

**UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF INDIAN AFFAIRS  
PACIFIC REGIONAL OFFICE  
2800 COTTAGE WAY  
SACRAMENTO, CA 95825**

GINA L. HOWARD,	)	<b>APPEAL OF JUNE 1, 2011</b>
	)	<b>DECISION OF EXECUTIVE</b>
Appellant,	)	<b>COMMITTEE TO DISENROLL</b>
	)	<b>AND REQUEST FOR AN</b>
-vs-	)	<b>EXPEDITED DECISION</b>
	)	
EXECUTIVE COMMITTEE,	)	
Pala Band of Mission Indians,	)	<b>June 28, 2011</b>
	)	
Appellants.	)	
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**I. INTRODUCTION**

Appellant Gina L. Howard is a direct descendant of Margarita Brittain<sup>1</sup>, Pala Allottee 25, a full blood Cupa Indian.

By letter, dated June 1, 2011, Kilma Lattin, Secretary, Pala Band of Mission Indians (“Tribe”), told eight (8) enrolled members of the Tribe, including Gina L. Howard (“Appellant”), that: “As such, the Pala Enrollment Committee wishes to take their names off the band’s rolls, effective June 1, 2011. *See* Exhibit 1 attached hereto.

The Executive Committee’s June 1 disenrollment letter fails to account for Bureau of Indian Affairs (“BIA”) Final Decisions, dated May 17, 1989 and September 11, 1989, that resoundingly held: “. . . Margarita Brittain was a full blood Indian” and “[t]he issue of Margarita Brittain’s blood degree has been decided.” *See* Exhibits 2 and 3 hereinafter referenced, respectively, as the “Asbra Final Decision” and “Mills Final Decision”.

Mr. Lattin wholly ignores the Asbra and Mills Final Decisions and relies on an earlier rejected “letter from the B.I.A. dated July 29, 1985” as the *only* proof of those defective claims that the eight (8) members named in his letter are *not* eligible for

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<sup>1</sup> Various spellings have been used over the years. For the sake of consistency, “Brittain” will be used throughout this document even where spelled differently in official correspondence.

enrollment with the Tribe:

On May 26<sup>th</sup>, 2011, the conclusion of the Pala Enrollment Committee was to support the position of the Bureau of Indian Affairs, then acting Area Director, signed by Tom W. Dowell, that in fact the applications prove that the above named individuals are not eligible for enrollment with the band. As such, the Pala Enrollment Committee wishes to take these names off the band's rolls, effective June 1, 2011.

See Exhibit 4, "Rejected Dowell Recommendation".

The Lattin letter's refusal to include the 1989 Final Decisions in his discussion indicates a bad faith and malicious effort, entirely and wrongfully based on Dowell's overturned 1985 recommendation: this violates the eight (8) victim's rights as guaranteed under the Federal Indian Civil Rights Act, 25 U.S.C. § 1302, and other federal laws, as well as tribal law, i.e., the Tribe's Constitution and Enrollment Ordinance and those tribal laws existing at all times *prior to September 11, 1989*.

It is Appellant's position, *inter alia*, on appeal that, *under the federal law and tribal ordinances applicable at all times prior to September 11, 1989*, the actions taken by the Executive Committee on June 1, 2011 are entirely lacking in lawful authority and jurisdiction.<sup>2</sup> Consequently, the Agency's 1989 Decisions must be recognized by the Pacific Regional Director as solid precedence that must be honored as final under the federal Administrative Procedures Act, 5 U.S.C. § 701 - 708.

Further, tribe itself has determined its membership under the tribes' Articles of Association and subsequent Constitution. It is the position of the appellants that the Executive Committee has violated the Santa Clara Pueblo vs. Martinez judicial decision. The Appellants feel that Santa Clara Pueblo vs. Martinez applies to them as Tribal Members and that judicial decisions should be construed as in favor of the Appellants.

The finality of the Asbra and Mills Decisions are the "bedrock" that all federal and tribal governmental entities/officials are compelled to abide by at the risk of suffering legal liability in the U.S. District Court.

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<sup>2</sup> Appellant's use of the term "appeal" does not mean that she consents or concedes to the Executive Committee's characterization that its June 1 disenrollment decision is the subject of this filing with the Pacific Regional Director. Her "appeal" is more correctly described as a "demand" that the Secretary of Interior stand on the 1989 Asbra and Mills Final Decisions and issue a decision to the Committee that this matter is "moot" or "res judicata".

## II. FACTUAL AND PROCEDURAL BACKGROUND

### A. Historic

The Executive Committee's latest modern attack on Appellant Howard's sacred status as an enrolled member of the Pala Band of Mission Indians must be framed within the background of exhaustive analysis executed by Ronald M. Jaeger, Director, Sacramento Area Office, BIA, in his letter, dated January 17, 1986<sup>3</sup>. See Exhibit 5.

The historical record in this matter proves that Superintendent Tom W. Dowell's May 29, 1985 recommendation was *rejected* on appeal after the Area Director and Office of Assistant Secretary - Indian Affairs engaged in exhaustive review of historic documents relevant to the blood quantum of Margarita Brittain.

Area Director Jaeger's January 17, 1986 decision is directed to the "Assistant Secretary - Indian Affairs" describing the appeal of "Jacqueline Boisclair, Cheryl Majel, Anthony Freeman, Luanne Moro, Barbara, Letricia, Michael and Phillip Inglett, and Leah, Kyah and Lucas Lattimer":

A review of the records in this office reflect attempts have been made to decide the true blood degree of Indian blood for Margarita Brittain, Pala Allottee # 25. These attempts have included changing her blood quantum to 4/4 Cupeno or Cupa Indian blood.

....

Although the Bands' Executive Committee approved the enrollment applications, we did not agree with their determination and therefore omitted the above named individuals from sharing in the last Pala per capita payment.

....

It is the recommendation of this office that the degree for Margarita Brittain, great-great grandmother of the individuals listed above, be changed to reflect 4/4 degree Pala Indian. This change may have far reaching effects which we will discuss further; however, our reasons and justifications for making, the change, we believe, are well founded:"

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<sup>3</sup> Changed to "Pacific Region".

