

April 6, 2024,

Department of the Interior
Office of the Assistant Secretary-Indian Affairs
Attn: Office of Federal Acknowledgment
1849 C Street, N.W.
Washington, DC 20240

Dear Sir or Madam,

In accordance with 25 CFR 83.22(b)(1)(iv), we are submitting for your review and distribution our individual interested party comments on the documented petition of the Fernandeno Tataviam Band of Mission Indians. Upon request, we would also be happy to provide a digital copy of these comments in pdf format.

Please confirm your receipt of these comments and let us know if you have any questions or concerns.

Regards,

[REDACTED]
Michael L. Lawson
Alex Sanders
[REDACTED]

Annandale, Virginia 22003
[REDACTED]

**COMMENTS ON THE DOCUMENTED
PETITION FOR FEDERAL
ACKNOWLEDGMENT PRESENTED BY
THE FERNANDEÑO TATAVIAM BAND
OF MISSION INDIANS**

Submitted to the
U.S. Department of the Interior
Office of Federal Acknowledgment

by

Alex Sanders
Michael L. Lawson

April 6, 2024

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EXECUTIVE SUMMARY

This document contains our comments regarding the evidence the Fernandeno Tataviam Band of Mission Indians (FTB) has presented to the U.S. Department of the Interior (DOI) for Federal acknowledgment as a tribe in accordance with Part 83 of Title 25 of the *Code of Federal Regulations* (25 CFR 83). Our comments address and evaluate the evidence presented by the petitioner in its 2023 submission as Petition #403. At times, we also include evidence that the petitioner submitted in its 2009 petition and three supplemental reports it submitted in 2015 when it was under consideration as Petition #158. The DOI will evaluate this evidence under the revised regulations published by the Assistant Secretary of the Interior for Indian Affairs (AS-IA) as a Final Rule in the *Federal Register* on July 1, 2015. In accordance with § 83.7(b) of the revised regulations, the Fernandeno petitioner proceeded under the 2015 regulations.

We have concluded that the Fernandeno petitioner does not appear to have sufficient evidence at present to meet three of the seven mandatory criteria for Federal acknowledgment under the 2015 regulations. For reasons explained herein, we could not determine whether the petitioner meets criterion § 83.11(e), descent from an historical tribe. Failure to meet this criterion would result in the DOI's Office of Federal Acknowledgment (OFA) issuing an expedited proposed finding to deny Federal acknowledgment. In response to FTB's 2009 petition and its later submissions as Petition #158, OFA did exactly that and issued a negative Proposed Finding due to its determination that FTB did not meet criterion § 83.11(e).

In our opinion, the petitioner does not currently have adequate evidence to meet criteria § 83.11(a), identification as an American Indian entity since 1900; § 83.11(b), social relations within a distinct community since 1900; and § 83.11(c), political influence or authority within a distinct entity since 1900. The petitioner does appear to meet criteria § 83.11(d), having a governing document that defines its membership criteria, § 83.11(f), not being comprised principally of members of federally recognized tribes, and § 83.11(g), never having had a Federal relationship terminated by Congressional legislation. Moreover, it met the three latter criteria in its previous petition as Petitioner #158 and would likely do so again.

The Fernandeno petitioner has failed to present sufficient evidence to meet criterion § 83.11(a), identification as an American Indian entity since 1900, for nearly half of the years since 1900 (50 of the total of 121 years). These gaps in evidence run from 1910 to 1919 and from 1930 to 1969. If the petitioner chooses to proceed in the acknowledgment process with its existing evidence, this lack of documentation alone would be fatal to its case.

The petitioner's existing evidence for criteria § 83.11(b), community, and § 83.11(c), political influence and authority, also does not provide sufficient internal documentation of the existence of a distinct Fernandeno tribal entity. As is noted in detail in our comments, the petitioner's oral history evidence strongly suggests the absence of a functioning organic tribal entity whose members knew each other and their historical continuity. It fails to evince that they had significant social relations and any significant political relationship with recognized leaders until the latter decades of the 20th century. The statements of the informants give the impression that the people involved with the petitioner prior to that time did not have a collective identity as Indians or as a tribal entity. They also suggest that their organizer, Rudy Ortega, Sr., was trying to develop an Indian descendency or recruitment group rather than reorganizing a continuing tribal entity and that one of the incentives for organizing was the pursuit of claims. Because it appears from the evidence presented that the Indian descendants of the San Fernando Mission represented by this petitioner did not reform as a tribal entity in the early 20th century, the Fernandeno petitioner's documentation is insufficient to meet criterion § 83.11(a) under the 2015 regulations. These revised regulations provide that a petitioner's evidence will be evaluated in two defined phases: (Phase I) criteria § 83.11(d), (e), (f), and (g) and (Phase II) criteria § 83.11(a), (b), and (c). If the Fernandeno petitioner is found to meet criteria § 83.11(d-g) in a Phase I review but fails to submit adequate evidence for criterion § 83.11(a) in Phase II, the OFA would publish a negative proposed finding based on this failure alone (see § 83.26(b)(4)).

Criteria § 83.11(b) and (c) of the 2015 regulations define categories of evidence and of High Evidence for meeting each criterion. Documenting any of the High Evidence categories permits the petitioner to meet the criteria for the time span that documentation covers solely based on that evidence. Otherwise, the regulations require meeting a combination of two or more of the defined categories of evidence for each criterion.

The Fernandeno petitioner only has acceptable evidence for criterion § 83.11(b), community, for the period since about 2000. Its fundamental problem is that while the petitioner claims three primary family lineages (Ortega, Ortiz, and Garcia), it fails to adequately demonstrate the social interaction of all three lineages before this time.

For the period from 1900 through 1951, the Fernandeno petitioner's evidence may, with two important caveats, meet two categories of evidence for community during certain years of this time span. The categories are (1) having "social relationships connecting individual members" (§ 83.11(b)(1)(ii)) and (2) having "evidence of strong patterns of discrimination or other social distinctions by non-members" (§ 83.11(b)(1)(v)). The limits of the evidence are that: (1) the evidence of social relationships between lineages only seems to include the period from the mid 1940s to 1951 and depends on records (maps and GEDCOM files) proving that a

substantial proportion of the entity's membership, including the Ortega and Ortiz lineages, lived in a certain area [likely a few blocks of old town San Fernando] and that these records are not accessible to the public; and (2) the specific information about discrimination and social distinctions that only covers the period since the 1920s. Unless a petitioner can qualify under High Evidence for the entire period, the Acknowledgment regulations provide that a petitioner must meet a combination of categories of evidence for criterion § 83.11(b). The combination of somewhat minimal positive evidence for some years with important caveats for § 83.11(b)(1)(ii) and (v) is not sufficient to carry the case for the entire period from 1900 through 1951 in the absence of strong evidence of significant social relations and informal social interaction throughout the period.

For the period from 1952 through 2023, the Fernandeno petitioner meets § 83.11(b)(1)(viii) for this period, having demonstrated a collective Indian identity for more than 50 years. It might meet § 83.11(b)(1)(vii), distinct cultural patterns, if it made an argument that the autonomous family lineages constituted a distinct cultural pattern (which it has not articulated in either of its petitions). It also might meet § 83.11(b)(1)(ii), significant social relationships, and § 83.11(b)(1)(iii), rates or patterns of informal social interaction, since the mid-1950s if the petition presented more specific evidence regarding the relationships and interaction both between the core group families in and near San Fernando and between those families and the outlying families, including the Garcia lineage group. At present, the petitioner's specific evidence for community only has acceptable documentation for meeting these categories of evidence since about 2000.

Although the petitioner's existing evidence for criterion § 83.11(b) during the period 1952 through 2023 fails to document the social interaction of members of the Garcia lineage prior to 2000, its evidence for political influence and authority (criterion § 83.11(c)) evinces the political participation of at least some members of the Garcia family as early as the 1950s. Conversely, the political participation of Ortiz family members during these years is not well documented in the petition, although there is better evidence of their social interaction. While it can reasonably be assumed that political participation also involved social interaction, neither is adequately established for all three family lineages in the petitioner's existing evidence for criteria § 83.11(b) and (c).

As we have noted throughout these detailed comments on the Fernandeno petitioner's evidence for criterion § 83.11(b), the petitioner might meet § 83.11(b)(1)(vii), distinct cultural patterns, and perhaps even § 83.11(b)(2)(iii), High evidence for distinct cultural patterns, if it made an argument that the autonomous family lineage model it projects constitutes a distinct cultural pattern. To support this argument, more specific examples of how the separate family lineages made social and political decisions would need to be provided.

As we have noted, the Fernandeno petitioner's present evidence does not appear to meet the community criterion until about 2000. Evidence is particularly lacking for the period from 1900 until the mid-1940s. The evidence presented for this period strongly suggests that the petitioner was not a functioning organic tribal entity whose members knew each other and their historical continuity. This collective identity was not shown until Rudy Ortega, Sr., began efforts to organize Fernandeno descendants into a social club in the mid-1950s. The petitioner's evidence on residential proximity from the 1920s through the 1990s may indicate that there was a core group of members in or around San Fernando who lived in close enough proximity to maintain social relationships and informal social interaction, and that there were increasingly more entity activities that may have drawn outlying members into social relationships. However, the petition does not present good evidence regarding the individual families involved and their actual participation level. With the exception of a short period between the mid-1940s and 1951, it fails until 2000 to present specific evidence that significant social relations and/or informal social interactions also encompassed one of its three primary lineage families, the Garcias.

Although the membership is more dispersed in the 2000s, there are more documented tribal activities that demonstrate significant social relations between all of the three primary family lineages claimed by the petitioner and their sublineages. If the petitioner can produce more evidence of family interaction that also includes the Garcia line, it might be able to meet the categories of evidence in § 83.11(b)(1)(ii) and (iii), social relationships and informal social interactions respectively, from the mid-1950s on. With its present specific evidence for community, however, it only approaches meeting these categories since 2000.

In sum, the Fernandeno petitioner's present evidence appears to meet criterion § 83.11(b), community, only for the years 2000 through 2023. It fails to adequately demonstrate the existence of a distinct tribal community in which there were significant social relationships involving all three claimed primary family lineages for the period from 1900 through 1999. Therefore, the petitioner's existing documentation fails overall to meet criterion § 83.11(b).

The petitioner only has sufficient evidence to meet criterion § 83.11(c), political influence or authority, from 2019 to the present. Its primary failing is the lack of evidence evincing member participation in political processes.

In evaluating the Fernandeno evidence under the 2015 regulations for the period from 1900 through 1951 for criterion (c), political influence or authority, our comments conclude that the petitioner may only meet one of the categories of evidence for political influence or authority — § 83.11(c)(1)(v); demonstrating "internal conflicts which show controversy over valued entity goals, properties, policies, processes, and decisions" for certain periods of time (1928-1933 and 1948 to

1951). The evidence does not support meeting that category of evidence for the whole period and petitioner meets no other categories of evidence during this time span that could be combined with this category. The existing petition lacks sufficient documentation for any category of evidence for this period, and the early years of this half century seem to be well beyond the range of what can be accurately captured by oral history interviews.

For the period 1952 through 2023, the evidence of the Fernandeno petitioner's existence as a tribal political entity does not seem to cohere until the early 1970s. By that time, it had an elected leader in Rudy Ortega, Sr., a formal entity name as the San Fernando Mission Indians of San Fernando, issues around which it could mobilize members, including registration for the California Indian Judgment Fund, and at least nominal participation of all three primary lineages (Ortega, Ortiz, and Garcia). Since the 1970s, the petitioner has greatly expanded its activities and subject issues to include cultural and religious site monitoring; increased involvement in health, education, and charity programs; and greater sophistication of its governance with a constitution, an administrative office, and voting districts. Much of this evidence was omitted in the 2023 petition; however, the 2009 petition did a good job of describing the activities of the leadership since the 1970s. Identifying elected members of the governing body, particularly before 2000, and indicating how they voted on specific tribal issues would strengthen this evidence.

