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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOSEPH HOLLEY INDIVIDUALLY AND
ON BEHALF OF THE TE-MOAK TRIBE
OF WESTERN SHOSHONE INDIANS OF
NEVADA as Tribal Council Chairman,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
THE INTERIOR, BUREAU OF INDIAN
AFFAIRS; and DARRYL LA COUNTE, as
Director of the Bureau of Indian Affairs,

Defendants.

Case No. 2:24-cv-01629-JAD-DJA

**PLAINTIFF’S EMERGENCY MOTION
TO STAY UNDATED DECISION FROM
DIRECTOR OF THE BUREAU OF
INDIAN AFFAIRS OR,
ALTERNATIVELY, EMERGENCY
MOTION FOR PRELIMINARY
INJUNCTION**

I. INTRODUCTION

Plaintiffs Joseph Holley individually, and on behalf of the Te-Moak Tribe of Western Shoshone Indians of Nevada (the “Tribe”), as Tribal Council Chairman (collectively, “Plaintiffs”), seek emergency relief from this Court because they are out of other options and irreparable harm to the Tribe’s 2024 election is imminent.

In short, the Tribe’s recent internal political divisions have resulted in disputed legislative and judicial leadership. It is well established that the Tribe has both a right, and responsibility, to resolve these disputes for itself. However, a recent written decision by the Director of the

1 Bureau of Indian Affairs (the “Director”) is interfering the Tribe’s ability to fulfill its
2 responsibility. (Ex. 2 hereto.) Specifically, the Director issued an undated Decision on or about
3 June 26, 2024 (“Decision”) that recognizes a group of individuals known as the “Garcia-Ike
4 Council” as the “government” of the Tribe “for purposes of conducting business with the federal
5 government and for preparing for the next election cycle” *Id.* at pg. 31. The Director
6 ordered that the Decision is “effective immediately.” *Id.* By way of this underlying action,
7 Plaintiffs seek the review and reversal of the Decision.

8 While substantive judicial review of the Director’s Decision will no doubt require a full
9 review of the administrative record, full briefing on the issues, and potentially even discovery,
10 the issues presented by this Motion are limited to whether Plaintiffs can show a likelihood of
11 success on the merits and that the Tribe will be irreparably harmed if a stay or injunction is not
12 entered. The answer to both of those questions is definitively ‘Yes’ and does not require the
13 Court to resolve, for the time being, the central issues of fact. Indeed, to avoid dragging this
14 Motion down with factual debates, Plaintiffs are willing to assume, for the sake of this Motion,
15 that many of the Director’s factual findings are true.

16 However, even with the benefit of this assumption, the Decision must be stayed to protect
17 the Tribe. According to the Director, “there are only two possible Tribal Councils for [the
18 Director] to choose between: the Joseph Holley-led ‘holdover’ Council ... or the Garcia-Ike
19 Council.” *Id.* at pg. 30. While the Director’s admitted “premise” for picking the “Garcia-Ike
20 Council” over the “Holley Council” was to ensure a full and fair 2024 election in compliance
21 with Tribal law, his choice does not fulfill this purpose. *See id.* at pg. 30. It directly injures it.
22 As detailed below, the Decision and Director’s findings are being weaponized by the few
23 remaining members of the “Garcia-Ike Council,” and other individuals affiliated with them, to
24 take control over the Tribe’s affairs and sow doubt and inconsistency into its upcoming elections
25 to hold onto their claim to power for as long as possible.

26 To begin, the “Garcia-Ike Council” is not capable or qualified to serve as the Tribe’s
27 legislative and executive branches. It was previously led by Vincent Garcia (“Garcia”). After
28 Garcia passed away on January 15, 2024, Danena Ike (“Ike”) took over control. Plaintiffs are

1 informed and believe that the “Garcia-Ike Council” is comprised of Ike and three other
2 individuals. Together, these four members represent a total of only one of the Tribe’s four Band
3 Councils. In particular, Ike was previously *recalled* from the Tribal Council by her Band’s
4 Council and other members of the “Garcia-Ike Council” include an individual that is not a
5 member of *any* Band Council, and an individual who claims to have been *appointed* to the Tribal
6 Council by *Ike herself*.

7 More importantly, the “Garcia-Ike Council” does not maintain regular meetings in
8 accordance with Tribal law and has sought at every turn to disrupt, instead of further, Tribal
9 operations and the upcoming election. These efforts include the wrongful seizure of Tribal
10 funds, political retribution against opponents, and scheduling a competing 2024 Tribal election
11 under conditions whereby Ike’s hand-picked “elections official” claims to have assumed
12 unilateral authority and control over who may and may not cast a vote.

13 In contrast, the “Holley Council,” which is led by Chairman Joseph Holley (“Holley”), is
14 composed of nine council members that represent all four of the constituent Bands forming the
15 Tribe. These council members were all validly elected to their respective Band councils and then
16 appointed by their Bands to the Tribal Council pursuant to the requirements of the Te-Moak
17 Constitution. Joseph Holley maintains the Chairman position as the last undisputed person to
18 hold this position. The “Holley Council” has at all times maintained lawful and regular Tribal
19 operations in accordance with Tribal law. Most important for purposes of this Motion, these
20 operations include the “Holley Council’s” recent Resolution setting forth the schedule for the
21 2024 T-Moak Band and Council elections.

22 Ultimately, while long in page count, the Director’s Decision is simple in reasoning.
23 With his Decision, the Director claimed to further four goals: (i) imposing the least intrusive
24 option; (ii) ensuring that all the Tribe’s four constituent Bands were represented; (iii) ensuring a
25 functional government for the Tribe; and (iv) ensuring that this government conducted the 2024
26 election in accordance with Tribal law. Because *none* of these four interests are furthered, and
27 *all* are harmed, with the appointment of the “Garcia-Ike Council,” the Court must stay, or
28

alternatively enjoin, the Director’s Decision pending resolution of Plaintiffs’ request for judicial review.¹

The Interior Board of Indian Appeals (IBIA), as the internal administrative appeals board for the Bureau of Indian Affairs (the “Bureau”), previously rejected Plaintiffs’ request for a stay of the Decision on the grounds that such relief was within the exclusive purview of this Court. (Ex. 4 hereto.) Thus, Plaintiffs must seek relief from this Court and on an emergency basis as the 2024 Tribal election is scheduled to move forward on October 8, 2024, and the “Garcia-Ike Council” is attempting to schedule a competing election for October 12, 2024.

II. BACKGROUND

A. The Te-Moak Constitution and Election Ordinance.

The Tribe is a federally recognized Indian tribe headquartered in Elko Nevada and composed of four constituent Bands including the Battle Mountain Band, Elko Band, South Fork Band, and Wells Band. (ECF No. 1, Verified Complaint (“V.Cmplt.”) at ¶ 7.) Pursuant to the Tribe’s Constitution the executive and legislative powers of the Tribe are vested in the Tribal Council for the overall Tribe and separate Band Councils, one for each Band. (Ex. 6 hereto at Art. 4). Each of these Bands has authority to elect their own Band Council members, with authority to manage the internal affairs of the Band. *Id.* at Sect. 11-12.

