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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10

11 CRYSTAL BOWMAN,
12 Plaintiff,
13 v.
14 JOSEPHINA¹ FRANK, et al.,
15 Defendants.

Case No.: 5:25-cv-6372-BLF

**DEFENDANTS’ REPLY IN SUPPORT
OF MOTION TO DISMISS PURSUANT
TO FRCP 12(b)(1)**

**FILED CONCURRENTLY
HEREWITH:
(1) Supplemental Declaration of Josefina
Frank**

Judge: Hon. Beth Labson Freeman
Hearing Date: May 28, 2026
Hearing Time: 9:00 a.m.
Courtroom 1, 5th Floor

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19 **I. INTRODUCTION**

20 Based on the Bear River Tribal Council’s determination that Plaintiff had threatened the
21 peace, safety, and general welfare of members of the Bear River community, the Council ordered
22 that Plaintiff be excluded ("Exclusion Order") from all tribal properties but permitted her to
23 request lifting of the Exclusion Order after six months. The effect of the Exclusion Order was to
24 preclude Plaintiff from participating in various Tribal committees and employment on Bear
25 River’s properties.

26 Plaintiff contends that these “cumulative restraints” resulting from the Exclusion Order
27

28 ¹ The Petition misspells Chairwoman Frank’s first name. The correct spelling is “Josefina.”

1 constitute "detention" entitling her to a writ of habeas corpus under the Indian Civil Rights Act
2 ("ICRA"), 25 U.S.C. §§ 1301, 1303. Not so. "Detention" under the ICRA requires "a severe
3 actual or potential restraint on liberty." *Jeffredo v. Macarro*, 599 F.3d 913, 919 (9th Cir. 2010).
4 Most of the adverse actions identified by Plaintiff that "prevent[] [her] from participating in tribal
5 governance and civil life" implicate community relations within the Tribe—matters which are
6 beyond judicial review under the ICRA. Pl.'s Opp'n to Mot. to Dismiss at 2.

7 As far as Plaintiff's alleged "comprehensive banishment" from Tribal lands, the record
8 makes clear that her exclusion is not permanent or without recourse; indeed, the Council lifted the
9 Exclusion Order about five weeks after it was first imposed, but despite having reimposed it after
10 Plaintiff violated the terms under which it was lifted, has encouraged her to seek reconsideration
11 of the exclusion order every 6 months.

12 In short, Plaintiff's exclusion from Bear River Tribal properties is temporary, not
13 permanent, and thus cannot constitute detention within the meaning of § 1303. The Court
14 therefore lacks jurisdiction to grant the relief Plaintiff seeks.

15 II. ARGUMENT

16 A. Plaintiff Has Not Been Subject to Detention, and Thus is Not Entitled to Seek 17 Habeas Relief Under the Indian Civil Rights Act

18 Plaintiff contends that the cumulative effect of the Exclusion Order constitutes "detention"
19 within the meaning of § 1303. These actions fall into three categories: (1) termination of her use
20 of a Tribe-owned residence on the Bear River Rancheria; (2) removal of Plaintiff from various
21 Tribal committees, thus "prevent[ing] [her] from participating in tribal governance and civic life;
22 and (3) her exclusion from entering all Bear River Tribal properties.

23 The first two categories of adverse action are not relevant, individually or collectively, to
24 the detention analysis. Plaintiff did not own the residence from which she was excluded, or the
25 tribal land on which the house is situated. Her continued residency was contingent on complying
26 with Tribal law and not threatening the safety and welfare of the Tribal community. The Council
27 determined that Plaintiff, through conduct that included repeated harboring of a person whom she
28 knew had been excluded from Tribal lands—a determination that is not in dispute—had become

1 a public safety nuisance for the Bear River Community. February 2, 2026, Declaration of Josefina
2 Frank (2/2/26 Frank Decl.), ¶¶ 6, 7.

3 The Council’s decision to exclude Plaintiff from Tribal properties, including the tribally-
4 owned house that she leased from the Tribe, was an “expression of its sovereign authority to
5 determine the makeup of the community.” *Tavares v. Whitehouse*, 851 F.3d 863, 876 (9th Cir.
6 2017). Second-guessing that decision would impermissibly intrude on Bear River’s sovereign
7 prerogatives.” *Id.* at 877–878. To the extent that Plaintiff contends she was not given sufficient
8 process to contest the eviction, she raises a due process issue that is properly resolved through
9 Bear River’s Tribal Court. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65–66 (1978); *Tavares*
10 at 878; *see also* Section six of Bear River’s “Act Establishing the Judiciary” (Tribal Court
11 Ordinance), (February 20, 2026 Supplemental Declaration of Josefina Frank [“Supp. Frank
12 Decl.”] ¶ 2, Exh. 10.)

