No.

In The Supreme Court of the United States

JAMUL ACTION COMMITTEE, JAMUL COMMUNITY CHURCH, DARLA KASMEDO, PAUL SCRIPPS, and GLEN REVELL,

Petitioners

v.

E. SEQUOYAH SIMERMEYER,
Chairman of the National Indian Gaming Commission; et al.,

Respondents

On Petition For A Writ of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

APPENDICES

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMUL ACTION COMMITTEE; JAMUL COMMUNITY CHURCH; DARLA KASMEDO; PAUL SCRIPPS; GLEN REVELL; WILLIAM HENDRIX, *Plaintiffs-Appellants*, v. E. SEQUOYAH SIMERMEYER, Chairman of the National Indian Gaming Commission; DAVID BERNHARDT, Secretary of the U.S. Department of the Interior; TARA KATUK MAC LEAN SWEENEY, Assistant Secretary - Indian Affairs, U.S. Department of the Interior; PAULA L. HART, Director of the Office of Indian Gaming, Bureau of Indian Affairs; U.S. DEPARTMENT OF THE INTERIOR; NATIONAL INDIAN GAMING COMMISSION; RAYMOND HUNTER, Chairman, Jamul Indian Village; CHARLENE CHAMBERLAIN; ROBERT MESA; RICHARD TELLOW; JULIA LOTTA; PENN NATIONAL, INC.; SAN DIEGO GAMING VILLAGE, LLC; C.W. DRIVER, INC.; UNITED STATES OF AMERICA, *Defendants-Appellees.*	No. 17-16655 D.C. No. 2:13-cv-01920-KJM-KJN OPINION

APPENDIX A

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, Chief District Judge, Presiding

Argued and Submitted November 13, 2019
San Francisco, California

Filed September 8, 2020

Before: William A. Fletcher and Bridget S. Bade, Circuit Judges, and Barry Ted Moskowitz,[*] District Judge.

Opinion by Judge W. Fletcher

SUMMARY[**]

Tribal Matters

The panel affirmed the district court's dismissal for failure to join a required party in an action challenging the Jamul Indian Village's efforts to build a casino.

In 1981, a small group of Kumeyaay Indians living on land in Rancho Jamul, California organized under the Indian Reorganization Act as the Jamul Indian Village. The Bureau of Indian Affairs ("BIA") approved the Village's constitution,

[*] The Honorable Barry Ted Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

and the Village has appeared on the BIA's published list of federally recognized Indian tribes ever since.

Two community organizations and several of their members (collectively "JAC") contend that the Village is not a federally recognized Indian tribe.

The panel held that the distinction JAC urges between historic tribes and other tribal entities organized under the Indian Reorganization Act was without basis in federal law. The panel held further that the Jamul Indian Village is a federally recognized Indian tribe with the same privileges and immunities, including tribal sovereign immunity, that other federally recognized Indian tribes possess. The Village's tribal sovereign immunity extends to its officers in this case.

Because the Village was protected by tribal sovereign immunity, the panel agreed with the district court that the Village cannot be joined in this action and that the action cannot proceed in equity and good conscience without it. The panel therefore affirmed the dismissal for failure to join a required party.

COUNSEL

Kenneth R. Williams (argued), Sacramento, California, for Plaintiffs-Appellants.

Varu Chilakamarri (argued), William B. Lazarus, Judith Rabinowitz, and Barbara M.R. Marvin, Attorneys, Appellate Section; Eric Grant, Deputy Assistant Attorney General; Jeffrey H. Wood, Acting Assistant Attorney General; Environment and Natural Resources Division, United States

Department of Justice, Washington, D.C.; Matthew Kelly, Office of the Solicitor, United States Department of the Interior, Washington, D.C.; Austin T. Badger, Office of the General Counsel, National Indian Gaming Commission, Washington, D.C.; for Federal Defendants-Appellees.

Frank Lawrence (argued) and Zehava Zevit, Law Office of Frank Lawrence, Nevada City, California, for Tribally-Related Defendants-Appellees.

OPINION

W. FLETCHER, Circuit Judge:

Since at least 1912, a small group of Kumeyaay Indians have lived on a two-acre plot of land in Rancho Jamul, California, deeded to the Roman Catholic Diocese of Monterey and Los Angeles for use as an Indian cemetery. In 1981, the families residing there organized under the Indian Reorganization Act ("IRA"), 25 U.S.C. §§ 5101 *et seq.*, as the Jamul Indian Village. The Bureau of Indian Affairs ("BIA") approved the Village's constitution, and the Village has appeared on the BIA's published list of federally recognized Indian tribes ever since. *See* 84 Fed. Reg. 1,200, 1,202 (Feb. 1, 2019); 83 Fed. Reg. 34,863, 34,864 (July 23, 2018); 82 Fed. Reg. 4,915, 4,916 (Jan. 17, 2017); 81 Fed. Reg. 26,826, 26,828 (May 4, 2016); 80 Fed. Reg. 1,942, 1,944 (Jan. 14, 2015); 79 Fed. Reg. 4,748, 4,750 (Jan. 29, 2014); 78 Fed. Reg. 26,384, 26,386 (May 6, 2013); 77 Fed. Reg. 47,868, 47,870 (Aug. 10, 2012); 75 Fed. Reg. 60,810, 60,811 (Oct. 1, 2010); 74 Fed. Reg. 40,218, 40,220 (Aug. 11, 2009); 73 Fed. Reg. 18,553, 18,554 (Apr. 4, 2008); 72 Fed. Reg. 13,648, 13,649 (Mar. 22, 2007); 70 Fed. Reg. 71,194, 71,195

(Nov. 25, 2005); 68 Fed. Reg. 68,180, 68,181 (Dec. 5, 2003); 67 Fed. Reg. 46,328, 46,329 (July 12, 2002); 65 Fed. Reg. 13,298, 13,300 (Mar. 13, 2000); 63 Fed. Reg. 71,941, 71,943 (Dec. 30, 1998); 62 Fed. Reg. 55,270, 55,272 (Oct. 23, 1997); 61 Fed. Reg. 58,211, 58,212 (Nov. 13, 1996); 60 Fed. Reg. 9,250, 9,252 (Feb. 16, 1995); 58 Fed. Reg. 54,364, 54,367 (Oct. 21, 1993); 53 Fed. Reg. 52,829, 52,830 (Dec. 29, 1988); 51 Fed. Reg. 25,115, 25,116 (July 10, 1986); 50 Fed. Reg. 6,055, 6,056 (Feb. 13, 1985); 48 Fed. Reg. 56,862, 56,863 (Dec. 23, 1983); 47 Fed. Reg. 53,130, 53,132 (Nov. 24, 1982).

This case concerns the Village's status as a federally recognized Indian tribe. In a suit challenging the Village's efforts to build a casino, two community organizations and several of their members (collectively, "JAC") contend that the Village is not a federally recognized Indian tribe. Instead, JAC contends that the Village is only a community of adult Indians, not a historic tribe with inherent sovereign authority. Therefore, according to JAC, the Village may not use its lands for gaming and is not protected by tribal sovereign immunity.

No tribunal has accepted this argument. But that has not deterred litigants, including JAC and other members of the plaintiff organizations, from pressing similar claims in myriad actions before administrative agencies, state courts, and federal courts around the country since the early 1990s. In an opinion that we hope will finally put an end to these claims, we hold as follows. The distinction JAC urges between historic tribes and other tribal entities organized under the IRA is without basis in federal law. Jamul Indian Village is a federally recognized Indian tribe with the same privileges and immunities, including tribal sovereign

immunity, that other federally recognized Indian tribes possess. The Village's tribal sovereign immunity extends to its officers in this case.

Because we hold that the Village is protected by tribal sovereign immunity, we agree with the district court that the Village cannot be joined in this action and that the action cannot proceed in equity and good conscience without it. We therefore affirm the district court's judgment dismissing JAC's claims for failure to join a required party.

I. Background

A. The Jamul Indian Village

In 1912, the Coronado Beach Company deeded a small parcel in Rancho Jamul, San Diego County, California, to the Roman Catholic Diocese of Monterey and Los Angeles for use as an Indian cemetery. No more than a portion of the land has ever been used as a burial ground. On the remainder of the parcel, with the acquiescence of the Diocese, several families of Kumeyaay Indians have made their home for generations.

Beginning in the early 1970s, the families residing on the parcel sought to organize under the IRA. The Diocese and a local family transferred about six acres to the United States, including the greater part of the Indian cemetery and an adjoining parcel of private land, which the government accepted into trust for the benefit of the Jamul Indians. After the United States took this land into trust, the Superintendent of the Southern California Agency for the BIA recommended federal recognition of the Village and its inclusion on the list of recognized tribal entities published in the Federal Register.

The BIA authorized a constitutional election. After a majority of eligible voters cast ballots in favor, the BIA approved the Village's constitution under the IRA on July 7, 1981. The tribal constitution limited membership to those with one-half or more California Indian blood.

B. Leadership Dispute and Subsequent Litigation

Trouble began for the Village in the early 1990s with a series of disputes about the Village's membership and leadership. Faced with the prospect of declining membership as the Village's initial members died, the Village began considering reducing the blood quantum requirement for membership. At about the same time, some members of the Village sought to recall officers elected in the Village's 1992 election. *See Rosales v. Sacramento Area Dir.* (*Rosales I*), 32 IBIA 158, 159–63 (1998). Those members held a recall election, which the BIA determined did not comport with the Village's constitution and declined to recognize. *Id.* at 161. The Village's BIA-recognized government and its opponents held separate elections in 1995. The Interior Board of Indian Appeals ("IBIA") ultimately reinstated the officers elected in the 1992 elections. *Id.* at 167.

Meanwhile, the Village obtained authorization from the BIA to hold an election to amend its constitution to reduce the blood quantum requirement for membership from one-half to one-quarter. The election approved the amendment in 1996. The BIA rejected a challenge to the amendment brought by the tribal members opposed to the Village's government. *See Rosales v. Sacramento Area Dir.*, 34 IBIA 50 (1999). However, some members continued to dispute the amendment's validity. They challenged every tribal election in which individuals of less than one-half Indian blood were

allowed to vote and held separate elections in 1997, 1999, and 2001. *Rosales v. United States* (*Rosales II*), 477 F. Supp. 2d 119, 124 (D.D.C. 2007) (holding that individuals who were not registered voters in the 1996 election lacked standing to challenge its results), *aff'd*, 275 F. App'x 1 (D.C. Cir. 2008).

Central to the arguments raised by the opponents of the Village's BIA-recognized tribal government in these suits was the theory that the Village was no more than a community of adult Indians created by the Department of the Interior and therefore was not a federally recognized Indian tribe with the same privileges and powers as a properly recognized historic tribe. Plaintiffs advanced this theory in challenges to tribal elections, to the beneficial ownership of the parcels held in trust by the United States for the Village, and to the Village's more recent efforts to build and operate a casino. *See, e.g.*, *Rosales II*, 477 F. Supp. 2d at 129; *Rosales v. United States*, 73 F. App'x 913 (9th Cir. 2003); *Rosales v. United States*, 477 F. Supp. 2d 213 (D.D.C. 2007). In a 2009 opinion holding that a claim by opponents of the Village's tribal government to a personal beneficial interest in the Village's trust land was time-barred, the Court of Federal Claims identified "no fewer than fourteen legal actions brought before tribal tribunals, administrative boards, and federal courts in California and the District of Columbia, all without success," presenting "these same and related issues." *Rosales v. United States*, 89 Fed. Cl. 565, 571 & n.2 (2009). Since then, both individuals and organizations affiliated with JAC have continued to press similar claims in both state and federal courts. *See, e.g.*, *Rosales v. Dep't of Transp.*, No. D066585, 2016 WL 124647 (Cal. Ct. App. Jan. 12, 2016) (unpublished); *Jamulians Against the Casino v. Dep't of Transp.*, No. C077806, 2016 WL 1253586 (Cal. Ct.