

JACK DURAN, SBN 221704
DURAN LAW OFFICE
4010 Foothills Blvd., S-103, N.98
Roseville, CA 95747
Telephone: (916) 779-3316
Facsimile: (916) 520-3526
duranlaw@yahoo.com

Attorney for Petitioners:

Ron Napoles, Laurine Napoles, Rick Napoles, Mark Napoles,
James Napoles, Debra Williams, Wade Williams

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

RONALD NAPOLES, LAURINE NAPOLES,
RICK NAPOLES, MARK NAPOLES,
JAMES NAPOLES, DEBRA WILLIAMS
WADE WILLIAMS,

Petitioners,

v.

DESTIN ROGERS, BRIAN PONCHO,
EARLEEN WILLIAMS, WILLIAM "BILL"
VEGA [BISHOP PAIUTE TRIBAL
COUNCIL, IN THEIR INDIVIDUAL
CAPACITIES], BISHOP PAIUTE TRIBAL
COURT AND TRIBAL COURT JUDGE, BILL
KOCKENMEISTER, [N HIS INDIVIDUAL
CAPACITY],

Respondents

Case No.

PETITION FOR HABEAS CORPUS

Indian Civil Rights Act, 25 U.S.C. § 1303

PETITION FOR HABEAS CORPUS

I. INTRODUCTION

Petitioners hereby petition the Court for a Writ of Habeas Corpus pursuant to the Indian Civil Rights Act ("ICRA"). 25 U.S.C. §§ 1301-1303. Respondents are unlawfully detaining Petitioners by convicting Petitioners of crimes, including "trespass," and otherwise ejecting and restraining them from their family land without due process or equal protection of law.

Respondents are being punished and deprived of liberty and property in retaliation for pursuing recovery of family land assignments that were rightfully assigned to Petitioners through tribal custom, tradition and the mandates of the 1962 Ordinance Governing Assignments on the Bishop, Pig Pine and Lone Pine Reservations (hereinafter, "1962 Ordinance"), the principal document upon which land assignments are governed within the Owens Valley; and the decisions and authority of the Owens Valley Board of Trustees (hereinafter "OVBT"), the governing entity with exclusive authority over recognition, approval and changes of land assignment. The Petitioners have been ordered to vacate the assignments and face criminal sanction, for trespass, which has been ordered by the Court. The punishment Respondents imposed constitutes detention, as contemplated by ICRA.

Petitioners have exhausted tribal remedies by first challenging a Trespass order to the Tribe's Appellate division, the Intra-Tribal Court of Southern California (ITCSC), which reversed the lower court's finding of trespass and remanded the case back to the Tribal Court to determine the underlying status of the land and Bishop Paiute Tribal Council's authority over it. The Tribal court, however, ignored and continues to ignore and take steps to circumvent the Appellate order. The Tribal Court first ordered the case dismissed at the request of the Defendant, Bishop Tribal Council, entering the dismissal with prejudice. Then immediately after

1 entering the dismissal, Respondents immediately renewed their efforts to punish Petitioners and
2 force them off their land, instituting a variety of threats, citations, and actions. Additionally,
3 Respondent Kockenmeister entered, sua sponte and ex parte, without trial, evidentiary
4 presentation, or other elements of due process required under ICRA and the laws of the Bishop
5 Paiute Tribe, a Temporary Protection Order (hereinafter "TPO"). The TPO completely restrains
6 Petitioners from entering upon the land, threatens them erroneously with federal criminal
7 prosecution under the Violence Against Women Act (which has no applicability to the
8 underlying facts involved with this case), and denies other fundamental rights wholly unrelated
9 and inappropriate to the nature of the situation.

12 In an effort to seek relief from the latest round of actions, Petitioners prepared and filed a
13 Petition for Writ of Mandamus for consideration by the Bishop Paiute Appellate Court. Upon
14 filing it, however, Petitioners were informed that the Council terminated its relationship with the
15 ITCSC following its decision on their earlier trespass action, rendering Petitioners without any
16 other forum or available remedies to challenge Respondents' illegal actions. Although the
17 Bishop Paiute Appellate Court exists yet in name and law, and there are Rules of Appellate
18 Procedure, **no judges presently constitute the court; no plan is in place for the appointment**
19 **of said judges;** and Respondents themselves, who have demonstrated a persistent intention to
20 take Petitioners' land and restrain their liberty without adherence to any principles of federal or
21 tribal law, the authority of the ITCSC, the Bishop Paiute Appellate Court, the General Council or
22 the Owens Valley Board of Trustees, are exclusively in control of determining whether, when,
23 and how to reconstitute that court.

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1 On December 19, 2016, Respondent Kockenmeister issued an order continuing the
2 December 20, 2016, hearing and staying the proceedings of the tribal court “pending the
3 empanelment of the Appellate Court.” Order of Continuance and Stay Pending Appeal. The
4 order acknowledges that the Appellate Court has yet to be empaneled. Although the initial TPO
5 was scheduled to expire on December 20, 2016, well beyond the 10-day period authorized for Ex
6 Parte Orders to stay in effect by law, Respondent Kockenmeister extended its provisions, thereby
7 continuing the deprivation of liberty and taking of Petitioner’s land without due process,
8 jurisdiction, adherence to the laws of the Bishop Paiute Tribe or Indian Civil Rights Act.
9 Petitioners presently have no remaining remedy within the Bishop Paiute legal system and will
10 continue to suffer irreparable harm if the relief sought in this proceeding is not granted in
11 expedited fashion.

12 **II. PARTIES**

13 1. Petitioners Ron Napoles, Laurine Napoles, Rick Napoles, Mark Napoles, James
14 Napoles, Debra Williams, and Wade Williams are all enrolled members of the Bishop Paiute
15 Indian (“Bishop Tribe”), a federally recognized Indian Tribe headquartered in Bishop,
16 Inyo County, California.

17 2. Respondents, Bishop Tribal Council, Destin Rogers, Brian Poncho, Earleen
18 Williams and William “Bill” Vega are the elected Executive Committee of the Tribe.
19 Respondents located within the Tribe’s exterior reservation boundary, in Bishop California, Inyo
20 County.

21 3. Respondent, Bishop Tribal Court is the Tribe’s court, a court of general
22 jurisdiction. The Court is located in Bishop, California, Inyo County.

