

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NICOLAS VILLA, JR.)
Chief, Ione Band of Miwok Indians)
of California)
Jackson Valley Reservation)
3015 Jackson Valley Road)
Ione, CA 85640)

Plaintiff,)

v.)

Civil Action No.)

KENNETH SALAZAR)
Secretary of the Interior)
U.S. Department of the Interior)
1849 C Street, N.W.)
Washington, D.C. 20240)

DONALD E. LEVERDURE)
Acting Assistant Secretary for Indian Affairs)
U.S. Department of the Interior)
1849 C Street, N.W.)
Washington, D.C. 20240)

Defendants.)

COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

NATURE OF THE ACTION

1. This is an action challenging as arbitrary and capricious final agency action taken by the Acting Assistant Secretary for Indian Affairs for the United States Department of Interior (Department) to approve the trust acquisition for gaming purposes of 228 acres (Plymouth Tracts) in Amador County, California, for the benefit of a group calling itself the Ione Band of Miwok Indians. Plaintiff seeks judgment declaring the agency action

void and without legal effect, and injunctive relief against any further action consistent with its erroneous factual and legal premises.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §1331, the Administrative Procedure Act, 5 U.S.C. §§701-706, and the Declaratory Judgment Act, 28 U.S.C. §§2201-2202.
3. Venue lies in this judicial district pursuant to 28 U.S.C. §1391(e)(1) and (2).

PARTIES

4. Plaintiff Nicolas Villa, Jr., is an adult citizen of the United States residing in Amador County, California. He brings the action in his individual capacity as one living nearby the Plymouth Tracts which the Department has approved for acquisition in trust and for gaming; and in his official capacity as head of a nearby Tribe within the meaning of the Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. § 2701 *et seq.*
5. Mr. Villa's Tribe has long been identified as the Ione Band of Miwok Indians of California, a historic Tribe that has for centuries maintained its identity and geographic location in what is now Amador County, and that has maintained a continuous relationship with the United States for more than 100 years.
6. Defendant Kenneth Salazar is Secretary of the United States Department of Interior and as such responsible for its operations. The Secretary is named in his official capacity.
7. Defendant Donald E. Leverdure is Acting Assistant Secretary for Indian Affairs and as such responsible for the operations of the office. The Acting Assistant Secretary is named in his official capacity.

Upon information and belief, Mr. Villa alleges the following:

STATEMENT OF FACTS

8. Like his father (Nicolas Villa, Sr.) before him, Plaintiff Nicolas Villa, Jr., heads the Tribe known as the Ione Band of Miwok Indians of California that for centuries has inhabited lands in present day Amador County, California.
9. Mr. Villa and other members live on or nearby forty acres held in common in Amador County. In 1972 the Department's Commissioner of the Bureau of Indian Affairs agreed the Department would acquire these forty acres in trust for the benefit of the Ione Band of Miwok Indians of California headed by Nicolas Villa, Sr.
10. The Department has yet to take the Tribe's forty acres into trust as agreed, but has determined the land is held in common by members of the Ione Band of Miwok Indians of California, and not individually, in anticipation the Department will one day complete the trust acquisition promised 40 years ago.
11. The Department's Bureau of Indian Affairs recognizes the land held in common as historic tribal lands of the Ione Band of Miwok Indians of California.
12. The group calling itself the Ione Band of Miwok Indians, for which the Acting Assistant Secretary for Indian Affairs has authorized the trust acquisition of the Plymouth Tracts for gaming purposes, includes as purported members persons with little or no ancestral or other connection to the historic Tribe headed by Mr. Villa and his father.
13. The purported members of the Ione Band of Miwok Indians include an official of the Bureau of Indian Affairs (BIA) Regional Office in Sacramento, whose responsibilities include making recommended determinations as to tribal membership. This official and

members of her family have made their way onto the rolls of the purported Ione Band of Miwok Indians in the absence of BIA procedural requisites, and have done so in anticipation of eventual Departmental approval of gaming operations on lands acquired in trust for the group.

14. The Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. § 2701 *et seq.* generally prohibits gaming on Indian lands acquired after October 17, 1988, unless one of several exceptions established by § 2719 applies, including an instance in which the Department takes land into trust as part of the “restoration of lands for an Indian tribe that is restored to Federal recognition” (restored lands exception).
15. In 2004 the group calling itself the Ione Band of Miwok Indians sought an opinion as to whether the Plymouth Tracts – land which the group did not and does not own – would qualify for gaming if the Department agreed to acquire the lands in trust for its benefit.
16. By Memorandum to the Associate Solicitor of the Division for Indian Affairs (James E. Cason) dated September 19, 2006, the Associate Solicitor for Indian Affairs (Carl J. Artman) rendered an “Ione Band Indian Lands Determination” (Artman Opinion) that the Plymouth Tracts would meet the restored lands exception, in that the group could make the evidentiary showing required by the Department that (a) “[the Band] was once recognized by the Federal government, that the Federal government did not recognize it and that, ultimately, the Federal government restored its recognition of the Band.” Carl J. Artman to James E. Cason, September 19, 2006, page 2; and that (b) the “[Band] ... have a modern and historical connection to the land and there [is] ... a reasonable temporal connection between the date the land is acquired and the date the tribe is restored.” *Id.*,

page 4.

