes affecting personal and property rights on Native lands . . . ." 25 U.S.C. § 3651 (6).

Finally, the Judgment entered by the General Council does not conflict with any other court's final judgment that is entitled to recognition, nor any contractual choice of forum provision agreed to by the Tribe.

These facts prove beyond doubt that the General Council's Judgment stripping Phillip Del Rosa of his right to vote and hold office is a final, non-appealable decision that is binding on Phillip Del Rosa, the Federal Officials and the District Court. The PR Director's Decision recognizing Phillip Del Rosa as the Chairman of the Tribe is a clear example of the BIA ignoring the tribal forum

established by the Tribe to resolve disputes that arise on the reservation among Tribal Members. The Tribe, acting through its General Council determined that Phillip Del Rosa as a matter of Tribal law, cannot vote in tribal elections or hold a tribal office. In contrast, the PR Director's Decision directly overturns the General Council's Judgment, reinstates Phillip Del Rosa in office, reinstates his right to vote, and gives him access to Tribal funds. Such a result clearly constitutes a direct, impermissible interference with the ability of the Tribe to govern itself and a failure by the Federal Officials to give comity to a Tribal Court Judgment entitled to comity.

III. THE BIA'S OWN DECISIONS REQUIRED THE BIA TO AFFORD DEFERENCE TO THE TRIBE'S INTERPRETATION OF ITS OWN LAWS AND TRIBAL COURT JUDGMENT REMOVING PHILIP DEL ROSA.

Even if this Court were to conclude that the District Court did not have jurisdiction to recognize and enforce the Tribe's Judgment under principles of comity, the District Court did have jurisdiction to order the BIA to comply with its own rules of decision that require the BIA to give deference to the Tribe's interpretation of its own laws and to its Tribal Court judgments.

The federal government, through the BIA, has adopted a policy of deferring to an Indian tribe's interpretation of its own governing documents and laws in order to bolster tribal sovereignty and self-determination.

> It is well established that a tribe has the primary authority to interpret its own constitution and that BIA must defer to a reasonable interpretation put forth by the tribe.

Paula Brady, Leta K. Jim, and Patricia Stevens v. Acting Phoenix Area Director, 30 IBIA 294, 299 (1997).

Neither the BIA nor the Solicitor's Office may undertake to interpret tribal law without first considering whether the tribe has arrived at an interpretation of its own. *Id*. The BIA is required to avoid interpreting tribal law unless there is a clear necessity for it to do so. *Keweenaw Bay Indian Community v. Minneapolis Area Director*, 29 IBIA 72, 78 (1996); *Sandra Maroquin v. Anadarko Area Director*, 29 IBIA 45 (1996); *Parmenton Decorah, et al. v. Minneapolis Area Director*, 22 IBIA 98 (1992).

Thus, in furthering the doctrines of tribal sovereignty and self-determination, the BIA recognizes the right of Indian tribes to interpret their own laws and gives deference to a tribe's interpretation of its own law. *See San Manuel Band of Mission Indians v. Sacramento Area Director*, 27 IBIA 204 (1995); *Donna Van Zile & James Crawford v. Minneapolis Area Director*, 25 IBIA 163 (1994). Once an Indian tribe has offered a reasonable interpretation of its own law, the BIA is required to defer to the tribe's interpretation even if the BIA has an equally reasonable interpretation of the tribal law. *Shakopee Mdewakanton Sioux Community v. Acting Minneapolis Area Director*, 27 IBIA 163, 169 (1995). *See*

also Prairie Island Community v. Minneapolis Area Director, 25 IBIA 187, 192 (1994) ["Where a Secretarial election is to be conducted; BIA has the authority to make an independent interpretation of tribal law concerning voter eligibility, although it should give deference to the tribe's reasonable interpretation of its own law in this regard."]; *Ute Indian Tribe of the Uintah & Ouray Reservation v. Phoenix Area Director* 21 IBIA 24 (1991) (BIA review of tribal ordinances should be undertaken in such a way as to avoid unnecessary interference with tribal self-government).

In reviewing decisions of the IBIA, federal courts have followed the BIA policy of deferring to an Indian tribe's reasonable interpretation of its own laws. In *Ransom v. Babbitt*, 69 F. Supp. 2d 141 (D.D.C. 1999), for example, the Federal Circuit held that: As a general matter, the IBIA's administrative law decisions comport with the principle of respecting tribal self-government.