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3 4. Respondent, Tribal Judge, Bill Kockenmeister, is the Tribal Court Judge who, at
4 the direction of the Bishop Tribal Council, issued the Temporary Restraining Order (TRO)
5 against Petitioners. Judge Kockenmeister's business office is the Bishop Tribal Court, located in
6 Bishop, Inyo County, California.
7

8 III. JURISDICTION

9 5. The District Court has jurisdiction over this action pursuant to federal law,
10 including 25 U.S.C. § 1303, which dictates that the "privilege of the writ of habeas corpus shall
11 be available to any person, in a court of the United States, to test the legality of his detention by
12 order of an Indian tribe."
13

14 6. "A central purpose of [the Indian Civil Rights Act ("ICRA")] was to 'secur[e]
15 for the American Indian the broad constitutional rights afforded to other Americans,' and
16 thereby to 'protect individual Indians from arbitrary and unjust actions of tribal governments.'"
17 *Santa Clara Pueblo v. Martinez*, 436 US 49, 61 (1978) (quoting S. Rep. No. 841, 90th Cong.,
18 1st Sess., 5-6 (1967)). The Bishop Paiute Tribe **does not** have a constitution or bill of rights,
19 and has not adopted the provisions of the ICRA.
20
21

22 7. The Court has jurisdiction because the Petitioners are being unlawfully
23 detained, based on criminal punishment for alleged crimes including trespass, the Petitioners
24 have exhausted all available tribal remedies, and a Tribal Court issued restraining order
25 restricts the physical freedom (geographic movement) of the Petitioners. *See Quair v. Sisco*
26 (*Quair I*), 359 F.Supp.2d 948 (E.D.Cal. 2004); *Quair v. Sisco (Quair II)*, 2007 WL 1490571
27 (E.D. Cal. May 21, 2007).
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3 8. Venue is proper in the Eastern District, as all the events giving rise to this action
4 occurred in Inyo County, California.

5
6 9. Petitioners have not applied for this Writ in any other Court.

7
8 **IV. FACTS**

9 **A. General Background Prior to the Events Giving Rise to this Petition**

10 10. Petitioners are direct descendants of Ida Warlie who received in or about July of
11 1941, a family assignment of 11 lots in exchange for her agreement to relocate with her family to
12 the Bishop Paiute Reservation. Ida Warlie Community Land and Building Assignment, July 22,
13 1941 (Exhibit A).

14
15 11. Following discussions with agents of the federal government, heads of households
16 like Ida Warlie gave up interests in land, homes and improvements in Sunland, Inyo County,
17 California in exchange for family assignments of land located within the present boundaries of
18 the Bishop Paiute Reservation. See Ida Warlie Community Land and Building Assignment, July
19 22, 1941 (Exhibit A). Family land was assigned according to household size, and the purpose
20 was to provide a means of livelihood and eligibility for housing funds for the benefit of
21 individual members of the Bishop Paiute Tribe. 1937 Act. See also 1962 Ordinance Governing
22 Assignments on Bishop, Big Pine and Lone Pine Reservations (“In the past, the size of
23 assignments on the Bishop, Big Pine and Lone Pine Reservations generally were determined by
24 the size of the assignee’s family. The assignments were granted for the purpose of providing a
25 home and acreage to aid in supporting a family.”).

1 ///

2 12. Through these land exchanges and grants of family and individual assignments,
3 the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony was founded and
4 located within the present boundaries of the Bishop Paiute Reservation.
5

6 13. The land was and is held in trust by the United States for the livelihood, welfare
7 and benefit of the members of the Bishop Paiute community, never for the development or
8 business purposes interests of the Bishop Paiute Tribal Council or other entity claiming
9 governmental authority. Indeed, the Tribal Council did not even exist at the time these original
10 individual and family assignments were granted and consolidated into the land base that lies
11 within the boundaries of Bishop Paiute reservation.
12

13 14. Like other California Tribes, the Bishop Community was and continues to be
14 governed by consensus through its General Council of all members.
15

16 15. Despite their recent efforts to assert themselves to the contrary, under the custom,
17 tradition and laws of the Bishop Paiute Tribe, the powers of the Tribal Council are limited and do
18 not extend to decisions about whether to start or expand particular economic development
19 projects, or the granting, transfer, rescission or other decision-making with respect to family
20 and/or assigned land.
21

22 16. Petitioner, Laurine Napoles, was listed on the original assignment for the purpose
23 of determining its household size, as was her sister Geraldine Pasqua, who is now deceased, and
24 four other siblings.
25

26 17. In 1962, a land assignment ordinance was enacted by the members of the Bishop,
27 Big Pine, and Lone Pine Reservations "in order to promote the general welfare, safeguard our
28

1 interests, conserve and develop our lands and resources.” Preamble, Ordinance Governing
2 Assignments on Bishop, Big Pine and Lone Pine Reservations (1962).

3
4 18. That ordinance validated all existing assignments like that of Ida Warlie’s.
5 Ordinance, Article I, Section A(1). It also provided procedures for other tribal members to apply
6 for assignments of “unassigned tribal land,” to exchange or relinquish land for reassignment to
7 another tribal member as well as for land to be passed down through the generations through
8 designation by assignees of those they would like to receive the assignment upon death and
9 preference rights for those who are named as beneficiaries or represented in the original
10 assignment. 1962 Ordinance II(D)(5)(6), (9) & (10)(d).

11
12 19. Well-established principles of custom and tradition extending from the inception
13 of the Bishop Paiute Community to the present recognize family land and its orderly passing on
14 through the generations to qualified family members, and the tribal court record in the first
15 trespass action is replete with examples where such family land has been recognized and passed
16 on to surviving family members throughout the Bishop Paiute community. *Bishop Paiute Tribal*
17 *Council v. Bouch.*

18
19 20. There is no lawful provision for assigned land to be converted into land for
20 economic development or any other purpose at the hands of the Bishop Paiute Council or any
21 other government entity. All provisions provide for and regulate the validation, exchange,
22 relinquishment, availability and assignment of land from one tribal member to another. When
23 land becomes unavailable to or is relinquished by one head of household or individual, it
24 becomes available for reassignment to another family member or individual (where there are no
25 family members eligible to receive the assignment). 1962 Ordinance.
26
27
28

1 21. There is no provision in the 1962 ordinance or any other authority for land to
2 escheat to the Tribal Council or other entity of the tribe. Id.

3 22. Decisions over these actions are exclusively within the authority of the Owens
4 Valley Board of Trustees, not the Bishop Paiute Tribal Council or any entity of the Bishop Paiute
5 Tribe. (Id. 1962 Ordinance, Governing Body). The OVBT was created and recognized by the
6 Trust Agreement for Relief and Rehabilitation Grant to Unorganized Bands, approved April 17,
7 1939, by the Acting Commissioner of Indian Affairs. “It was to this recognized governing body
8 and their successors in office that the Commissioner granted and conveyed the said funds in
9 trust, subject to specified conditions stated in the Trust Agreement. Therefore, the recognized
10 governing body of the Owens Valley Indian Bands is the Owens Valley Board of Trustees.” Id.
11
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14 23. Even where surviving family members are not available or do not qualify for
15 assignment, the land does not escheat to the Tribal Council or other tribal entity. Provides the
16 ordinance: “In the event those individuals in the above categories do not qualify for an
17 assignment under terms of this ordinance, the available acreage may be reassigned to any eligible
18 member of the Owens Valley Paiute Shoshone Bands.” 1962 Ordinance II(D)(10).
19

20 24. Following the adoption of the 1962 Ordinance, Ms. Warlie’s family assignment
21 was validated by resolution of the Owens Valley Board of Trustees. The assignment included
22 Lots 4-11 of Block 3, including the Lots 6 and 7 that are at issue in numerous proceedings before
23 the Bishop Tribal Court and Court of Appeals, and Lots 2-4 of Block 9, as mapped by the Bureau
24 of Indian Affairs in 1960. (Exhibit D).
25

26 25. Prior to and after Ms. Warlie’s death, the OVBT recognized and validated its
27 assignment to several of her children.
28

1 26. In or around 1969, Josephine Paradise, daughter of Ms. Warlie, was granted by
2 resolution of the OVBT an assignment in her name of Block 3, Lot 4 and 5.

