Loonsfoot v. Brogan, ___ F. Supp. 3d ___, 2021 WL 1940400 (W.D. Mich. May 14, 2021)

- **Holding:** Petition for writ of habeas corpus under 25 U.S.C. § 1303 by two tribal members was dismissed for failure to exhaust tribal court remedies.
- **Summary:** In March 2021, a search warrant was issued by the Keweenaw Bay Indian Tribal Court for the seizure of various items of, and for blood draws from, two tribal members, husband and wife, and two of their children. The warrant was based on allegations that the children were "possibly ingesting drugs." The mother was eventually arrested for disobeying the order when she refused to have blood drawn. The father is also incarcerated in the same tribal facility for an unspecified reason. Petitioners filed suit seeking habeas corpus relief under the Indian Civil Rights Act, 25 U.S.C. § 1303, alleging in part that they have "followed the .... appeals process but haven't heard anything on the matter except [a tribal trial court judge] stating that they [sic] were moving forward" and that "[i]t is apparent the appeal was never filed with the appellate division of the tribal court."

  Conducting a preliminary review required for state habeas corpus cases under 28 U.S.C. § 2254, the district court dismissed the petition for failure exhaust tribal court remedies. It recognized that "[t]he statutory exhaustion requirement does not apply to habeas petitions under 25 U.S.C. § 1303." Nevertheless, citing numerous federal court decisions, the court held that "before Petitioners may proceed with a habeas petition presenting ICRA claims, they must first exhaust their tribal remedies." It also recognized that "the exhaustion requirement is not inflexible" but found none of the established justifications for departure from the requirement present:

  > Petitioners do not provide facts which support a claim that the assertion of tribal jurisdiction is motivated by bad faith or that the tribal court does not have jurisdiction over the claims that have resulted in Petitioners' detention. Petitioners indicate that they have little faith in the appellate process offered by the tribal court; however, they have not shown that the process is futile. At most they complain that the appeals they have pursued thus far have not yet been resolved to their satisfaction.

  The court further stated that "Petitioners have not given the tribal trial court, much less the tribal appellate court, an opportunity to finally resolve the constitutional issues they raise in their habeas petition." The court therefore dismissed the petition without prejudice.
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