

1 AT THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA
2
34 Case No. CV-22-1422-PHX-DLR
5
67 **JUAN-CARLOS PRECIADO,**
8 **BIANCA BAUTISTA-PRECIADO,**
9 *Plaintiffs,*

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CLERK U.S. DISTRICT COURT	
DISTRICT OF ARIZONA	
BY	DEPUTY

10 **v.**
11 **GWR ARIZONA LLC. (d/b/a GREAT WOLF LODGE),**
12 **Murray Hennessy, in his professional and individual capacity as a man,**
13 **Amy Johnson, in her professional and individual capacity as a woman,**
14 **SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY (SRPMIC),**
15 **Martin Harvier, in his individual capacity as a man and official capacity as President of the**
16 **SALT RIVER PIMA- MARICOPA INDIAN COMMUNITY (SRPMIC),**
17 **Say Moua, in his professional and individual capacity as a man,**
18 **Isela Kerbaugh, in her professional and individual capacity as a woman,**
19 **Aaron Betz, in his professional and individual capacity as a man,**
20 **Sydney Doe, in her professional and individual capacity as a woman,**
21 **Phillip LaRoche, in his professional and individual capacity as a man,**
22 *Defendants.*23 **MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO STRIKE**
24 **DEFENDANTS MOTION TO DISMISS**25
26 **1. INTRODUCTION**27 Defendants' counsel has filed a motion to dismiss for failure to state a claim for which
28 the court can grant relief. Defendants' Counsel described in the motion to dismiss that the
29 GWR ARIZONA LLC. (d/b/a GREAT WOLF LODGE) "Lodge's" face-mask policy was the
30 cause for the complaint. While generally misleading, Plaintiffs cannot personally know,
31 whether or not it is intentionally misleading, as counsel fails to describe or place on the
32 record evidence as to how the "Lodge's", by and through Defendants; Martin Harvier acting
33 in the office of President for the Salt River Pima-Maricopa Indian Community/(SRPMIC),
34 Murray Hennessy acting as the President for the GWR ARIZONA LLC. (d/b/a GREAT
35 WOLF LODGE)/(GWL), Amy Johnson acting as the Chief Executive Officer for the (GWL),
36 Isela Kerbaugh acting as the Director for the (GWL), Say Moua acting as a security agent for
37 the (GWL), were granted the authority to impose regulations regarding the sanitation of
38 property to include living, breathing, and sentient men or women. Plaintiffs have maintained

1 that the initial causation of injury, to the Plaintiffs, was a proximate result of an
 2 unconstitutional directive. This is a question of law, and this federal forum is required to
 3 address the Justiciability of these causes of action.

4

5 **2. FEDERAL QUESTION JURISDICTION**

6 The Supreme Court held that the requirement to invoke federal question jurisdiction, the
 7 school district had to contend that the tribe had been divested of its sovereign authority to
 8 enter a judgment—in essence, that a dispute existed over the extent of tribal powers. *Id.* at
 9 852, 105 S.Ct. at 2452. Because the school district contended that federal law “divested the
 10 tribe of this aspect of sovereignty,” it satisfied this federal question requirement. *Id.* at 852–
 11 53, 105 S.Ct. at 2452. In particular, “[t]he questions whether an Indian tribe retains the power
 12 to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court”
 13 had to “be answered by reference to federal law and is a ‘federal question’ under § 1331.”¹³
 14 *Id.* at 852, 105 S.Ct. at 2452. “[A] federal court may determine under § 1331 whether a tribal
 15 court has exceeded the lawful limits of its jurisdiction.” *Id.* at 853, 105 S.Ct. at 2452.

16 Plaintiffs, have plead sufficiently, that constitutional rights were violated without any
 17 legal or lawful authority. Semantics over the wording of “tribal” law or “state” law, does in
 18 no way abrogate responsibility away from Martin Harvier, Murray Hennessy, Amy Johnson,
 19 Isela Kerbaugh, nor any of the other Defendants, who worked directly or indirectly, by and
 20 through the directive of Martin Harvier, Murray Hennessy, Amy Johnson, and Isela
 21 Kerbaugh chilling and deterring Plaintiffs from exercising their freedoms and liberties as
 22 enumerated in the Bill of Rights.