....

It appears the above listed applications which reflect the fractions of blood degree were tampered with.

....

It is apparent from our research that certain previous administrative actions taken by the Southern California Agency to resolve this matter have been either misinterpreted or ignored by those persons who signed the petition of December 18, 1985. It is hoped a final decision from the Central office would be consistent with the Bureau's prior attempts at correcting the rolls of the Tribe *so that their current enrollment will be truly reflective of the base roll of 1913 which is the official record of the Tribe.* (Emphasis added.)

In conclusion, this office recommends that the Secretary authorize the bureau to officially record the blood degree of Margarita Brittain as 4/4 degree Cupeno as the official roll of the Pala Band of Mission Indians.

In support of Area Director Jaeger's 1986 conclusion is a February 27, 1962 letter to Juliana Calac, Chairman, Pala Enrollment Committee from the BIA, Riverside Area Field Office:

In regards to the recent conversation about certain Pala Indians, we wish to report the following:

Margarita Brittain, Allottee #25

A record made by Mr. LW Green, Special Allotting Agent, on December 5, 1910, shows that Margarita was a full blood Cupa Indian. Her husband, Jim Brittain, was non-Indian.

Exhibit 6<sup>4</sup>.

The fact that the 1985 Dowell recommendation was *never accepted as binding*

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<sup>4</sup> First page is the only one available at this time. Appellants reserve the right to add, when they become available, other relevant documents to the record. Because of the surprise nature of the Executive Committee's actions, Appellants were placed at a disadvantage in locating supporting documentation.

*precedent* is established by a letter from Jerome Tomhave, Superintendent of the same Southern California Agency, dated November 17, 1983, informing counsel for Margaret Hilton that:

We are in receipt of your letter. We have reviewed the documents that you submitted on behalf of your client, Margaret Hilton. We did find that a “mathematical error” did exist. We are going to change the records to show that Margarita Brittain was 4/4 degree, which means that Maria Antonia Brittain Sanchez will possess 1/2 Pala & 1/2 total. This will bring Mrs. Hilton’s blood degree to 1/4 Pala & 1/4 total.

We will notify the Pala Band of Mission Indians of the change.

See Exhibit 7.

By letter, dated July 25, 1984, Forest E. Wright, California Indian Legal Services wrote to Thomas A. Dowell, Superintendent, BIA on behalf of his client, Violet M. Inglett:

.....

Based on a review of the relevant documents the Bureau concluded that there was an error and changed the record to show that Maria Antonia Brittain (Sanchez) was 1/2 degree of Indian blood, in conformance with the 1913 Roll. See, decision dated 11/17/83, copy enclosed, and our letter to the Bureau dated 10/24/83, which set forth the basis for Mrs. Hilton’s request.

.....

Mrs. Inglett believes that her degree of Indian blood has been incorrectly calculated as 1/8 Pala instead of the 1/4 Pala as a consequence of the same error in calculation that occurred as to the record of her aunt Maria Antonia Brittain. She therefore requests that the Bureau certify her degree of Indian blood based on her grandmother’s correct degree of blood, that being 4/4.

.....

See Exhibit 8.

When the 1985 Dowell recommendation is viewed in the proper context of Exhibits 7 and 8 cited above, it is obvious that the Superintendent totally ignored the handwritten alterations on the 1913 Pala Allotment Roll approved by the Secretary of the

Interior on November 3, 1913.

A close examination of the Asbra Final Decision of May 17, 1989 (Exhibit 2) notes:

.....

According to your appeal, you were notified on June 5, 1985, that your applications were denied because you possess only 1/32 degree Pala blood. You appealed that decision to the Southern California Agency Superintendent by letter dated July 24, 1985. Your appeal was timely filed.

.....

To determine whether Margarita Brittain's descendants meet the minimum blood degree for membership, we must first resolve the blood degree issue of Margarita Brittain.

.....

Margarita's blood degree was erased and typed over with no initials or explanation on the 1928 applications of several of her descendants.

.....

When the individual history cards were made out for Margarita's children by LW Green, Special Allotting agent, on December 5, 1910, he consistently showed Margarita's children as possessing 1/2 degree Cupa and 1/2 degree non-Indian blood but did not list the name of Margarita's father thereon. When the Pala Band was preparing a membership roll in the 1960's, the 1913 Pala Allotment roll was reconstructed using information on the original roll and combining information from other BIA records pertaining to date of birth, degree of Indian blood, date of death and remarks. Margarita Brittain was shown as a full blood and her children as halfbloods on that roll but there were subsequent pen or ink corrections that changed their degree of blood to halfblood and one quarter blood, respectively. The corrections were not noted in any way. Since the membership was updated, there have been several inconsistent determinations as to the blood degree of Margarita's descendants. Up until July 24, 1984, the BIA considered Margarita as a halfblood in determining the blood degree of her descendants. On that date, however, the Acting Superintendent of the Southern California Agency concluded that a mathematical error in computing Violet Inglett's blood degree had been made and corrected the records to show her as possessing 1/4

degree Pala Indian blood.

On February 22, 1984, the Pala General Council considered the Margarita Brittain blood degree issue and determined that she possessed 4/4 degree Indian blood. The motion to approve the change of blood degree for Margarita's children passed by a vote of 29 in favor, 25 opposed with two abstentions.

.....

Accordingly, we find that you possess 1/16 degree Cupa Indian blood. *You, therefore, meet the minimum blood degree requirement for enrollment. Your appeal is sustained. The Southern California Agency staff is hereby directed to add your names to the roll being prepared for the distribution of tribal assets. This decision is based on authority delegated to me by the Secretary of Interior and is final for the Department.* (Emphasis added.)

The minutes of the General Council Meeting described by Asbra above and held on February 22, 1984 are attached. *See Exhibit 9.*<sup>5</sup>

Superintendent Dowell was forced, on June 7, 1989, to face the fact that Central Office had dismissed his erroneous July 29, 1985 recommendation:

At the time the Enrollment Committee reviewed the above applications the decision was correct. However, as you are aware the Central Office sustained the appeal of descendants of Margarita Brittain and concluded that Mrs. Brittain's blood degree is fullblood. We have been directed to correct the blood degree for Mrs. Brittain's descendants and add their names to the membership roll being prepared for the distribution of tribal assets. *This decision is based on authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs.* (Emphasis added.)