> It is IBIA policy that "under the doctrines of tribal sovereignty and self-determination, a tribe has the right initially to interpret its own governing documents in resolving internal disputes, and the Department must give deference to a tribe's reasonable interpretation of its own laws."

Ransom v. Babbitt, 69 F. Supp. 2d at 150 (quoting *United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director*, 22 IBIA 75, 80 (1992)). The *Ransom* Court went on to state that, should the BIA or a court find no alternative to interpreting a tribe's law, "[a]ll such interpretive efforts must effect

as little disruption as possible of tribal sovereignty and self-determination." *Ransom v. Babbitt*, 69 F. Supp. 2d at 151. *See also*, *Cahto Tribe of the Laytonville Rancheria v. Dutschke*, 715 F.3d 1225, 1230 (9th Cir. 2013) (recognizing the rule that deference must be given to tribes' reasonable interpretations of their own laws and holding: "In light of our discussion above, the Tribe's interpretation was, at minimum, reasonable.").

The principles underlying the requirement that federal courts and federal agencies give deference to an Indian tribal government's interpretation of its own laws apply equally to state courts. A state court's overruling of a tribal government's own interpretation of its tribal law would constitute an impermissible interference with the tribe's ability to govern itself. *Williams v. Lee*, 358 U.S. at 223 (holding state court lacked jurisdiction to hear a contract dispute between an Indian and non-Indian that arose off the reservation, where the tribe had a tribal court, because to allow the state court to hear the dispute, rather than the tribal court, would interfere with the ability of the tribe to govern itself). An interpretation by this Court of the Tribe's Constitution, laws, and resolutions, rather than simply adopting the Tribal Court's interpretation, would constitute a similarly prohibited interference with the ability of the Tribe to enact its own laws and be ruled by them. *Id*. *See also, In the Interest of K.B.*, No. 03-0530, 2004 Iowa App. LEXIS 529, at *11 (Ct. App. Mar. 24, 2004) ("We also agree the courts

should respect a Tribe's interpretation of its membership provisions."); *Fisher v. District Court*, 424 U.S. 382, 387-88 (1976).

Here the BIA, Agency issued Decision III without giving any consideration to the General Council's Judgment, removing Philip Del Rosa from Office and finding as a matter of Tribal law that his right to vote as a member of the Business Committee had been suspended. This is in direct conflict with the IBIA decisions holding that the BIA and its agency and regional officials must give deference to a Tribe's interpretation of its own laws. *Ransom v. Babbitt*, 69 F. Supp. 2d at 150 (quoting *United Keetoowah Band of Cherokee Indians in Oklahoma v. Muskogee Area Director*, 22 IBIA 75, 80 (1992)).

For this reason alone, the Court should reverse the District Court's decision, and remand this case to the District Court with instruction that the District Court order the BIA, Agency to reconsider its Decision III in light of the General Council's Judgment.

IV. THE BIA'S DECISION III CONSTITUTED A DIRECT INTERFERENCE IN THE ABILITY OF THE TRIBE TO GOVERN ITSELF IN VIOLATION OF THE UNITED STATES' TRUST OBLIGATION.

It is indisputable that the United States maintains a trust relationship with Indians and Indian tribes. "This principal has long dominated the Government's dealings with Indians." *United States v. Mitchell*, 463 U.S. 206, 225 (1983). *See*,

United States v. Mason, 412 U.S. 391, 398 (1973); *Minnesota v. United States*, 305 U.S. 382, 386 (1939); *United States v. Shoshone Tribe*, 304 U.S. 111, 117-118 (1938); *United States v. Candelaria*, 271 U.S. 432, 442 (1926); *McKay v. Kalyton*, 204 U.S. 458, 469 (1907); *Minnesota v. Hitchcock*, 185 U.S. 373, 396 (1902); *United States v. Kagama*, 118 U.S. at 382-384; *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). The nature of that trust relationship was eloquently stated by the Supreme Court in *Seminole Nation v. United States*, 316 U.S. 286 (1942):

> [T]his Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people. . . . In carrying out its treaty obligations with the Indian tribes the Government is something more than a mere contracting party. Under a humane and self-imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. **Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards**.

Id., at 296-297 (citation omitted) (emphasis added).

