

Title:

Alto v. Black, ---F.3d --- , 13 Cal. Daily Op. Serv. 13, 995, WL 6813816 (9th Cir.) (2013).

Intro:

In *Alto v. Black*, the 9th Circuit held that an appeal from the Bureau of Indian Affairs' (hereinafter "BIA") decision regarding membership was reviewable under the APA, and that the tribe was not a necessary party to the suit because of their delegation of final membership determination to the BIA.

Case History:

This case involves a membership dispute between the descendants of Marcus Alto, Sr. (hereinafter "the Alto's") and the San Pasqual Band of Mission Indians (hereinafter "the Band"). While typically the federal government leaves tribes to determine membership based on their sovereignty, the Band specifically delegated final authority over enrollment decisions to the Secretary of the Interior.¹

The Altos applied and were added to the Band's membership roll in 1991.² An individual member of the Band challenged the Altos' membership before the Band's Enrollment Committee in 2007, alleging that because Marcus Alto, Sr. had been adopted by his ancestors with Indian blood, he did not meet the requisite blood quantum requirement for membership. The BIA Regional Director denied the request of the Committee that the Alto's be disenrolled based on the new evidence.³ The Assistant Secretary reversed the Regional Director's decision, and issued a 22 page Disenrollment Order, which motivated the Alto's to file a Temporary Restraining Order and Preliminary Injunction in Federal District Court, listing the Assistant Secretary in his official capacity, and not listing the Band as a party to the suit.⁴ The Altos' federal claim sought an injunction to preserve their rights as members of the Band pending final adjudication, and sought relief from erroneous decision making by the BIA under the APA.⁵ The Band sought to intervene as a necessary party, and sought dismissal on the grounds of failure to join a necessary party to the suit.⁶ Joinder was denied and the Preliminary Injunction was granted.⁷ The Assistant Secretary issued a Memorandum Order to the Band advising them that failure to comply with the injunction would be considered a denial of the Altos' due process rights, but did not issue any orders compelling the Band to comply.⁸ The Band was then granted an intervention as a special appearance and moved to dissolve the injunction for lack of jurisdiction. The BIA objected to the Band's contention that it was a necessary party to the suit, but agreed that the court lacked subject matter jurisdiction for the causes of action. The Court specifically delayed adjudication on the issue of jurisdiction, and refused to dissolve the injunction or dismiss the action.⁹ The Band appealed this decision.

¹ *Alto v. Black*, ---F.3d --- , 13 Cal. Daily Op. Serv. 13, 995, WL 6813816 (9th Cir.) (2013).

² *Id.* at 2.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.* at 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 4.

⁹ *Id.* at 5.

Decision:

The court began by clarifying the scope of the preliminary injunction, which it took to be modified by the Memorandum Order issued by the BIA following federal regulations, which the court did not order modified upon the Altos' objection. It remanded to the lower court to clarify the injunction for the purpose of reflecting the limited scope of the order.

The court then turned to the Band's challenge to subject matter jurisdiction, and held that it did have jurisdiction as the BIA falls under the APA for review of final agency action. Where typically membership would be a matter of tribal law, the Band's delegation of final membership questions to the BIA results in the ability of Federal courts to review their decisions under the arbitrary and capricious standard required of government agency action.¹⁰ The federal courts may apply tribal substantive law to APA appeals in the same manner that they would apply state law to diversity actions.¹¹

Finally, the court concluded that the Band was not a necessary party for the action, since the Band's constitution delegated membership questions to the BIA and the BIA was a party to the suit via its official in his official capacity.¹²

Relevance:

Allowing review of final BIA action by federal courts in regards to membership questions delegated to the agency affects how tribes may participate in suits regarding membership in the future, or ultimately how tribes choose to determine membership and how those appeals are to be made. As the court explained in its own footnote: "Such membership disputes have been proliferating in recent years, largely driven by the advent of Indian gaming, the revenues from which are distributed among tribal members."¹³

¹⁰ *Id.* at 8.

¹¹ *Id.* at 9.

¹² *Id.* at 10.

¹³ *Id.*, FN 2. *citing* Suzianne D. PainterThorne, *If You Build It, They Will Come: Preserving Tribal Sovereignty in the Face of Indian Casinos and the New Premium on Tribal Membership*, 14 *Lewis & Clark L.Rev.* 311, 313 & nn. 8–10, 320 (2010); *see also Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1014–15 (9th Cir.2007); *Lewis*, 424 F.3d at 960.