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## GENERAL MEMORANDUM 10-002

### Ninth Circuit Rejects Disenrollment Challenge Based on ICRA Habeas Corpus Provision

On December 22, 2009, the Ninth Circuit Court of Appeals issued a decision in the case of *Jeffredo v. Macarro*,<sup>1</sup> affirming a district court order denying a petition for a writ of habeas corpus under the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1303. The petition had been filed by several individuals ("Appellants") disenrolled by the Pechanga Band of the Luiseno Mission Indians ("Pechanga Tribe" or "Tribe"). The Tribe disenrolled a number of its members for failing to prove lineal descent from original Pechanga people, a requirement of the Tribe's constitution. The Tribe followed disenrollment procedures that provided notice and opportunity for a hearing and appeal to the full Tribal Council.

Federal courts have uniformly held that they lack general jurisdiction under ICRA to consider a tribal disenrollment decision. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 39, 72 n. 32 (1978) ("A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."). Recognizing this long-standing precedent, the Appellants sought federal court review of the disenrollment action by filing a petition for a writ of habeas corpus under section 1303 of ICRA, which authorizes federal court jurisdiction "to test the legality of ... detention by order of an Indian tribe." Appellants argued that the disenrollment action was effectively a "detention" of their tribal identity.

The court rejected this claim, following federal court precedent interpreting ICRA habeas corpus review to require that 1) the petitioner seeking review must be in physical "custody"; 2) the petitioner must have exhausted available tribal remedies; and 3) the tribal proceeding from which review is sought must be criminal and not civil in nature. The Appellants alleged that they were "restrained" by denial of access to the tribal health clinic, tribal schools and other tribal benefits, but the court held such results of disenrollment were not sufficient to meet the custody requirement of a "a severe actual or potential restraint on liberty," citing *Poodry v. Tonawanda Band of Seneca Indians*, 85 F. 3d 874, 880 (2d Cir. 1996). The court specifically found that disenrollment alone is not sufficient to be considered "detention" for purposes of ICRA. Appellants further claimed that disenrollment made them subject to the threat of banishment from the reservation, but the court noted that no banishment action had been taken and Pechanga regulations provide an "exclusion and eviction" process that would have to be exhausted if the Tribe did take action to exclude Appellants from the reservation. Finally, the court held that the Pechanga disenrollment proceeding was civil in nature, not criminal.

Please let us know if you would like additional information regarding this decision.

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<sup>1</sup> *Jeffredo v. Macarro*, No. 08-55037, --- F.3d ---, 2009 WL 4912143 (9<sup>th</sup> Cir. 2009).