3
4 27. On or about April 14, 1975, and in accordance with the custom and tradition
5 regarding succession, Karen Gail Manuelito, one of Ms. Warlie's grand-daughters and the
6 daughter of Josephine, was granted by resolution of the OVBT an assignment in her name of
7 Block 3, Lots 4 and 5, in her name.

8
9 28. In or around 1965, Petitioner, Laurine Napoles, daughter of Ms. Warlie and
10 mother of Ronald, Rick and Mark Napoles and Debra Williams, was granted by resolution of the
11 OVBT an assignment in her name of Block 9, Lots 2 and 3.

12 29. Geraldine Pasqua, another of Ms. Warlie's daughters, who was also listed on the
13 original assignment, became the head of household for Assignment 40, Block 3, Lots 6, 7, 8, 9,
14 10, 11, and Block 9 Lot 4. Her interest in the family assignment was officially recognized by the
15 Owens Valley Board of Trustees on November 15, 1977. Resolution No. 127, November 15,
16 1977. (Ex D).

17
18 30. Prior to her death in 2016, Ms. Pasqua executed an intent to relinquish interest in
19 certain of her lots to various of the Petitioners, her great nieces and nephews and the next
20 surviving relatives who would be eligible for said land.

21
22 31. Pursuant to that relinquishment, Petitioner Rick Napoles applied for the transfer
23 of Lots 10 and 11 to his name.

24
25 32. Petitioner Debra Williams applied for Lots 8 and 9.

26
27 33. Petitioner Ronald Napoles applied for Lots 6 and 7.

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1 34. The applications for Debra Williams and Rick Napoles were moved forward by
2 the Assignment Committee and Bishop Paiute Council, and approved by the OVBT.

3 35. The application for Ronald Napoles on Lots 6 and 7 was not advanced, as it
4 should have under the laws and customs of the tribe.
5

6 36. In 2006, members of the Tribal Council unilaterally and against all lawful
7 authority decided to seize land located in Block 3, Lots 4 and 5, 6 and 7 for economic
8 development, putting into motion the circumstances ultimately necessitating the filing of this
9 action. Specifically, the proposal was for the expansion of the casino and parking and
10 construction of a hotel.
11

12 37. On or about July 3, 2007, the Bishop Tribal Council took action to cancel the
13 assignment of Karen Gail Manuelito, and the OVBT officially cancelled it. Resolution No.
14 OVBT-2007-41. July 27, 2007. Upon cancellation, under the terms of the 1962 Ordinance the
15 land should have become available for assignment to another family member. Petitioners Ron
16 Napoles, James Napoles, and Wade Williams are among those who would be eligible.
17

18 38. On May 7, 2013, then Chairman Chad Delgado informed Petitioners and Ms.
19 Pasqua that surveyors would be working on establishing boundaries and fencing for expanded
20 casino parking and events. Ex. F, Letter from Chad Delgado, May 7, 2013.
21

22 39. Petitioners and the late Geraldine Pasqua responded on May 29, 2013 denying
23 access to surveyors for the purpose of said activity. ("Please be advised that access for surveying
24 the assignments comprising Block 3 Lots 4-10 for the intent of fencing is denied. Additionally,
25 use in whole or part of any of the aforementioned lots for any casino/tribal related activities up to
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1 and including additional casino parking and special event promotions is also denied.”) Ex. G,
2 Letter from Geraldine Pasqua et al. to Bishop Paiute Council, May 29, 2014.

3 40. Petitioners’ correspondence also indicated that “the fact that the casino has never
4 required additional land for any past ‘events,’ and the timing of this sudden need for fence
5 ‘separation,’ indicates that this action may be an attempt to enforce the tribe’s bogus land claim
6 prior to a upcoming vote on casino expansion.” Id.
7

8 41. On or about July 9, 2013, and in accordance with the laws, tradition and customs
9 of the Bishop Paiute Tribe, the matter of the building of a hotel and casino expansion that
10 Respondent Tribal Council is now pushing to build on Block 3 Lots 4 and 5, 6 and 7 was put to a
11 referendum vote of the General Council, the governing entity bestowed with authority for such
12 decisions. The majority voted against the proposal. Sample Ballot and Vote. (Exhibit H.)
13

14 42. No other votes of the General Council have taken place since then regarding the
15 casino and hotel expansion or other activity on the land in question.
16

17 43. Until these efforts of recent contingents of the Bishop Paiute Tribal Council to
18 build the hotel and casino expansion upon their land began and Petitioners were forced off or
19 fenced out of their land, Ida Warlie, her children, grandchildren and great grandchildren have
20 continuously occupied the family land described above since it was originally granted to them in
21 1941.
22

23 44. Petitioners have had at all times possessed under well-established principles of the
24 law applicable within the boundaries of the Bishop Paiute Tribe the lawful right to use and
25 occupy the land in question. They are the rightful occupants of Lots 4 and 5, and 6 and 7, just as
26 they are on the remaining lots of Ida Warlie’s family assignment that are not at issue in this case,
27
28

1 as direct descendants to Ida Warlie with interest in a family assignment existing since the
2 inception of the creation of the Bishop Paiute Reservation, passing properly through the
3 generations based on the terms of the 1962 Ordinance, the decisions of the Owens Valley Board
4 of Trustees, and tribal law and custom.

5
6 45. By no law or custom applicable within the Bishop Paiute Tribe, does Respondent
7 Tribal Council have proper authority to exercise dominion over Block 3, Lots 4 and 5, Lots 6 and
8 7, or any other family or assigned land issued for the welfare, homes, and sustenance of tribal
9 members. Like other federally recognized tribes in California, the Tribal Council has limited
10 administrative functions. The entity did not exist at the time the original family assignment was
11 granted to Ms. Warlie or in close proximity to the formation of the Bishop Paiute Community.
12 Exclusive governance authority over these matters lies with the General Council, that has the
13 primary governance authority over matters internal to the Bishop Paiute Community, and the
14 Owens Valley Board of Trustees that has exclusive authority over land assignments existing
15 within the Bishop, Big Pine and Lone Pine Paiute bands.
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19 46. The land in question, in particular Block 3 Lots 6 and 7, and Petitioner's right to
20 their use and occupancy rights of said land was the subject of earlier trespass citations that
21 resulted in decisions of this court in *Bishop Paiute Tribal Council v. Bouch et al.*, B-AP-1412-6-
22 12.
23

24 47. In that case, there was an extensive factual presentation and record established in
25 the tribal court on the issue of who had use and occupancy rights to the land in question and
26 whether the Tribal Council had authority, thereby, to trespass Petitioners and other family
27 members and guests from this land.
28