The petition consistently fails to provide descriptions and documentation of member involvement in political processes; this is precisely the sort of evidence that the defined categories for criterion § 83.11(c) specifically request. This would include evidence that many or a significant number of members were mobilized by issues defined by the leadership, that they were well-versed on the issues and discussed them, and that they were generally engaged in political processes with the leadership, including the resolution of any internal conflicts. Such evidence may very well exist, but the petitioner has failed to establish it because it has not attempted to either describe or quantify member knowledge of or participation in political processes.

Because its focus has been primarily on the political participation of the leadership rather than that of the membership, the petition has generally failed to evince the existence of an interactive political relationship. Apparently, the petitioner does not have adequate documentation of attendance at meetings, issues discussed, and vote tallies. Much of the evidence presented is based on oral history interviews with leaders or those close to the leadership. The petitioner might have come closer to meeting the political influence or authority criterion if its oral history project had sampled a greater number of regular Band members and asked them questions that were more specifically relevant to the defined categories of evidence for the criterion. Such inquiries could have addressed their knowledge of the issues defined

by the leadership and participation in formal meetings or informal discussions regarding those issues.

The petitioner fails to meet criterion § 83.11(c), political influence or authority, from 1952 through 2018 because its documentation does not adequately meet any of the separate categories of evidence for this criterion, primarily because of its failure to evince member participation in political processes.

The petitioner may be able to meet the High Evidence criterion § 83.11(c)(2)(i)(c) for the years 2019 to the present through its establishment and enforcement of norms in its Tribal Senate. In this category of evidence, the petitioner can meet the criterion for the time span concerned by the relevant documentation solely based on that evidence.

The petitioner may be able to at least partially meet the new category of evidence in § 83.11(c)(1)(viii) of the revised regulations, having a continuous line of leaders and a means of leadership selection or acquiescence by a significant number of members. The petitioner claims that existing evidence evinces a continuous line of leaders since 1900, although the evidence of leadership prior to 1951 is based primarily on the oral history statements of Rudy Ortega, Sr., the petitioner's leader until 2008. The major problem the petitioner has in meeting this category with its existing evidence is that it has not clearly documented a leadership selection process prior to the early 1950s at best and perhaps later. The petitioner's claims around the manner of the selection of Rudy Ortega, Sr., as a captain or as a tribal leader, for example, vary within its own petition. While the petitioner seems to argue that there was no formal selection process before the 1970s and that members at least acquiesced to the selection of Rudy Ortega, Sr., as captain, it does not demonstrate with the existing evidence that a "significant" number of members acquiesced to their leadership, because the current petition has not quantified member involvement. It also fails to document the selection process of lineage headpersons, who appear to hold substantial influence within their lineages during the 20th century.

In sum, the Fernandeno petitioner's present evidence fails to meet criterion § 83.11(c), political influence or authority, for the period from 1900 through 2018. It may have met the criterion § 83.11(c)(2)(i)(c) for the years 2019 to the present through its establishment and enforcement of norms in its Tribal Senate. Its primary failing is its lack of evidence demonstrating member participation in political processes. Therefore, the petitioner's existing documentation fails to meet criterion § 83.11(c).

In order to meet criterion (d), a petitioner must have a governing document or some other written document that defines its membership criteria. Criterion (d) is required primarily so that the DOI can adequately measure a petitioner's

membership to determine if the current members meet the membership criteria. In its Phase I Proposed Finding against acknowledgment of the Fernandeño Tataviam Band for Petition #158, the DOI determined that the "FTB submitted a governing document that describes its governing procedures and its membership criteria" and met the requirements of criterion § 83.11(d). It is very likely that the petitioner's 2023 submission has adequate membership criteria in its governing document or could readily provide a written description of its current membership criteria. It likely meets criterion § 83.11(d).

Criterion § 83.11(e) of the 2015 regulations requires proof that a petitioner's current membership descends from an historical tribe or from two or more tribes that have joined together and acted politically as a single entity. This criterion requires a petitioner to provide a list of its current members, any and all previous membership lists, and ancestry charts and vital records that demonstrate how current members descend from ancestors who were members of an historical tribe. Under the 2015 regulations, "historical" is interpreted as meaning "before 1900."

There are several components to this criterion, including: identifying a historical tribe (or two or more tribes that have joined together and acted as a single autonomous entity) for the purpose of calculating descent; whether a petitioner had demonstrated that this historical tribe existed before 1900; and whether a petitioner has documented descent of the petitioner's members to that historical tribe. In its Phase I Proposed Finding against acknowledgment of the Fernandeño Tataviam Band for Petition #158, the DOI determined that the petitioner had failed to identify a historical Indian tribe for the purpose of calculating descent under the criterion. This proved fatal to the petitioner's case, and the DOI issued a proposed negative finding without evaluating the genealogical documents. In its current submission, the Fernandeño petitioner has abandoned its novel "coalition of lineages" theory and adopted OFA's suggested alternative of declaring that the petitioner's current membership descends from a historical Fernandeño tribe that was created from the combination of Indian villages in the Mission San Fernando Rey (SFR). However, it remains to be seen whether the petitioner has provided sufficient evidence to support this argument. As we've observed throughout, the petitioner often struggles to demonstrate regular social interaction between the lineages before or after 1900, and the petitioner's arguments for political authority or influence are often undercut by its failure to show that the different lineages had influence with each other or even discussed important political matters.

The Fernandeño petitioner's evidence concerned with documenting descent for criterion § 83.11(e) could not be adequately evaluated because neither its genealogical data and records nor membership lists are accessible. These records are, at least in part, protected from public disclosure under provisions of the Privacy Act and the Freedom of Information Act. The OFA's Technical Assistance (TA) review of the initial petition questioned the Indian ancestry of those current

members claiming descent from Antonio Maria Ortega, whom the petitioner claims as a tribal captain from 1904 to 1941, and who is a progenitor of most of the defined leaders and many members of the petitioning entity following that period. The petitioner submitted additional evidence regarding the ancestry of Antonio Maria Ortega in its 2009 petition. However, it cannot be determined, absent the full genealogical record, whether this new evidence will be sufficient to permit the petitioner to meet criterion § 83.11(e).

If the present evidence does not meet criterion § 83.11(e), the petitioner is subject to an expedited proposed finding declining Federal acknowledgment. Should OFA find that the petitioner fails to adequately support its new theory of descent from a historical Fernandeno tribe at SFR, the petition would meet the same fate as its previous attempt through Petition #158. Furthermore, failure to document the Indian ancestry of Antonio Maria Ortega would also be fatal to the Fernandeno petitioner's case. Under § 83.26(a)(3) of the 2015 regulations, the OFA can issue a negative proposed finding if a petitioner does not meet criteria § 83.11(d), (e), (f), or (g) during a Phase I evaluation.

Criterion § 83.11(f) of the 2015 regulations requires proof that a petitioner's membership is not composed principally of members of any federally acknowledged tribe. This criterion is required because the DOI seeks to prevent federally recognized tribal components or factions from being able to use the Federal acknowledgment process to break up acknowledged tribes. In its Phase I Proposed Finding against acknowledgment of the Fernandeno Tataviam Band for Petition #158, the DOI determined that the petitioner's membership is composed principally of persons who are not members of federally recognized Indian tribes and met the requirements of criterion § 83.11(f). The petitioner's current governing document provides that applicants for membership must submit a sworn letter of relinquishment of membership in any other tribe, and the FTB has established documentation to compliance with single tribe enrollment. Therefore, the petitioner appears to meet criterion § 83.11(f).

Criterion § 83.11(g) of the 2015 regulations requires proof that neither the petitioner nor its individual members have been the subjects of Congressional legislation that terminated a Federal relationship. This requirement is in place because the DOI does not have the authority to restore or acknowledge tribes or tribal members whose Federal relationship was legislatively terminated. Only Congress has that authority. The Fernandeno petitioner has provided the OFA with a statement, signed by its governing body, indicating that neither the band nor its individual members have been the subject of legislation terminating a Federal relationship. The only tribal entities in California whose Federal trust relationship was terminated by Congress were a number of recognized Rancherias, primarily in northern California. Most of those tribal entities have subsequently had their Federal relationship restored by Congress. Moreover, in its Phase I Proposed

Finding against acknowledgment of the Fernandeño Tataviam Band for Petition #158, the DOI determined that neither the petitioner nor its members are the subject of Congressional legislation that has expressly terminated or forbidden the Federal relationship. Therefore, it is likely that the petitioner meets criterion § 83.11(g).

Criterion § 83.11(a), Indian Entity Identification

Explanation of the Criterion and Its Requirements

In the revised 2015 regulations, this criterion is as follows:

a) *Indian entity identification.* The petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900. Evidence that the group's character as an Indian entity has from time to time been denied will not be considered to be conclusive evidence that this criterion has not been met. Evidence to be relied upon in determining a group's Indian identity may include one or a combination of the following, as well as other evidence of identification.

§ 83.11(a)(1), Identification as an Indian entity by Federal authorities.

§ 83.11(a)(2), Relationships with State governments based on identification of the group as Indian.

§ 83.11(a)(3), Dealings with a county, parish, or other local government in a relationship based on the group's Indian identity.

§ 83.11(a)(4), Identification as an Indian entity by anthropologists, historians, and/or other scholars.

§ 83.11(a)(5), Identification as an Indian entity in newspapers and books.

§ 83.11(a)(6), Identification as an Indian entity in relationships with Indian tribes or with national, regional, or state Indian organizations.

§ 83.11(a)(7), Identification as an Indian entity by the petitioner itself.

Criterion § 83.11(a) is included among the seven mandatory criteria in 25 CFR 83 to prove the continuous ethnic identity of a petitioner since 1900. It demands continual identification of a specific tribal entity since that time. The requirement for continuous identification as an Indian entity complements criteria § 83.11(b), (c), and (e). The criterion is intended to exclude from acknowledgment those groups that have only been identified as being tribal entities in recent times. It also is intended to exclude those groups whose "Indianness" is based solely on self-identification or, in other words, on documents or other evidence generated by the group itself. The revised regulations have added a new category of evidence in § 83.11(a)(7) that provides that the identification can be "by the petitioner itself," although this internal evidence must still be combined with one or more types of external identification (by Federal authorities or State governments, for example) in order to meet the criterion.

The OFA has established in previous cases that the minimum standard of evidence for meeting criterion (a) is to provide at least one source of acceptable identification of the entity for each of the twelve decades since 1900.

The qualification that identification of the petitioner must be on a "substantially continuous basis" allows for certain gaps in time during which the group's existence or activities may not have been documented. Many, if not most, petitioners find that they have such gaps. In evaluating the significance of these gaps, the OFA staff has frequently used the "tunnel" test. The analogy is to a train that goes in and out of a tunnel. If a train (petitioner) is reasonably identified and characterized prior to going into a tunnel (gap), and once it comes out of the tunnel (gap), it has the same identity and character, then it can reasonably be assumed that it remained fundamentally the same while it was in the tunnel (gap). The gap of evidence for criterion (a) can be as many as 19 years as long as there is at least one source for every decade. For example, if there is a source of sufficient evidence for 1910 but the next sufficient source is not until 1929, this would meet the minimum standard because it would provide one source for each of two decades, the 1910s and the 1920s.

The qualification that "evidence that the group's character as an American Indian entity has from time to time been denied shall not be considered to be conclusive evidence that this criterion has not been met" allows for certain periods during which the identity may have been characterized as being other than Indian. For example, a tri-racial group may have been identified as being White, Black, Negro, mulatto, or colored.

