

# In the United States Claims Court

(FILED JUNE 13, 1986)

JESSIE SHORT, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 102-63
	)	
THE UNITED STATES,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
THE HOOPA VALLEY TRIBE OF INDIANS,	)	
	)	
Defendant-Intervenor.	)	

## O R D E R

### REGARDING D & E PLAINTIFFS WITH NON-PLAINTIFF PARENTS

On April 30, 1985, the defendant-intervenor Hoopa Valley Tribe moved for partial summary judgment against plaintiffs who seek to qualify under Eligibility Standards D or E, but whose parents are not plaintiffs in this suit. The government also filed a motion seeking similar relief. Numerous other pleadings of the parties discuss this issue. For the reasons discussed below, the court denies the motions for partial summary judgment.

Eligibility Standards D and E are similar to Hoopa Valley Tribe enrollment schedules that permitted children of Tribe members to enroll and become eligible to receive per capita distributions of Reservation revenues. But the Standards are not identical to the enrollment schedules. The purpose of the Standards is to determine fairly which plaintiffs should qualify as "Indians of the Reservation" and should share in the distribution of revenues, because they were wrongfully excluded from doing so.

Eligibility Standard D qualifies

[p]laintiffs of at least  $\frac{1}{4}$  Indian blood, born after October 1, 1949 and before August 9, 1963 to a parent who is or would have been, when alive, a qualified Indian of the Reservation under any of the [Standards A, B or C], or has previously been held entitled to recover in this case.

Short v. United States, 719 F.2d 1133, 1144 (Fed. Cir. 1983).

Eligibility Standard E qualifies

[p]laintiffs born on or after August 9, 1963, who are of at least  $\frac{1}{4}$  Indian blood, derived exclusively from the qualified parent or parents who is or would have been when alive a qualified Indian of the Reservation under any of the [Standards A, B or C], or has previously been held entitled to recover in this case.

Id.

The defendant-intervenor and defendant argue that a "qualified Indian" is, by definition, an Indian qualified by the court in this litigation. Hence, they argue, only plaintiffs whose parents are parties to this litigation can qualify under Standards D or E. In other words, plaintiffs cannot qualify under Standards D or E if their parents were "Indians of the Reservation" who died without joining in this case or who chose not to participate.

This argument loses sight of the individual nature of the claims being asserted and the ultimate goal of Standards D and E--that is, to identify Indians of the Reservation. The fact that a plaintiff's parent (or parents) died does not make an otherwise qualified plaintiff a non-Indian. The Standards must be read in light of their intended purpose.

This court will qualify those plaintiffs under Standards D and E who can prove that they meet all of the criteria set forth in the Standards. Plaintiffs must prove that the parent or parents through whom they claim would have been considered a qualified "Indian of the Reservation" under Standards A, B or C, had they participated in this litigation.

The defendant-intervenor's and defendant's motions for partial summary judgment are denied.

*Lawrence S. Margolis*  

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