1
2 48. Petitioners Ron, Rick, Debra and Laurine Napoles were parties in that earlier
3 action. Petitioners Mark and James Napoles and Wade Williams are brothers and nephews of
4 Ron and Rick, descendants also of Ida Warlie, possessing their own interest in being upon the
5 land in question and invited by other authorized members of the Ida
6 Warlie/Pasqua/Napoles/Williams family to be upon it too.
7

8
9 49. In that action, Respondent Kockenmeister issued a decision on June 19, 2014
10 affirming citations for Trespass against several Petitioners and other friends and family members
11 for their presence and activities on their family land. (See Ex. I, Findings of Fact, Conclusions
12 of Law and Judgment, June 19, 2014).
13

14 50. From the inception of the first trespass action against Petitioners, Respondent
15 Kockenmeister has demonstrated a significant confusion of roles and inability to act as an
16 impartial and independent judicial officer. In the first decision on the matter, he took the
17 position the tribal court lacked jurisdiction to adjudicate land disputes but nonetheless affirmed
18 the citations for trespass in deference to what the Bishop Paiute Tribal Council had asked him to
19 do. *Bishop Paiute Tribal Council v. Bouch et al.*, Findings of Fact, Conclusions of Law and
20 Judgment at 2-3. In the hearing, he explained to Petitioners and their family, "Once again I
21 cannot, if the Tribal Council tells me it's their land, there's nothing I can do about that. Let me
22 say that, and I'm not disagreeing with you, I'm telling you I have no authority to make that
23 determination. . . . And I have to accept the Tribal Council's position that it's their land at this
24 point in time. . . [I]f the Tribal Council comes and tells me this is our land I can't say no it's not,
25 I don't have that kind of authority." Transcript, at 4-5, Bishop Paiute Tribal Court, June 17,
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1 2014. He conducted no reasonable fact-finding about the elements of trespass, applied no valid
2 legal principle or authority, but nonetheless issued the relief requested by Tribal Council. In that
3 regard, he acted more as an advocate for and enforcer of the Tribal Council, not an impartial
4 judicial tribunal.
5

6 51. The Bishop Paiute Court of Appeals, reversed said decision, in *Bishop Paiute*
7 *Tribal Council v. Bouch*, B-AP-1412-6-12, remanding the matter to the lower court for the
8 purpose of receiving further evidence and argument and issuing findings of fact and conclusions
9 of law about the core issue: namely, use and occupancy rights to the land in question. (See
10 Ex. __, Decision BP Appellate Court).
11

12 52. Instead of exercising its option to do that, however, Respondent Tribal Council
13 moved to dismiss its claims against Petitioners and their family and guests.
14

15 53. Petitioners opposed said motion and argued, in the event the court granted
16 dismissal, that such dismissal should be without prejudice, given the stage of the proceedings and
17 the extensive factual and legal argument that had occurred in the case.
18

19 54. Respondent Kockenmeister has persisted in advocating on the side of Bishop
20 Tribal Council and attempting to circumvent the appellate court's decision and authority
21 regarding the need to determine the status of the land prior to taking action against Petitioners.
22 Additionally, he has consistently rejected the authority and determinations of the Owens Valley
23 Board of Trustees, the decisions and authority of the General Council, and the clearly articulated
24 and longstanding laws of the Bishop Paiute Tribe in order to effectuate the unlawful aims of
25 representatives of the Bishop Paiute Tribal Council with respect to the proposed development.
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1 55. In a Pretrial Hearing held on October 18, 2016, purportedly for the purpose of
2 discussing the next steps in scheduling an evidentiary hearing following remand from the court
3 of appeals, Respondent Kockenmeister indicated **he would not be resolving the land issue as**
4 **directed by the appellate court** as it was “beyond my comprehension of anything that an
5 appellate court has ever done in my 35 years as an attorney.” October 18 Hearing Record. (“I
6 don’t care, I don’t care. Hold on. I don’t care what the appellate court said quite frankly. Okay
7 they had what appeared to me almost an evidentiary hearing in the appellate court. It was an
8 outrageous action on their part and at this point in time I’m prepared to dismiss the citation with
9 prejudice. If that’s what you want to do Miss Kimber you are the counsel for the tribe who
10 brought the citations.”)

11 56. Upon Ms. Kimber’s confirmation that she did indeed wish to dismiss the citations,
12 Respondent Kockenmeister indicated that he would be dismissing them with prejudice “which
13 means that for the particular incident in question it cannot come before the court if there’s
14 another trespass issue then we’ll just go from there. Thank you very much.” Id.

15 57. On October 28, 2016, the tribal court dismissed the matter WITH PREJUDICE,
16 thereby precluding the parties from relitigating the matter of trespass from the land in question.
17 Order of Dismissal, *Bishop Paiute Tribal Council v. Bouch et al.*, October 28, 2016 (Exhibit J).
18 The written entry of that decision states: “By requesting dismissal Plaintiff has indicated that it
19 does not seek any relief from the court and the matter is moot. . . . Dismissal of this matter is
20 therefore appropriate. For these reasons, IT IS HEREBY ORDERED that this matter is
21 Dismissed With Prejudice.” Order of Dismissal, October 28, 2016. Respondent Tribal Council
22 did not appeal the court’s decision to dismiss with prejudice.”

1 58. Petitioners, having prevailed in the previous suit on the matter, resumed use and
2 occupancy of the land in question, restoring livestock and fencing and moving a trailer that had
3 been stored elsewhere on their family land upon the land in question.
4

5 59. In September 2016, Respondents published notice of a comment period on an
6 Environmental Assessment describing the casino and hotel expansion development planned for
7 Block 3, Lots 4 and 5, 6 and 7. Ex. K, Bishop Paiute Casino Project Tribal Environmental
8 Assessment, September 2016, [http://www.bpdcorp.org/images/PublicReviewDraftTribal-](http://www.bpdcorp.org/images/PublicReviewDraftTribal-EA_Casino.pdf)
9 EA_Casino.pdf
10

11 60. That Environmental Assessment indicates that the plans were underway to break
12 ground in March of 2017. (“2.3 CONSTRUCTION SCENARIO Construction of the proposed
13 project is expected to begin in March 2017. Construction would involve typical activities
14 including site preparation, excavation and grading for the expansion area, foundation building,
15 framing, electrical and mechanical work, finishing and paving. Infrastructure upgrades would
16 occur simultaneously with building construction and it would take approximately 22 months to
17 complete the construction of the expanded facilities and the modernization of the Casino.”E.A. at
18 4).
19
20

21 61. On or about November 15, 2016, notwithstanding their decision to dismiss the
22 case with prejudice rather than establish their lawful authority to eject the Petitioners from the
23 land in question, Respondents Bishop Tribal Council and Deston Rogers issued a press release.
24 Press Release, November 15, 2016 (Exhibit L). Not only does the release contain multiple
25 personal and defamatory attacks on Petitioner Ronald Napoles, but it erroneously construes the
26 meaning of dismissal with prejudice. States the release: “The most recent dismissal by the
27
28

