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8
9 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

10 Doreen Brown, Louella Stanton, Eldon
11 Brown, Dwight Brown, Elena Loya, Elisa
12 Dick, Lovelle Brown, Kevin Dick, & Leslie
Smartt Jr.,

13 Plaintiffs,

14 v.

15 Deb Haaland, Secretary, United States
16 Department of the Interior, in her official
Department of Interior, Assistant Secretary of
17 Indian Affairs, in his official capacity; Darryl
18 LaCounte, Director of the Bureau of Indian
Affairs, in his official capacity; Rachael
19 Larson, Superintendent of the Western
Nevada Agency, Bureau of Indian Affairs, in
20 her official capacity; and the United States
Department of Interior, Bureau of Indian
21 Affairs,

22 Defendants.

Case No. 3:21-cv-00344-MMD-CLB

**Defendants' Cross Motion for
Summary Judgment**

23
24 Pursuant to Fed. R. Civ. P. 56, Defendants, Deb Haaland, Secretary, United States
25 Department of the Interior, in her official capacity; Bryan Newland, United States
26 Department of Interior, Assistant Secretary of Indian Affairs, in his official capacity; Darryl
27 Lacounte, Director of the Bureau of Indian Affairs, in his official capacity; Rachel Larson,
28 Superintendent of the Western Region, Bureau of Indian Affairs, in her official capacity;

1 and the United States Department of Interior, Bureau of Indian Affairs (“Defendants”),
2 move for summary judgment against Plaintiffs, Doreen Brown, Louella Stanton, Eldon
3 Brown, Dwight Brown, Elena Loya, Elisa Dick, Lovelle Brown, Kevin Dick, & Leslie
4 Smartt Jr., (“Plaintiffs”). Plaintiffs fail to establish a violation of the Administrative
5 Procedure Act (“APA”) or the *Accardi* doctrine. Accordingly, the Court should enter
6 judgment in favor of Defendants.

7 This motion is based on the following Memorandum of Points and Authorities, as
8 well as all papers and pleadings on file.

9 Respectfully submitted this 14th day of June, 2023.

10
11 JASON M. FRIERSON
United States Attorney

12 */s/ Skyler H. Pearson*
13 SKYLER H. PEARSON
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14 *Attorneys for the United States*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction**

3 The Court should grant summary judgment in favor of Defendants. Plaintiffs fail to
4 establish the existence of a genuine issue as to any material fact that Defendants’ decision,
5 or indecision, to not reassume the Judicial Services P.L. 93-638 contract (“638 contract”)
6 with the Winnemucca Indian Colony (“WIC” or “Tribe”) amounted to an arbitrary and
7 capricious decision or an abuse of discretion in violation of the Administrative Procedure
8 Act (“APA”) or the *Accardi* doctrine. Plaintiffs cannot establish any specific trust or
9 fiduciary obligations owed by Defendants to Plaintiffs, much less establish any violation of
10 such obligations. The Administrative Record (“AR”) shows that Defendants thoroughly
11 investigated issues with the 638 contract, including those raised by Plaintiffs and then made
12 a valid discretionary decision to protect tribal sovereignty on the Colony by not reassuming
13 the judicial services contract under an emergency or non-emergency basis. Accordingly,
14 Plaintiffs’ motion for summary judgment (ECF No. 100) should be denied and the Court
15 should grant summary judgment for Defendants and dismiss this case.

16 **II. Procedural Posture**

17 Plaintiffs filed their original complaint on August 6, 2021, alleging Defendant’s¹
18 transfer of certain court documents to the wrong court violated certain United States
19 Department of Interior, Bureau of Indian Affairs (“BIA”) regulations. *See* ECF No. 6.
20 Thereafter, the parties agreed to stay the proceedings for 90 days (ECF No. 13). The Court
21 granted the stay (ECF No. 14).