The Tribe’s Election Ordinance sets forth the procedures and steps necessary to elect members to governing positions. (Ex. 7 hereto.)

Each of the Band Councils then selects members to serve on the Tribal Council, with such selection occurring within fourteen days after the regular Band Council Elections. *Id.* at Sect. 13-4-2. Members of the Tribal Council are then nominated as candidates to run at-large for the position of Tribal Chairperson. *Id.* at 13-4-3. The Tribal Council has authority to govern the entire Tribe, all Tribal lands, and approve actions of the Band Councils. (Ex. 6 at Art. 3, Sect. 3.)

¹ On September 6, 2024, the Bureau announced the appointment of a new acting Director, effective September 8, 2024. (Ex. 3 hereto.)

1 The Tribe's Election Ordinance requires that regular elections of Tribe be held for each
2 respective Band Council in the second week of October of every third year. (Ex. 7 at 13-4-3.)

3 Successfully elected and certified Band Council members then select members from their
4 newly elected Band Council to serve concurrently on the Tribal Council who also qualify to be
5 nominated for the Tribal Chairman in an at-large election. *Id.* at 13-4-2.

6 Registered voters may lodge an election dispute within 24 hours following any given
7 election, which are expeditiously addressed and resolved. *Id.* at 13-10-1. The decision of the
8 Band Election Committee/Tribal Election Board is considered the Tribal remedy, and their
9 decision is final for purposes of judicial review. *Id.* If the Band Election Committee or the
10 Tribal Board determines that an election is invalid, it is nullified, and new elections are ordered.
11 *Id.*

12 Holley is the last undisputed Chairman of the Tribal Council. (V.Cmplt., ¶ 8.) On
13 October 30, 2018, Holley was elected as Chairman of the Tribal Council in an uncontested
14 election involving registered voters from all four Bands. *Id.* at ¶ 24. This election was properly
15 certified, and Chairman Holley was duly sworn into office. *Id.* The last undisputed composition
16 of the Tribal Council, in place and serving prior to October 2021, election consists of the
17 following council members:

- 18 a. Joseph Holley, Chairman - Battle Mountain Band Council
- 19 b. Julius Holley - Battle Mountain Band Council
- 20 c. Alice Tybo, Vice Chairman - South Fork Band Council (South Fork Band Vice
Chairman)
- 21 d. Duane Garcia - South Fork Band Council (South Fork Band Chairman)
- 22 e. Andrea Woods - Wells Band Council (Wells Band Council Vice Chairman)
- 23 f. Paula Garcia - Wells Band Council
- 24 g. Davis Gonzales - Elko Band Council
- 25 h. Thalia Marin - Elko Band Council
- 26 i. Larry Yeager - Elko Band Council

27 *Id.*, ¶ 8.

28 Notably, while the Decision repeatedly refers to the "Holley Council" as a "holdover"
Council, all the current members of the "Holley Council," apart from the three Elko Band
members, were elected to their respective Band Councils in the 2021 election recognized as valid

1 in the Decision. (*See* Ex. 2 at pgs. 22-28.) They were also duly appointed to serve on the Tribal
 2 Council by their respective Band Councils. (*See* Band Resolutions, Ex. 8 hereto.) As detailed
 3 below, the Elko Band members “held over” their positions based upon a ruling by the Te-Moak
 4 Tribal Court.

5 **B. The 2021 Tribal Election.**

6 Before summarizing the results of the 2021 Tribal elections, it is important to note what
 7 the Director ultimately ruled with respect to the results of these elections. In the Decision, the
 8 Director upheld the results of an October 25, 2021, election for the Elko Band Council and the
 9 results of February 8, 2022, elections for the remaining three Band Councils. (Ex. 2 at pg. 23.)
 10 While Plaintiffs disagree with the Director’s finding regarding the Elko Band election, they are
 11 willing to assume, for the sake of this Motion, that the Director’s finding was correct.

12 **1. The Tribe is Forced to Delay and then Redo the Election.**

13 In the Decision, the Director takes repeated issue with the “Holley Council’s” scheduling
 14 of the 2021 Band election. However, lost on the Director is the fact that the election was
 15 delayed, and disrupted, by the ongoing Covid-19 pandemic. Originally scheduled for October
 16 12, 2021, the 2021 Band elections were delayed until October 25, 2021, because of the
 17 pandemic. (V.Cmplt., ¶ 25; *see also* Ex. 9 hereto.) On October 25, 2021, the South Fork Band,
 18 Elko Band, and Wells Band conducted their elections. *Id.*, ¶ 25. However, the Battle Mountain
 19 Band failed to conduct any election on that date. *Id.*

20 Subsequently, the South Fork Band and Wells Band elections were both ruled invalid.
 21 *Id.*, ¶ 26. As a result, the Tribal Council enacted a Resolution for all Band elections to be
 22 rescheduled for February 8, 2022. *Id.*; *see also* Ex. 10 hereto. Three of the four Bands held
 23 elections on that date. *Id.* However, the Elko Band chose not to hold a new election in defiance
 24 of the Resolution. *Id.* Because the Elko Band failed to hold its election on the noticed date, it
 25 was unable to appoint members to the Tribal Council and the Council was unable to move
 26 forward with the election for a new Tribal Chairman, as the Elko Band would not be represented.
 27 *Id.*

2. Garcia and Ike Attempt to Seize Power.

Garcia was a member of the South Fork Band. *Id.*, ¶ 27. Garcia claimed to be elected in October 2021, but that election was never certified by the South Fork Election Committee and has not been recognized as valid by the Director. (Ex. 2 at pg. 28.) Moreover, Garcia was not victorious in the February 8, 2022, South Fork Band election. (V.Cmplt., ¶ 27.) Thus, under the Director’s findings, he was *not* qualified to serve on the Te-Moak Tribal Council. *Id.*

Unlike Garcia, Ike was elected to the Elko Band Council in the election that was ultimately recognized as valid by the Director. (Ex. 2 at pgs. 25-27.) However, the Director failed to note that while Ike’s appointment was revoked on January 26, 2022, three days before the January 29, 2022, date on which Ike claims to have been sworn in as Vice-Chairman of the Tribal Council by Samuel Biers. (Ex. 11 hereto.) Given her removal, Ike is also not qualified to serve on the Tribe’s Council in any capacity.

In the interim, Garcia and Ike led a break-in of the Tribe’s administrative offices on December 28, 2021, taking files, letterhead, seals, and other items used to impersonate the Tribe’s Council. (V.Cmplt., ¶ 28.) Thereafter, Garcia Ike, and their allies, purported to hold a “chairperson election” on January 26, 2022, in total derogation of the Tribe’s Election Law and Procedure, with only three “candidates” participating (Garcia, Ike, and Chauna Cota). *Id.* Garcia claimed to have been elected Chairman with a “supermajority” of the votes. *Id.*

Purporting to be Chairman, Garcia attempted to halt the February 8, 2022, Band elections in the Bureau’s Court of Indian Offenses, but his challenge was denied by Chief Magistrate Marsha Harlan. *Id.*, ¶ 30. Garcia and his allies then attempted to validate themselves through invalid Council “resolutions” and judicial “orders” issued by “Supreme Court Justice” Samuel L. Biers. *Id.* While Mr. Biers had at one time been hired by the actual Tribal Council, he had immediately been removed by the undisputed Pre-Election Council on June 11, 2021, more than six months earlier. *Id.*; *see also* Ex. 12 hereto.