1 Bishop Paiute Tribal Court of the 2014 trespass claims against Mr. Napoles and his family was
2 done at the request of Tribal Council. The fact that the claims were dismissed with prejudice
3 does not limit the Tribal Council's authority to bring trespass charges against Mr. Napoles in the
4 future if he chooses to once again violate the Tribe's laws." Id. at 2. This is a false
5 characterization of the law that grossly misleads the community about the legal status of
6 Petitioners' assignment and the previous trespass action and circumvents the authority and
7 decisions of the General Council and Owens Valley Board of Trustees.
8
9

10 62. Petitioner Ronald Napoles and other of the Petitioners have at all times taken
11 pains to utilize the legal processes and laws of the Bishop Paiute Tribe.
12

13 63. The Respondents, not Petitioners, on the other hand, have refused to honor the
14 laws applicable within the Bishop Paiute reservation and misconstrued and misused the judicial
15 process to achieve their aims.
16

17 64. On or about November 19, 2016, Respondent Deston Rogers accompanied by
18 officers of the Bishop Paiute Tribal Police and the Inyo County Sheriff's office entered
19 Petitioner's land without authority and issued trespass and nuisance citations once again against
20 Petitioners Ron, Rick, Mark and James Napoles and Wade Williams, who were the ones present
21 and working on the property at that time. See, e.g., citations to Ron and Rick Napoles, case
22 numbers 1280 and 1284, November 19, 2016, (Exhibit M). They approached Petitioners on
23 more than one occasion on that day. At the time they were apprehended, Petitioners were
24 working on Lots 6 and 7. Respondents crossed Lots 4 and 5 to get to them.
25
26

27 65. When asked to leave by Petitioners, Respondent Rogers replied that he would stay
28 there as long and whenever he wanted and that Petitioners did not have the authority to tell the

1 Tribal Council when to leave. Respondent Rogers threatened to issue citations every day until
2 they left the property and told them they would be tearing out Petitioners' fencing, livestock and
3 property.
4

5 66. Tribal Police returned on November 20 and 21, 2016, and issued the same
6 citations, each commanding Petitioners to appear to court on December 20, 2016. See, e.g.,
7 citations 1282, 1284, 1285, 1286, 1289, 1290 issued to James and Rick Napoles, (Exhibit N).
8

9 67. There was not then, nor has there ever been, any breach of the peace by
10 Petitioners or their guests or invitees.

11 68. Petitioners' personal liberty and security as well as right to quiet enjoyment of
12 their land, however, was breached by Respondents Rogers and Bishop Tribal Council and
13 accompanying law enforcement officers, who entered upon the land in question on multiple
14 occasions and confronted the Petitioners, using the threat of criminal charges and the force of
15 law enforcement from two jurisdictions to intimidate Petitioners and attempt to remove them
16 from their land.
17
18

19 69. On or about November 21, 2016, Respondents Tribal Council and Rogers caused
20 to be served on Petitioner Ron and Rick Napoles a directive to remove their property within 24
21 hours. See, e.g., Notice to Appear and Complaint (sic) ("24 hours to remove fence and other
22 property. Hearing by 11/23/16") (Exhibit O).
23

24 70. Also on or about November 21, 2016, in the evening, Respondents Tribal Council
25 and Rogers caused an officer of the Bishop Paiute Police to serve upon Petitioners Ron and Mark
26 Napoles at their homes a notice that there would be a proceeding in court the following day,
27 November 22, 2016 at 2:30 p.m.
28

1 71. The time and manner of service violated the Petitioners' personal security. The
2 officer pounded on the doors indicated gruffly that the proceeding would go on the next day
3 whether or not everyone was notified.
4

5 72. The notice did not include reference to any legal authority or remedy, nor did it
6 state the reason for the proceeding. It simply directed Petitioners to bring whatever evidence or
7 witnesses they wished to present at this mysterious event. See Notice of Hearing. November 21,
8 2016 (Exhibit P).
9

10 73. Respondents caused Petitioners James Napoles and Wade Williams to be served
11 at work the following day, November 22, causing embarrassment and intimidation and
12 perpetuating a hostile environment with respect to their employment.
13

14 74. Respondent Rick Napoles was never served with said notice.

15 75. On or about December 5, 2016, Petitioners Mark Napoles, James Napoles and
16 Wade Williams, who were employed by the Bishop Paiute Tribe, each in different departments,
17 were suspended without pay and subjected to certain conditions of a Performance Improvement
18 Plan in direct retaliation for their involvement in the proceedings involving their family land. On
19 December 20, 2016, James Williams was terminated from his employment.
20

21 76. On November 22, 2016, despite the absence of any filed petition or other
22 documents, Respondent Kockenmeister convened a proceeding in the tribal court.
23

24 77. Respondent Kockenmeister indicated that notice had been provided simply as "a
25 courtesy" to Petitioners, as he was issuing an ex parte temporary restraining order. He prohibited
26 Petitioners from presenting any evidence, which would have been necessary to determine that a
27 trespass had occurred and that such trespass had created an emergency risk to health or safety,
28

1 the requirements under the Bishop Paiute Trespass Ordinance necessary for issuing a valid
2 temporary restraining order. Recording, November 22, 2016, Proceeding. Specifically, he
3 explained: “With respect to the restraining order it can be made ex parte, meaning that you don’t
4 get to receive notice of the restraining order until after it is issued. So, you don’t have any due
5 process rights. You don’t have any rights to actually say anything what we have here today is a
6 courtesy to you.” Id.
7

8
9 78. During that proceeding, Responding Kockenmeister also indicated his ongoing
10 disregard for the previous order and mandate of the appellate court from the earlier proceeding,
11 reiterated his position that he would never determine the status of the underlying land as directed
12 by the court no matter what the appellate court had directed, and reverted generally to the
13 position he used as the basis for his June 13, 2014 decision that was reversed by the court of
14 appeals. Id.
15

16
17 79. On November 23, 2016, Petitioners were served with a written version of that
18 Temporary Restraining Order that is attached in its entirety to this Petition. Temporary
19 Protection Order, *Bishop Paiute Tribe v. Napoles et al.* Case Number BT-CV-RO-2016-0062 et
20 seq. November 22, 2016 (Exhibit Q).
21

22 80. That TPO falsely includes reference to the federal Violence Against Women’s
23 Act and threatens federal criminal penalties should Petitioners violate it. Id..

24 81. It falsely states that Petitioners have sought protection “against any acts of
25 violence, threats, harassment and/or causing emotional distress” and erroneously concludes “it
26 appearing to the satisfaction of the Court from specific facts shown by a verified application that
27 an act of violence, threats, harassment and/or causing emotional distress has occurred or there
28

1 exists a threat of violence, threats, harassment and/or causing emotional distress and good cause
2 appearing for issuing such Order without hearing.” Id at 2.

3
4 82. It includes the following warning: “WARNING: Possession of a firearm or
5 ammunition while this Order is in effect may constitute a felony under federal law punishable by
6 fines and/or a prison sentence.” Id. Not only is such language wholly unwarranted in light of the
7 circumstances of the instant matter, but it infringes upon traditions and livelihoods regarding the
8 hunting of rabbits and other wildgame that exist within the Bishop Paiute community and that
9 certain of Petitioners adhere to during this time of year.

