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INTERTRIBAL COURT OF SOUTHERN CALIFORNIA

FOR THE RINCON BAND OF LUISEÑO INDIANS

RIKKI MAZZETTI et al., Petitioners, v. KATERI KOLB et al., Respondents.	Case No.: CVR-2022-0002-GC **ORDER GRANTING RESPONDENTS' MOTION TO DISMISS**

On January 31, 2024, the Court of Appeals for the Rincon Band of Luiseño Indians ("Court of Appeals") issued an Order and Opinion After Oral Argument ("Opinion") affirming this Court's dismissal of the original complaint and denial of Petitioners' motion to amend the complaint. However, the Court of Appeals also remanded the case to allow Petitioners an opportunity to amend the complaint to allege specific violations of tribal law.

On July 24, 2024, Petitioners filed their First Amended Complaint ("Amended Complaint"). In response, on August 23, 2024, Respondents filed a Motion to Dismiss the First Amended Complaint ("Motion to Dismiss").

On October 7, 2024, a virtual hearing was held on Respondents' Motion to Dismiss. Manuel Corrales, Jr. appeared on behalf of Petitioners and David Dehnert appeared on behalf of Respondents.

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DISCUSSION

The Court of Appeals noted that it is "clear that the Rincon Band intends to cloak Enrollment Committee members with tribal sovereign immunity, so long as the officials or employees are acting within the scope of committee duties." *Rikki Mazzetti et al. v. Kateri Kolb et al.*, No. AP-0001-23, at 5 (Rincon Band of Luiseño Indians Ct. of App. Jan. 31, 2024). Having found that nothing in Petitioners' original complaint alleged that Respondents were "acting outside of their scope of duties," the Court of Appeals found that the trial court was correct in dismissing the original complaint based on sovereign immunity. *Id.* at 6. The Court of Appeals concluded, however, that Respondents "likely could be sued for prospective injunctive relief for **unlawful actions** taken in their official capacities" and thus remanded the matter to this Court with instruction to allow Petitioners to amend their complaint to allege specific violations of tribal law. *Id.* (emphasis added).

Pursuant to the Opinion, this Court's only remit is to determine the narrow issue of whether Petitioners have alleged Respondents' actions violated tribal law. The Amended Complaint enumerates four causes of action, each of which is discussed below.

First Cause of Action

In their first cause of action, Petitioners ask this Court to use federal common law to review Respondents' actions for abuse of discretion. Consideration of federal common law falls outside the narrow scope of the remand of the Court of Appeals. Therefore, this Court declines to address the allegations set forth in Petitioners' first cause of action.

Second Cause of Action

Petitioners' second cause of action seeks declaratory relief based on (i) Respondents' retroactive nullification of the Parada-led Enrollment Committee's preliminary decision; (ii) the use of "clear and convincing" proof relating to blood quantum; (iii) the April 20, 2022 letter outlining the Enrollment Committee's decision on the Mazzetti Applications signed by Respondents' attorney, David Dehnert; and (iv) the Enrollment Committee's failure to timely complete the Mazzetti Applications. First Am. Compl. 24. Petitioners argue that these actions violate Section 5 of

the Rincon Enrollment Ordinance ("Enrollment Ordinance") and the Rincon Enrollment Administrative Policy ("REAP").

Nullification of Parada-Led Enrollment Committee's Preliminary Decision

Petitioners allege that Respondents violated Section 5 of the Enrollment Ordinance by refusing "to prepare and submit to the Field Representative at the BIA, the required 'preliminary decision'" issued by the prior Enrollment Committee ("Parada-led Committee") for the blood quantum increase of Jerri and Rikki Mazzetti's blood correction application for Georgia Calac Mazzetti and her brother, Perter Calac, and the non-enrolled Petitioners' enrollment applications ("Mazzetti Applications") First Am. Compl. 11.

Petitioners base this allegation on Section 5 of the Enrollment Ordinance, which provides, in pertinent part:

> The Enrollment Committee shall review applications and arrive at a preliminary decision as to the eligibility of the applicant. . . .The Enrollment Committee shall refer the application, with a statement of the facts supporting its preliminary decision, to the Field Representative with a request for the review of the Bureau of Indians Affairs for any additional data which would either substantiate or refute the preliminary decision of the Committee. The Field Representative shall prepare a statement containing information found in the Bureau records relative to the eligibility of the applicant and shall forward such statement to the Enrollment Committee. After reviewing the statement, the Enrollment Committee shall, on the basis of the evidence thus accumulated, approve or disapprove the application.

Rincon Band of Luiseño Indians Enrollment Ordinance, § 5 (1971).

In short, Petitioners argue that Respondents were required by Section 5 to rubber-stamp the Parada-led Committee's preliminary findings and forward them to the Bureau of Indian Affairs ("BIA"). This Court disagrees.

There is nothing in the Enrollment Ordinance, or any other tribal law, that requires a subsequent Enrollment Committee to abide by the preliminary findings of a prior Enrollment Committee. In fact, Section 5 of the Enrollment Ordinance specifically states that applications are

not final until approval or disapproval of the Enrollment Committee, after BIA review. Additionally, Section 6 of the Enrollment Ordinance specifically allows the Enrollment Committee to re-evaluate applications if it finds the applicants provided erroneous information or "if it is **subsequently found that an applicant has been disqualified for membership with the Band as the result of oversight, misinterpretation, etc., by evaluating officials of information submitted**, such applicant shall be so informed and his application shall be reevaluated in accordance with the procedures for processing an original application." *Id.* § 6 (emphasis added). As Petitioners assert, Respondents sent out a notice indicating that "the application was 'pending,' because it was. . .missing certain documentation, including 're-evaluation of blood quantum.'" First Am. Compl. 11. Petitioners allege that this statement was false and based on animosity. As the Court of Appeals noted, such allegations are irrelevant to whether or not Respondents were acting within the scope of their authority. *Mazzetti et al. v. Kolb et al.*, No. AP-0001-23 at 6. Thus, this Court will not inject its own judgment or attempt to determine Respondents' motivations for re-evaluating the Mazzetti Applications, but instead only consider whether such actions violated tribal law. In the Court's view, Respondents' decision to re-evaluate the Parada-led Committee's preliminary findings did not violate Sections 5 or 6 of the Enrollment Ordinance.

