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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SARAH SUE CHANNING, LESTER JERRY CROW, and WILLIAM FISHER,
Plaintiffs,

v.

SENECA-CAYUGA NATION, CHARLES DIEBOLD, CURT LAWRENCE, KIM GUYETT, CYNTHIA DONOHUE BAUER, AMY NUCKOLLS, HOYIT BACON, TONYA BLACKFOX, JOHN DOES 1-10, DEB HAALAND, Secretary of the Interior, BRYAN NEWLAND, Assistant Secretary – Indian Affairs, and UNITED STATES DEPARTMENT OF THE INTERIOR,
Defendants.

Case No. 23-cv-00458-SH

REPLY MEMORANDUM OF DEFENDANTS SENECA-CAYUGA NATION, CHARLES DIEBOLD, CURT LAWRENCE, KIM GUYETT, CYNTHIA DONOHUE BAUER, AMY NUCKOLLS, HOYIT BACON, AND TONYA BLACKFOX IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

The Seneca-Cayuga Nation ("Nation") and its elected officials submit this reply in further support of their Motion to Dismiss (ECF No. 39). In the Complaint (ECF No. 2) and Response Memorandum (ECF No. 48), Plaintiffs ask this Court to intervene in an internal tribal matter, contrary to well-established Supreme Court and Tenth Circuit precedent, by overruling the Nation's decision to protect the Tribe's Treasury, and investigate and sanction Plaintiffs and other individuals for misappropriating the Nation's funds. These are matters that can and should be resolved through the Nation's political and dispute resolution processes.

There are multiple grounds for dismissal of this action. First, against all authority, Plaintiffs claim that the Indian Civil Rights Act ("ICRA") allows injunctive and declaratory relief in federal court. The Supreme Court and Tenth Circuit expressly reject that position. Habeas is the only federal remedy available under the ICRA. Second, Plaintiffs cannot pursue habeas relief because they have not exhausted tribal remedies. Plaintiffs retreat from their allegations that no tribal remedies exist to be exhausted, and now ask this Court to find—through *de novo* determinations of tribal law and jurisdiction—that the newly acknowledged remedies are inadequate or futile. Third, Plaintiffs' "detention" allegations are only minimal restraints that cannot justify habeas relief. Of the three Plaintiffs, one alleges potential exclusion from the Nation's casino and two now concede that they do not even allege a potential territorial restriction. Plaintiffs allege the potential denial of government benefits, which is categorically insufficient to establish detention—and would be insufficient even if the benefits were actually denied. Finally, the allegations that such minimal restraints are unlawful are mere labels and conclusions that the Court should disregard.

ARGUMENT

I. ICRA Authorizes Habeas as the Only Means of Federal Judicial Review of Tribal Actions

The ICRA precludes "declaratory and injunctive relief against tribes or their officers in

federal court" and "'authorize[s] federal judicial review of tribal actions only through the habeas corpus provisions of § 1303.'" *Chegup v. Ute Indian Tribe of the Uintah & Ouray Reservation*, 28 F.4th 1051, 1063 (10th Cir. 2022) (internal quotations omitted). Plaintiffs quote several cases confirming that habeas is the only federal remedy for alleged violations of the ICRA. Pls.' Resp. to Defs' Mot. Dismiss at 11 (ECF No. 48 ("Resp.")) (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 70 (1978); *Valenzuela v. Silversmith*, 699 F.3d 1199, 1203 (10th Cir. 2012)). Plaintiffs also admit that habeas "is limited to evaluating whether the confinement imposed on a petitioner is legal." Resp. at 21. Accordingly, Plaintiffs do not defend their declaratory and injunctive claims against the Nation and appear to concede that those claims are barred. Despite this concession, Plaintiffs still insist that they can seek "declaratory and injunctive relief against tribal officials" for alleged violation of the ICRA. *Id.* at 14. As support, Plaintiffs make two flawed arguments. First, they assert that habeas somehow encompasses declaratory and injunctive relief against tribal officials, even though habeas is limited to challenging the legality of detention. *Id*. Second, they attempt to resurrect the long-rejected notion that *Ex parte Young* permits such claims. *Id.* at 12.