17. The Department took no final agency action implementing the Artman Opinion of September 19, 2006.
18. In May 2008 the Department promulgated final rules regarding “Gaming on Trust Lands Acquired After October 17, 1988”, 73 Fed. Reg. 29354 (May 20, 2008), codified at 25 C.F.R. Part 292.
19. The Department answered the question “How Does a Tribe Qualify as Having Been Restored to Federal Recognition?” in most relevant part as follows: “Recognition through the Federal Acknowledgment Process under [25 C.F.R.] § 83.8 ...” 25 C.F.R. § 292.10(b).
20. The rules promulgated in May 2008 “do not alter **final agency decisions** made pursuant to 25 U.S.C. 2719 before the date of enactment of these regulations” (emphasis added), 25 C.F.R. § 292.26(a); nor do they apply “when, before the effective date of these regulations, the Department ... issued a written opinion regarding the applicability of 25 U.S.C. 2719 for land to be used for a **particular gaming establishment ...**” (emphasis added). *Id.*, § 292.26(b)
21. The group purporting to be the Ione Band of Miwok Indians has never achieved “[r]ecognition through the Federal Acknowledgment Process under [25 C.F.R.] § 83.8”, thus does not meet the Department’s requirements for meeting the “restored tribe” element of the restored lands exception set forth by 25 C.F.R. § 292.10(b).
22. The United States has recognized Mr. Villa’s Band of Miwok Indians of California and been in a continuing relationship with the Tribe for more than 100 years.

23. The Artman Opinion did not represent a “final ... decision” of the Department within the meaning of 25 U.S.C. § 292.26(a), so does not serve to justify departure from the requirement of 25 C.F.R. § 292.10(b) that a Tribe seeking to establish eligibility for treatment under the restored lands exception show “[r]ecognition through the Federal Acknowledgment Process under [25 C.F.R.] § 292.26(a).”
24. The Artman Opinion did not address “the applicability of 25 U.S.C. 2719 for land to used for a particular gaming establishment ...” 25 C.F.R. § 292.26(b), so does not serve to justify departure from the requirement of 25 C.F.R. § 292.10(b) that a Tribe seeking to establish eligibility for treatment under the restored lands exception show “[r]ecognition through the Federal Acknowledgment Process under [25 C.F.R.] § 83.8”.
25. In January 2009 the Solicitor of the Department (David L. Bernhardt) wrote the Acting Deputy Assistant Secretary for Policy and Economic Development (George T. Skibine) to reverse and withdraw the Artman Opinion, saying in relevant part, “I determined to review the Associate Solicitor’s 2006 Indian lands opinion and have concluded that it was wrong. I have withdrawn and am reversing that opinion. It no longer represents the legal position of the Office of the Solicitor. The opinion of the Solicitor’s Office is that the Band is not a restored tribe within the meaning of IGRA.”
26. In May 2012 the Acting Assistant Secretary for Indian Affairs nevertheless acted to approve the acquisition in trust of the Plymouth Tracts, and found the group purporting to be the Ione Band of Miwok Indians eligible to conduct gaming operations there on the basis of IGRA’s restored lands exception.

27. The Acting Assistant Secretary for Indian Affairs explained the plain departure from the requirement of 25 C.F.R. § 292.10(b) (requiring “[r]ecognition through the Federal Acknowledgment Process under [25 C.F.R. § 83.8 ...]”) by reference to fact that the Artman Opinion predated the promulgation of 25 C.F.R. Part 292.
28. Notice of final agency action taken by the Department, through its Acting Assistant Secretary for Indian Affairs, to authorize the trust acquisition of the Plymouth Tracts for gaming purposes, appeared in the Federal Register on May 30, 2012.

CLAIM

29. The allegations set forth in ¶¶ 1 through 28 are incorporated herein by reference.
30. The decision taken by the Acting Assistant Secretary for Indian Affairs to authorize the trust acquisition of the Plymouth Tracts for gaming purposes is arbitrary and capricious, an abuse of discretion and otherwise in violation of law.
31. Final agency action taken to authorize and implement the trust acquisition of the Plymouth Tracts for gaming purposes is arbitrary and capricious, an abuse of discretion and otherwise in violation of law

PRAYER FOR RELIEF

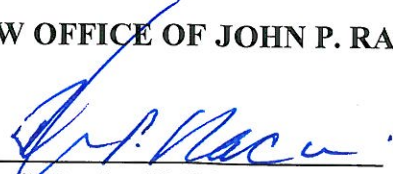
WHEREFORE, Plaintiff Nicolas Villa, Jr., respectfully requests that this Court:

- A. Declare, adjudge and decree final agency action taken to authorize and implement the trust acquisition of the Plymouth Tracts for gaming purposes to be arbitrary and capricious, an abuse of discretion and otherwise in violation of law;
- B. Enjoin the Department against taking the Plymouth Tracts into trust for gaming purposes; and

C. Grant such further relief as may be just and proper.

Respectfully submitted,

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Application for Admission
Pro Hac Vice Pending

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