23 “Thus, the particular phraseology of the constitution of the United States confirms and
 24 strengthens the principle supposed to be essential to all written constitutions, that a law
 25 repugnant to the constitution is void; and that courts, as well as other departments, are bound
 26 by that instrument.” *Madison*, 5 U.S. 137 (1803)

27 Defendants’ Counsel both conveniently and artfully avoided the federal question, judicial
 28 review, and the strict scrutiny rule as plead by the Plaintiffs. Counsel ignored Plaintiffs’
 29 demands for an empanelment of a Grand Jury to investigate criminal activity by the
 30 Defendants, which incorporates assault, conspiracy, and deprivation of constitutionally
 31 secured rights by color of law. “Tribal sovereign immunity protects Indian tribes from suit
 32 absent express authorization by Congress or clear waiver by the tribe.” *Cook v. AVI Casino*
 33 *Enterprises, Inc.*, 548 F.3d 718, 725 (9th Cir.2008). Tribal sovereign immunity “also protects
 34 tribal employees in certain circumstances,” Maxwell, 708 F.3d at 1086, namely, where a
 35 tribe’s officials are sued in their official capacities. “A suit against ... [a tribe’s] officials in
 36 their official capacities is a suit against the tribe [that] is barred by tribal sovereign

1 immunity." *Miller v. Wright*, 705 F.3d 919, 927–28 (9th Cir. 2013), cert. denied, — U.S.
 2 —, 133 S.Ct. 2829, 186 L.Ed.2d 885 (2013).

3 Plaintiffs contend that the official authority granted to Martin Harvier cannot include the
 4 power to regulate people as things and as such, the President and those working in concert with
 5 him, are liable for damages caused. While officials and agents of an Indian tribe do not have the
 6 same immunity as the tribe itself, *Kennerly*, 721 F.2d at 1259, tribal immunity nevertheless
 7 extends to individual tribal officials while "**acting in their representative capacity and within**
 8 **the scope of their authority.**" *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th
 9 Cir. 1985). *See also United States v. Yakima Tribal Ct.*, 806 F.2d 853, 861 (9th Cir. 1986), cert.
 10 denied, 481 U.S. 1069, 107 S.Ct. 2461, 95 L.Ed.2d 870 (1987)

11 3. INDIVIDUAL LIABILITY

12 Plaintiffs contend that sovereignty is a singular principle of existence and requires that all
 13 men know their duties and obligations to other men. The violation of one's rights is a
 14 violation of all. The responsibility of each individual to exercise prudence and care is one of
 15 personal responsibility. These same principles fully apply to tribal sovereign immunity.

16 Although "[t]ribal sovereign immunity 'extends to tribal officials when acting in their official
 17 capacity and within the scope of their authority,'" *Cook*, 548 F.3d at 727 (emphasis added)
 18 (quoting *Linneen v. Gila River Indian Cnty.*, 276 F.3d 489, 492 (9th Cir. 2002)); *see also*
 19 *Miller*, 705 F.3d at 928 (same), tribal defendants sued in their individual capacities for
 20 money damages are not entitled to sovereign immunity, even though they are sued for actions
 21 taken in the course of their official duties. *See Maxwell*, 708 F.3d at 1089. As the Tenth
 22 Circuit has explained:

23 The general bar against official-capacity claims ... does not mean that tribal officials are
 24 immunized from individual-capacity suits arising out of actions they took in their official
 25 capacities.... Rather, it means that tribal officials are immunized from suits brought against
 26 them because of their official capacities—that is, because the powers they possess in those
 27 capacities enable them to grant the plaintiffs relief on behalf of the tribe. *Native Am. Distrib.*
 28 *v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1296 (10th Cir. 2008).

29 The rule that, where non-members are concerned, "the exercise of tribal power beyond
 30 what is necessary to protect tribal self-government or to control internal relations cannot
 31 survive without express congressional delegation," *Montana v. United States*, 450 U.S. 544,
 32 564, applies to both Indian and non-Indian land. The land's ownership status is only one
 33 factor to be considered, and while that factor may sometimes be dispositive, tribal ownership
 34 is not alone enough to support regulatory jurisdiction over non-members. *Nevada v. Hicks*,
 35 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001).

36 A regulatory authority is an autonomous enforcing body, created by the government, to
 37 oversee and enforce regulations regarding occupational health and safety. The role of the

1 regulatory authority is to establish and strengthen safety standards and ensure consistent
 2 compliance with them. “It is indisputable that the public has a strong interest in combating
 3 the spread of [COVID-19].” Ala. Ass’n of Realtors, 141 S. Ct. at 2490. In pursuit of that end,
 4 the CDC issued the Mask Mandate. But the Mandate exceeded the CDC’s statutory authority,
 5 improperly invoked the good cause exception to notice and comment rulemaking and failed
 6 to adequately explain its decisions. Because “our system does not permit agencies to act
 7 unlawfully even in pursuit of desirable ends,” *id.*, the Court declares unlawful and vacates the
 8 Mask Mandate. *Health Defense Fund, Inc. v. Biden* 2022 WL 1134138.

9 Plaintiffs have plead, with specificity, that the arbitrary actions of President Martin Harvier
 10 were not that of a Sovereign acting independently on their own, but rather following the path
 11 of states and federal agencies. To maintain an action under section 1983 against the
 12 individual defendants, the Plaintiffs must instead show: (1) that the conduct complained of
 13 was committed by a person acting under the color of state law; and (2) that this conduct
 14 deprived them of rights, privileges, or immunities secured by the Constitution or laws of the
 15 United States. *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 1912-13, 68 L.Ed.2d 420
 16 (1981). The Supreme Court has established that the state action requirement in a section 1983
 17 claim is satisfied when the party charged with an alleged constitutional deprivation “may
 18 fairly be said to be a state actor.” *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 937, 102
 19 S.Ct. 2744, 2754, 73 L.Ed.2d 482 (1982).