Despite Garcia’s efforts, the February 8, 2022, elections moved forward – with the exception of the Elko Band – and, again, Garcia was not elected, despite not removing his name as a candidate on the ballot. (V.Cmplt., ¶ 31.) After losing, Garcia did not protest the February

8, 2022, election. *Id.* Instead, Garcia and his allies attempted to break into the South Fork Band offices on February 24, 2022, but were stopped by law enforcement. *Id.*, ¶ 32. At the time of his death, Garcia was facing criminal charges in the Te-Moak Tribal Court. *Id.*

Notably, the actions of Garcia and his allies spread beyond just the election and jurisdiction of the Tribe. Among other things, they sent letters to the Tribe’s bank – Nevada State Bank – claiming that they should have control over the Tribe’s money. *Id.*, ¶ 33. After Nevada State Bank froze the Tribe’s accounts, the Tribe was forced to file an action in Clark County District Court to procure an order releasing the funds from an interplead account back to the Tribe. *Id.*; *see also* Ex. 13 hereto. This delayed the Tribe’s access to crucial funds utilized for health and welfare programs, among other things. *Id.*

3. The Tribal Court Authorized by the Bureau Resolves the Election Dispute.

i. The Bureau authorizes the “Holley Council” to establish the Tribal Court.

Against this backdrop, the Tribal Court entered orders adjudicating the election dispute. By way of background, the Tribe was subject to a Court of Indian Offenses (CFR Court) for a number of years pursuant to 25 CFR 11.100. The Tribe had operated a portion of the CFR Court pursuant to a P.L. 93-638 judicial services contract. However, that contract was reassumed by the CFR Court in July of 2017. Thereafter, the Tribe appealed the reassumption, and a resolution of that appeal was finalized on or about August 3, 2021, pursuant to a negotiated Settlement Agreement. (Ex. 14 hereto.) Prior to the Settlement Agreement, in late November 2020, the Tribe submitted a law-and-order code to the Assistant Secretary for Indian Affairs, which established a tribal judicial system pursuant to 25 CFR 11.104. Based on the Settlement Agreement, the CFR Court was directed to facilitate the transfer of jurisdiction of judicial services to the Tribe pursuant to the schedule contained in the Settlement Agreement.

On February 9, 2022, the Regional Director sent the first in a series of Bureau letters to Chairman Joseph Holley directing the CFR Court to “facilitate a transfer of jurisdiction [from the CFR court to the Te-Moak Tribal Court identified by Chairman Holley] pursuant to a transition schedule negotiated under the [August 3, 2021] Settlement Agreement.” (V.Cmpl., ¶ 35; *see*

1 *also* Ex. 15 hereto.) On March 2, 2022, the Regional Director sent a second letter to Chairman
2 Joseph Holley recognizing Chairman Holley on an interim basis “for the purposes of transferring
3 judicial jurisdiction from the CFR Court to the Tribe pursuant to 25 C.F.R. Section 11.104.”
4 (Ex. 16 hereto.) On Page 6, Paragraph 2 of this letter, the Regional Director stated that,
5 “[h]aving made this determination [to recognize Joe Holley as Chairman], the Region will
6 transfer court jurisdiction and records to the Tribal court previously identified by Chairman
7 Holley.” *Id.*

8 Importantly, the CFR cases and records were only transferred to Te-Moak Judge Wendell
9 Hayes. No CFR cases were transferred to any purported Judge recognized by Garcia or the
10 “Garcia-Ike Council.” Samuel Biers, the primary alternative judge recognized by Vincent
11 Garcia, was formally removed by the Tribe as of June 11, 2021. (Ex. 12.)

12 The first CFR cases were transferred to Tribal Court after the February 9, 2022, Bureau
13 letter issued by the Regional Director. Chief Judge Wendell Hayes began hearing these cases,
14 as well as new cases in the Te-Moak Court starting in February of 2022. Since that time, for
15 over two years, the Te-Moak Tribal Court, with Chief Judge Wendell Hays presiding, has
16 successfully implemented and operated the Te-Moak judicial system. The Tribal court is
17 regularly attended by Tribal members from all four constituent bands, and Judge Hayes has
18 rendered decisions in hundreds of Te-Moak Tribal cases. There is no valid competing judge or
19 court. Samuel Biers does not hear Te-Moak cases and was condemned by the Te-Moak Council
20 for his fraudulent representations.

21 Garcia himself appeared before Chief Judge Hayes on criminal and civil matters
22 including his indictment and arraignment for the break in and burglary of the Te-Moak
23 administration building, and for his role in the assault of an individual inside the building on that
24 day. The Bureau Police recognized a warrant issued by Judge Hayes for Garcia and incarcerated
25 him at the at the Owyhee Federal Detention Center. Garcia recognized the Tribal Court with
26 Chief Judge Wendell Hayes as he appeared monthly on his criminal case.

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1 **ii. The Tribal Court rules on the disputed elections.**

2 Notably, the Te-Moak Tribal Court applied administrative and judicial remedies through
 3 the application of the Te-Moak Constitution and the Te-Moak Election Ordinance and resolved
 4 the contested elections, including the contested Band elections. (V.Cmplt., ¶ 37; *see also* Ex. 17
 5 hereto, *David Carrera Case*, No. BM-CV-03-21). Among other orders, the Tribal Court issued
 6 an order respecting the 2021 elections on May 6, 2022, which was subsequently upheld by the
 7 Tribal Supreme Court of Appeals on October 6, 2022. Pursuant to this order, the Tribal Court
 8 recognized the validity of the February 8, 2022, elections and the Elko Band's failure to conduct
 9 an election on that date. (Ex. 17.)

10 Owing to this failure, the Tribal Court ordered that the Band Council members elected to
 11 the Elko Band Council prior to the 2021 elections shall remain seated in office until new Band
 12 elections are held. *Id.* Accordingly, Davis Gonzales, Thalia Marin, and Larry Yeager have
 13 remained seated on the Tribal Council as the representatives for the Elko Band. (V.Cmplt., ¶
 14 38.)

15 **C. Ike Abuses the Authority Putatively Granted to Her by the Regional**
 16 **Director.**

17 Despite the Tribal Court's order, and the lack of any legal basis for the Ike to claim
 18 membership on the Tribal Council, the Regional Director reversed course in September and
 19 October of 2023 issuing, and then re-issuing, a decision recognizing Ike as the interim Tribal
 20 representative instead of the "Holley Council." (Ex. 18 hereto.) The Regional Director's final
 21 decision was issued October 17, 2023, and recognized Ike as the Tribal representative for ninety
 22 days "or until a chairman is elected, whichever is sooner." *Id.* The appeals of that decision to
 23 the Director led the Director to issue to Decision under review in the instant action.