11 83. It advises law enforcement outside the tribe to give full faith and credit to the
12 order, as they would only have authority to do under the Violence Against Women Act. After all
13 that, it types in on the box designated on the form order for determining whether the perpetrator
14 of domestic violence may enter or occupy a family home, that Petitioners: “YOU MAY NOT
15 ENTER AND OCCUPY Bishop Paiute Tribal Lands - Block 3, Lots 6 & 7.” The facts
16 underlying this action have nothing to do with domestic violence and Respondents’ associating
17 Petitioners with domestic violence works a serious harm on their reputations and livelihoods
18 within the communities and work environments, and puts them at high risk for arrest or harm
19 from law enforcement who may be misled about the true nature and enforceability of this order.
20 Furthermore, there is no dwelling or structure to enter upon on the lots in question, as the Order
21 suggests. The land in question is pastureland that exists for Petitioners’ livelihood as part of
22 their total family assignment. The use of an order derived from the context of domestic violence
23 creates a severe distortion of the circumstances, placing Petitioners’ security and livelihood at
24 risk within and outside of the community.

1 84. Not only was this order issued without the filing of a petition or affidavit or any
2 establishment of a legal or factual basis for its issuance, it creates a serious and imminent threat
3 to Petitioners' liberty, inviting law enforcement agencies outside the Bishop Paiute Tribe to
4 arrest or charge Petitioners with major crimes, even federal ones.

5
6 85. On November 11 and December 6, 2016, the court issued Notices of Hearing to
7 Petitioners in case numbers BT-CV-RO-2016-0062, BT-CC-NS-2016-0051 et seq. and BT-CC-
8 TP-2016-0068 et seq. announcing a hearing set for December 20, 2016 at 11:00 a.m. but
9 including no petition or details regarding that event. (Exhibit R.)

10
11 86. In response to the threats contained in the TPO and persistent acts of intimidation
12 and harassment by Respondents and law enforcement they directed to enforce their power,
13 Petitioners removed their livestock, fencing and property and have stayed off the land.

14
15 87. On December 13, 2016, Petitioners Ron, Rick, Mark and James Napoles and
16 Wade Williams filed a Petition for Writ of Mandamus in the Bishop Paiute Appellate Court,
17 contesting the actions of all respondents and seeking the same relief requested in the instant
18 Petition, serving it upon all parties.

19
20 88. On December 12, 2016 when seeking to file the Petition with the ITCSC, which
21 had been retained and constituted in the previous action to serve as the Bishop Paiute Court of
22 Appeals, Petitioners learned that Respondents had cancelled their contract with that appellate
23 entity following the decision against them rendered in the court in the first proceeding, *Bishop*
24 *Paiute Tribal Council v. Bouch et al.*

25
26 89. Upon filing the Petition the following day, the clerk of the Bishop Paiute Tribal
27 Courts, Joyce Alvey, confirmed that the contract had indeed been cancelled and that there were
28

1 presently no judges to proceed in appellate proceedings. She indicated that she would be
2 forwarding the Petition to Respondent Kockenmeister for him to determine how to proceed.

3
4 90. On December 15, 2016 Petitioners moved Respondent Kockenmeister to
5 disqualify himself and moved to continue and stay the December 20, 2016 hearing and all further
6 proceedings in the matter until such time as the court could be reconstituted and rulings made on
7 the Petition for Writ of Mandamus. Petitioners also moved for the disqualification of
8 Respondent Kockenmeister. Since the terms of the original TPO were set to expire on
9 December 20 and no additional pleadings or documentation had been submitted by Respondents
10 in the interim seeking its extension or a basis for it, Petitioners anticipated that the TPO would be
11 terminated should the court continue and stay the proceedings.
12

13
14 91. On or about December 16, 2016, pursuant to the direction of Respondents, an
15 impermeable chain link fence was placed contiguously around the perimeter of Block 3, Lots 4
16 and 5; and Block 3, Lots 6 and 7, excluding Petitioners from these pieces of family land.
17

18 92. On December 19, 2016, Respondent Kockenmeister issued an order continuing the
19 December 20 hearing and staying the proceedings "pending the empanelment of the Appellate
20 Court." Order of Continuance and Stay Pending Appeal.

21 93. The order acknowledges that the Appellate Court has yet to be empaneled.
22 Although the initial TPO was scheduled on its face to expire on December 20, well beyond the
23 10-day period authorized for Ex Parte Orders to stay in effect by law, Respondent
24 Kockenmeister summarily and sua sponte extended its provisions, thereby continuing the
25 deprivation of liberty and taking of Petitioner's land without due process, jurisdiction, adherence
26 to the laws of the Bishop Paiute Tribe or Indian Civil Rights Act.
27
28

1 94. Significantly, the order staying the proceedings sets a review hearing for March
2 21, 2017, and March 2017 is the date the Environmental Impact Statement announced that Tribal
3 Council would begin construction on Petitioners' land. Environmental Assessment, September
4 2016.
5

6 95. Thus, no timely relief is available to Petitioners within the Bishop Paiute court
7 system. Moreover, their unlawful detention, effectuated by Respondents without due process
8 and against the decisions of the ITCSC and both tribal and federal law, remains in effect unless
9 and until such time as the Respondents decide whether, when, and who to empanel for the
10 appellate court. Given the Respondents' persistent and serious disregard for the laws and
11 process of the Bishop Paiute Tribe and the Indian Civil Rights Act, including their decision to
12 terminate the contract with the ITCSC without designation of an alternative, it is unlikely an
13 alternative forum will be constituted prior to Respondents' advancing the development project to
14 the construction phase.
15
16

17 96. The actions of Respondents work a severe and wholly unjustified restraint on
18 Petitioners' liberty and personal security.
19

20 97. The actions of Respondents infringe upon Petitioners' rights to due process
21 guaranteed under ICRA and the laws of the Bishop Paiute Tribe, including those governing ex
22 parte and temporary restraining orders and trespass.
23

24 98. The actions of Respondents effectuate an unlawful a taking of land with respect to
25 which Petitioners enjoy the right to exclusive use and occupancy rights in violation of ICRA and
26 the law of the Bishop Paiute Tribe.
27
28

1 99. The actions of Respondents violate the valid and lawful determination by
2 referendum of the General Council of the Bishop Paiute tribe opposing the development
3 proposed by Respondents Tribal Council.
4

5 100. The actions of Respondent violate the right to equal protection and freedom of
6 expression guaranteed under ICRA.
7

8 101. The actions of Respondent have caused extreme emotional distress, defame and
9 injure Petitioners and other descendants of Ida Warlie, undermine the sovereignty and effective
10 governance of the Bishop Paiute Tribe, and create an intolerable and extreme state of lawlessness
11 and instability within the community.
12

13 **B. The Respondents Have Unlawfully Detained the Petitioners**

14 102. Petitioners reference and incorporate the preceding paragraphs 1 through 101.
15

16 103. Through their actions over the past years and in a steadfast effort to take
17 Petitioner's land for development purposes that were rejected by the General Council,
18 Respondents have individually and collectively used force, intimidation, harassment, citations;
19 and they have abused legal process to force Petitioners off their land, impeding their liberty and
20 security and detaining Petitioners.
21

22 104. These efforts have continued and, indeed, intensified, despite a decision by the
23 Court of Appeals reversing the lower court's June 17, 2014 trespass convictions, and the lower
24 court's dismissal of the matter with prejudice on remand.
25

26 105. Tribal police and Inyo County Sheriffs accompanied Respondent Deston Rogers
27 onto the land on November 19 and Tribal Police returned on November 20, and 21, surrounding
28 Respondents while Respondent Rogers ordered them to remove their property and threatened

1 them with further citations. All officers were armed, and at least one held his hand on his gun
2 during the interaction.

