

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 24, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KYLE R. SPENCER,

Plaintiff,

v.

TAMARA SALUSKIN, et al.,

Defendants.

No. 2:23-CV-00283-SAB

**ORDER GRANTING MOTIONS
TO DISMISS; CLOSING FILE**

Pending before the Court are Defendant Crystal L. Buck’s Motion to Dismiss, ECF No. 6, and the Yakama Nation Defendants’ Motion to Dismiss Complaint, ECF No. 11. Defendants are represented by Ethan Jones and Marcus Shirzad. Plaintiff is representing himself in this matter.

Plaintiff is suing current Yakama Nation Government employees and former Yakama nation Tribal Court judges and employees, along with the mother of his children, alleging that these Defendants are conspiring to deprive him of his parental and individual rights.

Plaintiff’s Complaint

Plaintiff is bringing claims under 18 U.S.C. § 241 and the Civil Rico statute, 18 U.S.C. § 1964. He asserts the tribal courts do not have jurisdiction over himself or his children. He asserts the Yakama tribal courts’ assertion of exclusive jurisdiction against him and his children is motivated by a desire to harass and is being conducted in bad faith. Plaintiff asserts that he was not aware or notified of

1 any tribal court cases that were being decided against him. He is seeking \$3 million
2 in damages, declaratory relief and injunctive relief.

3 **Motion Standard**

4 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to move for
5 dismissal if the plaintiff's complaint fails to sufficiently allege federal subject
6 matter jurisdiction.¹ However, "jurisdictional dismissals in cases premised on
7 federal-question jurisdiction are exceptional" and are permitted only when the
8 claim is "patently without merit." *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th
9 Cir. 1987). A jurisdictional determination is intertwined with the merits of a case
10 when a statute provides the basis for both subject-matter jurisdiction and the
11 plaintiff's substantive claim for relief. *Safe Air for Everyone v. Meyer*, 373 F.3d
12 1035, 1039-40 (9th Cir. 2004). Tribal sovereign immunity is a quasi-jurisdictional
13 issue, and the court cannot proceed without first determining if it has jurisdiction.
14 *Pistor v. Garcia*, 791 F.3d 1104, 1115 (9th Cir. 2015).

15 Federal Rule of Civil Procedure 12(b)(6) allows a party to move for
16 dismissal if the plaintiff has failed to state a claim upon which relief can be
17 granted. Fed. R. Civ. P. 12(b)(6). On a motion to dismiss, all well-pleaded
18 allegations of material fact are taken as true and construed in a light most favorable
19 to the non-moving party. *Wylar Summit P'ship v. Turner Broad. Sys., Inc.*, 135
20 F.3d 658, 661 (9th Cir. 1998).

21 **18 U.S.C. § 241**

22 18 U.S.C. § 241 provides:

23 If two or more persons conspire to injure, oppress, threaten, or
24 intimidate any person in any State, Territory, Commonwealth,
25 Possession, or District in the free exercise or enjoyment of any right
26

27 ¹ Federal Rule 12(h)(3) states: If the court determines at any time that it lacks
28 subject-matter jurisdiction, the court must dismiss the action.

1 or privilege secured to him by the Constitution or laws of the United
2 States, or because of his having so exercised the same; or

3 If two or more persons go in disguise on the highway, or on the
4 premises of another, with intent to prevent or hinder his free exercise
5 or enjoyment of any right or privilege so secured—

6 They shall be fined under this title or imprisoned not more than ten
7 years, or both; and if death results from the acts committed in
8 violation of this section or if such acts include kidnapping or an
9 attempt to kidnap, aggravated sexual abuse or an attempt to commit
10 aggravated sexual abuse, or an attempt to kill, they shall be fined
or may be sentenced to death.

11 The violation of a federal statute “does not automatically give rise to a
12 private cause of action” to the person harmed by that violation. *Northstar Fin.*
13 *Advisors, Inc. v. Schwab Investments*, 615 F.3d 1106, 1115 (9th Cir. 2010).
14 “Instead, the statute must either explicitly create a private right of action or
15 implicitly contain one.” *Id.* In *Aldabe v. Aldabe*, the Ninth Circuit held that § 241
16 does not provide a basis for civil liberty. 616 F.2d 1089, 1092 (9th Cir. 1980).