13 Plaintiff’s complaints about her removal from various Tribal committees and
14 policymaking positions are, likewise, unavailing. Plaintiff is no doubt correct that the effect of the
15 Exclusion Order has been to impede her from in-person participation in tribal governance and
16 civic life, but her remedy, if any, is through Tribal channels, not a habeas petition under § 1303.
17 *Tavares* at 878. And insofar as Plaintiff asserts that the loss of on-Rancheria employment has
18 resulted in financial harm, “federal habeas jurisdiction does not operate to remedy economic
19 restraints.” *Tavares* at 870.

20 The most substantive ground raised by Plaintiff’s petition is her exclusion from all Bear
21 River Tribal properties, but this, too, falls short of what is required to invoke this Court’s
22 jurisdiction under § 1303. Plaintiff acknowledges, as she must, that a “temporary exclusion is not
23 tantamount to a detention,” *Tavares* at 877. Plaintiff’s initial exclusion was for a period of up to
24 six months and coincided with termination of her tenancy in a tribally-owned residence on the
25 Rancheria, based on the Council’s determination that her conduct on tribal property constituted “a
26 public safety nuisance for the Bear River community and threatens peace, safety, and general
27 welfare of the tribal members.” Nonetheless, only five weeks later, the Council lifted the
28 Exclusion Order in reliance on Plaintiff’s execution of a “Care Plan” intended to maintain her

1 sobriety and compliance with tribal laws. Had Plaintiff not violated the Care Plan, *the very next*
2 *day* after the Council lifted the original Exclusion Order, the Council would not have reimposed
3 the Exclusion Order. 2/2/26 Frank Decl., ¶¶ 10-12.

4 Even so, the Council’s reinstatement of the Exclusion Order did not strip Plaintiff of her
5 right to vote, receive various tribal benefits, or foreclose her opportunity to reapply to have the
6 Exclusion Order lifted after six months. 2/2/26 Frank Decl., ¶ 14, Exh. 8. Although the Tribal
7 Council denied Plaintiff’s April 2025 request, the denial decision acknowledged and encouraged
8 Plaintiff’s progress in addressing her problems and expressly invited her to submit another request
9 in six months’ time. *Id.* ¶ 13, Exh. 9. Thus, Plaintiff’s exclusion under Bear River’s Exclusion
10 Ordinance is not the equivalent of permanent banishment.

11 Further support for this conclusion is the fact that Plaintiff’s compelled absence from
12 Tribal lands was accomplished pursuant to the Tribe’s Exclusion Ordinance, not its Banishment
13 Ordinance. Under § 3(F) of Bear River’s Exclusion Ordinance, an excluded person may request
14 the Tribal Council to lift an Exclusion Order after six months, and nothing prevents Plaintiff from
15 renewing her request to lift the Exclusion Order and demonstrating to the Tribal Council that her
16 presence on tribal property would not put the community at risk. 2/2/26 Frank Decl. ¶ 14, Exh. 8.

17 By contrast, Bear River’s Banishment Ordinance carries far more severe consequences. As
18 a preliminary matter, a tribal member who is banished is “treated by the Tribal Enrollment
19 Department as a deceased Tribal member.” 2/2/26 Frank Decl. ¶ 5, Exh. 3. Consequently, the
20 banished tribal member is “expelled from the jurisdiction of the Tribe and not [] allowed to return
21 for any reason during the period of banishment except when required to attend a Tribal Council
22 Hearing or other Tribal proceeding or event as expressly authorized by the Tribal Council.” *Id.* at
23 § 1.36.05(2). The banished tribal member is not entitled to “service, monies, or benefits”
24 otherwise entitled to tribal members, including per capita payments. *Id.* at §§ 1.36.05(3)-(5).

25 When Plaintiff is compared to the tribal members whose exclusion *Tavares* held did not
26 constitute “detention” sufficient to invoke the district court’s jurisdiction under § 1303, it is clear
27 she has not made out even a colorable case for detention. In *Tavares*, the lead plaintiff was
28 excluded from all tribal properties for 10 years without “a right to a hearing or an appeal on the

1 exclusion orders.” *Tavares*, 851 F.3d at 868.² In addition to the unappealable exclusion, the lead
 2 *Tavares* plaintiff was “barred from tribal events, properties, offices, schools, health and wellness
 3 facilities, a park, and the casino,” she was deemed ineligible to run for tribal office and was
 4 denied her per capita distributions of tribal revenues for three and a half years. *Id.* These sanctions
 5 were not sufficient to confer jurisdiction to grant habeas relief under § 1303.