3 106. Tribal officers further invaded Petitioners personal security in their homes and
4 work places, serving additional notices on November 21 and 22.

5 107. The TPO, issued by Respondent Kockenmeister on November 22 “ex parte” and
6 without the filing of a petition, affidavit invoking the court’s jurisdiction, or any factual evidence
7 and entered against Respondents, without a vestige of due process, prohibits them from entering
8 or moving upon their land and creates a condition of imminent arrest and deprivation of liberty,
9 potentially even by law enforcement located in jurisdictions outside the tribe, should they choose
10 or be misled into enforcing the terms of the Order.

11 108. Although the original ex parte order was scheduled to expire on December 20,
12 2016, Respondent Kockenmeister extended it sua sponte and indefinitely in the December 19,
13 2016 order continuing and staying the proceedings.

14 ///

15 109. These conditions, wholly unwarranted by law and without any of the legal steps
16 required by Bishop Paiute Law and federal due process, create an actual and imminent threat of
17 deprivation of liberty for Petitioners.

18
19 **C. The Trespass Penalty is a Criminal Sanction Lacking Due Process and**
20 **Meaningful Administrative Remedies**

21 110. Petitioners reference and incorporates paragraphs 1 – 109 of this Complaint.
22
23
24
25
26
27
28

1 111. The BTC has criminalized trespass and nuisance through the implementation of
2 two ordinances. Bishop Paiute Trespass Ordinance, No. 2000-02; Bishop Paiute Nuisance
3 Ordinance, No. 2000-03. See Ex. S.
4

5 112. These ordinances authorize citations to be filed by persons authorized by Bishop
6 Paiute Tribal Council, as de facto prosecutors, and carry sanctions in the form of fines and other
7 restrictions on the movement and liberty of those charged and convicted by the court.
8

9 113. Despite the fact that the ordinances have legal elements that must be established,
10 including that the Respondents unlawfully trespassed on land that did not belong to them or with
11 respect to which they did not enjoy use and occupancy rights, Respondent Kockenmeister has
12 convicted them of trespass and issued a TPO simply because the Tribal Council demanded it,
13 refusing to determine the status of the underlying land even though that was deemed essential by
14 the court of appeals.
15

16 114. This has had the effect of criminalizing Petitioners without the benefit of notice, a
17 hearing to present and refute any legal or factual basis for the citations and TPO, an impartial
18 tribunal, or other requirements of due process.
19

20 ///

VI. CAUSES OF ACTION

A. First Cause of Action: Unlawful Restraint on Personal Liberty in Violation of ICRA Due Process

115. Petitioners hereby incorporate and re-allege the foregoing Paragraphs.

116. ICRA provides the “privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.”

117. ICRA provides that “[n]o Indian tribe exercising the powers of self-government shall . . . deprive any person of liberty or property without due process of law.” 25 U.S.C. § 1302(8).

118. Respondents have denied petitioners due process of law.

119. Prior to the most recent round of restrictions, the issuance of the TRO, the fencing around their land, the threats of federal criminal sanctions, the warning not to possess firearms and other physical restrictions and threats imposed by Respondents, Petitioners received no meaningful notice. No petition or affidavit invoking the jurisdiction of the court was even filed with the court as required under tribal law prior to issuance of an ex parte or temporary restraining order.

120. No hearing meeting the requirements of due process was held. At the November 22, 2016, proceeding scheduled sua sponte by Respondent Kockenmeister, no witnesses were sworn or took the stand; no documents, submitted, and Respondents have offered no legal or factual justification for their detention and restraint of Petitioners.

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1 121. Petitioners, moreover, were informed by Respondent Kockenmeister that notice
2 had been provided simply as “a courtesy” to Petitioners and that they were not allowed to present
3 evidence or make any arguments as he was issuing an ex parte temporary restraining order.
4

5 122. Although Respondents Tribal Council and Rogers were represented in that
6 proceeding, the timing of the notice did not afford Petitioners the opportunity to obtain legal
7 representation for that proceeding.
8

9 123. Petitioners’ right to due process before an impartial tribunal has also been
10 violated. Respondent Kockenmeister has demonstrated a persistent and acute inability to execute
11 his responsibilities as a judicial officer of the tribe, independent from the will of the Bishop
12 Tribal Council. He has denigrated and refused to follow the decisions and authority of the
13 appellate court and manipulated the judicial process in a way that circumvented the directive of
14 the court of appeals to determine the status of the land before ejecting Petitioners and their
15 family from it, thereby effectuating the development goals of certain members of the Bishop
16 Tribal Council.
17
18

19 124. In the November 22, 2016, event scheduled by the court for the purpose of
20 announcing its intention to issue an ex parte temporary restraining order, Respondent
21 Kockenmeister reiterated that “[t]he appellate case is of no import in this court in this proceeding
22 today” and returned to the position that he articulated before his decision in that case had been
23 reversed, explaining to Petitioners, that “I am not hearing the issue of whether or not you are the
24 owner of the land. This tribe does not have the jurisdiction to hear, the tribal court does not have
25 jurisdiction to hear land disputes. You will not put on your case with respect to that in this court.
26
27 Ok, that’s the first thing.” November 22 Recording of Proceedings. He thereby prohibited the
28

1 presentation of any evidence, which would be necessary under fundamental principles of due
2 process and to determine, as required by tribal law, that a trespass had occurred and emergency
3 grounds existed for the purposes of a temporary restraining order.
4

5 125. The fact that he ordered a temporary protection order within weeks of dismissing
6 the previous trespass action with prejudice, without requiring or allowing the submission of
7 evidence or the filing of a petition required by law, further calls into question his handling of the
8 case and ability to be an impartial judge on the matter.
9

10 126. His December 19, 2016, sua sponte and ex parte extension of the TPO in his
11 granting of a continuance and motion to stay the proceedings further reinforces Respondents'
12 goal of detaining Petitioners and restricting them from their land without a modicum of due
13 process.
14

15 127. Clearly, Respondent Kockenmeister's interest in furthering the goals of the
16 Bishop Paiute Tribal Council and hostility for the order of the appellate court reversing his
17 earlier judgment have resulted in extreme bias and prejudice against the Petitioners, thereby
18 denying them their right to a fair and impartial tribunal guaranteed by principals of due process
19 and encroaching upon their freedom, security, and right to peaceful use and occupancy of their
20 family land and homes.
21
22