Criterion § 83.11(a) evidence should focus on the identity of the group as a distinct Indian tribal entity rather than on the Indian identity of its individual members or on a larger group of Indians, such as the broad category of landless Mission Indians of California. The regulations state that the criterion may be met by using only one of the six categories of evidence specified, ranging from Federal records to other Indian tribes. However, most petitioners will not have continued identity from one source since 1900, and so are likely to have to demonstrate identity using two or more categories of evidence.

Federal identifications might include executive orders, unratified agreements, appropriations or other acts of Congress; census or annuity rolls, military, court, or claims records; maps or land records, or the health, education, or welfare records of the Bureau of Indian Affairs or other Federal agencies. Petitioners who can establish “unambiguous previous Federal acknowledgment” only have to demonstrate identification as an Indian entity since the date of last Federal acknowledgment. They also must show that they are the same tribal entity that was previously acknowledged or that has evolved from that entity. Unambiguous previous acknowledgment is only an advantage for criterion § 83.11(a) if the date of that prior recognition is after 1900. The Fernandeno petitioner has not claimed previous Federal acknowledgment in its 2023 submission.

Comments on the Fernandeno Decade-by-Decade Evidence for Criterion § 83.11(a)

1900-1909

The March 21, 1904, article in the *Los Angeles Times* and the March 26, 1904, article in the *Madera Mercury* describe Rojerio Roja as “the oldest of the San Fernando Mission Indians” and thus qualify as external identification of an Indian entity.¹ These two articles permit the Fernandeno petitioner to meet the minimum standard for criterion § 83.11(a) for the decade 1900 to 1910. Special Agent H.N. Rust’s 1904 description of Roja as “almost the last of the Mission Indians of San Fernando” also provides positive evidence for criterion § 83.11(a).²

The September 4, 1905, article in the *Los Angeles Times* describes “a little community of Indians” in a “hidden-away hollow of Pacoima Canyon” with “a very ancient squaw” who remembers “the names of the dead who lay in the narrow vaults beneath the cloister floors, and in what relative positions they slept.”³ Though the article does not identify the entity or the woman by name, the Canyon is just to the north of San Fernando and the presence of an Indian woman who lived

¹ Fernandeno Tataviam Band of Mission Indians (FTB), Petition for Federal Acknowledgment, June 2023, pp. 73-74 of 213-page pdf.

² FTB, 2023 Petition, pp. 74-75 of pdf.

³ FTB, 2023 Petition, pp. 75-76 of pdf.

during the mission period and remembers the dead at the Mission is adequate to surmise that the woman and the “community of Indians” are San Fernando Mission Indians. This adds to the positive evidence for criterion § 83.11(a).

The remaining evidence does not support the petitioner’s application. Two articles fail to identify a San Fernando Indian entity, but instead identify an individual.⁴ In its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe (aka the Muwekma Ohlone Tribe of the San Francisco Bay), the DOI stated that “the identification of individuals as Indians is not sufficient to meet the criterion, which requires the identification of an Indian entity.”⁵

A.L. Kroeber’s article, dating from the 1950s, indicates that the “Gabrielino, including the scarcely differentiated Fernandeno” had “found refuge with” or assimilated with other peoples. The plain language of the article suggests that Kroeber not only did not identify a San Fernandeno Indian entity in the 20th century, but also that he thought no such entity existed by 1900.⁶ The September 20, 1905, article in the *Los Angeles Herald* is ambiguous. It identified “an old Indian woman” through her husband and father and observed that she was of a tribe “formerly of the Scorpion ranch and other properties in the San Fernando Valley.”⁷ It is unclear whether the article is referring a then-current tribe or one from the past. Nonetheless, the petitioner has four sources from 1904-1905 providing evidence of external identification and meets the standard for the 1900-1909 period.

1910-1919

The petitioner offers four pieces of evidence for the decade from 1910 to 1919: Harrington’s 1916 field notes on the Fernandeno, two registration cards for military service by Fernandeno members, and the 1919-1920 notes from C. Hart Merriam’s research on the San Fernando Mission. Ethnologist J.P. Harrington’s 1916 field notes on the Fernandeno describes several Indian individuals of the 19th century and their associations; however, these are not contemporaneous observations and do not identify an Indian entity in the 20th century. In its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe, the DOI stated that:

Harrington collected historical information about Indians and linguistic information about historical Indian languages. He did so by interviewing living Indians without identifying them as members of any Indian group or entity in existence at that time. For this reason,

⁴ FTB, 2023 Petition, p. 72 of pdf.

⁵ U.S. Department of the Interior, Office of Federal Acknowledgment, Final Determination, Ohlone/Costanoan Muwekma Tribe, 2002, p. 29.

⁶ FTB, 2023 Petition, pp. 72-73 of pdf.

⁷ FTB, 2023 Petition, p. 76 of pdf.

Harrington's . . . field notes do not provide evidence of the identification of a contemporaneous Indian entity which meets the requirements of criterion 83.7(a)."⁸

Although Harrington did state that "Rogerio or Rodger was chief at San Fernando," this is not a contemporary identification of an existing entity because Rogerio Roja died in 1904.⁹ Likewise, the identification of Odon as "chief of all of the Indians of the sw. end of the valley" also was not contemporaneous since Odon died around 1882.¹⁰ Nor does it provide external identification of an extant Indian entity in the 20th century.

The remaining evidence presented for this decade does not specifically identify a San Fernando Indian entity. The registration card for military service of Luis Ortega lists his race as Indian.¹¹ In its 2004 Proposed Finding to decline acknowledgment of the Burt Lake Band of Ottawa and Chippewa Indians, the DOI stated that:

References to individual Indian descendants or Indian families or an Indian cemetery, or accounts of the military service of individual Indians do not meet the requirement that identifications must have been of 'an American Indian entity'.¹²

The registration card for his brother, Eulogio Ortega, lists him as "Fernandeño Indian" but does not reference an Indian entity.¹³ As the petitioner confirms, this was a form of self-identification by Eulogio Ortega when he registered for military service. The 2015 regulations added a criterion of "Identification as an Indian entity by the Petitioner itself;" however, the 1917 registration card only provides information given by an individual as to his identity rather than from an external entity.

The 1919-1920 notes from C. Hart Merriam's research on the San Fernando Mission comprises a list of Indian rancherias compiled in 1919 from the San Fernando Mission Records. While valuable as a record of the mission, the historic villages of the Fernandeño, and of baptisms, these notes do not identify a contemporaneous Indian entity. The Fernandeño petitioner fails to meet criterion § 83.11(a) for the period 1910-1919.

⁸ U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Ohlone/Costanoan Muwekma Tribe, 2001, p. 11.

⁹ FTB, 2023 Petition, pp. 76-77 of pdf.

¹⁰ FTB, 2023 Petition, pp. 76-77 of pdf.

¹¹ FTB, 2023 Petition, p. 77 of pdf.

¹² U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Burt Lake Band of Ottawa and Chippewa Indians, Inc., 2004, p. 34.

¹³ FTB, 2023 Petition, p. 77 of pdf.

1920-1929

The 1922 article from A.L. Kroeber entitled “Basket Designs of the Mission Indians of California,” included the Fernandeno among the Indian groups of southern California. Kroeber also noted that several groups had “died out or become obscure through insignificant numbers,” and the Fernandeno were not on that list.¹⁴ This qualifies as external identification of an Indian entity.

The 1927 letter from District Superintendent Charles Ellis to John R. McCarthy appears to include the Fernandeno as among the bands within the Mission Indian jurisdiction when he observed that “the bands [presumably of the jurisdiction] are often known by ‘place names’ referring to their location, such as Gabrielinos, Fernandenos.”¹⁵ The petitioner does not include the entire letter in its citation and utilizes an ellipse, likely to shorten the length of the quoted text. Thus, we cannot confirm with certainty that the petitioner’s quoted passages reflect the intended meaning of the letter. If the material omitted by the ellipse does not affect its asserted meaning, then the letter qualifies as external identification of an Indian entity by Federal authorities.

The 1928 article in the *San Fernando Sun* is ambiguous. It describes the participation of Cetayimo in a fiesta at the Mission and identifies him as an “aged Indian and the last of the Mission Indians who once lived in the valley.”¹⁶ Without access to genealogical data, we cannot determine whether Cetayimo was a Fernandeno, but the article implies so. Although the article does not directly identify a Fernandeno entity, it suggests their existence.

The remainder of the evidence presented by the petitioner for the decade does not meet the standard of external identification of a distinct Indian entity. Commissioner Meritt’s testimony to Congress, Special Assistant Fraser’s conclusions, ethnologist Albert Kroeber’s 1920 statements, the 1921 letter from the Indian Board of Cooperation, and the 1924 correspondence to the Attorney General all refer to the status of California Indians or Mission Indians of California rather than of a Fernandeno entity. Commissioner Meritt’s testimony, Kroeber’s 1920 writings, and the 1921 letter to the Commissioner of Indian Affairs from the Indian Board of Cooperation refer to the “California Indians.” Likewise, the 1924 letter from a Special Assistant to the Attorney General refer to the “Mission Indians of California.” The 1920 correspondence from George Fraser to the Attorney General describes an appropriation act as authorizing the Secretary of the Interior to purchase lands for “the homeless Indians in California.” None of these documents identify a Fernandeno entity.

¹⁴ FTB, 2023 Petition, p. 82 of pdf.

¹⁵ FTB, 2023 Petition, p. 85 of pdf.

¹⁶ FTB, 2023 Petition, pp. 85-86 of pdf.

The 1927 article in the book entitled *The Mission in the Valley: A Documentary History of San Fernando, Rey De Espana* describes Rojerio Rocha as an individual Indian who resided and worked at the San Fernando Mission, but it does not identify a distinct tribal entity. Furthermore, it is not a description contemporary to the 1920s, since Rocha died in 1904.¹⁷

The petitioner provides at least one piece of evidence, Kroeber's 1922 article, that qualifies as an external identification of the Fernandeño entity. If the remainder of the 1927 letter from Ellis supports the apparent meaning of the quoted passages, that letter would also provide external identification. The 1928 article in the *San Fernando Sun* is ambiguous. The petitioner is likely to meet the standard for the 1920-1929 period.

1930-1939

Clifford Smith's 1930 Master's thesis, "The History of the San Fernando Valley with Special Emphasis on the City of San Fernando," includes a few sentences on the fate of the Indians in the San Fernando Valley after secularization. He states that "the San Fernando Indians became helpers of the rancheros in the vicinity or ran away to join their brothers who revolted in 1824." Others went to Los Angeles, and "some of these Indians lived in the mountains of San Fernando until their death just a few years ago." Smith is describing the actions of multiple individuals rather than of an entity in his reference to "San Fernando Indians."¹⁸ Furthermore, the references are not contemporary as most refer to 19th century events such as mission secularization and its aftermath. The most recent reference indicates that an unknown number died before the 1930s. Smith did not identify a contemporaneous Fernandeño entity.

The identification of Christina Rodriguez as an Indian in the 1930 census is clearly a reference to an Indian individual rather than an entity and does not meet the requirements set forth in § 83.11(a).

J.P. Harrington's notes are the substance of two sources that the petitioner uses to meet criterion § 83.11(a). In his cultural resources inventory of Santa Susana Pass State Park, John Johnson discusses two of Harrington's informants: Jose Juan Olivas and Setima Lopez. Johnson describes the biographies of the two and argues that they were important consultants for Harrington. Johnson does not identify a Fernandeño entity in these paragraphs. Furthermore, in its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe, the DOI stated that:

¹⁷ FTB, 2023 Petition, pp. 83-84 of pdf.

¹⁸ FTB, 2023 Petition, p. 86 of pdf.