22 While the stay remained in place, Plaintiffs filed an Emergency Motion for Order
23 Pursuant to LR 7-4 (ECF No. 15). Plaintiffs’ motion asked the Court to enjoin the BIA to
24 enforce an order from the Court of Indian Appeals—a court without proper jurisdiction—
25 to prevent the evictions of Plaintiffs from certain tribal lands and the demolition of their
26

27 ¹ The original complaint and first amended complaint named Deb Haaland, in her
28 official capacity as Secretary of the United States Department of the Interior as the only
defendant.

1 homes by the governing tribal council—the WIC. *See* ECF No. 15. The Court ordered
2 Defendant to respond and set the matter for expedited hearing (ECF No. 16).
3 Defendant responded, and the WIC moved to intervene and filed a response (ECF Nos. 17,
4 18, and 20). At the conclusion of the hearing, the Court denied Plaintiffs’ motion, which the
5 Court construed as a motion for a temporary restraining order, after concluding that the
6 Court of Indian Appeals lacked jurisdiction to issue the order Plaintiffs sought to have
7 enforced by the BIA. *See* ECF No. 22 (Minute Order).

8 Plaintiffs appealed to the Ninth Circuit. *See* ECF No. 23 (Notice of Appeal).
9 Although the Ninth Circuit ordered expedited briefing, it soon thereafter summarily denied
10 Plaintiffs’ request for injunctive relief. *See* ECF Nos. 24, 26.

11 After having failed to convince both this Court and the Ninth Circuit of its views,
12 Plaintiffs sought to remove the stay and amend their complaint. *See* ECF Nos. 28–29. The
13 Court lifted the stay and allowed for further briefing on the motion to amend (ECF Nos.
14 37–39).

15 Plaintiffs’ first amended complaint sought injunctive relief for violations of the Indian
16 Self Determination and Education Assistance Act (“ISDEAA”), the Administrative
17 Procedures Act (“APA”), the Fifth Amendment, and a general fiduciary duty owed by the
18 United States to Plaintiffs. *See* ECF Nos. 29, 66. Both Defendant and the WIC moved to
19 dismiss (ECF Nos. 41; 47). The Court denied Intervenor WIC’s motion but granted
20 Defendant’s motion in part. *See* ECF No. 65. Specifically, the Court held that “Plaintiffs’
21 APA claims may proceed.” (ECF No. 65 at 46). The Court “dismissed with prejudice,”
22 Plaintiffs’ ISDEAA claims “as amendment would be futile.” (ECF No. 65 at 46). The Court
23 also dismissed without prejudice and with leave to amend Plaintiff’s Fifth Amendment and
24 breach of fiduciary duty claims (ECF No. 65 at 46).

25 Plaintiffs filed their second amended complaint—an 82-page document with 46
26 attached exhibits—on June 25, 2022 (ECF No. 66). The second amended complaint alleged
27 seven causes of action and sought declaratory and injunctive relief (ECF No. 66).
28

1 Defendants moved to dismiss Plaintiffs’ second amended complaint (ECF No. 74).
2 The Court granted in part, and denied in part, Defendants’ motion (ECF No. 97).
3 Specifically, the Court dismissed parts of Plaintiffs’ APA claims but allowed “the remaining
4 parts of the APA claims to proceed.” (ECF No. 97 at 2). The Court dismissed Plaintiffs’
5 breach of fiduciary duty claims and Plaintiffs’ Fifth Amendment, due process claims (ECF
6 No. 97). Further, the Court allowed Plaintiffs’ *Accardi* claim to “proceed under the APA”
7 (ECF No. 97 at 2).

8 After Defendants moved to dismiss and WIC answered Plaintiffs’ second amended
9 complaint, Plaintiffs moved for a preliminary injunction (ECF No. 84). Plaintiffs sought
10 to enjoin Defendants to monitor and/or reassume the judicial services contract entered
11 into with the WIC, alleging that Plaintiffs “face imminent eviction and demolition of their
12 homes within the next 30 days” (ECF No 84 at 3) at the hands of the WIC. Specifically,
13 Plaintiffs asked the Court to require Defendants to “monitor and determine whether to
14 reassume judicial services at WIC on an emergency basis pursuant to 25 C.F.R. Section
15 900.247 **before** any more evictions, demolitions or arrests for trespass occur against
16 Plaintiffs.” (ECF No. 84 at 28) (emphasis in original).