Despite citing authority to the contrary, Plaintiffs claim that merely applying the "habeas" label is sufficient to allow claims for declaratory and injunctive relief against tribal officials to proceed. *Id.* at 14. This would overturn decades of precedent that defines the narrow relief permitted under the ICRA and the distinction between habeas and injunctive or declaratory relief. "Habeas" has a particular meaning; the claim is limited to challenging "the fact or duration of" confinement and is distinct from other claims seeking relief from unconstitutional treatment. *Heck v. Humphrey*, 512, U.S. 477, 481 (1994); 25 U.S.C. § 1303; Resp. at 31. In contrast, declaratory or injunctive relief—declaring official actions unlawful, enjoining officials from acting, requiring officials to act, or invalidating the tribal laws or procedures—would be a broad intrusion by a

federal court on the tribal constitutional authority of the Nation's governing body and officials, and would apply to all persons subject to the challenged acts—whether in detention or not. *See* Complaint ("Compl."), Counts I-VI (ECF No. 2) (seeking relief for "similarly situated individuals"). Thus, conflating habeas with declaratory or injunctive relief, as Plaintiffs urge, would have significant consequences on tribal self-government—the precise intrusion into tribal affairs foreclosed by *Santa Clara* and its progeny.

Insofar as Plaintiffs are suggesting that declaratory and injunctive relief can piggyback on a habeas claim, there is no basis in law for that. And the theory is further negated here by Plaintiffs' failure to allege any viable habeas claim against the Business Committee Defendants—there is no "back" to ride on. The claims against the Business Committee Defendants are *solely* for injunctive and declaratory relief. Plaintiffs do not allege that they are in the legal custody or control of the Business Committee Defendants—and the Business Committee Defendants are therefore not proper habeas respondents. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004); *Santa Clara*, 436 U.S. at 59. Indeed, Plaintiffs' "detention" allegations are directed at other officials, and, to a great extent, at no one in particular. With the alleged exclusion of Plaintiff Channing from the Nation's casino, Plaintiffs only allege a *statement* (not actual exclusion) by the Gaming Commissioner, who is not a Defendant. Compl. ¶ 44. And with the alleged deprivation of tribal benefits, Plaintiffs allege *no* specific actions by the Business Committee Defendants or anyone else—except that Defendant Diebold informed Plaintiff Channing that her benefits would "stay the same." Compl. ¶ 46. Thus, the allegations against the Business Committee Defendants are only for purported procedural violations in adopting the sanctions resolutions that led to the (inadequately) alleged detention by the Nation. Plaintiffs cannot apply the habeas label to seek declaratory and injunctive relief against those actions as alleged violations of the ICRA. *Chegup*, 28 F.4th at 1063.

Plaintiffs' *Ex parte Young* theory is equally defective. Plaintiffs assert that "[c]ontrary to [Defendants'] claim that *Santa Clara Pueblo* suggested that the ICRA foreclosed actions against tribal officials under *Ex Parte Young*, that case establishes the opposite." Resp. at 12. Plaintiffs contend that "*Santa Clara* and *Bay Mills* . . . both expressly recognize the propriety of seeking declaratory and injunctive relief against tribal officials for the ongoing violations of law." Resp. at 14. Plaintiffs' primary support for this assertion is a discussion of *Santa Clara* that rearranges the order of the quoted passages to suggest a holding opposite of what the Court decided. *Santa Clara* did note that "as an officer of the Pueblo, petitioner Lucario Padilla is not protected by the tribe's immunity from suit" because *Ex parte Young* might apply. *Santa Clara*, 436 U.S. at 59. But, importantly, the Court went on to find "that § 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers." *Santa Clara*, 436 U.S. at 72; *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 886 (2d Cir. 1996) (explaining that *Santa Clara* relied on *Ex parte Young* for the proposition that tribal officials are "are not absolutely immune from suit," but found that *Ex parte Young* did not apply to the ICRA). Nevertheless, Plaintiffs contend that *Ex parte Young* is an exception to tribal official immunity that applies in all cases, without exception. Resp. at 13-14. But it is well-established that a federal statutory framework may preclude *Ex parte Young* actions. *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 647–48 (2002) (citing *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996)). And Congress did precisely that with the ICRA. *Santa Clara*, 436 U.S. at 72.