Harrington collected historical information about Indians and linguistic information about historical Indian languages. He did so by interviewing living Indians without identifying them as members of any Indian group or entity in existence at that time. For this reason, Harrington's . . . field notes do not provide evidence of the identification of a contemporaneous Indian entity which meets the requirements of criterion 83.7(a).¹⁹

The second source is J.P. Harrington's 1933 notes themselves. His 1933 notes refer to Martin Feliz as an Indian man who knew a few Fernandeño words that he learned from Rogerio Rocha, but as in his 1916 notes, Harrington does not specifically identify a distinct Fernandeño political entity or community.

The petitioner presents information about how various Fernandeño descendants from the Garcia and Ortiz lineages identified themselves on applications during the early 1930s for the 1928 California Indian Judgment roll. In response to the question "What is your degree of Indian blood and to what Tribe of Band of Indians of the State of California do you belong?," Garcia family members answered with four variations of San Fernando Mission Indians.²⁰ In response to the question of who was the leader of the Tribe or Band, Garcia family members named Rogerio Rocha. The petitioner also describes how applications were verified by knowledgeable witnesses such as Jose Juan Olivas and J.J. Lopez who knew the families well. However, this application process was designed to identify Indian individuals in California and to demonstrate that the applicants were the legitimate descendants of an historical California tribe or band that existed in 1852. The information presented about the applications and their verification identifies Indian individuals that descended from the San Fernando Mission, but it does not identify an existing Fernandeño tribal entity in the 1930s. In its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe, the DOI stated that:

The claims against the United States authorized by the 1928 act . . . were brought "on behalf of the 'Indians of California'," not on behalf of a specific tribe or band. In preparing a census of California Indians, therefore, the BIA [Bureau of Indian Affairs] sought evidence of descent from an Indian who had resided in California in 1852. . . . Applicants applied as individuals, and their statements about the historical tribe of their ancestors were a form of self-identification of an historical, not contemporary, entity. Because the census was one for the generic "Indians of California," there was no need for the BIA to identify any specific tribe or band of Indians for the approved

¹⁹ U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Ohlone/Costanoan Muwekma Tribe, 2001, p. 11.

²⁰ FTB, 2023 Petition, p. 88 of pdf.

applicants. In 1940 correspondence, a BIA superintendent made the point that the BIA's claims roll did not identify an individual on the roll as a member of a tribal group. These lists of generic "Indians of California" did not identify any specific Indian group or entity. Because these lists prepared for the claims case did not identify the petitioning group as an Indian entity, the evidence of the inclusion of individual ancestors of the petitioner on these lists is not sufficient to meet criterion 83.7(a).²¹

The Fernandeno petitioner fails to meet criterion § 83.11(a) for the period 1930-1939.

1940-1949

The petitioner only offers three pieces of evidence for the decade 1940 to 1950: a 1941 obituary in the *San Fernando Sun*, another article in the collection *The Mission in the Valley*, and a 1948 statement from DOI Solicitor Mastin G. White regarding the status of California Indians as an identifiable group in regards to the Indian Claims Commission Act. The 1941 obituary of Antonio Ortega in the *San Fernando Sun* identified Ortega as "reputed to be the last of the old San Fernando Mission residents, born and raised on the Mission grounds" and describes his large extended family as survivors and mourners. The obituary does not specifically identify a Fernandeno community or a tribal entity.²²

The 1948 article within *The Mission in the Valley* includes a brief description of an April ceremony to rededicate a belfry. The ceremony was to include Spanish music, dancing, and a barbecue, and Mission Indians were expected to participate.²³ The article does not identify the Mission Indians as Fernandeno or members of that community; these participants could have been members of any of several Mission Indian groups in Southern California.

Solicitor Mastin White's March 1948 legal opinion describes the status of the Indians of California as an identifiable group within the context of the Indian Claims Commission Act. White states that while "some bands have secured recognition from Congress or the executive officers of the Government," there has been no recognition of coalitions such as "the Indians of California" or "the Indians of California, Inc" or the "Mission Indians of California" or the "Federated Indians of California" as a tribe or band exercising political authority."²⁴ The petitioner argues that "California Indian social and political organization tends toward kinship,

²¹ U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Ohlone/Costanoan Muwekma Tribe, 2001, p. 12.

²² FTB, 2023 Petition, p. 90 of pdf.

²³ FTB, 2023 Petition, pp. 90-91 of pdf.

²⁴ FTB, 2023 Petition, p. 91 of pdf.

lineages and tribelets, which compose small politically sovereign entities of lineages or coalition of lineages. The San Fernando Mission Indians follow the general pattern throughout California, being composed of several politically autonomous lineages which engage in cooperative relations.”²⁵ The petitioner then argues that the literature “uses expressions like Indians of California or California Mission Indians” as “matters of convenience” and they should not be used to “erase” bands or communities.²⁶ The regulations, however, are very clear that the petitioner must be identified as an American Indian entity, and White does not identify a Fernandeno tribal entity or any other tribal entities in the cited portion of his opinion.

The evidence presented for the 1940s is not sufficient to meet criterion § 83.11(a).

1950-1959

The petitioner provides three sources as evidence for the period between 1950 through 1959: two sections of ethnologist Robert Heizer’s 1955 testimony before the Indian Claims Commission (ICC) and a portion of Mary Louise Contini Gordon’s 2013 book entitled *TIQ SLO 'W: The Making of a Modern Day Chief- Charlie Cooke, Leadership in Restoring and Sharing Native Heritage*. In the first source, the petitioner alleges that a statement from A.L. Kroeber within Heizer’s testimony provides identification of an Indian entity through Kroeber’s analysis of a sample of 600 applications for a California Indian roll authorized in the California Indian Jurisdictional Act of 1928. However, neither Kroeber nor Heizer identified a Fernandeno tribal entity within this source citation. Kroeber’s analysis focused on the matter of surviving descendants of historical tribal entities commonly thought to be extinct; however, he did not specifically identify Fernandeno or Tataviam descendants or an entity comprised of those descendants.²⁷

In the second source citation from A.L. Kroeber within Heizer’s testimony, the petitioner alleges that Kroeber’s research into the application samples constitutes identification of an Indian entity through its identification of Gabrielino and Fernandeno members within the Spanish Missions and the self-identification of individuals in the applications. Kroeber’s research findings identified 8 Fernandeno and 6 Gabrielino among the 600 individual applications he sampled from the approximately 40,000 Indians who applied for enrollment under a 1928 statute. He also indicated that this number was “as always minima.”²⁸ However, Kroeber and Heizer did not claim that Fernandeno Indian entities or settlements existed in 1955, or in 1933. As the DOI pointed out in its 2002 Final Determination denying

²⁵ FTB, 2023 Petition, p. 91 of pdf.

²⁶ FTB, 2023 Petition, p. 91 of pdf.

²⁷ FTB, 2023 Petition, p. 92 of pdf.

²⁸ FTB, 2023 Petition, p. 92 of pdf.

acknowledgment of the Ohlone/Costanoan Muwekma Tribe, "Whether individuals of Indian descent survived until 1933, or later, is not the test posed by criterion (a)."²⁹

Furthermore, the DOI addressed the issue of the applications under the 1928 law in its 2001 Proposed Finding to decline acknowledgment of the Ohlone/Costanoan Muwekma Tribe. It stated that:

The [Muwekma] petitioner has submitted application forms for a share of any funds to be awarded under a 1928 act which allowed Indian claims to be made against the United States. The claims against the United States authorized by the 1928 act, as the petitioner acknowledges, were brought on "behalf of the 'Indians of California'," not on behalf of a specific tribe or band. In preparing a census of California Indians, therefore, the BIA sought evidence of descent from an Indian who had resided in California in 1852. Some ancestors of the petitioner's members were accepted as having descent from a California Indian and were listed on the BIA's 1933 census. Other ancestors and members were added when that list was subsequently expanded.

The petitioner claims the inclusion of its ancestors on the BIA's 1933 census of the Indians of California, and revised lists produced in later years, as examples of external identification of the petitioning group. Applicants applied as individuals, and their statements about the historical tribe of their ancestors were a form of self-identification of an historical, not contemporary, entity. Because the census was one for the generic "Indians of California," there was no need for the BIA to identify any specific tribe or band of Indians for the approved applicants. In 1940 correspondence, a BIA superintendent made the point that the BIA's claims roll did not identify an individual on the roll as a member of a tribal group. These lists of generic "Indians of California" did not identify any specific Indian group or entity. Because these lists prepared for the claims case did not identify the petitioning group as an Indian entity, the evidence of the inclusion of individual ancestors of the petitioner on these lists is not sufficient to meet criterion 83.7(a).³⁰

The documentation from the ICC proceedings that the Fernandeno petitioner has presented is not sufficient to demonstrate external identification of a tribal entity in the 1950s.

²⁹ U.S. Department of the Interior, Office of Federal Acknowledgment, Final Determination, Ohlone/Costanoan Muwekma Tribe, 2002, p. 28.

³⁰ U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Ohlone/Costanoan Muwekma Tribe, 2001, p. 12.

The petitioner cites Mary Louise Contini Gordon's 2013 book entitled *TIQ SLO 'W: The Making of a Modern Day Chief Charlie Cooke, Leadership in Restoring and Sharing Native Heritage* as evidence of identification of a Fernandeño tribal entity. This book presents a very different narrative of the organization of the San Fernando Mission Indians in the 1950s and 1960s than does the 2023 Fernandeño documented petition. It asserts that Charlie and Alvin Cooke, descendants in the Garcia lineage, began in the late 1950s to organize the descendants of the San Fernando Mission Indians in and around Newhall. There is no indication of an existing organization or entity, and the book strongly implies that those descendants were not members of a recognizable tribal entity at that time. The Cooke brothers focused their organizing efforts on the descendants around Newhall, and there is no indication of their coordination with the organizing efforts of Rudy Ortega, Sr., and his family in San Fernando around the same time. While the book uses the expression "San Fernando Mission Band," it does so to argue that Sam Kolb (who was not a Fernandeño descendant) and the Cooke brothers decided to organize Mission descendants rather than identify an existing tribal entity. Furthermore, Gordon's identification is not contemporary to the 1950s or 1960s since her biography was published in 2013.

The Fernandeño petitioner fails to meet criterion § 83.11(a) for the period 1950-1959.

1960-1969

The petitioner relies on three sources as evidence for criterion § 83.11(a) in the 1960s: another quote from Mary Louise Contini Gordon's 2013 book entitled *TIQ SLO 'W: The Making of a Modern Day Chief- Charlie Cooke, Leadership in Restoring and Sharing Native Heritage*; photographs of Fernandeño descendants with non-Indians in Brand Park in San Fernando; and the notes of Richard Reyes on cultural items and activities as recorded from two Ortega family descendants. The petitioner again cites Gordon's 2013 book on Charlie Cooke as evidence of entity identification in the 1960s:

Since Grandma Frances (Cook-Garcia) had passed away (in 1946), Aunt Mary had been the leader of her extended family of Indians whose ancestors lived in the San Fernando Mission. She called some family members together in 1959, including her son Ted (Garcia), Sr., along with Alvin and Charlie. . . . [T]hey made him [Charlie] their leader. Charlie started to bring people together in Newhall who had records of ancestry at the San Fernando Mission. In 1960, about thirty Indian people all came together to form the San Fernando Mission Band with Charlie and Alvin as founding members. . . . In 1968 the brothers started calling meetings for people of Indian descent to

inform them of their rights and to enroll them on the California Indian Land Settlement Roll.³¹

This evidence again identifies a group of descendants of the San Fernando Mission and not an ongoing tribal entity before 1960. As already observed, this passage raises several questions about the political organization of the Fernandeño petitioner. The FTB asserts elsewhere in its 2023 petition that Rudy Ortega, Sr.'s organization, the San Fernando Mission Indians of San Fernando, was the tribal government for the petitioner from the 1950s through the 1980s. Yet here the petitioner is claiming that the Cooke brothers formed a separate group, the San Fernando Mission Band, in 1960 and that should be accepted as evidence of entity identification. The petitioner does not offer evidence that the 1960 group was connected to the primary organization led by the Ortegas, or that the two groups were even communicating. They appear to be separate, parallel organizations centered around different families. Furthermore, Gordon's identification is not contemporary to the 1960s since her biography was published in 2013.