17 Following expedited briefing and a hearing, the Court denied Plaintiffs’ motion
18 (ECF No. 96). The Court specifically held that Plaintiffs “failed to show a likelihood of
19 success on the merits, that public interest favor[ed] an injunction, and [that Plaintiffs]
20 failed to meet the high standard for mandatory preliminary injunctive relief” (ECF No. 96
21 at 1–2).

22 As for the likelihood of success on the merits, the Court determined that “Plaintiffs
23 fail[ed] to show that compelling the BIA to ‘monitor and determine whether to reassume
24 judicial services’ would provide any immediate relief or would immediately enjoin the WIC
25 Tribal Court’s order of eviction.” (ECF No. 96 at 2) (citation omitted). The Court thus held
26 that “Plaintiffs’ requested relief is premised on mere speculation, and the connection
27 between Plaintiffs’ claims, their requested relief, and the imminent irreparable harm of
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1 eviction [was] at best tenuous.” (ECF No. 96 at 3) (citing *Stormans, Inc. v. Selecky*, 586 F.3d
2 1109, 1119 (9th Cir. 2009); *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010)).

3 As for the public interest, the Court determined that Plaintiffs’ requested relief
4 “would be against the public interest and would infringe on tribal sovereignty” because the
5 evidence showed that the “WIC Tribal Court [wa]s currently functioning and provide[d] a
6 forum to adjudicate Plaintiffs’ grievances[,]” and that Plaintiffs sought recourse in federal
7 court only “because they [we]re dissatisfied with the Tribal Court’s decisions” (ECF No. 96
8 at 3).

9 The case then proceeded as provided in the Court’s Scheduling Order (ECF No. 83)
10 with Defendants providing the parties with the AR and then filing it with the Court and the
11 parties now moving for summary judgment (ECF Nos. 98; 100).

12 Plaintiffs moved for summary judgment (ECF No. 100). Plaintiffs seek a court order
13 “requiring Defendants to investigate and reassume” the 638 contract for judicial services
14 “under their trust and fiduciary duty, and to reassume the court services contract under the
15 Indian Self-Determination and Education Assistance Act (“ISDEAA”), and the statutory
16 obligation of 25 U.S.C. § 5329 and 5330 as Plaintiffs’ health, safety, and welfare were
17 endangered by” the WIC, “causing irreparable harm.” (ECF No. 100 at 2). Furthermore,
18 “Plaintiffs also allege the Defendants violated the *Accardi Doctrine* by not following its own
19 regulations, policies, and discrete procedures regarding reassumption determinations and
20 the timeliness of those determinations when Plaintiffs’ health and safety were at risk.” (ECF
21 No. 100 at 2).

1 **III. Statement of Undisputed Facts²**

2 1. On June 1, 2021, the WIC and the BIA enter into a 638 contract. The 638 contract
3 incorporated a settlement with a timeline for transition of jurisdiction of cases from the C.F.R.
4 Court. AR020–057.

5 2. On July 12, 2021, Nevada Legal Services, the organization representing Plaintiffs
6 in this action, sent a letter to BIA’s Bryan Bowker on behalf of certain residents of the Colony.
7 The letter challenged a transfer of jurisdiction of cases from the C.F.R. Court to the Tribal
8 Court. AR191-215.

9 3. On August 6, 2021, Nevada Legal Services, on behalf of Plaintiffs, filed a complaint
10 in the United States District Court for the District of Nevada alleging that the BIA improperly
11 transferred C.F.R. Court files to the Tribal Court instead of to the C.F.R. Appellate Court
12 (ECF No. 6).