See Exhibit 10.

Walter Mills, Acting Assistant Secretary - Indian Affairs, wrote, on September 11, 1989, a letter to Patricia R. Nelson, Chairperson:

This is in response to your letter dated July 27 in which you protested

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<sup>5</sup> Only those two (2) pages relevant to this issue are included.

the Assistant Secretary's May 17 decision that Margarita Brittain, Pala Allottee 25, was a full blood Indian. You say the council was denied an opportunity to participate in the evaluation of the case before a determination was made.

See Exhibit 3.

Mills then describes to Ms. Nelson that the blood degree "decision" was necessitated by appeals from adverse action on enrollment applicants by the Pala Tribal Council: "Those records were available to the Pala Tribal Council when the roll was being prepared and continue to be available."

Mill's Final Decision letter describes that legal authority delegated by "Ordinance No. 1 adopted by the Pala Executive Committee on March 19, 1961, and approved by the Sacramento Area Director on October 23, 1961." See Exhibit 11. It is extremely significant that the Acting Assistant Secretary - Indian Affairs refers to the "source" of his lawful authority to make a Final Decision:

With regard to tribal participation in the deposition of appeals, Ordinance No. 1 adopted by the Pala Executive Committee on March 19, 1961, and approved by the Sacramento Area Director on October 23, 1961.

.....

Although generally the Bureau does not have authority to make decisions which affect membership for tribal purposes, as specified above, Ordinance No. 1 provides that the Executive Committee shall enter the applicant's name on the membership roll when his/her appeal is sustained. In this situation, therefore, the decision of the Assistant Secretary - Indian Affairs is final for all purposes. *You submitted no documentation with your letter which would have proven that the Assistant Secretary's decision was erroneous and we have no basis upon which to request that the Assistant Secretary reconsider his May 17 decision. That decision, therefore, is final.*

The authority to approve the membership roll of the Pala Band is vested in the Superintendent of the Southern California Agency. His staff will review the roll prior to submitting that roll for his approval. We would suggest that you invite the Superintendent or a member of his staff to meet with the Tribal Council with regard to the approval of the Pala Band's current membership roll prior to its approval. *The*



*issue of Margarita Brittain's blood degree has been decided.*  
(Emphasis added.)

It is clear that under the federal and tribal laws applicable in 1989 that the Assistant Secretary - Indian Affairs had complete authority to make final decisions on appeals filed by “. . . a person whose application has been rejected . . .”.

Equally, it is clear that the Secretary of the Pala Band knew, on September 15, 1989, that the Office of the Assistant Secretary - Indian Affairs, *the highest federal authority in the Bureau of Indian Affairs*, rejected the July 29, 1985 Dowell recommendation that is erroneously held up by the Executive Committee as controlling over two (2) decades later.

The history of decision making proves that the Final Decisions of the Assistant Secretary - Indian Affairs corrected both typographical and pen and ink errors in Margarita Brittain's Cupa Indian blood quantum to *her true documented 4/4th blood quantum as reflected on the 1913 Pala Allotment Roll*:

*Margarita Brittain was shown as a fullblood and her children as halfbloods on that roll but there were subsequent pen or ink corrections that changed their degree of blood to halfblood and one quarter blood, respectively. The corrections were not noted in any way.* (Emphasis added.)

Exhibit 2, p. 2.

## **B. Modern**

There is no record that, after September 15, 1989, the Tribe or Executive Committee filed an action under the federal Administrative Procedures Act, 5 U.S.C § 701 - 708, to seek reversal of the Margarita Brittain full blood decision issued by the Assistant Secretary - Indian Affairs. In effect, this failure on the part of the Tribe/Executive Committee to file a federal civil action in the United States District Court over the 1989 Final Decisions requires the legal doctrine of *res judicata* to be applied here.

Taking no further efforts after 1989 to object to the full blood Final Decisions, the Executive Committee clearly accepted the clarification of Margarita Brittain's Cupa blood quantum until June 1, 2011.

Superintendent Virgil Townsend, BIA, Southern California Agency told James

Brittain (aka “Jr.”) on April 19, 1994:

On May 17, 1989, the Assistant Secretary of Indian Affairs, Washington, D.C., determined that Margarita Brittain possessed 4/4 degree Indian blood and directed our office to correct the blood degree for her descendants. This action was a result of enrollment appeals by certain descendants.

....

Our Tribal Enrollment Specialist, has completed extensive research to identify all descendants of Margarita Brittain and determine the correct blood degrees involving five generations.

....

Our staff met with the Pala Business Committee on March 2, 1994, and provided them with our findings and supporting documentation including tree charts. We advised them that the correct blood degree also be noted on their membership roll.

....

See Exhibit 12.

Townsend’s letter recognizes the May 17, 1989 Asbra Final Decision and that Southern California Agency staff met with the Pala Business Committee on the Margarita Brittain blood degree correction.

On October 23, 1995, Barbara Gonzales-Lyons, Vice-Chairman, Agua Caliente Band of Cahuilla Indians wrote to Stan McGarr, Secretary, Pala Tribe, seeking “. . . verification of the blood quantum of Casilda Welmas following the correction of Indian blood quantum of her mother, Margarita.”<sup>6</sup> See Exhibit 13.

An undated letter (Exhibit 14) was sent by Stanley H. McGarr to the Agua Caliente Band citing Margarita Brittain to be “4/4 Degree Indian Blood (PAR):

The Pala Allotment Roll (PAR) approved by the Secretary of the Interior November 3, 1913 and the Pala Census (PC) for the year 1919 are acknowledge by the Pala Band of Missions Indian Tribes to be true and the Tribe agrees with the Degree of Indian Blood in these

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<sup>6</sup> If the Regional Director does not agree that *res judicata* ends any further inquiries into the resolved matter of Margarita Brittain’s Cupa blood quantum, the effects will be far reaching.

records.