The photographs of Fernandeño descendants with non-Indians from the 1960s show several members of the Ortega lineage with an actress and her driver. The petitioner asserts that these images "capture a Tribal Council meeting to which the community was also invited," and that the meeting was located in Brand Park, across the street from the Mission San Fernando.³² The petitioner does not provide evidence that the documents identified a tribal entity, and it is unclear as to the source of the assertion that the photographs captured a "Tribal Council meeting." This evidence is better directed to meet criterion (c).

Richard Reyes, who was Irene Verdugo's spouse and not a member of the Fernandeño Tataviam tribe, recorded notes on customs of the San Fernando Indians sometime in the 1960s. He obtained this information from his spouse, Irene Verdugo, and from Sally Verdugo. Categories of information included: clothes, languages, foods, medicines and burial ceremonies. None of the notes provided in the petition refer to a contemporaneous Indian entity, and it is unclear whether these customs were modern or dated back to a different period in the past. If the petitioner can demonstrate that members have passed down and engaged in some of these customs in the 20th century, this evidence would support their petition via criterion (b) rather than § 83.11(a).

The evidence presented for the 1960s is not sufficient to meet criterion § 83.11(a).

1970-1979

³¹ FTB, 2023 Petition, p. 94 of pdf.

³² FTB, 2023 Petition, pp. 94-95 of pdf.

In its 2023 submission, the petitioner provides eight sources as evidence for the period between 1970 through 1979: six newspaper articles from 1971-1972, a book, and a 1975 photograph with a label. In its 2015 supplement to the 2009 petition as Petitioner #158, the petitioner also provides an additional source: a 1977 doctoral dissertation by Wayne G. Bramstedt entitled, "Corporate Adaptations of Urban Migrants: American Indian Voluntary Associations in the Los Angeles Metropolitan Area." All of the newspaper articles, and the quoted portion of *Indian Country, LA: Maintaining Ethnic Community in Complex Society* provide external identification of the petitioner, then known as the San Fernando Mission Indians, and are positive evidence for criterion (a).

The 1975 photograph of "Chief Little Bear with Eagle" describes Little Bear (Rudy Ortega, Sr.) as a "Chief Fernandeno/Tataviam Tribe." The petitioner asserts that Little Bear received the eagle as a gift from the [presumably California] Department of Fish and Game after he applied for a permit to own eagle feathers, and that since "only Federally Recognized Indians are allowed to own or take eagle feathers," this constitutes recognition of him as an Indian of the petitioning entity.³³ There are several questionable assertions within this evidence and the petitioner's interpretation of it. First, the U.S. Department of Fish and Wildlife regulates the possession of bald and golden eagles, not the California Department of Fish and Game. That Federal agency established the National Eagle Repository in the early 1970s to regulate the provision to Native Americans of eagle parts for religious purposes. Currently only enrolled members of Federally Recognized tribes can apply; however, in 1975, the regulations were different. Applicants had to be an individual [rather than a tribe], provide the name of the tribe with which the applicant was associated, the name of the germane tribal religious ceremony, provide a certificate from the BIA attesting to the fact that the applicant is an Indian, and provide a certificate from an authorized official of the religious group that the applicant is authorized to participate in the relevant ceremony.³⁴ Moreover, in 1975, there was no formal Federal Acknowledgement Process; the first comprehensive list of which Indian tribes were federally acknowledged was not published until 1979. Thus in 1974-1975, the National Eagle Repository received and approved applications, perhaps including Little Bear's, without determining the recognition status of the tribe of which he was associated. Last, the approval of such an application in 1974-1975 only proves that the U.S. Fish and Wildlife Service agreed that Little Bear was an Indian, was associated with a tribe, and had a verified need to possess eagle feathers. It does not demonstrate that the Fernandeno petitioner was recognized by the Federal Government as an Indian entity. However, the photograph qualifies as identification of an Indian entity by the petitioner due to its identification of Little Bear as "Chief Fernandeno/Tataviam Tribe" and thus contributes to the evidence provided in 1970s.

³³ FTB, 2023 Petition, p. 99 of pdf.

³⁴ 39 FR 1183, January 4, 1974.

1980-1989

The petitioner provides only two sources as evidence for this decade: a 1985 *Los Angeles Times* article and a 1989 California Indian Legal Services brief. Neither source specifically identifies an entity known as the San Fernando Mission Indians. The 1985 *Los Angeles Times* article describes the efforts of Fernandeno and Gabrielino descendants to have the disturbed bones of their ancestors reburied. The article identifies a “Fernandino” tribe as one of three involved.³⁵ Charlie Cooke is identified as the hereditary chief of the Southern Chumash; the petitioner asserts that Cooke is the headperson of his lineage and that this lineage is included within the Fernandeno petitioner.³⁶ As observed earlier, the status of Charlie Cooke and his organization is of concern. The article may suggest that Cooke’s “Southern Chumash” tribe was a separate tribal entity. Nonetheless, the article identifies a Fernandeno tribe. The 1989 legal brief described Ortega as the “elected Chief of the ‘Fernandeno’ tribe” and noted that the “Fernandenos” were not a federally recognized tribe.³⁷ This document meets the minimal standard for evidence of external identification for the 1980s. Thus, the petitioner meets criterion (a) for this decade.

1990-1999

The four sources provided by the petitioner all identify a Fernandeno tribal entity. The 1995 article in the *Sun Valley View* identified the petitioner as the “Fernandeno/Tataviam Indian Tribe” in an announcement for what appears to be an inter-tribal pow-wow. In the article, Rudy Ortega, Sr., estimated that “there are approximately 3,000 tribe members in the San Fernando Valley.”³⁸ Since the official membership of the Fernandeno Tataviam Band of Mission Indians is much lower, it is likely that Ortega intended this as an estimate of the total Indian population of the Valley or perhaps the number of people eligible to become tribal members. In a contributing article to *A Second Century Of Dishonor: Federal Inequities and California Tribes*, Patty Ferguson clearly described the Fernandeno Tataviam Band’s political culture and identifies the petitioner. The 1996 article in *The Signal* identified Charlie Cooke and Rudy Ortega, Sr., as chiefs, and recognized Ortega as representing Tataviam/Fernandino in the public gathering. In 1997, the City of San Fernando recognized the Tataviam Fernandeno Tataviam Tribe and Rudy Ortega, Sr., in a statement. The petitioner meets criterion § 83.11(a) for the 1990s.

2000-2009

³⁵ FTB, 2023 Petition, p. 99 of pdf.

³⁶ FTB, 2023 Petition, p. 99 of pdf.

³⁷ FTB, 2023 Petition, pp. 99-100 of pdf.

³⁸ FTB, 2023 Petition, p. 100 of pdf.

The petitioner provided five sources for the years 2000-2009: a 2001 or 2003 grant application to the U.S. Department of Health and Human Services' Administration for Native Americans (ANA), a 2003 letter from Rudy Ortega, Sr., to Congressman Howard Berman, a November 2014 article in a Cedar Rapids, Iowa newspaper, a letter from the Tribal Chairman of the San Manuel Band of Mission Indians to Judy Noiron, a Forest Supervisor, and the band's 2006 Articles of Incorporation. All of these sources are limited to identification of an Indian entity by the petitioner itself and/or have substantial flaws as evidence for this decade.

The 2001 or 2003 application to the ANA produced by the Tataviam Tribal Office identified the Fernandeno/Tataviam petitioner as being the subject of two pieces of legislation: draft legislation to the State of California for state recognition of the band, and legislation introduced in the U.S. Congress to "affirm and clarify the Federal Relationship of the Fernandeno/Tataviam Tribe as a distinct federally recognized Indian tribe."³⁹ We were unable to find any record of either of these pieces of legislation in their respective legislative bodies in 2003. The 2003 letter from Ortega to Congressman Berman also identified the Fernandeno/Tataviam Tribe in his effort to secure Berman's support for Federal recognition. Both of these sources qualify as identification of an Indian entity by the petitioner and must be combined with additional kinds of external identification in order to meet the criterion.

The source identified as a November 2014 article in *The Gazette* should not contribute to the evidence for the 2000s since it was published in 2014.

The 2005 letter from the Chairman of the San Manuel Band of Mission Indians to Judy Noiron, Forest Supervisor, requested a tour of burial sites by three tribes. The quoted portion of the letter did not identify the tribes or a Fernandeno tribal entity. The letter does not meet the requirements for evidence within criterion (a).

The 2006 articles of incorporation of Fernandeno Tataviam Band of Mission Indians qualify as identification of an Indian entity by the petitioner and must be combined with additional kinds of external identification in order to meet the criterion.

As presented in its 2023 petition, the evidence offered by the Fernandeno petitioner is insufficient to meet criterion § 83.11(a). However, while the petitioner only provided these five sources as evidence for the decade, there are several others available to use that the petitioner did not employ. In its 2009 petition, the Fernandeno petitioner presented many other sources including newspaper articles that qualify as external identification of a Fernandeno tribal entity. Thus, even though the evidence in the 2023 petition does not meet the minimum standard for criterion (a), the petitioner will likely do so with an addendum including supplementary evidence.

³⁹ FTB, 2023 Petition, p. 102 of pdf.

2010-2019

The petitioner supplies six sources as evidence in 2010s: a 2010 memorandum of agreement between FTB and the City of San Fernando, a 2010 article in a newspaper, various letters of support from State and local governments in support of FTB's petition for Federal acknowledgment, a 2018 news release from the Catholic News Agency, e-mails from the Natural History Museum in Los Angeles, and a 2019 proclamation from the City of Santa Clarita.

The 2010 memorandum of agreement, the 2010 article in *The Signal*, the emails from the Natural History Museum, and the 2019 proclamation from the City of Santa Clarita all clearly identify the Fernandeno Tataviam Band of Mission Indians and are sufficient to meet the evidentiary requirement for criterion (a). The 2018 new release from the Catholic News Agency mentioned "The First People of the Land" and did not identify the petitioner.⁴⁰ It is likely that at least some of the letters of support from various state and local governments would qualify as evidence of external identification; however, the petitioner did not provide the necessary information to confirm this in its 2023 petition.

Moreover, the November 2014 article in *The Gazette* identified the Fernandeno Tataviam Band of Mission Indians, as well as Rudy Ortega, Jr., in its article on the Band's attempt to gain federal recognition. This document alone meets the minimal standard for evidence of external identification for the period from 2010 to 2019.

2020-present

Five sources are provided as evidence in the 2020s including various letters of support from state and local governments in support of FTB's petition for Federal acknowledgment, a 2021 report by the *City News Service* on a motion within the City of Los Angeles Council, and a 2021 motion from the Los Angeles Board of Supervisors. It is likely that at least some of the letters of support from various State and local governments would qualify as evidence of external identification; however, the petitioner did not provide the necessary information to confirm this in its 2023 petition. The 2021 resolution from the Los Angeles Board of Education certainly provides evidence of external identification, and the motions from the City of Los Angeles Council and the Board of Supervisors are supportive as well, though they would be strengthened if the petitioner demonstrated that they were passed. The petitioner has evinced the continued external identification of a Fernandeno tribal entity for the period since 2020.