24 As the Regional Director made clear in her October 17, 2023, decision, this recognition
 25 was "limited both in time and scope" as it was initially limited to ninety days and "only for those
 26 limited times when continuation of necessary government-to-government relations requires the
 27 United States to identify a representative" *Id.* at pg. 12. According to the Regional Director,
 28 "it is not to be construed as a general recognition for all Tribal purposes." *Id.* Summarizing the

1 Regional Director’s decision in his own Decision, the Director stated that “[t]he RD envisioned
 2 Ms. Ike, and the Band Councils recognized by the RD, undertaking the tasks necessary to call
 3 and conduct Tribal [Chairman] elections within those 90 days.” (Ex. 2 at pg. 17.)

4 Despite the clear limitations, and purpose, of the Regional Director’s decision, Ike
 5 immediately set about exceeding and abusing her limited authority. For example, on October 2,
 6 2023, Ike sent a letter attempting to take control of the account holding funds belonging to the
 7 Tribe’s Housing Authority. (V.Cmpl’t., ¶ 41; *see also* Ex. 19 hereto.) In her letter, Ike purported
 8 to be in control of the Tribe’s HUD funding and demanded a transfer of all the funds to an
 9 account “identified solely under my name.” *Id.* The Tribe’s Housing Authority was forced to
 10 respond with a demand seeking to mitigate the confusion and harm caused by Ike’s
 11 correspondence. *Id.* Yet, since that time, the Tribe’s Housing Authority has been unable to
 12 access its funds. *Id.*

13 Ike also sent other correspondence to, among others, the Nevada Department of Motor
 14 Vehicles, misrepresenting her position and authority in the Tribe. *Id.*, ¶ 42; *see also* Ex. 20
 15 hereto. Ike took these actions despite the Regional Director’s repeated instructions about the
 16 limitations on her authority and that it only applied when continuation of necessary government-
 17 to-government relations required a representative. (*See* Ex. 21 hereto.)

18 Beyond disruption, Ike also resorted to outright retaliation against those she viewed as
 19 her political and personal rivals. Specifically, Ike issued an “Executive Order” on February 19,
 20 2024, revoking the “Sovereign Immunity” of almost 50 members of the Tribe as well as “any
 21 other individual(s) working in concert” with them. (V.Compl’t., ¶ 44; *see also* Ex.22 hereto.)

22 **D. The Director Overturns the Regional Director and Recognizes the “Garcia-
 23 Ike Council” as the Tribe’s Government.**

24 Given Ike’s actions and the lack of any Constitutional basis for the “Garcia-Ike Council”
 25 to assert authority over the Tribe, the Tribe was shocked to receive the Director’s Decision of
 26 June 26, 2024, recognizing the “Garcia-Ike Council” as the “government” of the Tribe for the
 27 purposes of conducting business with the federal government and preparing for the election.

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1 **1. The Decision’s Stated Purpose is to Ensure Full Tribal Representation**
 2 **and Preserve the 2024 Election.**

3 In his thirty-three-page Decision, the Director repeatedly recounts his purpose for
 4 recognizing the “Garcia-Ike Council” as the Tribe’s “government.” As the Director states, the
 5 Bureau “has the authority and responsibility to ensure that ... [a tribe’s] representatives, with
 6 whom it must conduct government-to-government relations, are the valid representatives of the
 7 nation as a whole.” (Ex. 2 at pg. 16 (citing *Seminole Nation v. Norton*, 223 F. Supp. 2d 122, 140
 8 (D.D.C. 2002)). According to the Director, a “cornerstone” of the Bureau’s “distinctive
 9 obligation of trust” is “to promote a tribe’s political integrity, which includes ensuring that the
 10 will of tribal members is not thwarted by rogue leaders when it comes to decisions affecting
 11 federal benefits.” *Id.* (citing *Cal. Valley Milwok Tribe v. United States*, 515 F.3d 1262, 1267
 12 (D.C. Cir. 2008)).

13 Consistent with this, the Director recognized that the Bureau typically recognizes the last
 14 undisputed tribal government *unless* that government is “no longer capable of functioning as a
 15 Tribal government, has itself factionalized or dissolved, or is an inappropriate choice for any
 16 number of reasons.” *Id.* at pg. 15 (citing *Alturas Indian Rancheria v. Salazar*, No. 2:10-cv-1997,
 17 2010 WL 4069455, at *6 (E.D. Cal. Oct. 18, 2010)). In addition, the Bureau must avoid carrying
 18 on government-to-government relations with a tribal government known to be “faithless to their
 19 own people and without integrity.” *Id.* at pg. 16 (quoting *Seminole Nation v. United States*, 316
 20 U.S. 286, 296-97 (1942)).

21 Ultimately, as the Director acknowledged, the Bureau “has a duty to ensure that its
 22 decisions satisfy the United States Constitution, the Administrative Procedure Act, and any other
 23 applicable laws, which [the Bureau] cannot do should it unquestionably approve obvious
 24 misapplication of tribal laws.” *Id.* at pg. 16. With these purposes in mind, the Director found
 25 that conducting a full and fair 2023 election is a “primacy” to resolving the Tribe’s internal
 26 disputes. *Id.* at pg. 30. According to the Director, the “Garcia-Ike Council’s” “commitment to a
 27 fair election, and their authority to conduct that election under Tribal law is the *premise* of my
 28 recognition decision.” *Id.* at pg. 31 (emphasis added).

1 **2. The Decision Does Not Serve, and Instead Injures, Its Stated Purpose.**

2 While ensuring a functional and fully representative government that will move forward
3 with the election in accordance with Tribal law are proper goals for the Bureau, the Director's
4 Decision to appoint the "Garcia-Ike Council" does not fulfill these aims and instead injures them.

5 **i. The "Garcia-Ike Council" represents only one of the Tribe's four Bands.**

6 To begin, the "Garcia-Ike Council" represents, at most, *one* of the Tribe's *four* Bands. In
7 particular, the "Garcia-Ike Council" is composed of Ike (Elko Band Council), Rhonda Hicks (not
8 a Band Council Member), Helen Stevens (Elko Band Council), and Leah Brady (Elko Band
9 Council). (V.Cmplt., ¶ 46.) While an individual named Angie Quintana (South Fork Band
10 Council) was also a member of the "Garcia-Ike Council," she resigned from her position on
11 April 9, 2024. (Ex. 23 hereto.)

12 As shown, Band Councils appoint their representatives to the Tribal Council. While
13 initially appointed, Ike was *removed* as Tribal Council representative by the Elko Band on
14 February 1, 2022. (Ex. 11.) Moreover, Rhonda Hicks is not a member of *any* Band Council.
15 (V.Cmplt. ¶ 46.) Thus, she clearly cannot have been validly appointed to the Tribal Council.
16 For her part, Helen Stevens claims that she was appointed to the Tribal Council by Ike herself,
17 who lacks power, under any scenario, to make any such appointment. *Id.* Thus, the *only*
18 "Garcia-Ike Council" member seemingly appointed to the Tribal Council by her Band Council is
19 Leah Brady, who was purportedly appointed by the Elko Band Council two years ago. *Id.*
20 Accordingly, even under the Director's own findings, the *only* Band represented on the "Garcia-
21 Ike Council" is the Elko Band.