Next, Robert H. Smith, Tribal Chairman, wrote a letter to Gonzales-Lyons on November 15, 1995 that stands for the fact that the Tribe/Executive Committee fully agreed that Tribal Enrollment Records proved all of her seven (7) children were ½ Degree Indian Blood:

After researching our Tribal Enrollment Records, we show Cayetan & Casilda Welmas each possess ½ degree Indian blood as stated in the Pala Allotment Roll of November 3, 1913. Jose, Rafina and Miguel Welmas also possess ½ degree Indian blood. I hope this information will be helpful to you.

....

*See Exhibit 15.*

Undoubtedly, Exhibits 14 and 15 are *admissions by the Tribe* that the issue of Margarita Brittain's Cupa full blood quantum were accepted and the 1985 Dowell recommendation was not accepted and is of no further evidentiary value.

On June 1, 2011, Kilma Lattin, Tribal Secretary, notified eight (8) enrolled tribal members that the Pala Enrollment Committee was taking steps to take their names off the Tribe's rolls, effective June 1, 2011. Exhibit 1. Gina Howard, one of the eight (8) tribal members wrote a letter on June 7, 2011 to Kilma Lattin seeking clarification on the actions taken by the Tribe against her tribal membership status. *See Exhibit 16.*

Lattin wrote to Ms. Howard on June 8 noting numerous unsupported and misrepresentative statements to her:

....

The second intent of the letter was to give the background as to how the decision came about. The decision did not come about without warrant or evidence. Due diligence was performed to ensure that the action being taken was the correct action. The Executive Committee, under the request of a Pala Tribal Member, asked the BIA for the Regetti files. The BIA provided the files. The Enrollment Committee reviewed the files sent from the BIA, and determined that the descendants from the Regetti application did not meet the criteria to be enrolled with the band. Under the tribe's Enrollment Ordinance, Section 6, A, 1, any new information can be used to reevaluate an existing or old application (as can information that should have been

provided at the time of the application).

....

Please keep in mind that the ultimate decision regarding enrollment rests with the Tribe. Even if the federal B.I.A. disagrees with the actions of the Executive Committee, that action cannot be overturned by the B.I.A. The United States Supreme Court has made it clear that enrollment matters are the sovereign right of the individual tribes, i.e., tribes have the final authority in determining membership.

....

*See* Exhibit 17.

Appellants concur with Mr. Lattin's statement that the Tribe has the final authority in determining its membership and the Tribe has made that determination as per Article 2, Sec. 1, subsections A, B, and C of the Tribes Articles of Association and subsequent Constitution. This June 8 letter ignores the fact that the Assistant Secretary - Indian Affairs made Final Decisions in 1989 that rejected the 1985 Dowell recommendation. If one were to agree with Lattin that the BIA recently provided files related to the Regetti application, then BIA staff excluded the Asbra and Mills Final Decisions.

### **III. DISCUSSION**

#### **A. Analysis of Defective June 1 and June 8 Letters.**

Appellants' contention in this matter of International Human Rights is that the entire process is haphazard, faulty and wholly based on glaring errors, including misstatement of facts and law. Consequently, the Regional Director is duty bound to agree with Appellants that these recent actions initiated by the Executive Committee cannot supersede the Asbra and Mills Final Decisions.

A thorough review of the Tribe's June 1 letter is necessary to place it proper context with the actions taken to disenroll each Appellant without the Universally Accepted Concepts of Justice, Fairness and Due Process. This letter, as signed by Tribal Secretary, Kilma Lattin, does not unequivocally state an actual affirmative decision: it only makes a statement that that the Executive Committee "wishes to take these names off the band's rolls, effective June 1, 2011." There is nothing in the record submitted by the Executive Committee that sustains its allegation that Appellants failed to provide information in their enrollment applications that would have led to the applicants being determined as ineligible for enrollment with the Pala Tribe.

On June 7 a letter is sent by one of the eight (8) persons, Gina Howard, to Secretary Lattin seeking clarification and the intent of the Executive Committee letter of June 1 citing that the letter only “wishes” to have the names removed from the Tribe’s Membership Roll. Exhibit 16.

On June 8 Secretary Lattin responds to the June 7 letter but still fails to clearly state that the eight (8) named individuals are, in fact, disenrolled. Exhibit 17. Nothing is mentioned in either of Lattin’s letters about according any of those who are the targets of these abhorrent acts of tribal revenge with Due Process and Equal Protection as mandated under the Indian Civil Rights Act.

The June 8 letter from Secretary Lattin makes it clear that he is the Constitutional Officer responsible for issuing letters of this type on behalf of the Tribe. A second letter is issued from Chairman Robert Smith on June 8 clearly stating that the eight (8) named individuals are disenrolled. *See* Exhibit 18. He describes the disenrollment process as a “re-evaluation” undertaken pursuant to Enrollment Ordinance No. 1, Sec. 6.A, Paragraph (1). The problem evident in these circumstances is that there is *nothing new or otherwise existent within these facts that can sustain a “re-evaluation.”*

One important threshold question of lawful jurisdiction that Smith’s letter raises is whether this constitutes proper notice of actual disenrollment. Remember that Secretary Lattin has stated that it is his Constitutional responsibility to issue such notices and we must presume not Mr. Smith. To date only the letter of Robert Smith actually states that the eight (8) named individuals are disenrolled.

Yet another major issue arises from this hastily and “slap dash” so-called proceeding. If the basis for disenrolling was failure to submit copies of the 1928 Roll then the disenrollment action can only apply to the three appellants, Tony Freeman, Luanne Moro and Cheryl Majel. This is because these were the only applications that were requested by the Executive Committee from the BIA. To disenroll the other five would have absolutely no basis since their enrollment applications were not reviewed and this is as per the response from the BIA. That is unless, your elected official are on a terror campaign to sweep the street of anyone who they perceive to threaten their unbridled authority and scare other Tribal members into submission.