Conclusion

⁴⁰ FTB, 2023 Petition, p. 105 of pdf.

To summarize, the Fernandeno petitioner appears to have failed to provide adequate evidence to meet criterion § 83.11(a), identification as a tribal entity, based on external sources for at least fifty years since 1900. This gap in evidence exists from 1910 to 1919 and again from 1930 to 1969. The petitioner's evidence for the decade of the 1920s leans on a single article from A.L. Kroeber on "Basket Designs of the Mission Indians" and an incomplete quote from a 1927 letter. The OFA may allow the petitioner a gap from 1910 to 1919 through their "tunnel" test, though the petitioner's case for a "substantially continuous basis" would be more convincing if it had more sources in the 1920s. Even under that assumption, the petitioner appears to fail to meet the criterion based on the lack of adequate evidence from 1930 to 1969.

If the petitioner cannot find further documentation of its identification as a tribal entity, this lack of evidence will be fatal to its case. The 2015 regulations provide that a petitioner's evidence will be evaluated in two defined phases: (Phase I) criteria § 83.11(d), (e), (f) and (g) and (Phase II) criteria § 83.11(a), (b), and (c). If the Fernandeno petitioner is found to meet criteria § 83.11(d-g) in a Phase I review but fails to submit adequate evidence for criterion § 83.11(a) in Phase II, the OFA would publish a negative proposed finding based on this failure alone (see § 83.26(b)(4)).

Criterion § 83.11(b), Community

Explanation of the Criterion and its Requirements

This criterion reads as follows in the revised 2015 regulations:

(b) Community. The petitioner comprises a distinct community and demonstrates that it existed as a community from 1900 until the present. Distinct community means an entity with consistent interactions and significant social relationships within its membership and whose members are differentiated from and distinct from nonmembers. Distinct community must be understood flexibly in the context of the history, geography, culture, and social organization of the entity. The petitioner may demonstrate that it meets this criterion by providing evidence for known adult members or by providing evidence of relationships of a reliable, statistically significant sample of known adult members.

§ 83.11(b)(1), The petitioner may demonstrate that it meets this criterion at a given point in time by some combination of two or more of the following forms of evidence or by other evidence to show that a significant and meaningful portion of the

petitioner's members constituted a distinct community at a given point in time:

§ 83.11(b)(1)(i), Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages;

§ 83.11(b)(1)(ii), Social relationships connecting individual members;

§ 83.11(b)(1)(iii), Rates or patterns of informal social interaction that exist broadly among the members of the entity;

§ 83.11(b)(1)(iv), Shared or cooperative labor or other economic activity among members;

§ 83.11(b)(1)(v), Strong patterns of discrimination or other social distinctions by non-members;

§ 83.11(b)(1)(vi), Shared sacred or secular ritual activity;

§ 83.11(b)(1)(vii), Cultural patterns shared among a portion of the entity that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization or system, religious beliefs or practices, and ceremonies;

§ 83.11(b)(1)(viii), The persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name;

§ 83.11(b)(1)(ix), Land set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period;

§ 83.11(b)(1)(x), Children of members from a geographic area were placed in Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed; or

§ 83.11(b)(1)(xi), A demonstration of political influence under the criterion in § 83.11(c)(1) will be evidence for demonstrating distinct community for that same time period.

§ 83.11(b)(2), High Evidence: The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 83.11(c) at a given point in time if the evidence demonstrates any one of the following:

§ 83.11(b)(2)(i), More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area;

§ 83.11(b)(2)(ii), At least 50 percent of the members of the entity were married to other members of the entity;

§ 83.11(b)(2)(iii), At least 50 percent of the entity members maintain distinct cultural patterns such as, but not limited to, language, kinship system, religious beliefs and practices, or ceremonies;

§ 83.11(b)(2)(iv), There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations; or

§ 83.11(b)(2)(v), The petitioner has met the criterion in § 83.11(c) using evidence described in § 83.11(c)(2).

To meet the requirements of criterion § 83.11(b), the petitioner must be more than a group of Indian descendants with common tribal ancestry who have little or no social or historical connection with each other. Sustained interaction and significant social relationships must exist among the members of the group. Interaction should be broadly distributed among the membership, not just small parts of it. Petitioners must show that interactions have occurred continuously since a given point in time.

The acknowledgment regulations also require that the petitioner be a community distinct from other populations in the area. Members must maintain at least a minimal social distinction from the wider society. This requires that the petitioner's members are differentiated from and identified as distinct in some way from non-members. The existence of only nominal differences provides no supporting evidence for the existence of community among the membership.

In essence, community as defined in the regulations means the continued maintenance of tribal relations. This requires that tribal members knew each other and interacted in various ways. Ideally, this interaction can be demonstrated by showing that there was intermarriage across tribal family lines and reasonable residential proximity of the tribal families within a defined geographic area. Community can also be shown, however, by evidence that tribal members visited each other, shared information, attended each other's life events, such as weddings and funerals, and/or discussed or even argued and fought over issues of importance to the tribal membership.

If an acknowledgment petitioner's present tribal membership is comprised of components or subgroups, as is the case with the Fernandeño petitioner, then it must be demonstrated either that these components have always been socially and politically interactive or, if they were separate at one time, that they naturally became part of a single tribal community.

The settlement patterns and social relationships of the petitioner need to be documented and interpreted within the context of strategies used by the members to retain their distinct identity, social cohesion, and interaction. Actual interaction does not need to be evidenced if marriage and residential patterns can demonstrate that the families lived in close enough proximity to make interaction probable.

The DOI has stated the following in previous cases:

Historical Community: Methodology. The regulations provide that, 'Community must be understood in the context of the history, geography, culture and social organization of the group' (25 CFR 83.1). Prior decisions indicate that for the time span from the colonial period [now 1789] to the 19th century, evaluation of community has not been tied to the specific forms of evidence listed in § 83.7(b), but rather was

evaluated more generally, under the provisions of the definition of community in § 83.1. This approach should be seen in the light of the preamble to the regulations, which states that some commenters to the 1994 revised regulations saw [the 1994 25 CFR Part 83] revision and the revised definition of community as requiring a demonstration of specific details of interactions in the historical past, and thus as creating an impossible burden. . . . A detailed description of individual social relationships has not been required in past acknowledgment decisions where historical community has been demonstrated successfully and is not required here. . . . Further, the language added to § 83.6 clarifies that the nature and limitations of the historical record will be taken into account.⁴¹

The relevant language follows:

Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. The limitations inherent in demonstrating the historical existence of community and political influence or authority shall also be taken into account. Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time.⁴²

Comments on the Fernandeno Evidence for Criterion § 83.11(b), Community, 1900 through 1951

At the turn of the twentieth century, the family lineages of the Fernandeno petitioner had become dispersed across the San Fernando Valley and north to the Tejon Ranch. According to the 2009 petition, the Ortega family was living in San Fernando, where some retirees remained in crumbling buildings at the old San Fernando Mission.⁴³ However, other families had left. The Garcias had moved to Newhall, about ten miles to the north to find work in the ranching community.⁴⁴ Josephine Leyva, a headperson of the Garcia lineage, resided in Newhall in 1900 and later moved to Ventura County, though she returned by the end of the 1930s.⁴⁵ The Ortiz lineage departed San Fernando in 1877 for Tejon Ranch, many miles

⁴¹ 59 F.R. 38, 9287 (February 25, 1994).

⁴² 25 C.F.R. 83 (As of April 1, 2012), Section 83.6; Accessed at: <https://www.doi.gov/sites/doi.gov/files/uploads/25cfr83.pdf>

⁴³ FTB, 2009 Petition, p. 129 of 283-page pdf.

⁴⁴ FTB, 2009 Petition, p. 129 of pdf.

⁴⁵ FTB, 2023 Petition, p. 111 of pdf.

away to the north.⁴⁶ The Joseph Ortiz family later moved to Bakersfield in the 1890s before returning to San Fernando in 1924 where they moved in near Ortega families.⁴⁷ This proximity of members is illustrated on maps that were submitted to the DOI but are not accessible to the public and are not a part of the response materials evaluated here. However, it is notable that two of three claimed lineages did not live near each other for at least twenty years starting at the beginning of the twentieth century, and the petitioner is unable to provide direct evidence of social relationships and regular interaction outside of San Fernando for these years.

According to the 2009 petition, “by the end of the 1920s, most progenitors of tribal members are living in San Fernando, CA, while a few households are living in Fresno, Bakersfield, and El Rio. Most of the Ortiz family and the Ortega family lived in San Fernando CA, mostly within walking distance of each other.”⁴⁸ The 2023 petition states that most Garcia families continued to live at Newhall. In its 2009 petition, the petitioner asserted that “most community residence and major life events activity took place in the eastern San Fernando Valley, mainly in San Fernando.”⁴⁹ These included holiday celebrations and fiestas at the Mission. However, the petitioner has not provided evidence of widespread Fernandeno participation in what one informant characterized as “pan-Indian” events. There appears to be a core group of members in San Fernando, centering around the Ortega and Ortiz lineages, that lived in close enough proximity to maintain social relationships and informal social interaction. However, there is minimal evidence of social interaction with the Garcia lineage in Newhall in these years.

The 2023 petition offers very little information on the residential patterns or social activities of its members for the decade of the 1930s. Fortunately, the 2009 petition is a corrective. It stated that “a large majority of Fernandeno families lived in the northeastern portion of the San Fernando Valley,” and that “most Ortiz and Ortega households live[d] within walking distance and mainly in the old section of San Fernando during the decade of the 1930s.”⁵⁰ The petitioner claimed that the Fernando community “carried on meetings, dressed in regalia to dance and sing songs, and participated in festivals,” particularly those at the Mission.⁵¹ The only informant for this claim was Rudy Ortega, Sr., and he was unable to provide details of these activities since he was very young [born in 1926]. In fact, in his oral interview, he could not verify any singing of songs and was not able to provide any information about participants.⁵²

⁴⁶ FTB, 2009 Petition, p. 129 of pdf.

⁴⁷ FTB, 2023 Petition, p. 111 of pdf; FTB, 2009 Petition, p. 133 of pdf.

⁴⁸ FTB, 2009 Petition, p. 134 of pdf.

⁴⁹ FTB, 2009 Petition, p. 135 of pdf.

⁵⁰ FTB, 2009 Petition, p. 137 of pdf.

⁵¹ FTB, 2009 Petition, pp. 137-138 of pdf.

⁵² FTB, 2009 Petition, p. 138 of pdf, fn. 252.

In the 1940s, the residential pattern continued much as it was in the previous decade with “most community households in San Fernando . . . within walking distance and located within a one half mile radius.”⁵³ This community “lived in a segregated section of San Fernando with Indians and Mexicans and other minority members on the west of the railroad tracks laid near Truman Street.”⁵⁴ A few households, however, moved to the surrounding towns. The petitioner claims in its 2023 submission that there were political and social meetings, perhaps held by Estanislao Ortega after he became captain in 1942, and that some were held in Newhall.⁵⁵ However, there are no details about these meetings and gatherings. One informant, likely David Salazar, Sr., remembered that members of the Garcia lineage would visit on holidays with other relatives. Sometime around 1940, Frances Cooke had moved to San Fernando with her family, which likely explains their presence at holidays. As in the 1920s and 1930s, there appears to be a core group of members in San Fernando, centering around the Ortega and Ortiz lineages, that lived in close enough proximity to maintain social relationships and informal social interaction. Unlike previous decades, however, there is greater evidence of social interaction with the Garcia lineage for these years.