23 128. Criminal Trespass, in the manner requested by the Council and as ordered by the
24 Tribal Court in its June 2014 decision and the most recent TPO, constitutes restraint for purposes
25 of ICRA habeas "detention."
26

27 129. The unique trespass results in detention because the petitioners' movement is
28 prohibited under criminal sanction and the issuance of a TPO that prevents them from entering

1 upon their land, deprives them of certain rights, and puts them at risk of arrest by law
2 enforcement in surrounding jurisdictions who may be misled by the terms and findings of the
3 order.
4

5 130. The Tribe's Appellate Court remanded the case back to the Tribal Court, but the
6 Tribal Court ignored the Appellate Court's request for Judge Kockenmeister to decide the
7 trespass issue. Instead, Judge Kockenmeister ignored the appellate court and dismissed the case,
8 *sua sponte*, in the absence of any due process to Petitioners.
9

10 131. As applied, Petitioners have received no opportunity to be heard and because the
11 Tribe has canceled the ITCSC contract without establishing or identifying another court of
12 appeals, the Tribe is without an Appellate Division for which Petitioners can seek redress.
13

14 132. Although a court system purporting to have independence and certain laws, i.e., of
15 trespass, nuisance, the orderly transmission of family and individual assignments, and the
16 issuance of ex parte and temporary injunctive relief, have been developed within the Bishop
17 Paiute Tribe, Respondents have persistently refused to follow those laws.
18

19 133. Respondent Kockenmeister, through his actions and decisions related to the
20 matter in question, has acted more as an advocate for and enforcer of the will of Tribal Council
21 than impartial judicial officer and has compromised the independence, impartiality and integrity
22 of the Bishop Paiute Tribal Court to such a degree that no measure of due process has or may be
23 afforded to Petitioners.
24

25 134. This undermines the integrity of the independence and credibility of the tribal
26 court system as well as the sovereign authority of the Bishop Paiute Tribe as a whole.
27

28 135. The Order clearly affects the geographic movement of the Petitioners.

1 136. There is no Tribal Court forum or other means to contest the criminal charges or
2 to protest the Order. No hearings have or will be granted to the Petitioners.

3 137. Respondents' treatment of Petitioners is a criminal punishment and violates
4 Petitioners' right to be free from arbitrary restraints on liberty as guaranteed by ICRA and the
5 Tribe's Constitution.
6

7 **B. Second Cause of Action: Unlawful Restraint on Personal Liberty in**
8 **Violation of Federal ICRA Equal Protection**
9

10 138. Petitioners hereby incorporate and re-allege the foregoing Paragraphs.

11 139. ICRA provides that "[n]o Indian tribe exercising the powers of self-government
12 shall . . . deny any person within its jurisdiction the equal protection of its laws" 25 U.S.C. §
13 1302(8).
14

15 140. Respondents have discriminatorily applied purported Tribal laws against
16 Petitioners and therefore denied Petitioners equal protection.
17

18 141. Even where others unconnected to the Warlie family were present on the land in
19 question, they were not cited or otherwise warned, restricted or subjected to legal action or
20 deprivation of liberty.
21

22 142. The Executive Committee specifically targeted a class of persons, descendants of
23 Ida Warlie, a female head of household and all Tribal members who claim an interest in the
24 disputed Assignments.
25

26 143. There is no compelling interest that would justify treating the Petitioners
27 differently from the other Tribal members.
28

///

C. Third Cause of Action: Unlawful taking of land in violation of ICRA

144. The actions of Respondents are, at root, an effort to seize Respondents' family land for the purpose of their proposed development action, development that has been rejected on more than one occasion by the authority of the General Council, who has the proper authority over such decision-making.

145. There is no provision under the law of the Bishop Tribe for taking assigned land.

146. Other than action by the OVBT within the constraints of the 1962 Ordinance, neither the BTC nor any other tribal entity has authority to take action with respect to any assigned land; and no entity, not even the OVBT, has authority to convert assigned land to commercial or use other than to recommend reassignment of the land to another eligible tribal member.

147. Respondents have neither compensated Petitioners, nor developed or instituted a takings process, of the kind and nature that would be necessary under ICRA.

148. Rather, Respondents have attempted to take Petitioners' land has been taken through force, intimidation, physical sequestration, and abusive and unlawful use of legal process.

149. These actions create a dangerous precedent for all members of the Bishop Paiute Tribe.

150. They also constitute an invalid taking of Petitioners' family land in violation of the Indian Civil Rights Act, 25 U.S.C. Section 1302 (2) and (8).

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D. Fourth Cause of Action: Deprivation of Rights to assembly and speech

151. Petitioners reference and incorporate paragraphs 1 – 150.

152. The Indian Civil Rights Act prohibits tribes from making or enforcing “any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances.” 25 U.S.C. Section 1302(1).

153. Petitioners have been outspoken opponents of the Tribal Council’s efforts to grab land and the casino expansion/hotel development. They have placed signs to that effect on the land in question, mounted a significant public relations campaign, and communicated their concerns with the B.I.A. and other external agencies as well as members of the BTC and General Council.

154. In the first trespass action in the tribal court, when the issue of the signs came up and Respondents argued the issue of their freedom of expression, Respondent Kockenmeister directed them to remove the signs from the land in addition to trespassing them.

155. The actions of Respondents, by restricting Respondents from where they can go on their family land and citing and intimidating their guests and invitees as well further impeded their right to freedom of assembly.

///

V. RELIEF

WHEREFORE, Petitioners pray that the Court:

A. Issue the Writ of Habeas Corpus or an order to show cause why a Writ of Habeas Corpus should not be entered.

B. Declare that Respondents' Temporary Restraining Order imposes a criminal punishment for which a Writ of Habeas Corpus is available.

C. Declare that Respondents' Temporary Restraining Order is sufficiently severe potential or actual restraint on liberty to warrant habeas review.

D. Declare that Respondents have violated and are violating ICRA.

E. Order Respondents to discharge Petitioners from the restraints on Petitioners' personal liberty.

F. Issue an Order vacating Petitioners' trespass and nuisance sanction.

G. Issue an Order enjoining Respondents' from issuing legal process or further interfering with Petitioners' Use and Occupancy rights of all family land, including but not limited to Block 3, Lots 4 and 5; Block 3, Lots 6 and 7, and all other land that was part of the original assignment of Ida Warlie.

H. Granting immediate emergency relief and thereafter preliminary injunctive relief prohibiting Respondents from taking any further action on the land in question and against petitioners.

I. Award Petitioners reasonable attorneys' fees and costs.

J. Grant Petitioners such other and further relief as the Court deems just and proper.

1 Petitioners reserve the right to amend this Complaint to plead new parties, claims and/or
2
3 allegations.

4 **EXHIBITS** - Appendix A attached hereto.

5 Respectfully Submitted this December 27, 2016
6

7 DURAN LAW OFFICE

8 By: /s/ Jack Duran

9 JACK DURAN
10 Attorneys for Petitioners
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