In *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 165 (2011) ("*Jicarilla Apache*"), the Jicarilla Apache Nation filed suit against the United States in the United States Claims Court seeking money damages for, among other things, a breach of the United States' trust obligation. In rejecting the Nation's breach of trust claim for money damages, the Court held that any duties arising

from the Government's trust obligations had to be found in a specific statute that imposed certain duties on the United States towards the Nation. *Id.* at 165.

The holding in *Jicarilla Apache* is consistent with a long line of Supreme Court cases that have drawn a distinction between breach of trust claims brought by Indian tribes against the United States for equitable relief and claims seeking money damages. In the latter, the Court has consistently held that, in order for an Indian tribe to maintain a lawsuit against the United States for money damages arising from the Governments breach of its trust obligations, the tribe had to cite to a statute that imposed specific duties upon the United States that gave rise to the breach of trust claims and waived the United States sovereign immunity from suit. *United States v. Mitchell*, 463 U.S. 206 (1983) (holding that "a fiduciary relationship necessarily arises when the Government assumes" duties arising under a statute and that the Government "should be liable in damages for the breach of its fiduciary duties." *Id.* at 225-226.

However, when tribes and tribal officials, as in this case, have sought equitable relief against the United States arising for a breach of its common law trust duty owed to tribes, the federal courts have consistently held that the existence of a fiduciary responsibility toward Indians exists, independent of an express provision of a treaty, agreement, executive order or statute.

> Defendant [federal government] contends that no fiduciary obligation can arise unless there is an express provision of a treaty, agreement, executive order or statute creating such a trust relationship, and the trust relationship is limited by the precise terms of the document. **If by this the Government means that the document has to say in specific terms that a trust or fiduciary relationship exists or is created, we cannot agree**. The existence *vel non* of the relationship can be inferred from the nature of the transaction or activity.

Navajo Tribe of Indians v. United States, 624 F.2d 981, 987 (Ct. Cl. 1980). (Emphasis added). *See*, *United States v. Mitchell*, 463 U.S. 206, 225 (1983); *United States v. Mason*, 412 U.S. 391, 398 (1973); *Minnesota v. United States*, 305 U.S. 382, 386 (1939); *United States v. Shoshone Tribe*, 304 U.S. 111, 117-118 (1938); *United States v. Candelaria*, 271 U.S. 432, 442 (1926); *McKay v. Kalyton*, 204 U.S. 458, 469 (1907); *Minnesota v. Hitchcock*, 185 U.S. 373, 396 (1902); *United States v. Kagama*,118 U.S. at 382-384; *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

Furthermore, the trust duty, standing alone, independent from any duty imposed by federal statute upon the Executive Branch of the United States, can serve as an adequate legal basis for declaratory and injunctive relief sought by Indians:

> When the Congress legislates for Indians only, something more than a statutory entitlement is involved. **Congress is acting upon the premise that a special relation is involved and is acting to meet the obligation inherent in that relationship**.

White v. Califano, 437 F. Supp. 543, 557 (D.S.D. 1977) (emphasis added). *See, Lane v. Pueblo of Santa Rosa*, 249 U.S. 110 (1919); *McNabb v. Bowen*, 829 F.2d 787 (9th Cir. 1987); *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F. Supp. 252 (D.D.C.1972).

Thus, in the exercise of its trust responsibility towards Ms. Del Rosa and the Tribe in this case, the Federal Officials' conduct should have been exercised with "great care," *United States v. Mason*, 412 U.S. at 398, in accordance with "moral obligations of the highest responsibility and trust," and must be judged by this Court "by the highest fiduciary standards." *Smith v. United States*, 515 F. Supp. 56, 60 (N.D. Cal. 1978).

It is also a fundamental principle that Indian tribes retain the right to self-government and that "the sovereignty retained by tribes includes 'the power of regulating their internal and social relations.'" *New Mexico v. Mescalero Apache Tribe* (1983) 462 U.S. 324, 332 (citing *United States v. Kagam*a, 118 U.S. at 381-82). This authority includes the "power to make their own substantive law in internal matters and to enforce that law in their own forums." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 n.14 (1982); *United States v. Wheeler*, 435 U.S. 313, 322 (1978); *Ex parte Crow Dog*, 109 U.S. 556, 572 (1883); *Bowen v. Doyle*, 880 F. Supp. 99, 113 (W.D.N.Y. 1995).