22 **ii. Ike seeks personal control over Tribal assets.**

23 Beyond not representing the "nation as a whole," the "Garcia-Ike Council" members
24 have already shown themselves to be "rogue leaders" who are clearly most interested in seeking
25 personal control over Tribal authority and assets. As before with the Regional Director's
26 September/October 2023 decision, Ike responded to the Director's Decision by immediately
27 issuing letters misstating her position and authority in the Tribe.
28

1 For example, on July 1, 2024, Ike sent correspondence under the Tribe's letterhead
 2 demanding the Tribe's administrative staff turn over all records of enrollment, voter
 3 registrations, voter lists, financial documentation, all Tribe funds, accounting reports, all Tribe
 4 vehicles, office equipment, and other types of equipment, all office supplies, all Tribal
 5 information, and all keys and passwords belonging to the Tribe. (Ex. 24 hereto.) Ike also
 6 purported to put all Tribe staff on administrative leave without pay after July 3, 2024. *Id.*

7 Beyond letter writing, Ike has also resorted to outright conversion of the Tribe's property.
 8 In particular, the Tribe was forced to file a Complaint with the U.S. Post Office after Ike
 9 submitted a fraudulent change of address notice on July 2, 2024, attempting to change the
 10 Tribe's mailing address to an address unaffiliated with the Tribe. (Ex. 25 hereto.) Since this
 11 time, much of the Tribe's mail has gone missing. (V.Cmplt., ¶ 51.)

12 Additionally, on or about August 5, 2024, Ike accessed the Native American Tribal
 13 Opioids Settlement portal and changed the Tribe's bank information to an account controlled by
 14 Ike and submitted a new W-9. *Id.*, ¶ 52. Ike also contacted the counsel and administrators for
 15 the Opioid Settlement Trust asserting that distributions should be directed to the new account.
 16 *Id.* Ike provided these individuals with a copy of the Director's Decision. *Id.*

17 ***iii. Ike and her allies are already disrupting the 2024 election.***

18 Most importantly for this Motion, the "Garcia-Ike Council" is clearly *not* committed to
 19 facilitating full and fair 2024 Tribal elections. On April 17, 2024, two months before the
 20 Director's Decision, the "Holley Council," through the Tribe's administrative staff, set the
 21 schedule for the 2024 elections. (V.Cmplt., ¶ 47.) The details of that schedule are set forth in a
 22 Resolution attached hereto as Exhibit 26. As shown therein, the Bands "Election Day" is
 23 scheduled for October 8, 2024. *Id.* Thus, the Tribe, through the "Holley Council," has already
 24 committed itself to "take all necessary actions to ensure that valid elections take place in 2024"
 25 even prior to the Director's undated Decision.

26 In contrast, Ike continues with her attempts to seize control of the Tribe for herself. As
 27 before, Ike is issuing letters misstating her position and authority in the Tribe. Beyond
 28 demanding the Tribe's administrative staff turn over all records of enrollment, voter

1 registrations, and voter lists, Ike, and individuals affiliated with her, have set about to schedule
2 an alternative competing Tribal election. Seeking to cling to her fraudulent grounds for asserting
3 power over the Tribe and its resources, Ike and her allies are undermining the election schedule
4 and validity, claiming that they will hold their own election and decide who is, and is not,
5 permitted to participate.

6 For example, Steven McDade (“McDade”), an individual allied with Ike, and falsely
7 claiming to be a “Southfork Band election member/Te-Moak Election Board Chairman,” emailed
8 Bureau officials on July 12, 2024, claiming that he intended “to step in and hold the election of
9 the bands by the Te-Moak Election Board” and that it was “also within [his] authority to NOT
10 ALLOW individuals who have committed election fraud in the past to be no where [sic] within
11 the election of 2024.” (Ex. 27 hereto.) Additionally, as recently as September 20, 2024,
12 McDade sent notification to the Bureau wherein he again claimed to be the “Te-Moak Election
13 Board Chairman” and “tasked to oversee the band elections for Battle Mountain, Southfork and
14 Wells Band” (Ex. 28 hereto.)

15 Ike and her allies have even scheduled a false competing election date of October 12,
16 2024. (Ex. 29 hereto.) Notably, these individuals appear to be utilizing outdated voter
17 enrollment lists for purposes of his sham competing election. (See Ex. 33 hereto.) Ike and her
18 allies have gone so far as to tear down the posted schedules of the true election dates in places of
19 public accommodation and replaced them with their own fake notices, resorting to intimidation
20 and threats when met with resistance. (V.Cmplt., ¶ 55; see also Ex. 30 hereto.) In other words,
21 Ike’s allies intend to hold their own sham election, granting or withholding ballot access in their
22 sole and absolute discretion. This, of course, runs contrary to the Te-Moak Constitution and
23 Election Ordinance.

24 Further proving this, in his September 20, 2024, email to the Bureau, McDade provided
25 the Bureau a list of what he claims are “the *only* candidates that will be recognized by the Te-
26 Moak council of Garcia/Ike and will be listed as candidates for October 12, 22024.” (Ex. 28)
27 (emphasis added.) However, McDade’s candidate list is as inaccurate as his claim that he is an
28 elections official. Notably, McDade is *not* a member of the South Fork Band Council Election

1 Committee nor a member of *any* Te-Moak Band Election Committee. (*See* Ex. 31 hereto.)
 2 Thus, pursuant to the Te-Moak Constitution, he is not, and cannot, serve on the Tribe's Election
 3 Board. (*See* Ex 6 at Art. 7, Sect. 9-10.)

4 In short, the "Garcia-Ike Council" is patently the wrong body for the Bureau to stand
 5 behind for any purpose, especially a role as significant as a Tribal "government." In recognizing
 6 the "Garcia-Ike Council," the Director looked past the last duly recognized Tribal Council in
 7 favor of a group that has never held that position. A group with no election management
 8 experience who have already sought to undermine the upcoming election for their own gain.

9 **E. The Regional Director Utilizes the Director's Decision to "Revoke" the**
 10 **Tribal Court.**

11 Further complicating matters and calling into question the authority of the Tribe's judicial
 12 branch, the Regional Director issued a decision on July 10, 2024, wherein she purports to
 13 "revoke" the prior implementation of the Tribe's Tribal Court based upon some of the findings in
 14 the Director's Decision. (Ex. 32 hereto.) According to the Regional Director, the Director's
 15 findings in his Decision that prior appointments made by a 12-member "Holley Council" were
 16 unconstitutional calls into question the Resolution enacting the Tribal Court. *Id.* Based on this
 17 "question," the Regional Director revoked her prior letter decision transferring judicial
 18 jurisdiction from the Court of Indian Offenses (CFR Court) to the Tribal Court. *Id.*

19 Again, the Tribal court is regularly attended by Tribal members from all four constituent
 20 bands, and Judge Hayes has rendered decisions in hundreds of Tribal cases. (V.Cmpl't., ¶ 60.)
 21 There is no valid competing Tribal judge or court. *Id.* Despite this, the Regional Director's
 22 Decision "revokes" the Tribal Court during the precise time that it will likely be needed the
 23 most.