17 **18 U.S.C. § 1964**

18 Section 1964 of the Racketeer Influenced and Corrupt Organization Act
19 (RICO) provides a private right of action for treble damages in “[a]ny person
20 injured in his business or property by reason of a violation” of the Act’s criminal
21 prohibitions. § 1964(c); *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 641
22 (2010). Section 1962, in turn, sets forth the prohibited activities. Section 1961
23 provides the definitions.

24 **Sovereign Immunity**

25 Suits against Indian tribes are barred by sovereign immunity absent a clear
26 waiver by the tribe or congressional abrogation. *Okla. Tax. Comm’n v. Citizen*
27 *Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991). Tribal sovereign
28

1 immunity may be forfeited if the Tribe fails to assert it. *Acres Bonusing, Inc. v.*
2 *Marston*, 17 F.4th 901, 907 (9th Cir. 2021). That said, although sovereign
3 immunity is only quasi-jurisdictional in nature, Rule 12(b)(1) of the Federal Rules
4 of Civil Procedure is the proper vehicle for invoking sovereign immunity from suit.
5 *Id.* (quotation omitted). Consequently, when a defendant timely and successfully
6 invokes tribal sovereign immunity, the court lacks subject matter jurisdiction. *Id.* at
7 908. On the other hand, tribal sovereign immunity does not bar actions for
8 damages against individual tribal employees and tribal agents in their personal
9 capacities. *Id.*

10 A suit against a governmental official may be a suit against the sovereign,
11 but not always. In such contexts, courts look to whether the sovereign is the real
12 party in interest to determine whether sovereign immunity bars the suit. *Id.*
13 (quotation omitted). The critical question is whether the remedy sought is truly
14 against the sovereign. *Id.* (quotation omitted). An official-capacity claim, although
15 nominally against the official, “in fact is against the official’s office and thus the
16 sovereign itself.” *Id.* Because the relief requested effectively runs against the
17 sovereign, the sovereign is the real party in interest, and sovereign immunity may
18 be an available defense. *Id.*

19 Suits against officials in their personal capacities are different. In those
20 cases, the plaintiff seeks to impose individual liability upon a government officer
21 for actions taken under color of law. *Id.* (quotation omitted). There, the real party
22 in interest is the individual, not the sovereign. *Id.* In that case, although the
23 defendants may be able to assert personal immunity defenses, sovereign immunity
24 does not bar the suit. *Id.* (quotation omitted)

25 Tribal judges are afforded absolute judicial immunity. *Id.* at 914. Judicial
26 immunity does not apply in two circumstances: (1) a judge is not immune from
27 liability for nonjudicial actions; and (2) a judge is not immune for actions, though
28 judicial in nature, taken in the complete absence of all jurisdiction. *Id.* (quotation

1 omitted).

2 **Analysis**

3 The Tribal Defendants are afforded sovereign immunity or absolute
4 immunity from this suit. The real party in interest is the Yakama Tribe.
5 Additionally tribal judges are afforded absolute immunity and Plaintiff has not
6 alleged facts to support any exceptions to this doctrine.

7 Moreover, as set forth above, 18 U.S.C. § 241 does not provide a private
8 cause of action, and Plaintiff has not alleged sufficient facts to state a claim under
9 RICO.

10 Accordingly, **IT IS HEREBY ORDERED:**

- 11 1. Defendant Crystal Buck’s Motion to Dismiss, ECF No. 6, is
12 **GRANTED.**
- 13 2. The Yakama Nation Defendants’ Motion to Dismiss, ECF No. 11, is
14 **GRANTED.**
- 15 3. Plaintiff’s Motion to Strike and Deny Motion to Dismiss, ECF No. 18, is
16 **DENIED.**
- 17 4. The Clerk of Court is directed to enter judgment in favor of Defendant
18 and against Plaintiff.

19 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
20 forward copies to Plaintiff and counsel, and **close** the file.

21 **DATED** this 24th day of January 2024.



25

26 

27 Stanley A. Bastian
28 Chief United States District Judge