Finally, even assuming that *Ex parte Young* claims were theoretically permitted under the ICRA, there is no basis for such claims against the Business Committee Defendants. As is true with the attempt to label declaratory and injunctive relief as "habeas" claims, applying the *Ex parte Young* label to such claims fails because the named "officials must have a particular duty to

'enforce' the statute in question and a demonstrated willingness to exercise that duty." *Prairie Band v. Wagnon*, 476 F.3d 818, 828 (10th Cir. 2007). There is no such allegation here; Plaintiffs do not contend that the Business Committee Defendants patrol the Nation's properties or administer any benefit—only that they make laws or resolutions on those subjects. Resp. at 15-16.

II. Plaintiffs Cannot Pursue Habeas Because They Have Not Exhausted Tribal Remedies

Exhaustion of tribal remedies is a jurisdictional prerequisite for an ICRA habeas claim. The Nation Defendants deny that Plaintiffs have any viable claim in any forum, and reserve all defenses against such claims. But it is Plaintiffs' obligation to prove that such possibilities are exhausted before asking a federal court to intervene in tribal affairs. *Chegup*, 28 F.4th at 1060. Exhaustion of tribal remedies is especially critical here because this action implicates significant matters of tribal self-governance in which federal courts are reluctant to intervene. *Valenzuela*, 699 F.3d at 1206. But instead of pursuing tribal remedies, Plaintiffs ask this Court to adjudicate *de novo* the jurisdiction and authority of the Nation's constitutional entities—matters inherent to the Nation's sovereignty and internal governmental affairs. *See id.* (federal courts enforce the tribal exhaustion rule to "reinforce[] Congress's strong interest in promoting tribal sovereignty"). To make matters worse, Plaintiffs' vague and changing arguments on tribal remedies raise more questions about than they answer—Plaintiffs' claims were not subject to adjudication in tribal forums that could develop and assess a record, and thus are not ripe for adjudication by this Court. *Id.* (tribal exhaustion "allow[s] a full record to be developed in the tribal court before either the merits or any question concerning appropriate relief is addressed in federal court").

A. Plaintiffs Could Petition the General Council for Relief

Plaintiffs admit that the General Council imposed the challenged sanctions and could remove them. Compl. ¶¶ 27 (imposing sanctions), 32 (vacating sanctions). Nevertheless, Plaintiffs attempt to justify their failure to pursue such a remedy by contending that "nothing in the Nation's

Constitution supplies the General Council . . . with the authority to address the Plaintiffs' claims and provide them with any relief." Resp. at 18. But the General Council is the "supreme governing body" of the Nation and must address "reports and any other business which may come before" it. Const. and Bylaws of the Seneca-Cayuga Nation, Art. IV, VIII. There is no reasonable interpretation of these provisions that would foreclose the General Council from addressing Plaintiffs' claims. No delegation is required for the General Council to exercise its inherent authority—it comprises all adult members of the Nation and is the source of sovereign authority. Plaintiffs' demand for a federal court to impose limits on the General Council's authority is a stunning attack on the Nation's fundamental rights of sovereignty and self-governance.

In another admission of a General Council remedy, Plaintiffs claim that their right to General Council review, existed, but did not vest until it was explained in 2021 letter. Resp. at 18. But even if the right to General Council review did not vest until then—a baseless claim—that was years before this action was filed in October 2023. Plaintiffs also contend that General Council review was not available in a timely manner because the General Council meets "*only*" once a year. Resp. at 19. That is not accurate; the General Council can hold Special Meetings as needed. By-Laws. Art. III, secs. 2, 3. Regardless, Plaintiffs waited more than 15 years after the sanctions were first imposed, and two years after Resolution 30-04062 (which reinstated Resolution 02-062108, imposing sanctions for the unauthorized use of the Nation's funds) and Resolution 025-072721 (authorizing investigation) were enacted, before bringing this lawsuit. Had Plaintiffs sought General Council review, it would be no less "timely" than this litigation. Plaintiffs chose not to pursue their General Council remedy, and their decision forecloses an action in federal court.