24 As shown, the Tribe's executive and legislative branches have been successfully
 25 operating for years under the "Holley Council." Similarly, the Tribe's judicial branch has been
 26 successfully operating for years under the Tribal Court overseen by Chief Judge Wendell Hayes.
 27 Despite this, with the stroke of a pen, the Director and Regional Director seek to dismantle all
 28 three branches of the Tribe's government. This is clearly an arbitrary and capricious abuse of

1 authority and discretion. Such abuse of discretion is even more troubling given the Tribe's
2 impending Band elections scheduled for October 8, 2024.

3 **F. The IBIA Rejects Plaintiffs' Request for a Stay Holding That It Must Be**
4 **Sought from This Court.**

5 Based upon this, Plaintiffs initially exercised their administrative appeal rights and
6 appealed the Director's Decision to the Interior Board of Indian Appeals (IBIA) and filed a
7 petition for an expedited stay on July 25, 2024. However, on August 1, 2024, the Chief
8 Administrative Judge for the IBIA denied Plaintiffs' request for stay finding that the IBIA lacked
9 authority, pursuant to the applicable regulations, to stay a "Tribal representative recognition
10 decision" issued by the Director. (Ex. 4.) According to the IBIA, "such a decision may be
11 stayed pending appeal by order of a federal court." *Id.* As such, Plaintiffs have been forced to
12 seek judicial review and a stay from this Court. Plaintiffs filed a Verified Complaint seeking
13 judicial review, declaratory relief, and injunctive relief on September 4, 2024. (ECF No. 1.)

14 **III. ARGUMENT**

15 **A. The Court Is Empowered to Grant a Stay or Injunction.**

16 The Court is well-aware of its reviewing authority under the Administrative Procedure
17 Act (APA). Pursuant to the APA, "[o]n such conditions as may be required and to the extent
18 necessary to prevent irreparable injury, the reviewing court ... may issue all necessary and
19 appropriate process to postpone the effective date of an agency action or to preserve status or
20 rights pending conclusion of the review proceedings." *Hsiao v. Stewart*, 527 F. Supp. 3d 1237,
21 1248 (D. Haw. 2021) (quoting 5 U.S.C. § 705). "Courts apply the same factors to evaluate stays
22 under § 705 and preliminary injunctions. *Id.* (citing *Immigrant Legal Res. Ctr. v. Wolf*, 491
23 F.Supp.3d 520, 529–30 (N.D. Cal. 2020); *City & County of San Francisco v. U.S. Customs &*
24 *Immigr. Servs.*, 408 F. Supp. 3d 1057, 1078 (N.D. Cal. 2019); *Bauer v. DeVos*, 325 F. Supp. 3d
25 74, 104–05 (D.D.C. 2018)).

26 Specifically, the Court's judgment is "guided by sound legal principles that have been
27 distilled into consideration of four factors: (1) whether the stay applicant has made a strong
28 showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably

injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *R.J. Reynolds Vapor Co. v. Food & Drug Admin.*, 65 F.4th 182, 188–89 (5th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 433 (2009)). “The first two factors ... are the most critical.” *Id.* Ultimately, “[t]he ‘issuance of a stay is left to the court’s discretion.’” *Id.* (quoting *Nken*, 556 at 434).

B. Plaintiffs Will Succeed on the Merits of Their Claims.

“Under the APA, the Court may overturn agency action only if the action was ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, or’ in excess of its statutory jurisdiction or authority.” *ConocoPhillips Alaska, Inc. v. Nat’l Marine Fisheries*, No. 3:06-CV-0198-RRB, 2006 WL 8438494, at *1 (D. Alaska Oct. 5, 2006). “The task of the courts is to ensure that the agency’s action relied on appropriate considerations, considered all important aspects of the issue, and provided an adequate explanation for its decision.” *City & Cnty. of San Francisco v. United States Citizenship & Immigr. Servs.*, 981 F.3d 742, 758–59 (9th Cir. 2020). “To meet its burden under this standard, an agency must present a rational connection between the facts found and the conclusions made.” *Hous. Auth. of Te-Moak Tribe of W. Shoshone Indians v. U.S. Dep’t of Hous. & Urb. Dev.*, 85 F. Supp. 3d 1213, 1220–21 (D. Nev. 2015) (quotations omitted).

“An agency’s decision is arbitrary and capricious if it was not ‘based on a consideration of the relevant factors’ or if there was a ‘clear error of judgment.’” *Id.* (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)). As the Supreme Court has stated in summarizing one of its leading cases:

Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

City & Cnty. of San Francisco, 981 F.3d at 758–59 (quoting *Motor Vehicle Mfrs. Ass’n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983)).

///

1 **1. The Director Exceeded His Authority.**

2 Here, the Decision fails under each of these tests. To begin, the Decision must be
 3 overturned as unlawful because the Director lacks authority to recognize an entire “government”
 4 of the Tribe. The relevant administrative appeal regulations provide that appeals from decisions
 5 by regional directors must be taken to the IBIA “except where a specific section of this part sets
 6 out a different appellate hierarchy.” 25 CFR § 2.202 & Table. As the IBIA confirmed when it
 7 denied Plaintiffs’ request for a stay, the Director’s review authority is sourced in 25 CFR Part 2,
 8 Subpart G (“Special Rules Regarding Recognition of *Tribal Representative*”). (Emphasis
 9 added). Pursuant to 25 CFR § 2.700, “[t]he purpose of this subpart is to expedite administrative
 10 review of a Bureau decision to recognize, or to decline to recognize, a *Tribal representative*.”
 11 (Emphasis added.)

12 As shown, the Director vacated the Regional Director’s September/October 2022
 13 decision recognizing a Tribal *representative* and recognized an entire Tribal *government*. This
 14 he cannot do. *See Montana v. Blackfeet Tribe*, 471 U.S. 759, 766, (1985) (in actions involving
 15 Native American tribes, “statutes are to be construed liberally in favor of Indians, with
 16 ambiguous provisions interpreted to their benefit”).

17 Moreover, as shown, the Regional Director’s decision was meant to facilitate election of
 18 a new Tribal Chairman and was only to remain effective for ninety days “or until a chairman is
 19 elected, whichever is sooner.”² In contrast, the Director’s Decision stays into effect “pending the
 20 Tribe’s ultimate resolution of its internal disputes via tribal mechanisms.” (Ex. 2 at pg. 2.) The
 21 Tribe has not received any indication about what an “ultimate resolution” requires. Without a
 22 doubt, Ike and her allies will attempt to cling onto their false grounds for power by disputing the
 23 results of the 2024 election. Because the Director’s Decision is overbroad in scope and
 24 unlimited in time, it must be immediately reversed.

25 ///

26 ///

27 ² Ultimately, the Regional Director’s October 17, 2023, decision never went into effect as it
 28 was stayed pending appeal.