Use of Clear and Convincing Standard to Determine Blood Quantum

Petitioners allege that Respondents violated tribal law by requiring that a change in blood-quantum requires clear and convincing evidence. Petitioners correctly note in their Amended Complaint that there is nothing that requires the Enrollment Committee to determine blood-quantum by clear and convincing evidence. What Petitioners fail to recognize, however, is that there is also no tribal law that prohibits the Enrollment Committee from deciding, within its discretion, that clear and convincing evidence is the proper standard. Indeed, all parties to this matter appear to agree that tribal law does not provide much, if any, guidance to the Enrollment Committee related to determining blood quantum other than Amendment II to the Enrollment Ordinance that provides that persons listed on the September 15, 2017 new base membership roll "shall retain the right to correct his or her own blood degree and enrollment status." First Am. Compl. 12. As the Court of Appeals noted, the Enrollment Committee's duties involve discretionary functions, "most notably

the evaluation of evidence in light of the applicable legal standards." *Mazzetti et al. v. Kolb et al.*, No. AP-0001-23 at 10-11. Thus, it follows that in the absence of tribal law designating specific procedures or standards for determining if a change in blood quantum is appropriate, Respondents acted within their authority as independent arbiters in determining that "clear and convincing" evidence was the proper legal standard to make such a change, particularly given that "clear and convincing" is the standard set forth in the REAP with respect to enrollment. Rincon Band of Luiseño Indians Enrollment Administrative Policy, § 6.4(e) (2011).

April 20, 2022 Decision Letter

Petitioners claim that Respondents "hired a non-Indian lawyer, David Dehnert, who is not a member of the Enrollment Committee, to prepare and sign a decision denying the Mazzetti applications" and appear to allege that Mr. Dehnert signing and sending the letter violates tribal law because "[no]where in Ordinance No. 3 or any Tribal ordinance does it permit a non-voted [sic] member of a committee to issue decisions for the committee." First Am. Compl. 17.

Petitioners appear to be asserting that Mr. Dehnert was the actual decisionmaker and not just the attorney assisting Respondents in communicating their decision to Petitioners who had, at this point in time, hired an attorney and initiated legal action against Respondents. Petitioners offer no evidence to support this contention nor do they provide any specific details demonstrating how an attorney writing on behalf of his client transforms the decision into a decision by said attorney. Contrary to Petitioners' assertions, it is clear to this Court that Respondents elected to have their attorney relay their findings and decisions due to the increasing tensions between Petitioners and Respondents and the Court finds nothing unusual or violative of tribal law in this method of communication, particularly in light of the fact that Petitioners had hired an attorney and initiated legal action on April 14, 2022.

Failure to Timely Complete Mazzetti Applications

Finally, Petitioners assert that Respondents have processed other applicants without delay, and "not in the order in which they were received" as required under Section 6.4(a) of the REAP. First Am. Compl. 19. While it is true that the REAP requires applications to be **processed** in the order in which they were received, it is unreasonable to expect that every application will be

completed in the order in which it was received, as the time necessary to complete a given application is dependent on a number of variables. Petitioners do not allege that the Mazzetti Applications were not processed in a timely manner, they allege that they were not completed in a timely manner. There is no tribal law that dictates when an application must be completed, for obvious reasons. Thus, although the processing of the Mazzetti Applications has taken a substantial amount of time, there are any number of reasons for the delay in such processing, including the change in the Enrollment Committee members, the COVID-19 pandemic, and the intricacy of these particular applications given the blood quantum issue. Because there is no tribal law requiring an application to be completed within a certain number of days, the Court finds that Petitioners have failed to set forth any violation of tribal law.

Third Cause of Action

Petitioners' third cause of action appears to simply repeat the allegations in its first and second causes of action.

Fourth Cause of Action

Petitioners allege in their fourth cause of action that Respondents' actions violated their due process rights under the Indian Civil Rights Act. Since the Indian Civil Rights Act is not tribal law and thus beyond the scope of the Court of Appeals' remand, the Court declines to address this allegation.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Even if the Court did find that Petitioners properly alleged specific violations of tribal law, Petitioners still have not exhausted their administrative remedies. As the Court noted in its order granting Respondents' original motion to dismiss, the Enrollment Ordinance provides an appeal process for individuals whose applications for enrollment are denied. This process requires the BIA to review appeals of applicants whose applications have been rejected. The BIA review is a mandatory part of the Band's enrollment administrative process. In fact, Petitioners have taken advantage of the Band's administrative appeals process by filing an appeal on June 20, 2022. The Court has been advised that the appeal is still pending. Thus, any lawsuit is premature and since

Petitioners have not requested a stay of this matter during the pendency of the administrative appeal, the Court has no alternative but to dismiss this case.

CONCLUSION

For the reasons set forth above, the Court concludes that Petitioners have failed to allege any violations of tribal law by Respondents. Respondents' Motion to Dismiss is granted, the Amended Complaint is dismissed with prejudice, and the Case Management Conference set for December 9, 2024 is vacated.

IT IS SO ORDERED.

DATED: November 26, 2024

Kathryn A. Ogas

KATHRYN A. OGAS
Judge Pro Tem
Intertribal Court of Southern California