

In the United States Claims Court

No. 102-63

(FILED MAY 12, 1989)

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MAY 15 1989

PIRTLE, MORISSET
SCHLOSSER & AYER

JESSIE SHORT, ET AL.,)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES,)
)
 Defendant,)
)
 and)
)
 THE HOOPA VALLEY TRIBE OF INDIANS,)
)
 Defendant-Intervenor.)

ORDER

CLARIFICATION ORDER REGARDING THE MANIFEST INJUSTICE EXCEPTION CRITERIA

The defendant filed a motion on May 5, 1989 requesting expedited consideration and clarification concerning the manifest injustice exception criteria. The defendant requests the court to clarify the applicability of proposed criteria discussed in the court's order of June 19, 1986. A status conference was held by telephone on May 11, 1989 where the parties discussed the defendant's motion and its implications.

The June 19, 1986 order stated, with regard to criteria proposed by the defendant for the application of the manifest injustice exception:

The court agrees that plaintiffs satisfying the defendant's proposed standards will qualify under the manifest injustice exception, if not qualified under Eligibility Standards A-E. But by indicating that those plaintiffs who meet defendant's proposed standards will qualify, the court does not mean to suggest that plaintiffs who fail to meet the standards will not qualify. The court refuses to adopt the standards proposed by the defendant as the only circumstances for determining "manifest injustice."

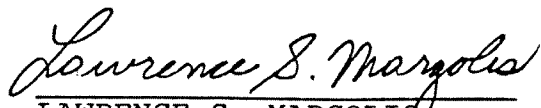
Order of June 19, 1986 at 3. The court thus indicated that individuals who can establish that they meet the standards proposed by the defendant would qualify under the manifest injustice exception.

The need for clarification on this question arose within the context of briefing qualification motions for a small number of plaintiffs who would allegedly be qualified under the third criteria proposed by the defendant and considered in the June 19, 1986 order. That third proposed standard would allow the qualification of:

3. Plaintiffs (1) who are children born to a qualified Schedule D or E plaintiff and (2) who, if born after October 1, 1949 and before August 9, 1963, possess $\frac{1}{2}$ Indian blood or, if born on or after August 9, 1963, are of at least $\frac{1}{2}$ Indian blood, derived exclusively from a qualified parent or parents.

Order of June 19, 1986 at 2-3. Regarding the outstanding motions of individuals who may meet the criteria of this standard, the statement that "[t]he court agrees that plaintiffs satisfying the defendant's proposed standards will qualify under the manifest injustice exception" is still valid. It should be emphasized, as the court stated in the June 19, 1986 order, that "[i]t was the court's desire to avoid harsh inflexibility" and that application of the manifest injustice exception "necessarily involves case-by-case analysis."

The court rejects the characterization suggested by the Tribe that an acknowledgement of the applicability of the statements made in the June 19, 1986 order would in effect constitute a declaratory judgment on the meaning of the Hoopa-Yurok Settlement Act. This order shall not be so construed. The court accepts the assurances of the plaintiffs that the acknowledgement of the applicability of the court's statements in the June 19, 1986 order will not be used as a vehicle to relitigate hundreds of previously decided manifest injustice entitlement motions, but will rather allow the parties to focus on establishing the qualification of a small number of individuals who may qualify under the third standard proposed by the defendant and discussed in the June 19, 1986 order.


LAWRENCE S. MARGOLIS
Judge, U.S. Claims Court