13 4. On October 20, 2021, the WIC adopted a housing ordinance allowing for, among
14 other provisions, self-help evictions. AR255; *see also* AR254.

15 5. On November 2–3, 2021, the WIC, pursuant to its housing ordinance, began
16 removal of property and persons that the WIC considered to be in trespass. *See* ECF No. 15.

17 6. On November 4, 2021, the BIA contacted the Tribal Court Judge to inquire into
18 eviction cases transferred from the C.F.R. Court. AR182.

19 7. On November 4, 2021, Plaintiffs sought an emergency order from this Court to
20 force BIA to enforce an order coming out of the C.F.R. Appeals Court (ECF No. 15).

21 8. On November 12, 2021, BIA sent a letter to the WIC regarding a monitoring visit
22 AR169.

23 ² In their motion for summary judgment (ECF No. 100), Plaintiffs improperly rely
24 on two declarations. *See* Exhibits 1 and 2. These declarations are outside both the AR and
25 the record before the Court. As such, the Court should disregard them. *See Friends of the*
26 *Clearwater v. Dombeck*, 222 F.3d 552, 560 (9th Cir. 2000) (providing that judicial review of a
27 final agency action is generally limited to a review of the administrative record). And,
28 although exceptions to this general rule apply, *see Southwest Ctr. for Biological Diversity v.*
United States Forest Serv., 100 F.3d 1443, 1450 (9th Cir. 1996), those exceptions are
inapplicable in this case. *See id.* In any event, Plaintiffs fail to provide any reason why the
Court should look beyond the AR in this case. *See* ECF No. 100.

1 9. On November 16, 2021, Nevada Legal Services, the same organization that
2 represents Plaintiffs in this matter, sent a second letter to Bryan Bowker of the BIA. AR170

3 10. On November 17, 2021, BIA again contacted the Tribal Court Judge to discuss the
4 status of the transferred eviction cases. AR166.

5 11. On November 23, 2021, the WIC initiated eviction case(s) against the alleged
6 trespassers in the WIC Tribal Court. *See* ECF No. 94-1 at 97.

7 12. On December 8, 2021, BIA held a meeting with the WIC to discuss the Tribal
8 Court program. AR152–154.

9 13. On December 10, 2021, BIA sent a letter to the Tribal Court Judge providing
10 technical assistance. AR082.

11 14. On December 14, 2021, BIA sent a letter to the WIC outlining areas of potential
12 concern with the Tribal Court program. AR254.

13 15. On December 15, 2021, the WIC responded to the BIA’s letter regarding areas of
14 potential concern with the Tribal Courts program. AR243.

15 16. On January 20, 2022, the BIA sent another letter to the WIC regarding the Tribal
16 Court program. AR229.

17 17. On January 21, 2022, the WIC again responded to the second BIA letter regarding
18 the Tribal Courts program. AR235.

19 18. On January 27, 2022, the BIA held a teleconference with the WIC to discuss the
20 Tribal Courts program. AR080.

21 19. On July 25, 2022, the BIA held another meeting with the WIC regarding the Tribal
22 Court program. AR221.

23 20. On August 19, 2022, the BIA held an in-person visit with Tribal Court Judge. AR222.

24 21. On October 19, 2022, the BIA conducted a review meeting regarding Tribal Courts
25 program. AR313.

1 **IV. Summary Judgment Standard**

2 The APA allows for judicial review of federal agency actions. 5 U.S.C. §§ 701–706.
3 In actions brought under the APA, the Court does not follow the traditional summary
4 judgment analysis set forth in Fed. R. Civ. P. 56. That is because “there are no disputed
5 facts that the district court must resolve.” *Occidental Eng’g Co. v. INS*, 753 F.2d 766, 769 (9th
6 Cir. 1985). Instead, the Court “determines whether or not as a matter of law the evidence in
7 the administrative record permitted the agency to make the decision it did.” *Id.* “Assuming
8 that statutory procedures meet constitutional requirements, the court is limited to a
9 determination of whether the agency substantially complied with its statutory and
10 regulatory procedures, whether its factual determinations were supported by substantial
11 evidence, and whether its action was arbitrary, capricious or an abuse of discretion.” *Albert*
12 *v. Chafee*, 571 F.2d 1063, 1065 (9th Cir. 1977) (quoting *Toohey v. Nitze*, 429 F.2d 1332, 1334
13 (9th Cir. 1970)); 5 U.S.C. § 706(2).