2. The Decision Does Not Serve Its Asserted Purposes.

“The arbitrary and capricious standard ‘requires [courts] to ensure that an agency has taken the requisite hard look at the ... consequences of its proposed action, carefully reviewing the record to ascertain whether the agency decision is founded on a reasoned evaluation of the relevant factors.’” *Te-Moak Tribe of W. Shoshone of Nevada v. U.S. Dep't of Interior*, 608 F.3d 592, 599 (9th Cir. 2010) (quoting *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir.1992)). As courts recognize “*an internally inconsistent analysis is arbitrary and capricious.*” *Hsiao*, 527 F. Supp. 3d at 1252 (citing *Nat'l Parks Conservation Ass'n v. EPA*, 788 F.3d 1134, 1141 (9th Cir. 2015)) (emphasis added).

Here, the Decision is clearly inconsistent with itself. While the Director’s express purported concerns were: (i) imposing the least intrusive option; (ii) ensuring that all the Tribe’s four constituent Bands were represented; (iii) ensuring a functional government for the Tribe; and (iv) ensuring that this government conducted the 2024 election in accordance with Tribal law, the Decision does not serve any of these interests and instead only harms them.

i. The Decision wrongfully intrudes on the Tribe’s sovereignty.

As the Director himself recognized, “[i]t is for a tribe, and not the [Bureau], to elect or otherwise designate the tribe’s representative(s).” (Ex. 2 at pg. 14 (quoting *Alturas Indian Rancheria v. Acting Pac. Reg’l Dirs.*, 54 IBIA 1, 11 (2001))). However, as shown, the Director’s Decision overturns the Regional Director’s temporary 90-day recognition of a Tribal representative and institutes an entire Tribal government with no express time limitations.

Moreover, the “Garcia-Ike Council” is comprised of only four individuals and only *one* of its members (Leah Brady) was appointed to the Tribal Council by her respective Band. While Ike was appointed by the Elko Band, this appointment was subsequently *revoked*. In stark contrast, the “Holley Council” is comprised of the constitutionally required nine members. All these members, excluding those representing the Elko Band (Davis Gonzales, Thalia Marin, and Larry Yeager), were validly elected and appointed under the election findings applied by the Director in the Decision.

1 In the Decision, the Director failed to compare the actual composition of the “Garcia-Ike
2 Council” with his findings regarding the Band Council elections. Thus, in effect, the Director
3 overturned the Tribe’s election and designation of its representatives in favor of four individuals
4 who lack any legitimate basis to call themselves a Tribal Council. This is a clear abuse of
5 discretion.

6 ***ii. The Decision fails to ensure full Tribal representation.***

7 The Director’s Decision also recognizes the Bureau’s “responsibility to ensure that ... [a
8 tribe’s] representatives ... are valid representatives of *the nation as a whole*.” (Ex. 2 at pg. 16
9 (quoting *Seminole Nation*, 223 F. Supp. 2d at 140)) (emphasis added). As repeatedly
10 emphasized herein, the “Garcia-Ike Council” has only four members representing only *one* of the
11 Tribe’s four Bands. In contrast, the “Holley Council” is comprised of nine members
12 representing all four of the Tribe’s constituent Bands. Therefore, the “government” appointed by
13 the Director clearly does not represent the Tribe “as a whole.”

14 ***iii. The Decision does not ensure a functional government.***

15 Similarly, a “cornerstone of the Government’s distinctive obligation of trust identified by
16 the Supreme Court ... is to promote a tribe’s political integrity, which includes ensuring that the
17 will of tribal members is not thwarted by *rogue leaders* when it comes to decisions affecting
18 federal benefits.” (Ex. 2 at pg. 16 (quoting *Cal. Valley Miwok Tribe*, 515 F.3d at 1267 (emphasis
19 added))). In the Director’s words, the Bureau “must not carry on government-to-government
20 relations with a tribal government known to be ... ‘faithless to their own people and without
21 integrity.’” *Id.* (quoting *Seminole Nation*, 316 U.S. at 296-97.)

22 Despite this, the Director rejected the “Holley Council” – and the well-established
23 precedent for recognizing the last undisputed council – in favor of a council that actively
24 interfered with the Tribe’s receipt of funding and sought to seize control of Tribal assets for
25 itself. (*See infra*; *see also* Ex. 2 at pg. 18 *and* pg. 29 (“TMHA assets that it has failed to receive
26 HUD funding because of the RD’s recognition of Ms. Ike....”)).

27 As shown, the “Holley Council” is the *only* council holding regular meetings and
28 addressing the business of the Tribe and the needs of the Tribal membership. Ike and her three

1 fellow members have only succeeded in injecting disorder and confusion with respect to the
 2 Tribe's operations. Thus, the Director abused his authority and failed to substantiate the
 3 Bureau's rejection of the "Holley Council" in favor of the "Garcia-Ike Council." *See City &*
 4 *Cnty. of San Francisco*, 981 F.3d at 761 ("This is a practice the Supreme Court has rejected: an
 5 agency about-face with no reasoned explanation ... for disregarding the findings underlying the
 6 prior policy.") (internal quotation omitted).

7 ***iv. The Decision does not protect the 2024 election.***

8 Most importantly, and as all interested parties no doubt agree, "[t]he best hope for
 9 resolution of this acrimonious intratribal dispute lies in the Tribe holding valid tribal elections in
 10 October and November 2024." (Ex. 2 at pg. 20.) According to the Director, the "Garcia-Ike
 11 Council's" "commitment to a fair election, and their authority to conduct that election under
 12 Tribal law ... is the *premise* of my recognition decision." *Id.* at pg. 31 (emphasis added).

13 However, the "Garcia-Ike Council" is clearly *not* committed to conducting a full and fair
 14 election. They are actively attempting to disrupt it. As shown, the Tribe, through the "Holley
 15 Council," has already committed itself to "take all necessary actions to ensure that valid elections
 16 take place in 2024" even prior to the Director's undated Decision. However, now armed with the
 17 Decision as the basis for her authority, Ike continues with her attempts to seize control of the
 18 Tribe for herself.

19 Beyond demanding the Tribe's administrative staff turn over all records of enrollment,
 20 voter registrations, and voter lists, Ike, and individuals affiliated with her, have set about to
 21 schedule an alternative competing Tribal election. (Ex. 29 hereto.) One of these individuals
 22 (McDade) is openly claiming that he plans "to step in and hold the election of the bands by the
 23 Te-Moak Election Board" himself and that it is "within [his] authority to NOT ALLOW
 24 individuals who have committed election fraud in the past to be no where [sic] within the
 25 election of 2024." (Ex. 27 hereto.) McDade also claims that it is within his power to determine
 26 "the *only* candidates that will be recognized by the Te-Moak council of Garcia/Ike" in their
 27 competing election. (Ex. 28 hereto.)
 28

1 The “Holley-Council” scheduled the Tribe’s election for October 8, 2024, months before
 2 the Director issued the Decision. Notifications have gone out and planning has already been
 3 completed. However, citing the Decision as authority, Ike and her allies scheduled a false
 4 competing election date of October 12, 2024. These individuals appear to be utilizing outdated
 5 voter enrollment lists and have gone so far as to tear down the posted schedules of the true
 6 election dates in places of public accommodation and replaced them with their own fake notices.
 7 (See Exs. 30 and 33 hereto.) These individuals have resorted to intimidation and threats when
 8 met with resistance. In other words, Ike’s allies intend to hold their own sham election, granting
 9 or withholding ballot access in their sole and absolute discretion.