Another significant issue in the confusing mess caused by the Lattin and Smith letter is “what constitutes proper notice for purposes of determining the right to appeal within 30 days?” The letter of June 1 from Kilma Lattin states that the 30 day appeal period begins to run as of the date of mailing whereas most appeal periods begin to run as of date of receipt.

The letter from Robert Smith clearly states that the eight (8) members are disenrolled but is he the proper Constitutional Officer to issue such a finding or order? The Appellant believes he, acting alone, lacks lawful authority to notify any member that they are disenrolled. Kilma Lattin states that this is his function.

The substance of the letters imply that the reason for the Executive Committee action is two-fold:

1. The applicants failed to provide information for review by the enrollment committee in their original application.

2. The Executive Committee apparently agreed, that after reviewing this omitted information, the applicants do not possess the necessary degree of Indian blood and the eight (8) named individuals would be removed from the Tribe's membership Roll.

It is key to note that the letters themselves prove that the Appellants were not given an opportunity to refute the contents of the June 1 and June 8 letter before they were summarily disenrolled. Had the Executive Committee acted reasonably and taken time to notify those affected by their actions, had given the Appellants a chance to come forward and lay their arguments on the table for discussion, this entire situation would not have happened.

More specifically, the letters state that "the 1928 enrollment application of Juana Regetti and the 1928 application of the descendants of Martha Regetti Freeman" is proof that this so-called evidence was intentionally omitted in the applications of the eight (8) individuals. The Executive Committee stands on its allegation that the applicants lied to the Enrollment Committee. In effect, the Committee is asserting that the omitted documents prove that they did not possess the necessary blood degree for enrollment.

The fact is that the Pala Band of Mission Indians did not have a formal enrollment process in 1928. It was not until 1961 that the Tribe adopted an enrollment process.

Assuming that the intent of the letters is to state that the information from the 1928 California Indian Judgment Roll was the "Roll" to which the Executive Committee is referring, it is not Appellants' responsibility to make this interpretation. In none of the letters does it state "1928 California Indian Judgment Roll". Historical analysis of the reasons why California Indians made applications were for a "judgment roll" and not for "enrollment" purposes. The letters are either intentionally misleading and evidence of fraudulent statements, an exercise of just plain bad judgment or, worse, hatred.

If the Committee did indeed mean the 1928 California Indian Judgment Roll and

the allegation is that this information was not utilized in determining eligibility of the eight (8) individuals for enrollment in the Tribe, this allegation becomes a complete falsehood because during a meeting with the BIA on June 7, 2011, Ms. Frances Muncy, a 40+ year employee of the BIA, stated that the BIA has always used the 1928 California Indian Judgment Roll in determining eligibility of Pala applicants. Consequently, the charge that this information was not used in determining the applicant's eligibility are absolutely false.

Further, it is clear in the Tribe's Articles of Association and subsequent Constitution that only the 1913 Allotment Roll can be considered for enrollment purposes. In the letter of June 1 from Secretary Lattin, he represents in paragraphs 2, 3, and 4, the legal authority and evidence supporting the Committees actions. It must be first noted that the letter quotes the Enrollment Ordinance of 2009. However, Appellants only recently learned that this Ordinance was again amended in 2010. As of this date, the updated ordinance has not been provided to the eight (8) named individuals.

In paragraph 2, a subset, gives reference to a specific portion of the Ordinance. More specifically, this subset states: "Should the Executive Committee subsequently find that an applicant or the person filing the application on his/her behalf misrepresented or omitted facts that might have made him/her eligible for enrollment, his/her application shall be reevaluated in accordance with the procedure for processing an original application." In this section, the use of the word "eligible" instead of "ineligible" is used and, therefore, is a misrepresentation of the Enrollment Ordinance. Is it the duty of the affected party to note this confusing discrepancy to the Regional Direct and note that this section properly states "ineligible".

The legal authority of the Committee to disenroll any person is at issue here and challenged. It is stated in this letter in paragraph 4 that "A careful review of the documentation indicates the following individuals had, for the above stated reason, previously been disenrolled by the Pala Band of Mission Indians and later re-enrolled." This is not possible because the Pala Band of Mission Indians has never had the authority to enroll or disenroll any person. This authority was exclusively granted to the BIA in the Tribe's Articles of Association. It is this same precise authority that the Assistant Secretary – Indian Affairs exercised in 1989 that must be exercised now. Otherwise, the Executive Committee has violated the *ex post facto law prohibition in the Indian Civil Rights Act*. The Executive Committee cannot presume to assume a power of the Tribe which it never had nor can it use standards that did not exist in 1989. If the Executive Committee assumes it has power to disenroll, its actions exceed its lawful authority as defined under Tribal and Federal law.

In paragraph 4, it states: "As such, and at the request of Pala tribal members, the

Executive Committee coordinated with the United States Department of the Interior, Bureau of Indian Affairs, to gain access to federal documentation related to the Regetti/Freeman applications.” It must be noted that the Enrollment Ordinance, if it is indeed a valid operating document, does not make any provision for a Tribal member to challenge the membership right of another Tribal member, especially if that challenge is done with complete anonymity. This would have to be construed as a violation of the eight named individuals civil rights and a denial of Due Process.

In consideration of these facts it must be noted that at no time prior to the decision of the Executive Committee were the eight (8) Appellants given notice of the investigation being carried out by the Executive Committee. Nor were they offered opportunity to appear before the Executive Committee to contribute documents which could have substantiated their right to continued enrollment in the Tribe.

On page 2 paragraph 1, it states: “Although the Pala tribe has, for over two decades recognized these individuals as tribal members, the Bureau of Indian Affairs did extensive research and was unable to concur with the validity of the claims in the original applications. A letter from the B.I.A. dated July 29, 1985, has been provided as proof of these claims.” It is becoming more and more clear that this statement is a complete falsehood and actionable fraud.

During the meeting with the BIA on June 7 there was a complete denial by the BIA representatives, in the presence of approximately thirty (30) members of the Brittain family, that the BIA did not participate in extensive research in this matter.

The Margarita Brittain case is a well-documented case. The Executive Committee, the “Keeper of Records” as they relate to enrollment, should have a complete record of events contained in the enrollment files of the Tribe. If they do not then how are they able to consider anyone’s application for enrollment?