B. Plaintiffs Could Seek Relief from the Grievance Committee

To excuse their failure to seek relief from the Tribe's Grievance Committee, Plaintiffs ask this Court to determine the Committee's jurisdiction *de novo*. Plaintiffs invoke *Mott v. Fisher*,

Seneca-Cayuga Grievance Committee (Jan. 29, 2016), to contend that the Grievance Committee lacks "the authority to address the Plaintiffs' claims and provide them with any relief." Resp. at 18. *Mott* says nothing of the sort; it only determined that the Committee did not have the authority to resolve a conflict in the Nation's Constitution between provisions governing the authority of the General Council (as the "supreme governing body of the Nation") and Business Committee (with "power to transact business and otherwise speak or act on behalf of the" Nation). Plaintiffs do not allege any conflict between the Nation's constitutional provisions here—they contend that their alleged injuries are caused by violations of clear constitutional provisions. *E.g.*, Resp. at 7, 14, 26-29. Plaintiffs' misuse of *Mott* shows why the exhaustion requirement is needed to protect tribal self-government. Insofar as there is a question to be resolved regarding the Grievance Committee's jurisdiction, it is for the Committee to decide in the first instance. *Chegup*, 28 F.4th at 1060.

C. Plaintiffs Could Seek Relief from the Court of Indian Offenses

The Complaint alleged that that there is no tribal forum available to petition for relief because "the Nation has resolved to exit the Court of Indian Offenses" (Compl. ¶ 7.a), and therefore, Plaintiffs "have exhausted all of their tribal remedies, to the extent that they exist or are available" (Compl. ¶ 93). Plaintiffs implied they would have a remedy if the Nation participated in the court. *Id*. ¶ 7.a. Now, Plaintiffs now argue the opposite. They admit that the Nation participates in the court but assert that it cannot provide a remedy. Resp. at 21. The new argument also fails. Plaintiffs would have this Court decide, in the first instance, the Nation's conditions of participation in the Court of Indian Offenses and that court's jurisdiction as a tribal forum. *Id*.

While Plaintiffs admit that the Court of Indian Offenses is authorized to hear and resolve "governmental disputes," they contend that it lacks jurisdiction because the disputes in this action are not "governmental." *Id*. But the Complaint is against government officials for their exercise of "powers of self-government." Compl. ¶¶ 96, 104, 106, 114, 117, 123, 132, 142. It is hard to imagine

a dispute more "governmental" in nature. Moreover, this argument contradicts the assertion that the Grievance Committee is not available because it cannot decide the governmental disputes. Resp. at 20 (alleging that Grievance Committee cannot "interpret the Constitution on the actions of the Tribal Defendants"). Thus, under Plaintiffs' logic, the Court of Indian Offenses would be an available forum because it can *only* decide government disputes. Plaintiffs must pursue the remedy, or face dismissal of their claims in this Court. *See, e.g., Tillett v. Lujan*, 931 F.2d 636, 639-40 (10th Cir. 1991) (requiring exhaustion in Court of Indian Offenses for ICRA claim).

III. Plaintiffs' Alleged "Detention" Is Not Sufficient to Warrant Habeas Relief

Demonstrating a colorable claim for "detention" is a jurisdictional prerequisite for an ICRA habeas claim, because habeas is "an extraordinary remedy" that leaves "conventional remedies for cases in which restraints on liberty are neither severe nor immediate." *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973). Plaintiffs' allegations of "detention" are inadequate to warrant habeas relief under any legal standard. Plaintiffs allege only potential territorial exclusion and potential suspension of tribal benefits. Plaintiffs contend that these bare allegations amount to "banishment," which is somehow equivalent to "permanent banishment," and that, in turn, constitutes "detention" under the ICRA. That is several bridges too far. If the Court is to consider the Complaint despite the failure to exhaust tribal remedies, then it should dismiss for failure to plausibly allege detention.

Plaintiffs Fisher and Crow now admit that they are *not* subject to any territorial exclusion. Resp. at 24. They allege "detention" based *solely* on the purported denial of tribal benefits, and though they now identify benefits that tribal members may qualify to receive,[1] they still do not allege any specific withholding of benefits. *Id.* at 35. Plaintiff Channing alleges that the Nation's

[1] For the first time, Plaintiffs identify benefits they claim they are entitled to—"Eldercare, Dental, Glasses, Hearing, Meal and Food Distribution, Health & Fitness, and Death benefits"—but still fail to allege actual denial of any benefit. Resp. at 35.