> "[T]he tradition of Indian sovereignty over the reservation and tribal members… reflected and encouraged in [federal statutes] demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development."

White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143 (1980).

It is equally well settled that tribal authority over internal matters is exclusive. *Talton v. Mayes*, 163 U.S. 376 (1896); *Bowen v. Doyle*, 880 F. Supp. at 113; *United States v. Charles*, 23 F. Supp. 346, 348 (W.D.N.Y. 1938).

Based on these principles the BIA, Agency's appointment of Phillip Del Rosa to the Business Committee, who the Tribal Court expressly held under tribal law was suspended from holding a tribal office and voting on tribal matters, constitutes an impermissible infringement of the "right of the Indians to govern themselves." *Williams v. Lee*, 358 U.S. at 223.[3]

By refusing to enforce, let alone acknowledge, the Tribal Court's Judgment, the Federal Officials have impermissibly injected themselves into the internal governmental affairs of the Tribe, substituted their judgment for that of the Tribal

[3] In *Williams v. Lee*, a unanimous court ruled that state courts had no jurisdiction over a civil claim by a non-Indian against an Indian for a transaction arising on the Navajo reservation. The Court stated that "absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be governed by them." *Id*. at 220. To permit the Federal Officials in this case to exercise jurisdiction directly over the Tribal government itself and subject the Tribe's General Council Judgment, on issues of Tribal law, to a federal decision "would undermine the authority" of the Tribe to govern itself under its own laws and "hence would infringe on the right of the Indians to govern themselves." *Id*. at 220.

Court, and allowed a convicted embezzler of Tribal funds unfettered access to the Tribe's funds. There could not be a greater example of the BIA interfering with the ability of a tribe to govern itself than this one.

CONCLUSION

Nearly two years prior to the commencement of the current inter-tribal dispute, Phillip Del Rosa was removed as Chairman of the Tribe and his right to vote was suspended by the Tribal Court until full restitution of the funds he stole was made to the Tribe. Despite the Judgment of the General Council, the BIA, Agency and the PR Director has reversed the General Council's Judgment, reinstated Phillip Del Rosa as the Chairman of the Tribe, restored his right to vote on the Business Committee, and given him access to and control over the very type of accounts and funds that Phillip Del Rosa stole in the past. In light of these facts, the Federal Officials' decisions are a profound intrusion into the internal governmental affairs of the Tribe that can only be described as unconscionable.

If there was ever an example of the BIA unjustifiably intruding into the internal affairs of a tribe and imposing its unilateral vision of how a tribal government should be structured, this is it.

The law is clear. The BIA is to give comity to tribal court decisions, such as the Judgment of the General Council suspending Del Rosa's right to vote and to

hold office. The Federal Officials violated Ninth Circuit precedent by refusing to recognize the final Judgment of the General Council.

Ms. Del Rosa has stated a claim against the Federal Official arising under the Constitution and common law of the United States that requires federal agencies and federal courts to recognize and enforce tribal court judgments. As such, Ms. Del Rosa's claims arise under the laws of the United States and the District Court had jurisdiction over those claims.

For all of these reasons, the District Court's Order and Judgment must be reversed, and the Federal Officials must be ordered to recognize and enforce the General Council's Judgment.

Dated: April 29, 2022

Respectfully Submitted,

RAPPORT AND MARSTON

By: /s/ *Lester J. Marston*

LESTER J. MARSTON, Attorney for the plaintiffs, Alturas Indian Rancheria and Wendy Del Rosa

STATEMENT OF RELATED CASES

The undersigned, counsel of record for Plaintiffs-Appellants, is not aware of any related cases.

Dated: April 29, 2022

Respectfully Submitted
RAPPORT AND MARSTON

By: */s/ Lester J. Marston*
LESTER J. MARSTON,
Attorney for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 9,479 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14-point font.

Dated: April 29, 2022

Respectfully Submitted
RAPPORT AND MARSTON

By: */s/ Lester J. Marston*
LESTER J. MARSTON,
Attorney for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Participants in the case who are not registered CM/ECF users will be served by U.S. Mail.

Dated: April 29, 2022 Respectfully Submitted

By: */s/ Ericka Duncan*
ERICKA DUNCAN