To the contrary, a letter dated November 15, 1995 and addressed to Barbara Gonzales, Vice-Chairman of the Agua Caliente Band of Cahuilla Indians and signed by Chairman Robert Smith states:

After researching our Tribal Enrollment Records, we show Cayetan & Casilda Welmas each possess ½ degree Indian blood as stated in the Pala Allotment Roll of November 3, 1913. Jose, Refina and Miguel Welmas also possess ½ degree of Indian Blood.” Casilda Welmas is the sister of Juana Regetti and Martha Regetti, and Juana, Martha and Casilda are the daughters of Margarita Brittain and so stated in the Pala Allotment Roll of November 3, 1913. Exhibit 15.



In a closer review of Page 2, Paragraph 1, Lattin states, “. . . the Bureau of Indian Affairs did extensive research and was unable to concur with the validity of the claims in the original applications. A letter from the BIA dated July 29, 1985, has been provided as proof of these claims.”

After reading this letter of 1985 it does state, “Pursuant to extensive research of records on file at this agency and records at the Sacramento Area Office, we are unable to concur that records should be changed to show Margarita as 4/4 degree Indian. Our records are void of documentation to show who Margarita Britten’s father was. He is listed as unknown.”

When comparing this statement to the statement made in the Secretary Lattin letter, the Regional Director can only presume that the research cited was a product of recent effort. However, when compared to the letter of 1985, the Regional Director must agree that the extensive research was conducted 26 years ago. In other words, the Executive Committee did not conduct extensive research to reach its conclusions but instead relied upon research that was conducted 26 years ago.

In the letter of 1985 there are several references to attachments. None of those attachments were provided to the eight (8) Tribal members subject to disenrollment in this action. Paragraph 1 of the 1985 letter states, “Copies of those past decisions are attached.” In paragraph 4 of this same letter states, “Attached is a Family Tree Chart, for Jacqueline Florence Boisclair, Cheryl Lynn Majel, Anthony Allen Freeman, and Luanne Cynthia Moro, which was prepared from all available records maintained by the Bureau of Indian Affairs.” Again, none of these attachments were included with the letter of 1985.

The defective 1985 letter issued by Tom Dowell, Superintendent, Southern California Agency, confirms Ms. Frances Muncy’s statement that the BIA has always used the 1928 California Indian Judgment Roll when reviewing Pala enrollment applications. This practice is in outright violation of the Tribes Articles of Association and subsequent Constitution.

The most important element of the 1985 Tom Dowell letter in Appellants’ favor is that his conclusion after extensive research was only a recommendation and not a final determination. The rejected Dowell letter of recommendation specifically states, “I therefore, recommend disapproval of their request.”

The same defective logic is seen in Paragraph 2, Page 2 of the letter which makes several unsubstantiated claims or claims that completely controvert the Tribe’s Articles of Association and subsequent Constitution.

The Executive Committee states: "At the time the General Council voted to increase their blood quantum. Whether the General Council has the power to increase a tribal member's blood quantum is a separate debate, but worthy of noting in this case because it was the grounds for the 1985 appeals." This statement is truly a misreading of the minutes of the Pala General Council action taken on February 22, 1984. Exhibit 9. As per the approved 1984 minutes, it does in part state, "Bernyce Ponchetti stated that when they started the original allottees that were moved down here, a committee was formed for enrollment, they were approved by the bureau and the Secretary of the Interior. After a lengthy discussion as to what was correct or incorrect, Theresa Griffith made a Motion: to approve the change of blood degree for children of Margarita Britten: Second by Mary Ownby. 29 in favor, 25 opposed, 2 abstentions.....Motion carried....."

The General Council did not vote to increase Margarita's blood degree but to change or correct an ink pen modification that was detected in the 1913 Roll. This fact cannot be seriously disputed. Margarita Brittain's blood degree was restored not increased or changed from what was recorded on the 1913 Allotment Roll. The Regional Director is duty bound to concur that the Pala General Council does not have the authority to modify anyone's blood degree if such a change were in conflict with the 1913 Allotment Roll.

Paragraph 2, Page 2 also states that, "A further review of the federal documentation indicates that prior to the 1980's, the above named persons were not eligible for enrollment with the Pala Band, and were in fact disenrolled once after gaining enrollment." We do in fact concur that prior to the 1980's that not only were the eight named individuals not eligible for enrollment but any and all descendents of Margarita Brittain who were deemed to possess only 1/32 degree of Indian blood. This is the very heart and nature of the matter before us. Although the sons and daughters of Margarita Brittain always represented that their Mother, Margarita Brittain, was 4/4 Indian, someone had modified the 1913 Allotment Roll with a pen to read that Margarita Brittain was 1/2 Indian and further changed her children's blood degree to 1/4. This has been amply discussed by Appellant earlier in this appeal.

Next, Mr. James Brittain, the son of Margarita Brittain, always alleged that Julia Calac, former Chairwoman of the Tribe, was the one that penned these changes. Regardless of James Brittain's belief, the BIA, after considering the recommendation of Superintendent Dowell, conducted further intensive investigations into the facts of the matter of Margarita Brittain's degree of Indian blood.

The BIA was able to compare the 1913 Allotment Roll housed with the Southern California Agency to the original 1913 Allotment Roll housed in Washington, D.C, and

found that the penned changes on the Southern California Agency document were not evident on the original document located in Washington, D.C. This and other directly relevant evidence did cause the BIA to discard the Dowell recommendation and restore Margarita Brittain's blood degree to 4/4 in 1989. At this time, the BIA officially began to recognize that those persons formally bearing 1/32 degree of Indian blood were now considered to have 1/16 degree of Indian blood and eligible for enrollment with the Pala Tribe. This fact cannot be disputed.

Proving the faulty logic of the Executive Committee is the fact that the Appellants were never enrolled and then disenrolled as charged by the Executive Committee. The enrollment applications of the eight (8) Appellants were placed in abeyance until a final determination could be made regarding the blood degree of Margarita Brittain. The Appellants were not recognized or approved for enrollment until after the issuance of the 1989 letter by the BIA restoring Margarita Brittain's degree of Indian blood to 4/4.