14 Plaintiff bears the burden of demonstrating the agency’s action is arbitrary and
15 capricious. *See George v. Bay Area Rapid Transit*, 577 F.3d 1005, 1011 (9th Cir. 2009) (quoting
16 *City of Olmsted Falls, Ohio v. FAA*, 292 F.3d 261, 271 (D.C. Cir. 2002)). A Court must be
17 “highly deferential” in an APA review case and must “presum[e] the agency action to be
18 valid” *Nw. Ecosystem Alliance v. U.S. Fish & Wildlife Serv.*, 475 F.3d 1136, 1140 (9th Cir.
19 2007).

20 **V. Argument**

21 The Court should grant summary judgment in favor of Defendants. Plaintiffs fail to
22 establish the existence of a genuine issue of material fact that Defendants’ decision or
23 indecision to not reassume the 638 contract on either an emergency or non-emergency
24 basis amounted to an arbitrary and capricious decision or an abuse of discretion. In fact,
25 the AR establishes that Defendants respected the WIC’s tribal sovereignty while still
26 investigating issues surrounding the judicial services contract. The Court should deny
27 Plaintiffs’ motion for summary judgment because Plaintiffs fail to establish any specific
28 trust duties as required by law, let alone establish a breach of such a duty. Furthermore, the

1 AR establishes that Defendants investigated Plaintiffs' claims in accordance with its rules
2 and regulations. Plaintiffs may dislike Defendants' decision because it was not in their
3 favor. However, such decision or indecision, whichever way Plaintiffs wish to characterize
4 it, does not amount to an arbitrary and capricious determination or an abuse of discretion
5 under the APA. Furthermore, Plaintiffs are unable to establish, within the AR or
6 otherwise, that the alleged imminent harms (evictions and demolitions carried out by the
7 WIC) were caused by or even facilitated by the Judicial Services 638 contract. Plaintiffs
8 consequently are unable to establish how the action requested of BIA (reassumption of the
9 Judicial Services program) would have prevented the WIC from effectuating the evictions
10 and related actions. Accordingly, the Court should grant summary judgment for
11 Defendants and dismiss this case.

12 **A. Plaintiffs Fail to Establish Any Specific Trust Responsibility**

13 Plaintiffs argue generally "that the Defendants breached their trust responsibility to
14 Plaintiffs by failing to protect Plaintiffs' rights, safety, and welfare, and to preserve Plaintiffs'
15 interest in the 20 acres of land on which they formerly resided" (ECF No. 100 at 3–4).
16 Plaintiffs' arguments fail.

17 First, Plaintiffs fail to establish their generalized assertions by either fact or law. *See*
18 ECF No. 100 (providing no record citation to the AR or any legal precedent to establish the
19 existence of a specific fiduciary duty between Plaintiffs and Defendants). Second, the AR
20 shows that Defendants entered into a 638 contract with the WIC, not Plaintiffs (AR020–057).
21 And finally, although there is "a general trust relationship between the United States and the
22 Indian people," that general trust relationship does not, by itself, create legally enforceable
23 obligations for the United States. *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 173
24 (2011) (quoting *United States v. Mitchell*, 463 U.S. 206, 225 (1983) ("*Mitchell II*"). The United
25 States "assumes Indian trust responsibilities only to the extent it expressly accepts those
26 responsibilities by statute." *Id.* at 177. Even "a statute or regulation that recites a general trust
27 relationship between the United States and the Indian People is not enough to establish any
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1 particular trust duty.” *Hopi Tribe v. United States*, 782 F.3d 662, 667 (Fed. Cir. 2015) (citation
2 omitted).