Following the death of Rogerio Rocha in 1904, the petitioner asserts that Antonio Maria Ortega (of the Ortega lineage group) became the captain of the Fernandinos and served in that capacity until 1941.⁵⁶ The petition presents little, if any, evidence of what Antonio Ortega did to provide leadership or documentation to evince that he had political influence or authority over all three of the lineage families. Nor is there evidence of regular social interaction between the lineages. According to the 2009 petition, his funeral in 1941 “was well attended by members of the Band and the general San Fernando community.”⁵⁷ The informant describing the funeral, likely Rudy Ortega, Sr., did not establish that the mourners included representatives from all three of the petitioner’s lineage families.⁵⁸

The petition provides virtually no evidence of social relationships or interaction in the first two decades of the twentieth century. Instead, we are to assume the existence of such relationships by the claimed residential cluster of families in San Fernando. However, as already observed, several families were in different areas: the Ortegas in San Fernando, the Ortizes in Bakersfield, and the Garcias in Newhall. Joseph Ortiz only moved to San Fernando in 1920. The petitioner has provided a map and an associated file, a GEDCOM file, to the OFA to support its claim of a residential cluster in San Fernando. The GEDCOM file includes data from many sources, including U.S. Censuses, California Indian Judgment Rolls, and

⁵³ FTB, 2009 Petition, p. 144 of pdf.

⁵⁴ FTB, 2009 Petition, p. 144 of pdf.

⁵⁵ FTB, 2023 Petition, p. 113 of pdf.

⁵⁶ FTB, 2023 Petition, p. 110 of pdf.

⁵⁷ FTB, 2009 Petition, p. 135 of pdf.

⁵⁸ FTB, 2009 Petition, p. 135 of pdf, fn. 236.

birth, death and funeral records. The petitioner asserts that the file demonstrates that “the majority of FTB Christenings, Deaths and Burials occurred with FTB Tribal Territory. Births and Places of Residences follow the same pattern,” though with some exceptions.⁵⁹ We do not have access to the map, the GEDCOM file, or the associated genealogical records. Without access to this evidence, we cannot categorically prove or disprove this claim. This claim should be scrutinized carefully.

For the 1920s and 1930s, the 2023 petition asserts that there was social interaction between members at fiestas and gatherings. The petitioner provides one photo with several members of the Ortega family and one FTB member of the Garcia lineage as evidence. The petitioner also cites the recollections of Rudy Ortega, Sr., that there were fiestas and such, particularly at the Mission. There is no specific material on these gatherings or participants, and no evidence that all three lineage families participated. Importantly, the petitioner’s 2009 submission stated that many of these events were not exclusive to FTB. In that submission, the petitioner stated that “beginning in 1931, San Fernando Mission, local community groups, and the city of San Fernando held festivals celebrating and commemorating the history of the area. Living close by, the Fernandeno community members attended and participated in the festivals.”⁶⁰ Ortega, Sr., confirmed in one of his interviews that they were “pan-Indian” and could not identify specifically Fernandeno activity such as political meetings or cultural rites occurring during these fiestas.⁶¹ Ortega, Sr., is the only informant for these events, and he would have been a small child for many of these years. However, Ortega, Sr., also asserted that “we had own fiestas. Like we had the weddings . . . showers . . . birthday parties.”⁶² When asked whether these gatherings were for other Indians too, he replied that there were “exclusive for our people.”⁶³ It is unclear whether these were Ortega lineage events or were attended by members of all three lineage families.

In its 2015 supplement to Petition #158, the petitioner commented that lineage headpersons organized family gatherings, but only for their “direct lineage.” For example, Frances Garcia Cooke and subsequently her daughter, Mary Garcia, organized family gatherings until their deaths in 1946 and 1975, respectively. “Among the Ortegas, Antonio Maria and his wife, Ysidora, held family gatherings until Ysidora’s death in 1931. Thereafter, daughter Vera Ortega Salazar organized family events until the late 1970s.”⁶⁴ These statements indicate that many of the gatherings cited by the petitioner were lineage affairs rather than for members of all three lineage families.

⁵⁹ FTB, 2023 Petition, p. 126 of pdf.

⁶⁰ FTB, 2009 Petition, pp. 137-138 of pdf.

⁶¹ FTB, 2009 Petition, pp. 137-138 of pdf, fn. 250.

⁶² FTB, 2009 Petition, p. 138 of pdf, fn. 250.

⁶³ FTB, 2009 Petition, p. 138 of pdf, fn. 250.

⁶⁴ FTB, 2015 Supplementary and Updated Information to the Petition of 2009 (Supplement), b, p. 30.

Following the death of Antonio Maria Ortega in 1941, the petitioner states that his eldest son Estanislao became the captain of the Fernandinos until his own death ten years later in 1951. In one of his interviews quoted in the 2009 petition, Rudy Ortega, Sr., stated that the position “was idle” for about a year until “my dad took over to bring the people, keep the people together.”⁶⁵ There is no information as to how this decision was made or on who participated in the process. The 2023 petition indicates that Estanislao Ortega held political and social meetings for tribal members where tribal members practiced consensus decision-making.⁶⁶ The tribe also “participated in joint economic activities, including raising money for funerals, and collecting food for the elderly, and procuring food donations for tribal meetings.”⁶⁷ These statements appear to be based primarily on the oral history testimony of Estanislao’s son, Rudy Ortega, Sr. It is unclear how Ortega, Sr., was aware of these activities, since by his own admission, he was away for several years in the 1940s. These interviews, at least as quoted in the petition, include no examples of decision-making, provide little or no description of specific events, and fail to establish that these activities encompassed all three of the petitioner’s lineage families. Furthermore, it is unclear as to how much of this charitable work was directed toward Fernandino families as opposed to needy members of the broader San Fernando community.⁶⁸

However, there are other interviews that better document social relationships between the lineages in the 1940s. The quoted passage in the Ernest John Ortega interview documents informal social gatherings between his family and Indian families in the Newhall area, including the Cookes. Ortega recalled that “[u]s kids would play, and all the parents would gather and they’d play music or guitars or whatever it was and they’d do it. . . . I still have close ties to some of the Cooks.”⁶⁹ Ernest John Ortega was born in 1941, so this demonstrates interaction between the families in Newhall around the mid to late 1940s. Furthermore, another informant, likely David Salazar, Sr., recalled that the Cookes attended holiday gatherings at his family’s home. Frances Cooke had moved to San Fernando around 1940, and it is likely that their closer proximity brought more social interaction between these families.

The petition does not identify a community institution that might act as a nexus for Fernandino community activity and social interaction. Such institutions have been crucial to some successful applications in the past. For example, in its 1997 Proposal Finding for acknowledgement for the Match-e-be-nash-she-wish Band (MBPI) of Michigan, DOI found that:

⁶⁵ FTB, 2009 Petition, p. 139 of pdf.

⁶⁶ FTB, 2023 Petition, p. 113 of pdf.

⁶⁷ FTB, 2023 Petition, p. 113 of pdf.

⁶⁸ FTB, 2009 Petition, p. 140 of pdf, fn. 260.

⁶⁹ FTB, 2023 Petition, pp. 127-128 of pdf.

The Methodist Mission Indian church at Bradley provided a focus for social activities which encompassed most of the group. . . . Because mission activities were controlled by the MBPI [petitioner] and because their activities extended beyond the actual church membership to all MBPI members, many church activities provided a significant level of evidence for community under criterion 83.7(b)(1)(ii) and 83.7(b)(1)(iii).⁷⁰

At times, the petitioner seems to identify the Mission church at SFR as such a nexus. In its 2009 submission, the petitioner claimed that regular fiestas took place at the church in the 1930s.⁷¹ In its 2023 petition, FTB identifies revivals of ceremonies in 1928 and 1937 at the church, though it fails to provide evidence of significant Fernandeño participation or attendance.⁷² However, the 2009 document also asserted that events became much less frequent in the 1940s. Religious ceremonies, such as baptisms, took place in different churches in and around the San Fernando Valley, depending on where the family lived.⁷³ As a result, there does not appear to be a community institution for the Fernandeño petitioner in the first half of the twentieth century.

The only political issue focused on during this period was whether entity members should apply for the California Judgment Act roll (the roll created by the California Indian Jurisdictional Act of 1928). The members of the Ortiz and Garcia families favored enrollment, but Antonio argued against it out of fear that the people would be removed to a reservation. Elders, led by Antonio and his wife Ysidora, allegedly influenced all of the Ortega lineage members not to enroll.⁷⁴ Members of the Ortiz and Garcia lineages, however, did apply, and the petition documents the applications of Joseph Ortiz, Frances Garcia Cooke, and many members of the Garcia lineage.

Although the petition presents the 1928-1933 registration as a key political issue, it provides no specific examples of meetings or other gatherings at which the issue was discussed by all three of the lineage families together. If the matter was as important as the petitioner claims, there should be evidence of interaction within and between lineages. Instead, the 2023 petition offers minimal documentation of such interaction in the form of recollections from Rudy Ortega, Sr., that his grandparents were opposed, and therefore, “his people” [the Ortegas] did not apply.

⁷⁰ U.S. Department of the Interior, Office of Federal Acknowledgment, Proposed Finding, Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, 1997, p. 8.

⁷¹ FTB, 2009 Petition, pp. 137-138 of pdf.

⁷² FTB, 2023 Petition, pp. 123-126 of pdf.

⁷³ FTB, 2009 Petition, p. 143 of pdf, ftn. 272.

⁷⁴ FTB, 2023 Petition, p. 89 of pdf.

Comments on the Fernandeno Documentation for Categories of Evidence for Criterion § 83.11(b), Community, 1900 through 1951

§ 83.11(b)(1)(i), Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(1)(ii), Social relationships connecting individual members

The petitioner provides several sources as evidence that it meets this category: a 1920s-era photo; a 1926 article in the *San Fernando Valley Leader*; 2008 oral interviews of Earnest John Ortega and Rudy Ortega, Sr.; the 1946 funeral book for Frances Cecelia Cooke; a 1946 letter from Joe Cooke to Ernest Cooke; a 1950 letter from Rudy Ortega, Sr., to Ten Williamson, Area Tribal Operations Officer; and the 1951 funeral book for Estanislao Ortega. The majority of these sources document social relationships between named individual members; the exception is the 2008 oral interview with Rudy Ortega, Sr. His interview only names his aunt, Vera Salazar, though it suggests social relationships with unidentified participants through his newly organized group in the early to mid 1950s.

The quoted passage in the Ernest John Ortega interview documents informal social gatherings between his family and Indian families in the Newhall area, including the Cookes. Ortega recalled that “[u]s kids would play, and all the parents would gather and they’d play music or guitars or whatever it was and they’d do it. . . . I still have close ties to some of the Cooks.”⁷⁵ Ernest John Ortega was born in 1941, so this demonstrates interaction between the families in Newhall around the mid to late 1940s.

Significant social relationships may be assumed for the families in San Fernando; however, the petitioner does not provide an enumeration of the composite entity membership during this period, so it is not possible to determine if the San Fernando families represented a significant portion of the petitioner’s ancestors.

The 1951 funeral of Estanislao Ortega is the only example provided by the petitioner of a social event at which all three family lines were represented. While OFA evaluators will likely give some leeway to interpreting that this event did not happen in a vacuum and that there was some level of social relations between families for some period before and after the 1951 funeral, this single event does not

⁷⁵ FTB, 2023 Petition, pp. 126-127 of pdf.

appear to be sufficient in itself to demonstrate social relationships among all three lineages for the entire 52-year period.

There are other weaknesses as well. The petitioner offers no evidence in the first two decades of the twentieth century and little for the 1930s. The evidence for the 1920s is limited. The 1920s-era photo shows five members at the Antonio Ortega residence, but only one member of the FTB outside of the Ortega lineage. The only other evidence in the 1920s is a newspaper article on a birthday celebration for Rafael Ortiz, Sr., and the only FTB members listed are members of his extended family. The strongest evidence of social relationships between lineages appears to date from the mid-1940s and early 1950s, and that leaves a substantial gap in the petition.