10 This is obviously not the Director’s intent. Because the stated purpose of ensuring the
 11 election is undermined, not served, by appointing the “Garcia-Ike Council,” it should be
 12 reversed. See *Te-Moak Tribe of W. Shoshone of Nevada*, 608 F.3d at 607 (“[W]e hold that the
 13 BLM violated NEPA’s mandate by failing to conduct a proper analysis of the cumulative
 14 impacts of the Amendment and the Pediment/Cortez Hills project on Western Shoshone cultural
 15 resources in the area.”).

16 **C. The Tribe Will Be Irreparably Harmed Absent a Stay or Injunction.**

17 In addition to a likelihood of success, interested parties seeking a stay or injunction under
 18 the APA must demonstrate “that it will be exposed to irreparable harm.” *Hsiao*, 527 F. Supp. 3d
 19 at 1252–53 (citing *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)).
 20 “Irreparable harm is ... harm for which there is no adequate legal remedy, such as an award of
 21 damages.” *Id.* (quoting *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014)).
 22 Any loss of voting or election rights is irreparable harm. See e.g., *League of Women Voters of N.*
 23 *Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (The denial of a constitutional
 24 right, such as the right to vote, constitutes irreparable harm.); *Mi Familia Vota v. Abbott*, 497 F.
 25 Supp. 3d 195, 219 (W.D. Tex. 2020) (“The right to vote and have one’s vote counted is
 26 undeniably a fundamental constitutional right, the violation of which cannot be adequately
 27 remedied at law or after the violation occurred.”) (citing *Reynolds v. Sims*, 377 U.S. 533, 554
 28 (1964)).

1 Here, Tribe members face a loss of their voting rights if the “Garcia-Ike Council” is
 2 permitted to move forward with their competing 2024 election. It requires no stretch of the
 3 imagination to understand that the presence of competing election dates will confuse voters and
 4 disrupt the election process, likely leaving many Tribe members disenfranchised or forced to
 5 seek a new election on the heels of judicial review. Such losses obviously cannot be remedied
 6 with monetary damages.

7 Similarly, Ike’s actions in seizing control of Tribal property, and funds, is causing
 8 irreparable harm to the Tribe. *See E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 984
 9 (9th Cir. 2020) (“We agree with the district court that the plaintiffs “established a sufficient
 10 likelihood of irreparable harm through diversion of resources and the non-speculative loss of
 11 substantial funding from other sources.”) (internal quotation omitted). In light of this, a stay or
 12 injunction must be issued in order to remove the “Garcia-Ike Council’s” primary claim to
 13 authority and weaponization of the Director’s Decision. A stay or injunction will clear the path
 14 for the Tribe, through the “Holley Council,” to move forward with peacefully completing the
 15 2024 Band elections, Tribal Council appointments, and the Tribal Chairman election. This is all
 16 Plaintiffs are seeking.

17 **D. The Balance of Hardships and Public Interest Clearly Favor Plaintiffs.**

18 The balance of hardships weighs sharply in favor of Plaintiffs. Indeed, the “Garcia-Ike
 19 Council” cannot demonstrate that *any* harm will result to them if a stay is granted. Under the
 20 Decision, they should be limiting their actions to ensuring a full and fair 2024 election. This is
 21 precisely what the “Holley Council” intends to do.

22 Moreover, public interest favors preserving tribal sovereignty and preventing federal
 23 interference in internal tribal matters. *Nero v. Cherokee Nation*, 892 F.2d 1457, 1463 (10th Cir.
 24 1989). “It is a well-established principal of federal law that intra-tribal disputes should be
 25 resolved in tribal forums. This rule applies with particular force to intra-tribal disputes
 26 concerning the proper composition of a tribe’s governing body.” *Bucktooth v. Acting Eastern*
 27 *Area Director*, 29 IBIA 144, 149 (1996).

28 The Director’s Decision could not be any more intrusive. It gives credence and authority

1 to a group of individuals that are disrupting the 2024 elections and imposes a “government” on
 2 the Tribe composed of four individuals with no legitimate claim to that role. If the Decision
 3 stands, the Tribe will unquestionably be forced to seek judicial relief from the federal courts as
 4 the competing election scheduled by the “Garcia-Ike Council” will result in disputed results and
 5 the Regional Director has already called the Tribal Court’s authority into question.

6 In light of this, tribal sovereignty, and therefore public policy, is best served by staying or
 7 enjoining the Director’s Decision. Once the Decision is stayed, the “Garcia-Ike Council’s” claim
 8 to authority – and ability to schedule a competing election – will be largely neutralized.

9 **IV. CONCLUSION**

10 Plaintiffs’ right to a stay or injunction is straightforward. The Director had to pick
 11 between two competing councils. He chose poorly. Instead of sticking with a functional and
 12 experienced group of nine individuals who meet the constitutional requirements to represent the
 13 Tribe as a whole, the Director chose four people who together only represent a quarter of the
 14 Tribe’s Bands and who have demonstrated little to no interest in protecting the Tribe or its
 15 membership. Because Plaintiffs will succeed on judicial review and the threat to the 2024
 16 election is irreparable, a stay of the Director’s Decision, or injunction enjoining reliance upon it,
 17 should be entered on an emergency expedited basis.

18 Dated this 24th day of September, 2024.

19 SEMENZA RICKARD LAW

20
 21 /s/ Jarrod L. Rickard, Esq.
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 27
 28

CERTIFICATE OF SERVICE

I am employed by the law firm of Semenza Rickard Law in Clark County, Nevada. I am over the age of 18 and not a party to this action. The business address is 10161 Park Run Drive, Suite 150, Las Vegas, Nevada 89145.

On the 24th day of September, 2024, I served the document(s), described as:

**PLAINTIFF'S EMERGENCY MOTION TO STAY UNDATED DECISION FROM
DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS OR, ALTERNATIVELY,
EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

☒ by sending ☐ an original ☒ a true and correct copy as follows:

☒ a. via **CM/ECF System** (*You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary*)

Amber Dutton-Bynum, amber.dutton-bynum@usdoj.gov, efile_nrs.enrd@usdoj.gov
Karissa Dawn Neff, karissa.neff@csn.edu, debra.pieruschka@csn.edu
Attorneys for Defendants

☐ b. **BY U.S. MAIL.** I deposited such envelope in the mail at Las Vegas, Nevada. The envelope(s) were mailed with postage thereon fully prepaid. I am readily familiar with Semenza Rickard Law's practice of collection and processing correspondence for mailing. Under that practice, documents are deposited with the U.S. Postal Service on the same day which is stated in the proof of service, with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date stated in this proof of service.

☐ c. **BY PERSONAL SERVICE.**

☒ d. **BY DIRECT EMAIL.**

Michelle Ramus, Michelle.Ramus@usdoj.gov
Attorney for Defendants

☐ e. **BY FACSIMILE TRANSMISSION.**

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Olivia A. Kelly

An Employee of Semenza Rickard Law