Paragraph 2, Page 2 further states, "The above named persons were then re-enrolled with the Pala Band, and have remained on the rolls for over two decades." You can't be re-enrolled if you were never enrolled. This ill-fated misplaced statement is yet another intentional misrepresentation and misshaped fabrication on the part of the Executive Committee. The pattern and practice of the Executive Committee throughout the June 1 and June 8 letter is uncontroverted proof that the letters, standing alone, are worthless.

In the letter from Superintendent Dowell to the Pala Executive Committee, dated June 7, 1989 it states: "At the time the Enrollment Committee reviewed the above applications the decision was correct. However, as you are aware the Central Office sustained the appeal of the descendants of Margarita Britten and concluded that Mrs. Britten's blood degree is fullblood. We have been directed to correct the blood degree for Mrs. Britten's descendants and add their names to the membership roll being prepared for the distribution of the tribal assets. This decision is based on authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs."

Page 2, Paragraph 3 states, "On May 26th, 2011, the conclusion of the Pala Enrollment Committee was to support the position of the Bureau of Indian Affairs, then acting Area Director, signed by Tom W. Dowell, that in fact the applications prove that the above named individuals are not eligible for enrollment with the band."

The Appellants' position is that the referenced letter signed by Dowell is the letter signed by him and dated July 29, 1985. It stands clear that the Executive Committee has wholly misinterpreted this letter for intentionally malicious reasons. For one, the letter is addressed to the Area Director in Sacramento and Tom Dowell is the Superintendent of

the BIA's Southern California Agency and not the Area Director. The letter is not a finding or decision but a mere "recommendation" made to the Area Director regarding the appeal of Jacqueline Florence Boisclair, Cheryl Lynn Majel, Anthony Allen Freeman and Luanne Cynthia Moro. No one can dispute that the final line in the letter states: "I therefore, recommend disapproval of their request" and then signed by Tom W. Dowell. This fact alone should serve to debunk the Executive Committee's actions. It clearly demonstrates that they are incapable of interpreting, analyzing and representing any true facts in this matter.

Further stated in Page 2, Paragraph 3 is: "As such, the Pala Enrollment Committee wishes to take these names off of the band's rolls, effective June 1, 2011." The word "wishes" is not an "action" and it has to be argued that the Executive Committee did not convey to the Appellants an official action or decision as official actions are universally denoted as "shall" or "will". The word "wish" can never be a legal term nor is it a definitive term connoting a mandate or direct order. Simply put, how does one appeal a "wish" and why would one appeal a "wish"? Appellants note on appeal that the only definitive statement that they were disenrolled came from Chairman Robert Smith. If Tribal Secretary Kilma Lattin is correct, Robert Smith is not the proper Constitutional Officer to be noticing such a determination on disenrollment or "wish" to disenroll.

Page 2, Paragraph 4 states: "The Enrollment Committee recognizes the right for these persons to appeal the decision. Such procedures are outlined in the Band's enrollment ordinance. A copy of the enrollment ordinance has been provided, which outlines the steps for such a procedure." In truth, the Enrollment Committee failed to provide any of the eight (8) Appellants with a true and accurate copy of the Enrollment Ordinance as it was learned that the Ordinance was subsequently amended in 2010. As earlier noted, a justified re-examination of the Appellants' enrollment files must be undertaken by use of federal and tribal laws existent in 1989.

In a letter addressed to all Tribal members, signed by Tribal Secretary, Kilma Lattin and dated August 10, 2010 declares the following: "Recently, the Executive Committee for the Pala Band of Mission Indians made a change in the enrollment process." The enrollment ordinance provided to the Appellants is dated as Revised July 22, 2009. It would have to be considered impossible to proceed with and appeal if a current enrollment ordinance is not made available to the named eight (8) victims of this unprecedented attack on their tribal member status.

As plainly stated in Exhibit 12, the BIA staff met with the Pala Business Committee on March 2, 1994. Robert Smith was Tribal Chairman at this time and had to be present during this meeting where he was thoroughly briefed by the BIA as to the findings and status of the Margarita Brittain case/appeal and the final decision and

necessary implementations resulting from that final decision.

For Robert Smith to now claim that he was unaware of the information regarding the Margarita Brittain case/appeal has to be deemed a complete lie and actionable fraud. It also supports many Tribal members belief that he is a corrupted and believes himself to be beyond the reach of law. This March 1994 letter alone should serve to convince the Regional Director to vacate the “wishes” of the Enrollment Committee. Otherwise, the BIA is complicit with these outrageous human rights and Indian Civil Rights violations.

**B. The Regional Director is Duty Bound by the 1989 Final Decisions where there is no new evidence and there are facts in the record pointing to violations of the Indian Civil Rights Act.**

A careful review of the entire record proves that the Executive Committee has offered no new evidence in what is an obvious effort to violate Appellants’ guaranteed Indian Civil Rights.

First, the main allegation in the June 1 letter is that the applicants somehow failed to include the 1928 rolls of Juana Regetti and the descendants of Martha Regetti and, therefore, omitted essential information that would have resulted in their being denied enrollment with the Tribe.

It is unclear whether Lattin’s June 1 letter means to reference the 1928 California Indian Judgment Roll. Assuming that this is the situation, Appellant argues that the use of the 1928 Roll in any way to determine tribal membership is a patent violation of the Tribes Articles of Association and the Tribes subsequent Constitution.

The Appellants’ position is that when the Tribe adopted its Base Roll and the authority to develop regulations/ordinances governing its membership, the Constitution created a very solid “framework” which any enrollment ordinance would have to fit within or else that ordinance would be in patent violation of the Tribes Articles of Association and subsequent Constitution.

The operation of this framework is very simple. In effect, you are considered a member of the Tribe if your name appears on the 1913 Allotment Roll and then, in succession, you are a member if you are a descendant of a person listed on the 1913 Roll and possess at least 1/16 degree of Cupeno Blood. Use of a five (5) generation chart to visualize the process that this regulatory and constitutional framework mandates has always been imposed on the Executive Committee.