6 Bear River’s sanctions of Plaintiff Bowman are less severe than those held not to
 7 constitute detention in *Tavares*, and are less restrictive in some important respects. Unlike
 8 *Tavares*, Plaintiff can contest her exclusion, and the Tribe has encouraged her to do so. 2/2/26
 9 Frank Decl. ¶ 13. Also, unlike *Tavares*, Plaintiff has not lost the right to vote in tribal elections
 10 nor has Plaintiff been deprived of the right to receive per capita payments or other benefits
 11 available to other tribal members in good standing. 2/2/26 Frank Decl. ¶ 14.

12 Indeed, *Tavares* makes clear that § 1303 does not confer jurisdiction on federal courts to
 13 intrude into matters of internal tribal governance, such as the format of tribal meetings or other
 14 matters: “We also have taken issue with *Poodry*’s assertion that a tribe’s interference with ‘an
 15 individual’s social, cultural, and political affiliations’ can create custody.” *Tavares*, 851 F.3d at
 16 875-76 (comparing *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 897 (2d Cir.
 17 1996), with *Jeffredo v. Macarro*, 599 F.3d 913, 921 (9th Cir. 2010)). Under *Tavares*, “[Plaintiff’s]
 18 remedy is with the Tribe, not in the federal courts.” *Tavares*, 851 F.3d at 878.

19 Plaintiff’s complaint that while the Exclusion Order remains in effect, her access to tribal
 20 properties is subject to obtaining the Tribal Council’s discretionary approval is to no avail.³ By its
 21 very nature, exclusion, as distinguished from banishment, is a temporary condition that can be
 22 modified or even rescinded in ways favorable to the excluded individual, as evidenced by the

23 _____
 24 ² The exclusion order at issue in *Tavares* applied only to tribally-owned land within the Auburn
 25 Rancheria, because the Rancheria includes both land owned by the Tribe and land that is owned
 26 in fee by individuals. *Tavares*, at 868. Fee title to 100% of the land within the boundaries of the
 Rohnerville Rancheria, including Plaintiff’s former residence, is owned by the United States in
 trust for the Tribe. 2/2/26 Frank Decl., ¶ 2.

27 ³ Plaintiff’s Opposing Declaration, at 3:6-17, incorrectly asserts that Chairwoman Frank granted
 28 and then revoked permission for Plaintiff to enter the Rancheria to attend a celebration of her
 uncle’s life. As is clear from Exhibits C and E to Plaintiff’s own Declaration, the decisions were
 those of the Tribal Council, not Chairwoman Frank’s individually.

1 Tribal Council’s lifting of Plaintiff’s original Exclusion Order only about five weeks after it was
2 first imposed. Nothing in the record would support an interpretation of the Exclusion Ordinance
3 as prohibiting occasional relaxation of an Exclusion Order in appropriate circumstances. Once
4 again, Bear River’s tribal court, not this Court, would be the forum in which Bowman may
5 challenge the terms of her exclusion.

6 Finally, the tribally owned house at 89 Carroll Road that Plaintiff formerly occupied has
7 been assigned to another tribal citizen. Supp. Frank Decl., ¶ 3. The record contains no evidence
8 that any other tribally owned housing is currently vacant. Thus, an order by this Court that would
9 compel the Tribal Council to permit Plaintiff either to reoccupy the house at 89 Carroll Road or to
10 be assigned a different house on the Rancheria would necessitate the eviction of another tribal
11 family having no relationship to Plaintiff’s petition. Nothing in § 1303 confers upon this Court
12 jurisdiction to grant such relief.

13 In short, whether taken individually or cumulatively, the harms asserted by Plaintiff do not
14 constitute “detention” sufficient to invoke this Court’s jurisdiction under § 1303.

15 III. CONCLUSION

16 Although Plaintiff’s actions undoubtedly have resulted in adverse consequences for her, under
17 the Ninth Circuit’s decision in *Tavares*, Plaintiff has not established and cannot establish that she
18 has suffered “detention on the order of an Indian Tribe,” and thus this Court must dismiss the
19 Petition for lack of jurisdiction.

20 Dated: March 2, 2026

Respectfully submitted,

21 By: /s/George Forman
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28 Rohnerville Rancheria Tribal Council, and
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