3 Plaintiffs do not indicate which rights Defendants did not protect. Plaintiffs fail to
4 explain how Defendants ignored Plaintiffs’ safety and/or welfare. In fact, it seems that any
5 issue Plaintiffs take in this section arise from the Tribe’s decision to engage in self-help
6 evictions and demolitions. Plaintiff can tie neither the decision to engage in self-help, nor the
7 evictions or demolitions themselves to Defendants since these actions were taken by the Tribe.
8 Plaintiffs additionally fail to establish their legal interest in tribal lands. Accordingly, because
9 Plaintiffs cannot show the existence of any specific trust or fiduciary relationship between
10 themselves and Defendants, or point the Court to how Defendants specifically breached that
11 trust, the Court should grant summary judgment for Defendants. *See United States v. Navajo*
12 *Nation*, 537 U.S. 488, 506 (2003) (“a Tribe must identify a substantive source of law that
13 establishes specific fiduciary or other duties, and allege that the Government has failed to
14 faithfully perform those duties.”) (citation omitted) (emphasis added).

15 **B. Defendants Investigated Plaintiffs’ Claims and Discharged Their Statutory**
16 **Obligations**

17 The AR provides that after entering into the 638 contract with the WIC, Defendants
18 continued to monitor the WIC’s performance under it as required by statute and regulation.
19 Defendants’ monitoring efforts included: (1) contacting the WIC’s Tribal Court Judge about
20 eviction cases involving Plaintiffs transferred from the C.F.R. Court (AR166, AR182); (2)
21 sending, receiving, and responding to letters to the WIC and Plaintiffs (AR191–215, AR169–
22 70, AR082, AR254, AR243, AR229, AR235); (3) engaging in monitoring visits with the WIC
23 (AR169, AR222); and (4) holding meetings with the WIC (AR080, AR152–54, AR221,
24 AR313).

25 Overall, the AR establishes that Defendants were apprised of happenings at the
26 Colony, knew of issues involving the WIC’s performance of the judicial services contract—
27 including those flagged by Plaintiffs, and respected the WIC’s tribal sovereignty by working
28 with it to help it discharge its duties under the contract. As such, no genuine issue as to any

1 material fact exists to show that Defendants failed to investigate what has happening on
2 Colony lands or breach any statutory or regulatory duty. Furthermore, Plaintiffs fail to
3 establish that Defendants decision to not reassume the judicial services contract, under either
4 an emergency or non-emergency basis amounts to an arbitrary and capricious decision or an
5 abuse of discretion. Furthermore, Plaintiffs argue that the evictions conducted by the WIC
6 constitute immediate and irreparable harm (ECF No. 100 at 10–12). However, Plaintiffs do
7 not cite anything within the AR, or even outside the AR, that shows a direct connection
8 between these alleged harms and the 638 contract. In other words, Plaintiffs cannot establish
9 that the administration of the 638 contract caused or led to the alleged imminent and
10 irreparable harms. Any connection between the two is at best tenuous and speculative.
11 Requiring or expecting Defendants to reassume the 638 contract, a drastic measure, without
12 a showing that the 638 contract itself is leading to factors listed in 25 C.F.R. § 900.247 would
13 be unreasonable. Therefore, Defendants acted reasonably through their thorough and
14 ongoing oversight over the program while respecting the sovereignty that is central to the
15 spirit and mission of P.L. 93-638. *See* 25 U.S.C. § 5302. Accordingly, summary judgment
16 should be granted for Defendants.

17 **VI. Conclusion**

18 For the foregoing reasons Plaintiffs’ motion should be denied, the Court should grant
19 summary judgment for Defendants and dismiss this case.

20 Respectfully submitted this 14th day of June, 2023.

21
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