Casino management threatened to exclude her but does not allege that she was *actually* excluded. Compl. ¶ 44. She also alleges detention based on the purported suspension of benefits but, like Plaintiffs Fisher and Crow, she does not identify any benefits actually withheld—and admits that Defendant Diebold stated her benefits would "stay the same" Compl. ¶ 46. Plaintiffs identify no authority or legal principle that would support a finding of detention on these meager allegations.

Plaintiffs finally acknowledge that the Tenth Circuit *has not* decided whether anything short of physical confinement constitutes "detention" for purposes of habeas relief under the ICRA. Resp. at 23. But Plaintiffs skip over the substantial argument that Congress used the term "detention" deliberately to require physical confinement for habeas under the ICRA. *Chegup*, 28 F.4th 1051, 1065. Instead, Plaintiffs ask the Court to assume that the Tenth Circuit would find that "permanent banishment" may constitute detention. But that would not help Plaintiffs, as their allegations fail under that stringent standard, which is reserved for those actions that implicate "severe restraints on [plaintiff's] liberty" *Shenandoah v. United States Department of the Interior*, 159 F.3d 708, 713 (2d Cir 1998). In *Shenandoah*, the Second Circuit held that the alleged "banishment", including but not limited to termination from employment, exclusion from tribal governing bodies, loss of health insurance, exclusion from the tribal health center, denial of quarterly distributions, banishment from certain tribal businesses and recreational facilities, being stricken from membership rolls, being prohibited from speaking to some other tribal members, and not being sent tribal mailings—were insufficient to demonstrate the severe restraints on liberty required to constitute detention under the ICRA. *Id.* (internal quotations omitted). Here, Plaintiffs allege *no* custody, *no* termination of employment, *no* actual territorial exclusion, and *no* alteration of their membership or their ability to engage in governmental affairs of the Nation. They have not even identified any specific suspension of benefits. Thus, even if the Tenth Circuit concluded that

permanent banishment could constitute detention, Plaintiffs' allegations would fall far short of the relevant threshold. *Oviatt v. Reynolds*, 733 Fed. Appx. 929, 932-33 (10th Cir. 2018) (characterizing a situation as "banishment" is insufficient to support claim of detention under ICRA).

IV. Plaintiffs' Alleged "Detention" Is Not Unlawful

Assuming for the sake of argument that Plaintiffs could challenge in federal court the legality of the sanctions purportedly imposed, the claims would fail because Plaintiffs still offer nothing but "labels and conclusions" that are insufficient as a matter of law to state any claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiffs contend that they can proceed by arguing that the Nation Defendants have not proven the adequacy of sanctions procedures. Resp. at 30-31. But it is Plaintiffs' burden to adequately allege violations of law.

Plaintiffs improperly rely on assertions that was "no notice and no hearing," but this is not consistent with the allegations in the Complaint. Resp. at 32. The Complaint makes only one allegation regarding the proceedings that could be fairly characterized as "factual"—that the Sanctions Resolutions were enacted following a "Motion by Resolution" at a June 21, 2008 General Council meeting. Compl. ¶ 24, 27. The Complaint also alleges there was no "meaningful" notice of the allegations against them or "opportunity" to respond. Compl. ¶ 3. This implies *some* notice and opportunity, but Plaintiffs do not explain the details. Without articulating the process that did occur, Plaintiffs cannot state a claim based on defects in the process.

CONCLUSION

Plaintiffs' complaint should be dismissed for lack of subject matter jurisdiction based on tribal sovereign immunity and failure to allege the jurisdictional prerequisites (exhaustion of tribal remedies and detention) for an ICRA habeas petition. The action should also be dismissed for failure to state an adequate claim for relief.

Date: March 18, 2024

Respectfully submitted,

s/ Scott B. Goode

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2024, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants with entries of appearance filed of record.

s/ Joseph F. Halloran

Joseph F. Halloran