The 1913 Pala Allotment Roll establishes a “baseline” standard of blood degree

for every individual listed therein. In effect, no other documents or records can be used in determining an applicant's degree of Cupa Indian blood. Enacting a requirement other than this simple basic baseline rule would be a clear violation of the Tribe's Articles of Association and subsequent Constitution.

Secondly, the Enrollment Ordinance would be limited as to which documents are acceptable in reviewing and determining lineal descent, such as birth certificates, death certificates, adoption records, church/baptismal records, and sworn affidavits. While deemed necessary in determining lineal descent, none of these documents can be used in determining degree of Indian blood except to quantify the degree of Indian blood based on lineal descent.

It is a very simple and straightforward procedure firmly restricted through the framework of the Tribe's Articles of Association and subsequent Constitution and further confined to the 1913 Pala Allotment Roll.

Thirdly, the June 1 Lattin letter forcing the filing of this appeal raises serious issues dealing with the chain of evidence purportedly the source of the records that led to the disenrollments. As noted above, the Lattin disenrollment letter is utterly devoid of any reference to the numerous Exhibits included herein that put to rest the reversed and overruled 1985 Dowell recommendation letter.

The Pacific Regional Director is obligated to account for, what is no doubt, a poor record keeping system that lacks integrity:

- Who houses the Tribe's enrollment records and who is responsible for their maintenance?
- Who has access to these records?
- Which enrollment applications are they referring to in the decision to disenroll? Are they referring to the applications maintained at the BIA, if any, or the applications maintained by the Tribe, if any?
- It is implied that an unnamed Tribal member brought this discrepancy to the attention of the Executive Committee. How did this Tribal member access government controlled private documents?
- If the Tribal member is a member of the Executive Committee and that individual holds great enmity towards the Margarita Brittain family, enmity is often determined as a cause of dismissal in actions like this.

In the balance, the Regional Director must examine the obviously shoddy record keeping that failed to produce the 1989 Asbra and Mills Final Decisions or, more significantly, the June 7, 1989 letter wherein Superintendent Dowell concedes that his earlier July 29, 1985 recommendation was deemed unacceptable.

Since persons other than the Executive Committee have had access to these records, it can be easily construed that a person having such access and with malicious motive could have removed the documents that are the subject of this appeal.

Just as unofficial alterations on certain historical records designating Margarita Brittain's Indian blood quantum as ½ degree, the lack of integrity with the maintenance of confidential, private and invaluable family ancestry documentation in these circumstances creates the dangerous specter that malicious minded Tribal Officials will reach into their bag of dirty tricks and target their perceived political opponents for disenrollment.

Remember, the June 1 Lattin letter explicitly states: "As such, and at the request of Pala tribal members, the Executive Committee coordinated with the United States Department of Interior, Bureau of Indian Affairs, to gain access to federal documentation related to the Regetti/Freeman applications." Exhibit 1.

If Lattin's statements are true, then BIA staff intentionally failed to include the 1989 Asbra and Mills Final Decision when they gave the Executive Committee "federal documentation related to the Regetti/Freeman applications." If the BIA denies Lattin's June 1 statement, then the disenrollment is based entirely on lies and false representations about dealings with federal officials and, as such, constitute criminal/civil fraud.

There are good faith grounds to believe that the poorly documented and wholly unjustified June 1 Lattin letter is an effort to violate the rights of numerous descendants of Margarita Brittain as guaranteed under the federal Indian Civil Rights Act. It is public record that Leroy Miranda, a member of the Executive Committee pled guilty in February 2010 to a charge of soliciting a prostitute at the Happy Time Adult Book Store in Moreno Valley. *See* Exhibit 19, North County Times article "Tribe's vice chairman must serve 10 more days of probation", dated March 15, 2011.

On May 12, 2011, a petition signed by Tribal members, including Margarita Brittain's descendants, requesting a special meeting on the misconduct of Miranda was received by Secretary Lattin, the author of the June 1 disenrollment letter. The Executive Committee disqualified the petition and cancelled the special meeting. *See* Exhibit 20. The Regional Director cannot deny that this is no coincidence. The close proximity of the rejection of the Miranda petition and the issuance of the June 1 letter are solid evidence of

an effort by tribal officials to violate the Indian Civil Rights of the eight (8) Appellants.

In other words, there is absolutely no integrity to the chain of evidence in these serious circumstances. Therefore, the Regional Director has to agree that whatever the Executive Committee alleges to disenroll is not based on credible evidence. Appellants have seen nothing in terms of specific evidence or charges that the Executive Committee claims the Regetti information provides.

There is every reason to conclude that this is an unmitigated effort by the Executive Committee to disenroll Tribal members who have exercised their Indian Civil Rights act guaranteed rights to petition their own Tribe to discuss the immoral actions of Leroy Miranda.

#### **IV. CONCLUSION**

The Regional Director cannot ignore the blatant disregard of a whole range of errors committed by the Executive Committee in these circumstances, including evidence proffered by Appellants that prove these unfortunate events are the result of a conspiracy to violate their guaranteed civil rights.

Further, the Department of Interior is under a legal duty to use federal and tribal law that existed up and until the Mills Final Decision in 1989 and not anything recently enacted by the Executive Committee to place Appellants at a disadvantage. With a record devoid of any new evidence to disturb the 1989 Final Decisions, this matter must be deemed by the Bureau of Indian Affairs as *res judicata* or, alternatively, moot for all purposes.

Finally, due to the urgency of this emergency matter illegally forced on Appellants, they request an expedited decision in this appeal. No Tribe can be allowed to sweep off the table well-reasoned and extensively researched federal agency decision-making in an area of federal-tribal relations dealing with disenrollment. If the Regional Director agrees with the Executive Committee that its June 1 letter and other procedural missteps it has taken toward Appellants are valid, then other members of the Pala Band of Mission Indians must take heed that they will be next in line for disenrollment.



Dated June 27, 2011

Respectfully,

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Gina L. Howard

Dated June 28, 2011

Respectfully,

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