20 Pro se pleadings, “however inartfully pleaded,” must be held to “less stringent standards
 21 than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972).
 22 If the court can reasonably read pleadings to state a valid claim on which the litigant could
 23 prevail, it should do so despite failure to cite proper legal authority, confusion of legal
 24 theories, poor syntax and sentence construction, or litigant’s unfamiliarity with pleading
 25 requirements. *Boag v. MacDougall*, 454 U.S. 364 (1982); *United States ex rel. Montgomery*
 26 *v. Bierley*, 141 F.2d 552, 555 (3d Cir. 1969).

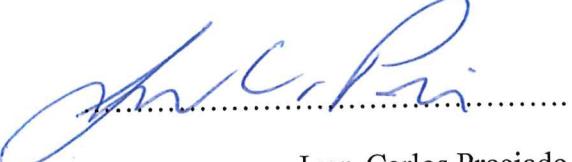
27 Defendants demonstrated criminal intent, carelessness, recklessness, and indifference
 28 towards Plaintiffs constitutionally protected, secured, and guaranteed rights, Plaintiffs
 29 notified Defendants that their conduct was illegal and unlawful, Defendants callously
 30 continued to move forward with their unreasonable, capricious, egregious, and harmful
 31 behavior against Plaintiffs.

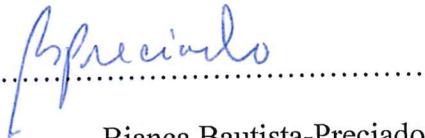
32 **4. DECLARATORY RELIEF**

33 Plaintiffs have asked this court to review the constitutionality of President Martin Harvier’s
 34 directive, not only for relief to the Plaintiffs, but also as equitable relief for the men and women
 35 directly under his authority. Declaratory relief is a remedy for a determination of justiciable
 36 controversy. This occurs when the plaintiff is in doubt regarding their rights. Declaratory relief
 37 has two essential elements needed, and they are; 1) a proper subject, 2) an actual controversy

1 involving justiciable questions. The breach of duty by officials enacting mandates,
2 proclamations, and directives outside their lawful office boundaries is a justiciable controversy
3 that concerns all.

4 WHEREFORE PLAINTIFFS move this Honorable Court to enter an order for dismissal of
5 Defendants Motion to Dismiss.

6 
7
8 Juan-Carlos Preciado

9 
10
11 Bianca Bautista-Preciado

**VERIFICATION OF MEMORANDUM IN SUPPORT
OF PLAINTIFFS' MOTION TO STRIKE**

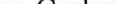
3 STATE OF ARIZONA)

4 | MARICOPA COUNTY)

5 BEFORE ME personally appeared Juan-Carlos Preciado and Bianca Bautista-Preciado
6 who, being by me first duly affirmed and identified in accordance with Arizona law, deposes and
7 say:

1. Our names are Juan-Carlos Preciado and Bianca Bautista-Preciado, plaintiffs herein.
2. We have read, written, and understood the attached foregoing motion and memorandum in support thereof and filed herein, and each fact alleged therein is true and correct of my own personal knowledge.

12 FURTHER THE AFFIANT SAYETH NAUGHT.

 Juan-Carlos Preciado, Affiant

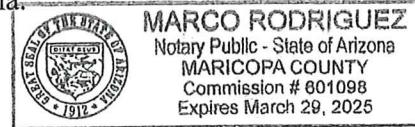
Juan-Carlos Preciado, Affiant

Preciado
Bianca Bautista-Preciado, Affiant
In Care of 3280 East Milky Way
Gilbert, Arizona 85295

AFFIRMED TO and subscribed before me this 13 day of November, 2022.

(Seal)

Notary Public sitting in and for the State of Arizona.



My commission expires:

CERTIFICATE OF SERVICE

I Juan-Carlos Preciado CERTIFY that a copy of the foregoing was provided by regular U.S. mail to Brandon T. Delgado, counsel of record for the Defendants at 2929 North Central Ave, Suite 2100 Phoenix, AZ 85012-2793
this day of November 2022.

this day of November 2022.

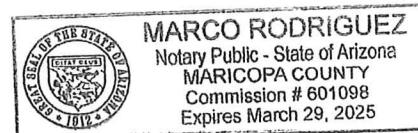

Juan-Carlos Preciado
In Care of 3280 East Milky Way
Gilbert, Arizona 85295

Before me personally appeared Preciado, Juan-Carlos whose identity was proved to me on the basis of satisfactory evidence to be the man whose name is autographed to this document.

Affirmed and autographed before me this 23 day of November in the common year two thousand twenty-two.

(Seal)

Notary Public sitting in and for the State of Arizona.



My commission expires: