IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In the Matter of the Adoption of: [redacted], DOB: 04/16/2019, a Minor Child, NIKKI LYNN RICHMAN, and JOSEPH D. JURCO, Petitioners.	**OPPOSITION TO REGISTRATION OF TRIBAL COURT ORDER AND REQUEST FOR EVIDENTIARY HEARING & MOTION TO DISMISS [CINA R. 24]** Case No. 4FA-21-00332 PR

Nikki Lynn Richman opposes Selawik's Petition for Registration of Tribal Court Order Under the Indian Child Welfare Act. Ms. Richman requests dismissal of the petition because,

1) CINA R. 24 is inapplicable under CINA R. 24(a) tribal proceedings were a civil custody dispute and not ICWA proceedings[1] or, if it was and ICWA proceeding, the Tribe violated the Indian Child Protection and Family Violence Prevention Act.
2) The order was not entered by a duly constituted tribal court as required by CINA R. 24; and
3) Notice required under CINA R. 24(e)(2) and (3) was not provided.

Additionally, Ms. Richman opposes registration of the petition because:

1) The tribal court did not have jurisdiction over the parties or the child custody proceeding as required by CINA R. 24(f)(1);

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[1] i.e. not a "child custody proceeding" as defined by 25 USC 1903(1),

2) Ms. Richman was entitled to notice, and notice was not given in a manner reasonably calculated to give actual notice of the proceedings before the tribal court issued the order for which enforcement is sought as required by CIINA R. 24(f)(2), and

3) If Tribal Court notice was given, Ms. Richman was not given an opportunity to be heard as required by CIINA R. 24(f)(3).

In the alternative, if the petition is not dismissed, Ms. Richman requests a hearing per CINA R. 24(f).

I. Background.

A detailed factual and procedural background in this case is set out in the attached verified Petition For Writ Of Habeas Corpus For Relief From A Tribal Court Judgement Pursuant To 25 U.S.C. § 1303 recently filed in U.S. District Court, which is incorporated by reference for the record.[2] While this Court is aware of proceedings before May 26, 2022, registration is sought for an order entered after that date.

a) Tribal Court Does Not Exist. Selawik does not really have a Tribal Court. Rather, it appears that the Tribal Council has been acting as a tribal Court, which is not authorized by trial law. This has been an issue in the past which the Tribe has never really addressed. However, it would now appear that Selawik has committed a fraud upon this Court.

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[2] Ex. 1 See *Richman v Native Village of Selawik,* Case No. 3:22-cv-00280-JMK (US Dist. Ct- AK) The federal proceedings are pending.

Richman makes an offer of proof [3]of the testimony of Ms. Darcel Cleary, who is an independent Indian advocate. Her testimony will report that in August, 2021, she was advocating for a lady from Selawik in an ICWA case and contacted Selawik tribe. [4] She talked to Mildred the Selawik ICWA worker and a Tribal representative named Tanya, which was probably Tanya Ballot. She was informed that Selawik did not have a Tribal Court. She had recent contact in August 2022with Selawik with the same result.

This conclusion is supported by the stark lack of any documentation as to the existence of a Selawik court, despite repeated requests for such documentation. The undersigned has requested copies of the Tribal Judicial code or other documentation that the Tribal Court exists. None has been forthcoming. In the December 16th hearing, the father requested a copy of the code because he was concerned about filing an appeal if Selawik's decided as they did. Nothing has been forthcoming. At best, the Tribe has asserted that it operates under custom and tradition, but there is no evidence that Selawik has a customary tradition of operating tribal courts, removing children in need of aid from their homes, or adjudicating custody disputes. Rather, the evidence is quite the opposite. The 2022 Alaska Tribal Court Directory for the Alaska State Court System indicates that there is no evidence as to the existence of a Tribal Court in Selawik.[5] And in *Evans v Native Village of Selawik,* 65 P.3d 58 (Alaska, 2003), the Selawik Tribal Council attempted to confirm an adoption, rather than any tribal court. In *Evans* the Tribal

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[3] Pursuant to Evd. R. 103. All other factual assertions contained herein are made as offers of proof as to the testimony anticipated to be presented by Ms. Richman at the requested hearing.
[4] Ex. 2
[5] https://courts.alaska.gov/courtdir/docs/tribal-court-directory.pdf

Council unsuccessfully attempted to act as a Tribal Court but simply failed to afford any due process in that matter. *Evans* clearly demonstrates that historically Selawik does not have a tribal court.

As noted below, there is a clear inconsistency about the composition of the tribal court/council. Initially, it seemed that the Presiding Judge was the Tribal chairman/president, Mr. Allen Ticket.[6] Mr. Ticket signed the April 2021 Council Resolution accepting jurisdiction of the case and referring the matter to the Tribal Court. As noted below, it appears that Mr. Ralph Stoker served as the "Presiding Judge" signing all but the December 16th order for which registration is sought. The December 16th Order granting custody to Arlene Ballot was signed by Amelia Ballot, who had never acted as a presiding judge previously. Indeed, in the December 16th hearing, Mr. Stoker served as the presiding judge. It is therefore very unclear that Amelia Ballot had the authority to sign an order awarding custody of the child to Arlene Ballot. This confusion about the judges further suggests that Selawik does not have a regular tribal court.

As discussed below, there is also an absence of any documentation as to the authorization of a tribal court in a manner required by the Selawik Tribal Constitution.

b) Non-existence of Tribal Codes. There are no Selawik child codes. Upon inquiry, the Tribe's attorneys admit that the tribe does not have written codes but assert

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[6] According to the BIA, the Chairman of the Council is Allen Ticket, who will serve as Chairman until October, 2023. https://www.bia.gov/bia/ois/tribal-leaders-directory/tribes/selawik Mr. Ticket was the listed as the President of the Tribal Council in April, 2021, when the Selawik Resolution accepting jurisdiction of the case.

that Selawik operates under traditional law and custom. There are problems with this assertion.

First, it is not clear that the traditions and customs of the Tribe are sufficiently developed to actually form a cogent regularized set of principles necessary to give any party reasonable notice of applicable standards of parental behavior required by principles of due process. This problem was evident in *State v Cissy A.*, 513 P.3d 999 (Alaska, 2022) where Ms. Tanya Ballot appeared and testified as a cultural expert regarding children. In that process, Ballot could only explain "general values of her tribe, including 'respect for elders, learning subsistence lifestyles and staying sober as best as possible.'"[7] The statements were so vague as to be of no assistance to the Court and were disregarded. Similar vague statements were made in the December 16th proceedings. In *Cissy A*. Ms. Ballot never testified about any values respecting the need to protect a child from risks of harm occasioned by abuse, neglect or abandonment. This was in stark contrast to the testimony of the tribal judge from the Nenana Tribal Court, which has a long and documented history.[8] In contrast to Selawik, and explained in *Cissy A.,* Nenana has a "prevailing cultural value … to keep children safe", and that "substance abuse, and domestic violence were 'not in line with cultural values of her Tribe."[9]

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[7] 513 P.3d, 1007
[8] *Native Village of Nenana v State,* 722 P.2d 219 (Alaska, 1986) *rev'd in IMO F.P.*, 843 P.2d 1214 (Alaska, 1992)
[9] 513 P.3d, 1007

Second, an unwritten code violates federal law as required under the Indian Child Protection and Family Protection Act (25 USC §3201 et. seq) which is discussed below.

Finally, it is clear that without written standards Selawik didn't know what standards to apply. During one hearing, the "Presiding Judge" expressed frustration about this fact and asked the Tribal Attorney, Savanah Fletcher whether they could use the Venetie Judicial and Children's Code.

c) Tribal Proceedings. At no time did Selawik give notice the father or Nikki Richman of any accusation that either the father or Ms. Richman placed the child was at risk of harm from abuse, neglect or abandonment. There was never a factual finding by the "Selawik Tribal Court" that the child was abused, neglected or abandoned or was at risk of such harm as a result of any action by either the father or Ms. Richman. Indeed, for other a year, Selawik affirmatively sanctioned the care of the child by Ms. Richman, which implicitly suggests that Selawik didn't believe Ms. Richman presented a risk of harm to the child, or that the father's placement of the child with Ms. Richman represented a risk of harm.

There appears to have been some kind of hearing on Nov 5, 2021 at which Ms. Richman was not present. Five months later, on April 22, 2022, Selawik issued an order continuing temporary placement with Ms. Richman, effective November 5, 2021.[10] It is not clear what type of placement this was (i.e. foster, adoptive, custody, etc.) Also on

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[10] Ex. 3

April 22nd Selawik issued a notice as to hearing scheduled for May 6th "regarding permanency".[11]

On May 6th, Selawik conducted a hearing on permanency, and on May 10th issued a Permanency Order, which found that the child was a tribal member, that adoption was in the child's best interest, that adoption was supported by the father, and placed the child with Ms. Richman.[12] The order ignores the clear and consistent statements that the father believed that the child should be adopted by Ms. Richman and not Ms. Ballot. The order did not terminate the father's rights, nor make any findings of facts respecting the risk of harm to the child from abuse, neglect, or abandonment. Finally, Selawik gave notice of a hearing for July 8th.[13] The order was signed by Mr. Stoker as Presiding Judge. The order and notice for the July 8th hearing were served by Tanya Ballot on May 13th.

In June Tanya Ballot indicated that the tribe wanted "home studies" done on both the Richman and Ballot homes. On June 29th, Ms. Richman, through the undersigned attorney, submitted a copy of the home study done by Ted Sponsel.[14] The email from the undersigned expressed the concern that Arelene Ballot could not get a home study done before the next scheduled hearing, since she was going to be in Fairbanks under after July 8th. The July 8th hearing did not occur. Although no reason for the cancellation was expressed, the July hearing was not held presumably because

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[11] Ex. 4
[12] Ex. 5
[13] Ex. 6
[14] Ex. 7 & 8

no home study of Arlene Ballot could be done. Ms. Richman was informed that Tanya Ballot lost the Sponsel home study, and Ms. Richman had her attorney resend it on July 4th.[15] There is no evidence in the record that any home study was ever done on the Arlene Ballot home.

On July 28th, Mr. Stoker signed and Ms. Susie Loon served a notice of hearing scheduled for August 19, 2022 "regarding placement".[16]

On August 15, 2022, Richman, through the undersigned attorney, filed a request to dismiss[17] the Selawik proceedings because 1) the child was not eligible for tribal membership under the Selawik Constitution, and the tribe lacked jurisdiction under the terms of its Constitution and the Indian Reorganization Act, 2) the tribal court was not organized in compliance with the Tribe's Constitution, 3) the Tribe lack a body of law which might regulate this proceeding in a manner consistent with the Indian Civil Rights Act; and 4) the Tribe failed to comply with the due process rights requirements under its Constitution and under the Indian Civil Rights Act. Selawik never acted upon this request to dismiss.

The August 19th Hearing did not occur. On September 23, Selawik issued a notice for a hearing October 28th which was signed by Mr. Stoker, and served by Savanah Fletcher, the tribal attorney.[18] On October 2, Mr. Steve Hansen submitted an Entry of Appearance for Ms. Alene Ballot with Selawik.

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[15] Ex. 7
[16] Ex. 8
[17] Ex. 9
[18] Ex. 10

The October 28th hearing was cancelled on October 12th due to the non-availability of parties and the court and rescheduled for November 3, 2022 by Mr. Stoker and notice was served by Ms. Fletcher on October 20th.[19] The November 3rd hearing did not happen.

A hearing was scheduled for November 18, 2022 with the notice signed by Stoker and served by Fletcher. [20] The purpose of the hearing was to deal with and adoptive placement, Ms. Richman's motion for reconsideration, and Ms. Richman's motion to dismiss. The November 18th hearing was never held.

On November 27, 2022, Jim Davis, one of Selawik's attorneys send a notice rescheduling the November 18th hearing to December 16th.[21] The purpose of the rescheduled hearing was not stated. This notice differed from all other notices in that it was not signed by a person purporting to be a tribal judge but was signed and served by the Tribe's attorney. The notice did not include call-in information. After some exchanges, the Selawik Tribal Attorney provided call-in information. There is no evidence that the Tribal officials actually set the December 16th hearing. The evidence would suggest that it was set on by the Tribe's attorney.

The December 16th hearing, was recorded, but Richman was not provided a copy of the recording. At the hearing Presiding Judge Stoker acknowledged that both Richman and Ballot wanted placement of the child, but the type of placement under

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[19] Ex. 11
[20] Ex. 12
[21] Ex. 13

consideration was never clarified : i.e. physical guardianship, foster, pre-adoptive, adoptive, etc.

Despite all the prior discussions and requests for home studies, there was no mention at the hearing of any home studies or background check done on either Richman or Ballot. There is no evidence that a home study or background check was actually done on Ms. Arlene Ballot. If one were done, it would have found that Arlene Ballot had a substantial criminal record involving a Domestic assault conviction,[22] two convictions for bootlegging,[23] and a civil DV charge.[24] There was no discussion of these issues. In contrast, Ms. Richman had a home study and a background check done in the home study, which Richman provided to Selawik.[25] Richman's background check was clear of any criminal of DV activity.

At the December 16, 2022 hearing Ms. Richman and Ms. Arlene Ballot were given five minutes to make statements regarding why the child should be placed with them. The father, Eric Rugstad addressed the Court and expressed his continuing desire to have the child placed with Ms. Richman, asserted the fact that his parental rights had not been terminated, and stated that Ms. Richman was taking good care of the child. The paternal grandfather made statements asserting that Ms. Richman was the best placement for the child. The supporters of Ms. Richman argued that placement of the child with Ms. Richman was in the best interest of the child.

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[22] State v Ballot, 4F-00-03157CR
[23] State v Ballot, 2KB—4-00715CR and State v Ballot, 2KB-13-00413 CR
[24] Solomon v Ballot, 4FA-01-00219CI. There is a second civil DV action later in the same year in which Ms. Ballot was the Petitioner. See Ballot v Solomon, 4FA- 01-00315CI
[25] Ex. 7 & 8

Ms. Ballot and her supporters argued that the child should be placed with Arlene Ballot to comfort Ms. Ballot over the death of her daughter, and conjecture that Ms. Ballot's daughter would have wanted the child placed with Ms. Ballot. There was no testimony that placement of the child with Ms. Ballot was in the best interest of the child. At the hearing, one tribal judge (assumed to be Amelia Ballot) questioned Ms. Richman by wrongly stating that Ms. Richman had withheld visitation from Arlene Ballot during the period of time Selawik contends that Venetie had custody. Ms. Richman pointed out that Venetie only provided for Arlene Ballot's supervised visitation of the child, which Arlene declined. Amelia Ballot contested this without any reference to the Venetie record, which supported Ms. Richman's understanding of the situation.

At the conclusion of the hearing, the purported Selawik Tribal Court orally concluded that the child placement shall be changed from Nikki Richman to Arlene Ballot. The date of such change was garbled. A written order was later issued stating that that the change of custody should happen on December 21, 2022. The order was signed by Amelia Ballot rather than Mr. Stoker.

II. Standing - Ms. Richman Stands In The Shoes Of The Father Under Alaska State Law.

Since January 2020, Ms. Richman has had physical custody of the child and provided for the care of the child pursuant to a series of Power of Attorney/Delegation of Parental Rights from the father under Alaska law. See A.S. 13 26.051.[26] Recently, Mr.

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[26] Previously A.S. 13.26.020.

Rustad renewed this delegation of parental rights and power of attorney.[27] Under Alaska law, Ms. Richman stands in the shoes of the father with respect to legal and physical custody. See A.S. 13.26.066; See also *T.B. v State*, 922 P.2d 271, 275-276 (Alaska, 1996). Consequently, Ms. Richman has due process/equal protection rights respecting the limitation or termination of her parental rights. *Id.* Specifically, the interest of a parent to the care, custody and control of their children is one of the most clearly established fundamental liberty interest protected by due process and equal protection. *Troxel v Granville,* 530 U.S. 57 (2000); See also *Evans v. McTaggart,* 88 P.3d 1078, 1089 (Alaska 2004)

III. CINA R. 24 Is Inapplicable Under CINA R. 24(A) Because Selawik Issued The December Order In A Parent/Non-Parent Custody Dispute And Not A "Child Custody Proceeding" As Defined By 25 USC 1903(1).

CINA R. 24 only applies to tribal court orders when a "tribal court … exercises jurisdiction in a "child custody proceeding" as defined by section 1903(1) of the Indian Child Welfare Act." CINA R. 24(a). However, this case does not a "child custody proceeding" under ICWA because it is a custody dispute between a parent and a grandparent; i.e. the parent Mr. Rustad, and Ms. Richman standing in the shoes of the parent and Arlene Ballot, the child's maternal grandparent.

ICWA defines a "child custody proceeding as including a foster care placement, a termination of parental rights, a pre-adoptive placement or an adoptive placement. 25 USC 1903(1).[28] As the father noted, the Selawik order did not terminate the father's

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[27] Ex. 14

[28] § 1903 of ICWA defines "child custody proceeding" (to) shall mean and include—

parental rights or Ms. Richman's rights under the delegation of parental rights. Thus the December 16th order is neither a termination of parental rights nor a pre-adoptive placement nor adoptive proceedings as defined in ICWA.[29] Selawik's December 16th order does not place the child in a "foster home or institution" which means that it is not a foster care placement as defined by ICWA.[30] Rather the December 16th order simply "awards custody" of the child to Arlene Ballot. Indeed, the language of the order is very telling, in that Ms. Richman is identified as the foster placement despite that fact that she never agreed to be a foster care placement and had custody of the child under a delegation of parental rights/power of attorney from the father. Arlene Ballot is identified as the "proposed placement", while Richman is not. It is very evident that Selawik only considered awarding custody of the child to Ms. Ballot and never considered awarding custody to Ms. Richman. By its terms, the Selawik order under consideration is not a child custody proceeding as defined by 25 USC 1903(1) As such, the order signed by Amelia Ballot awarding custody of the child to Arlene Ballot, is not an order that may be registered under CINA R. 24

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(i)"foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
(ii)"termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;
(iii)"preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

[29] Id.
[30] Id.

IV. In The Alternative, if the Grandmother is A Foster Placement, the Tribe Violated the Indian Child Protection and Family Violence Prevention Act

Alternatively, a tribal foster care placement with Arlene Ballot would not comply with the Indian Child Protection and Family Violence Prevention Act (ICPA) (25 USC § 3201 et. seq.) Tribes and Tribal Courts making foster care placements are required to perform background checks and are subject to minimum federal standards of placement. See 25 USC §3207(d)(2)(B) Federal law prohibits tribes from making a foster care placement until the Tribal social service agency concludes that the proposed foster placement meets these minimal standards. 25 USC §3207(d)(2)(A)(ii) The standards of placement require the Tribe to check for criminal records, abuse registries and check for child abuse and neglect. *Id*. There is no evidence in the record that the Tribal social service agency[31] or Tribal Court complied with ICPA. If it had, the Tribe would have discovered Arlene Ballot's criminal and domestic violence records. Ms. Richman does not know if Arlene Ballot has a record of ROH's with OCS or other agencies, but it is absolutely clear that Selawik did not do comply with the federally mandated background check to answer this question.

ICPA also requires Tribes making foster care placements to establish standards of placement that are no less stringent than the federally mandated standards of placement. 25 USC 3207 (d)(2)(B)(ii) As noted, the Selawik operates under unwritten codes and has

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[31] The Tribal Social Service agency is Maniilaq Association, which operates Selawik's Self-Determination Act Compact.

not established any ICPA compliant standards. Selawik has not complied with this requirement of ICPA.

Therefore, if the December 16th Order was a foster care placement designating Ms. Ballot as a foster placement, the order violated ICPA because Selawik has not adopted ICPA foster care placement standards, did not do a foster care background check on Arlene Ballot and neither the Tribal Court nor the Tribal Social Service agency found that Ms. Ballot complied with the tribe's minimum placement standards, which do not exist. Since the December 16th order violates federal law (i.e. ICPA), it is not entitled to registration or recognition.

V. The Order Was Not Entered By A Duly Constituted Tribal Court As Required By CINA R. 24.

Under normal full faith and credit analysis, "The finality and enforceability of a judgment or court order thus first must be determined under the issuing state's law." *Lewis v Brim,* 473 P.3d 694, 697 (Alaska 2020) This requires a State Court considering giving full faith and credit to a foreign order to examine the validity of the order under the laws of the issuing jurisdiction. *Id*. In considering recognition of tribal court orders, Alaska courts use a full faith and credit analysis with regard to both matters governed by ICWA, and other domestic relations matters such as the present case.[32] Appling that analysis to the December 16th order, it is clear that the order was not valid under the laws of the Native Village of Selawik.

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[32] 25 USC § 1911(d); See *John v Baker,* 982 P.2d 738 (Alaska 1999).

The Selawik Tribal Constitution does not establish a tribal court. Rather, the Tribal Constitution provides that

> "*Use of Powers.* The governing body shall put into use such of the powers of the Village as the Village may give to it at general meetings of the membership and shall make reports of its action to the membership at general meetings." SELAWIK CONST. Art. IV, Sec. 3.[33]

As noted, the Tribe has not complied with this requirement before using "tribal court powers". The Tribal Council has never adopted a tribal ordinance establishing a tribal court. The tribal members have never met to approve the use of tribal court powers. The Tribe has never adopted a children's code, nor have the tribal members met to approve the Council expansion of powers to regulate child protection/custody. All of this violates the tribal constitution.

Moreover, this failure also violates ICPA, in that a tribe must adopt minimum standards and background checks for tribal officials dealing with children.[34] This would include tribal ICWA social workers, and tribal court judges.

CINA R. 24 and ICWA does not dispense with this analysis; rather it requires it. CINA R. 24 only permits the registration and confirmation of tribal court orders where the tribal court exercises jurisdiction in a "child custody proceeding" as defined by section 1903(1) of the Indian Child Welfare Act. ICWA defines "tribal court" to mean a court or other administrative body of a tribe which is vested with authority over child custody proceedings. 25 USC § 1903 (12) (emphasis added) In other words, ICWA only requires recognition of tribe orders where those orders comply with Tribal law. In this case, the Tribal Council, which appears to be acting as a tribal court, has not complied

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[33] Ex. 15
[34] See 48 CFR Part 98.43

with the Selawik tribal law requiring the proper authorization of a tribal court. As a consequence, the Council, acting as a tribal court, is not vested with the authority over child custody proceedings. As a result, even if the order were issued in an ICWA defined 'child custody proceedings' it fails to qualify for full faith and credit under ICWA because the Council was not vested with proper authorization under tribal law. As a result, it is no cognizable in the State courts in ICWA or non-ICWA matters.

VI. Notice Required Under CINA R. 24(e)(2) And (3) Was Not Provided.

CINA R. 24(e) contains unique notice requirements which were not followed in this case. Specifically, the rules require that the Tribe provide that notice to Ms. Richman "that a hearing to contest the validity of the registered order must be requested within 20 days after service of the notice" and that "failure to contest the registration will result in confirmation of the order and bar any further contest of the order on matters that could have been asserted" CINA R. 24(e)(2) and (3). The notice filed with this court was clearly deficient in that it failed to provide proper notice. Of course, the omission is relevant and meaningful, in that the Tribe is also seeking expedited action. As noted in the accompanying opposition, expedited action is not warranted because there is no emergency. Rather, the failure to provide proper notice is a rather transparent attempt to undermine the procedural rights under CINA R. 24, which allow Ms. Richman twenty (20) days to respond.

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VII. The Tribal Court Did Not Have Jurisdiction Over The Parties Or The Child Custody Proceeding In Which The Tribal Child Custody Order Was Entered As Required By CINA R. 24(f)(1).

CINA R. 24(f)(1) permits the respondent to challenge the tribal court based upon a failure of the tribe to have jurisdiction over the parties or the child. Ms. Richman contests the tribe's jurisdiction. As previously noted, normal full faith and credit analysis provides that "The finality and enforceability of a judgment or court order thus first must be determined under the issuing state's law." *Lewis v Brim,* 473 P.3d 694, 697 (Alaska 2020) This requires a court considering giving full faith and credit to a foreign order to examine the validity of the order under the laws of the issuing jurisdiction. In considering recognition of tribal court orders, Alaska courts use a full faith and credit analysis with regard to both matters governed by ICWA, and other domestic relations matters such as the present case.[35] Appling that analysis to the December 16th order, it is clear that the order was not valid under the laws of the Native Village of Selawik because the child was not a tribal member under the laws of the Tribe.

A Tribe only has jurisdiction over non-tribal members unless Congress provides otherwise. *Strate v A-1 Contractors,* 520 U.S. 438, 445-46 (1997); *John v Baker,* 982 P.2d 738 (Alaska, 1999). In the case of children, the child must be a member of the tribe in order for the tribe to have jurisdiction over the child's custody. *John v Baker, supra.* In this case, the child is not a member of Native Village of Selawik under the terms of the Tribe's

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[35] 25 USC § 1911(d); See *John v Baker,* 982 P.2d 738 (Alaska 1999).

Constitution. Selawik does not attempt to claim that either Ms. Richman or Mr. Rugstad are tribal members. Thus, the question is whether the child is a member of Selawik.

The Constitution for the Native Village of Selawik provides that a person may be a tribal member in three (3) cases: 1) that the person is named on the Tribe's base role, SELAWIK CONST. Art. II, Sec. 1;[36] 2) that the person is a child of a member, SELAWIK CONST. Art. II, Sec. 2; or a Native person sets up a home in the Village, SELAWIK CONST. Art. II, Sec. 4. However, **a tribal member automatically loses their tribal membership if the member leaves the village without an intention of returning to reside in the village.** SELAWIK CONST. Art. II, Sec. 3.

The child has never lived in Selawik and the only way that the child could be a tribal member is if she is a child of a tribal member. The attached affidavit of the child's biological father was filed with Selawik in connection with Ms. Richman's request to dismiss the tribal proceedings. As indicated in the affidavit, the child's mother left Selawik in 2017 or 2018 and had no intention to return and reside in Selawik.[37] Thus, the mother lost her Selawik tribal membership in 2017 or 2018. [redacted] was born in 2019, which was after Kristen Huntington's tribal membership was automatically lost under the Selawik Constitution.[38]

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[36] i.e. the "names are on the list of native residents made according to the Instruction of the Secretary of the Interior for organization in Alaska…."
[37] Ex. 16
[38] As noted in the Request to Dismiss, the prior involvement of Venetie does not change this result, since Venetie has the same provisions in its Constitution. See VENETIE CONST., Art. II, Sec. 3. Eric Rustad left Venetie without any intention to return and reside in Venetie in 2007. (See Affidavit of Eric Rustad).

The issue was raised with Selawik by Ms. Richman's request to dismiss the tribal proceedings; however, the Tribe never actually examined the issue. The Tribe just found the child to be a member without examination of the facts. Other than the father's affidavit that the child's mother left the village with no intention to return, there was no contravening evidence in the tribal records on the matter. Nobody contested that the mother left the village, and there was no evidence presented to suggest that the mother intended to return to reside in Selawik.

The Tribe's Constitution was adopted under the Indian Reorganization Act (IRA) [25 U.S.C. § 5123], which means that the majority of Tribal members must approve amendments to its constitution by using the Secretarial Election method provided for in the federal statute. 25 U.S.C. § 5123(a) This requirement is also provided for in the Tribe's Constitution. SELAWIK CONST. Art. VI. The majority of the tribe's members have never voted to amend the Tribe's Constitution, and, specifically, have never changed the membership requirements. The documents used to enroll the child into the Tribe violate the Tribe's Constitution, the Indian Reorganization Act and are not valid. As a result, the child is not a member of the tribe. It is possible for Selawik to amend its Constitution to expand its tribal membership. However, under Selawik's law that issue is for the tribal membership to determine not the Council or this body.

As with all full faith and credit analysis, CINA R. 24, requires this Court to examine whether Selawik had jurisdiction, which means that it may examine whether the Tribe's

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assertion that the child is a member of the tribe is consistent with tribal law. It clearly is not, and Selawik lacked jurisdiction to issue the December 16th order.

VIII. Ms. Richman Was Entitled To Notice, And Notice Was Not Given In A Manner Reasonably Calculated To Give Actual Notice Of The Proceedings Before The Tribal Court Issued The Order For Which Enforcement Is Sought As Required By CINA R. 24(f)(2).

CINA R. 24 requires that a tribal order is only cognizable if the parties contesting the order were afforded actual notice as to the nature of the proceeding. This reflects a similar concept that generally applicable to the recognition of tribal orders under comity or full faith and credit analysis. *Starr v George,* 175 P.3d 50, 57 58 (Alaska 2008). Tribal orders are only given effect where due process rights had not been violated. Id.; See also *Evans v Native Village of Selawik,* 65 P.3d 58 (Alaska, 2003)

As noted above, the notice for the December 16th hearing does not state what the hearing is about. The title states that it is about "placement", but the order was about awarding custody of the child, not placement as indicated by the title. The prior order for the November hearing that was cancelled indicated that the Tribe would consider Ms. Richman's motion to dismiss and motion for reconsideration. Of course, that was misleading as to the rescheduled December 16th hearing, since these issues were not taken up by the Tribe.

It is not clear what the Tribe actually did. The order states that it awarded custody of the child to Arlene Ballot, but in filing this petition, the Tribe's attorney argues that

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CINA R 24 applies, which only applies to foster care placements. The father's statement in the Tribal proceedings clearly illustrates the confusion. He pointed out that his rights have not been terminated. Absent a failure to provide for his child, he has a fundamental right to control the care and custody of his child. *Troxel v Granville,* 530 U.S. 57 (2000); See also *Evans v. McTaggart,* 88 P.3d 1078, 1089 (Alaska 2004) (Due process requires special weight must be given to a fit parent's determination as to the desirability of visitation with third parties). There was no allegation that the father had failed to provide for the child. As a result of the delegation of parental rights, Ms. Richman stands in his shoes with similar rights.

There was clearly no notice reasonably calculated to give actual notice of the proceedings before the Tribal Court.

IX. If Notice Was Given, Ms. Richman Was Not Given An Opportunity To Be Heard As Required By CINA R. 24(f)(3).

Ms. Richman was clearly not given an opportunity to be heard as required by CINA R. 24(f)(3) and normal principles of due process and full faith and credit. As noted above, if the notice for the December hearing incorporated by reference the purpose of the planned November hearing, Ms. Richman was not permitted an opportunity to present the issues in her request to dismiss or her request for reconsideration. The latter dealt with problems presented by Arlene Ballot. The tribe did not afford Ms. Richman an opportunity to address these issues.

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The face of the order illustrates that Selawik did not consider that Mr. Richman was a proposed placement. The order is crystal clear that Selawik only considered Arlene Ballot to be a proposed placement. The fact that the order does not consider nor make any comments upon the merits of placement with Ms. Richman also suggests that Selawik never considered her as a possible placement. Nothing in the hearing suggested that Selawik ever considered the possibility of such a placement with Ms. Richman. The unwillingness of Selawik to consider Ms. Richman as a placement clearly indicates that she was not given an opportunity to be heard, despite the fact that she was allowed to speak for five minutes.

Ms. Richman submitted a copy of the Sponsel home study attesting to her fitness to care for the child. She participated with the tribal home study, which amounted to a cursory phone interview. Selawik made no reference to any home study. There is nothing in the record that Selawik ever did a home study on Arlene Ballot. Ms. Richman was not permitted an opportunity to address Ms. Ballot's home study because it either does not exist nor was it provided to Ms. Richman nor in the tribal proceedings.

At best, Ms. Richman five minutes and her answers to Selawik's questions did not equate to a meaningful opportunity to be heard.

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X. Ms. Richman Requests A Hearing Per CINA R. 24(F); Witnesses; Offer of Proofs (Evd. R. 103)

Ms. Richman requests a hearing per CINA R. 24(f). She intends to call the child's father regarding the above representations regarding tribal membership of the child, and his participation in the Selawik hearings and notice issues. Ms. Cleary will testify as to the fact that Selawik officials represented to her that they do not have a tribal court and will also testify that Selawik does not get involved with persons living outside the village. Judge Tracy Charles-Smith of Dot Lake Village will testify regarding tribal court formation and compliance with ICPA as an expert witness. The paternal grandfather will testify regarding the care that the child has received from Ms. Richman. And Ms. Richman will testify regarding all matters discussed above.

XI. Conclusion.

The Court should dismiss Selawik's petition under CINA R. 24 for all the reasons stated above. In the alternative, if the petition is not dismissed, Ms. Richman requests a hearing per CINA R. 24(f).

DATED on the 29th day of December, 2022, at Fairbanks, Alaska.

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Certificate of Service
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