



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Miami Agency
P.O. Box 391
Miami, Oklahoma 74355

June 24, 2022

Joe Keene, Esq.
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401 S. Boston Avenue, Suite 2200
Tulsa, OK 74103

Mr. Keene:

This is in response to your June 13, 2022, letter that described an intra-tribal leadership dispute within the Modoc Nation (“Nation”). The dispute is apparently between what you identified as the “Miller Council,” led by Kirk Miller; and what we have chosen to call the “Follis Council,” led by Bill Follis. You advised that you represent the Miller Council and requested the Bureau of Indian Affairs (“BIA”) recognize the Miller Council as the Nation’s lawful governing body on an interim basis and somehow allow the Miller Council access to Modoc Nation property, including the Nation’s bank accounts and files.

The Interior Board of Indian Appeals has repeatedly held that the BIA may not issue a stand-alone tribal leadership recognition decision because doing so would impermissibly interfere in the tribal resolution of internal political issues. See Cayuga Indian Nation of New York v. Eastern Regional Director, 58 IBIA 171 (2014). Courts have also made clear that it “is a bedrock principle of federal Indian law that every tribe is capable of managing its own affairs and governing itself.” Cayuga Nation v. Howard Tanner, 824 F.3d 321, 327 (2nd Cir. 2016) (citing California Valley Miwok Tribe v. United States, 515 F.3d 1262, 1263 (D.C. Cir. 2008)). The mere existence of an internal dispute and alleged resulting paralysis within a tribe does not permit the BIA to decide who constitutes that tribe’s legitimate leadership. See id. at 328; (see also Cf. Goodface v. Grassrope, 708 F.2d 335, 338-39 (8th Cir. 1983); Alturas Indian Rancheria v. Acting Pacific Regional Director, 54 IBIA 138, 143-44 (2011)).

Accordingly, the BIA must refrain from generally recognizing any particular individual or group of individuals as the duly elected leadership of the Nation and allow it to resolve the dispute without BIA intervention. The BIA only has the authority to make recognition decisions regarding tribal leadership “when it is truly necessary as an incident to satisfying some separate *Federal obligation*.” Cayuga Indian Nation of New York v. Eastern Regional Director, BIA, 58 IBIA 171, (2014) (emphasis added). There currently exists no separate *Federal obligation* for which the BIA must make any interim recognition decision, and therefore, cannot do so at this juncture with respect to the Nation.

You further suggest that the BIA must recognize the June 7, 2022, temporary restraining order of what we will refer to as the “Miller Faction Modoc Nation Tribal Court” purporting to enjoin the Follis Council from holding themselves out as the lawful elected Council of the Nation and ordering said Follis Council to stop taking actions on behalf of the Nation. We note the simultaneous existence of what we will call the “Follis Faction Modoc Nation Tribal Court” and litigation pending therein.

We make no comment, finding, or decision regarding the legitimacy of these apparently competing

“tribal courts.” Instead, we would remind the Miller Council that in accordance with federal regulations found at 25 C.F.R. § 11.100, the Miami Agency, BIA, currently operates a Court of Indian Offenses with jurisdiction over certain matters arising within the Nation. We would further respectfully direct the attention of the said Council to the regulations at 25 C.F.R. §§ 11.104 and 11.118, which regulations speak for themselves and are the best evidence of the principles of federal law and policy set forth therein.

This decision may be appealed to the Eastern Oklahoma Regional Director in accordance with the regulations in 25 C.F.R. Part 2. The regulations are available online free of charge at <http://www.law.cornell.edu/cfr/text/25/part-62>. Your notice of appeal must be filed in the Superintendent’s office at P.O. Box 391, Miami, Oklahoma 74355 within 30 days of the date you receive this decision. The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to the Superintendent’s office. Your notice and the envelope in which it is mailed should be clearly labeled “Notice of Appeal.” Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your notice of appeal to the Regional Director at: Regional Director, Bureau of Indian Affairs, Eastern Oklahoma Region, Eastern Oklahoma Regional Office, P.O. Box 8002, Muskogee, Oklahoma 74402-8002.

You may include a statement of reasons with your notice of appeal, explaining why you believe the decision being appealed is in error. If you do not include your statement of reasons with your notice of appeal, you must mail or deliver it to the Superintendent’s office within 30 days after you file your notice of appeal. The statement of reasons and the envelope in which it is mailed should be clearly labeled “Statement of Reasons.” It must be accompanied by or otherwise incorporate all supporting documents. You must send copies of your statement of reasons to all interested parties and the Regional Director.

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

RHONDA L. LOFTIN

Digitally signed by RHONDA L. LOFTIN
Date: 2022.06.24 13:26:26 -05'00'

Rhonda L. Loftin
Superintendent

cc: Bill Follis, 22 North Eight Tribes Trail, Miami, Oklahoma 74354
Wm. Blake Follis, Senior Associate Attorney, Peebles Kidder
Diane Jobe, Tribal Government Officer, Eastern Oklahoma Region
Eddie Streater, Regional Director, Eastern Oklahoma Region
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