§ 83.11(b)(1)(iii), Rates or patterns of informal social interaction that exist broadly among the members of the entity

The petitioner provides four sources as evidence that it meets this category: a 1920s-era photo; a portion of a 2008 oral interview of Ernest John Ortega; the 1946 funeral book for Frances Cecelia Cooke; and the 1951 funeral book for Estanislao Ortega. The 1920s-era photo displays four Ortega family members, an unnamed member of the Garcia lineage, and Isidora Garcia (a non-member of FTB) at the Antonio Ortega residence. Antonio Ortega was an Ortega lineage headperson and a captain at the time. This photo demonstrates members of different lineages interacting with each other at this moment in time.

The quoted passage in the Ernest John Ortega interview documents informal social gatherings between his family and Indian families in the Newhall area, including the Cookes. Ortega recalled that “[u]s kids would play, and all the parents would gather and they’d play music or guitars or whatever it was and they’d do it. . . . I still have close ties to some of the Cooks.”⁷⁶ Ernest John Ortega was born in 1941, so this demonstrates interaction between the families around the mid to late 1940s.

The 1946 guestbook for the funeral of Frances Cecelia Garcia lists several attendees from her immediate family; however, of the list provided by the petition, only three were members of the petitioning entity and all three were her children. The lack of guests from her extended family or other lineages is striking. The petitioner asserts that several floral tributes were sent from other families, including those of Ted Garcia, Vera Salazar, and possibly Evelyn Newman and Estanislao Ortega [the petitioner claims that he went by Jim and the tribute was sent from Mr. and Mrs. Jim Ortega]. The floral tributes, however, are not evidence of informal social interaction at the event, though they are suggestive of social relationships between families.

⁷⁶ FTB, 2023 Petition, pp. 126-127.

The petitioner asserts that the guestbook for the 1951 funeral of Estanislao Ortega demonstrates broad-based social interaction and “relationships between all tribal members listed in the funeral book.” It certainly shows social interaction between these individuals at the funeral. The tribal members include: Jimmy Verdugo, Sally Verdugo, Della Cooke Martinez, Verne Newman, Catherine Newman, Vera Salazar, Mary Ortiz, as well as Rose Ortiz Doh and her immediate family. Robert Salazar and Ted Garcia were listed as “friends who called.” Others sent flowers. This is strong evidence of social interaction within the FTB and between lineages, and since it did not take place in a vacuum, it is likely that there was some level of social interaction between the families for some period before and after the Ortega funeral.

These pieces of evidence provide isolated examples of informal social interaction sometime in the 1920s, in the 1940s, and in 1951 at the funeral of a lineage headperson and captain. The 1951 guestbook is particularly strong evidence. They do not, however, demonstrate “a rate or pattern of informal social interaction that exists broadly among members of the entity” for the period between 1900 and 1951. Notably, there is no evidence provided in the first two decades of the twentieth century and only one source in the 1920s, an image of a few members. Aside from the 1951 guestbook, it does not show a pattern of interaction among many members of the petitioning entity.

Furthermore, the petitioner fails to document regular informal social interaction between all of the three lineages during this period. Such interaction may be assumed for the families living in close proximity in San Fernando, but because the petition has not provided an enumeration of the entire entity membership during this period or provided the locale of these members, it is not possible to determine if the families in San Fernando constituted a broad portion of the membership. If they in fact did represent a significant portion, the petitioner might be able to demonstrate that it meets this category of evidence.

The petitioner does not currently meet the requirements of this category of evidence.

§ 83.11(b)(1)(iv), Shared or cooperative labor or other economic activity among members

The petitioner claims to meet this category of evidence because Rudy Ortega, Sr., paid for food, organized volunteers to prepare food, and solicited donations for the meetings he organized for tribal youth around 1940. In a 2007 oral interview, Ortega, Sr., confirmed that when he was organizing a meeting, “I used to buy the food. I used to send two women with a check to the store . . . And they’d go buy the

food, the turkeys. A lot of times, I'd go myself to the stores, the markets, and ask for a donation of a turkey or two and they'd give them to me. I'd say because we are having a big meeting in the Mission here in San Fernando. We're Native Americans."⁷⁷ The petitioner does not document significant shared or cooperative labor among its members but instead shows the efforts of one person, Rudy Ortega, Sr., to organize informal meetings and acquire food for the participants. Nor is it clear that this group consisted of FTB members and included members of the three lineages. The petitioner provides no list of participants or even possible attendees. As Ortega, Sr., described it, it was a club where those who wanted to learn about their culture and their identity could discuss these matters and involved no significant economic activity.

The petitioner also cites a 2008 oral interview with Kathryn Gonzales as evidence of shared or cooperative labor or other economic activity among members. Gonzales recounted how her mother, Rudy Ortega, Sr., and Rudy's sister, Eva, sold fajitas out of a carnival booth to raise money. There is no information about the purpose of the fundraising or the frequency of these events. This activity does not demonstrate shared economic activity by a significant number of members.

The petitioner does not meet the requirements of this category of evidence.

§ 83.11(b)(1)(v), Strong patterns of discrimination or other social distinctions by non-members

The petition provided two pieces of evidence that it claims as meeting this category: a 1904 article by Horatio N. Rust in the journal *Out West*, and three interviews conducted with tribal members in 2008. The 1904 article recounts the occupation of Roderia Rocha on a 10-acre plot of land for many years during the nineteenth century and his subsequent ejection from that land in 1885. The petitioner argues that Rocha's eviction and subsequent failure of the courts to provide redress due to an illegal change in the language of the land title demonstrates that "Indians were not granted legal standing within the courts" and thus endured a pattern of discrimination by non-Indians.⁷⁸ There are problems with this evidence and the argument made by the petitioner. OFA stated in its October 2016 Technical Assistance letter that Rust's 1904 recollections pertaining to Rocha were of "an individual, not a group."⁷⁹ Furthermore, the discrimination alleged by the petitioner appears to have been suffered in the nineteenth century rather than in the period germane to this category. The suit by Porter and Maclay, Rocha's forced ejection, and failure in seeking redress in the courts all occurred in the 1870s and 1880s. The

⁷⁷ FTB, 2023 Petition, p. 129 of pdf.

⁷⁸ FTB, 2023 Petition, pp. 120-121.

⁷⁹ U.S. Department of the Interior, Letter from R. Lee Fleming, Director, Office of Federal Acknowledgment, to Rudy Ortega, Jr., 10/17/2016, p. 9.

petitioner fails to identify evidence of social distinction or discrimination in this document after 1900 to support its claim.

The petitioner also argues that three interviews conducted in 2008 with tribal members demonstrate a “strong pattern of discrimination by non-members and exclusion from assimilation.”⁸⁰ The quoted portions of two interviews referenced as evidence, of Dorothy Newman and Verne Newman, Jr., don’t provide any evidence of social distinction or discrimination against tribal members, but instead describe the racial composition of San Fernando of the 1930s. In the third interview, Angie Campero stated that in their area of San Fernando the railroad tracks marked a line where “all the white people lived on that side” and “the Mexican-Americans could not cross the railroad tracks.”⁸¹ Instead, “the Mexican-American, you had to be on this side.”⁸² Elsewhere in the petition, the petitioner asserts that discrimination against FTB members was common in San Fernando. Oral interviews document that several members “attempted to learn Spanish to fit in with the Mexican-American community in San Fernando” and that many children “experienced discrimination from other students and from teachers.”⁸³

In its 2009 submission, the petitioner provided more documentation of these patterns of discrimination. Informants stated that members tried to avoid public identification as Indians, including the use of indigenous languages and visible display of native cultural expressions, due to prevailing racial bias against Native Americans. Several informants stated that Fernandenses feared that if they were identified as Natives they then would be put on a reservation.⁸⁴

This specific evidence covers only the period since the 1920s since it is based on descriptions provided by informants interviewed in the 2000s. Discrimination and social distinctions likely existed before this time, but they are not specifically documented in the petition. Therefore, the petitioner meets the requirements of this category of evidence from the 1920s through 1951.

§ 83.11(b)(1)(vi), Shared sacred or secular ritual activity

The petitioner provided three sources of evidence that it meets this category: a 1922 article in the *San Fernando Valley Press*; a 1928 article in the *San Fernando Sun*; and a 1937 article in the *San Fernando Sun*. The 1922 article in the *San Fernando Valley Press* describes a Fourth of July pageant held at the SFR Mission. While the article describes the attendance of “scores of Indians, Spaniards and Mexicans,” it

⁸⁰ FTB, 2023 Petition, pp. 124-125 of pdf.

⁸¹ FTB, 2023 Petition, p. 125 of pdf.

⁸² FTB, 2023 Petition, p. 125 of pdf.

⁸³ FTB, 2023 Petition, p. 112 of pdf.

⁸⁴ FTB, 2009 Petition, pp. 150-156 of pdf.

does not identify members of the Fernandeño petitioner as participating. The petitioner asserts that the fact that there were “scores of men and women in Indian and Spanish costume” and that they “presented unique and highly entertaining features” is evidence that “FTB members are a distinctive group that wears separate clothing and has separate rituals that can be distinguished from others around them.”⁸⁵ However, the article does not identify these men and women as FTB members or the “unique and highly entertaining features” as FTB ritual activities. Rather, these unidentified activities are likelier to be symbolic expressions. The DOI addressed the issue of symbolic expressions of identity in its 1993 Proposed Finding in favor of acknowledgment of the Snoqualmie Tribe of Washington. It stated that:

To be meaningful as evidence concerning the maintenance of a cohesive, distinct social community, cultural differences should extend beyond purely symbolic expressions of identity. An example of the latter is the revival and performance of traditional style dances, in contexts such as parades or performances before non-members, as a means of affirming identity, but without the context of beliefs, worldview and supporting social and economic obligations that the dance had in its original cultural and social setting.⁸⁶

The 1928 article in the *San Fernando Sun* describes the revival of San Ferdinand’s Day, a feast day held at the Mission. According to the petitioner, the newspaper reported that it is known today as the Commemoration or Image Ceremony and it was once celebrated as a “great yearly feast of the Indians which once was held at the mission to pay honor to the dead.”⁸⁷ It is unclear whether this ceremony was important to the petitioners or their ancestors. There is no evidence that the petitioning entity organized the feast day or that a significant number of their members attended. The article named only one Indian, Cetayimo, as attending.

The 1937 article in the *San Fernando Sun* describes the revival of the Candle Day ritual, an event at which “tribute was paid to the early padres and the Indians at the SFR.”⁸⁸ No further information is provided about the origin or history of this ritual and whether it played a significant role in the culture of the ancestors of the petitioning entity. According to the petitioner, the newspaper reported that 200 people attended this event. There is no documentation of the number of FTB members at the event. In fact, the only FTB participant named in the article was Josephine Gutierrez. Nor does the petitioner provide any documentation that this

⁸⁵ FTB, 2023 Petition, p. 123 of pdf.

⁸⁶ U.S. Department of Interior, Office of Federal Acknowledgment, Proposed Finding, Snoqualmie Indian Tribe, 1993, p. 20.

⁸⁷ FTB, 2023 Petition, p. 124 of pdf.

⁸⁸ FTB, 2023 Petition, p. 125 of pdf.

ritual was continued after 1937 and whether members of the petitioning entity were involved.

Without evidence documenting that the significance of these rituals to and greater participation of members of the petitioning entity, these articles fail to meet this category of evidence.

§ 83.11(b)(1)(vii), Cultural patterns shared among a portion of the entity that are different from those of the non-Indian populations with whom it interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization or system, religious beliefs or practices, and ceremonies

The petitioner provided three sources as evidence that it meets this category: a 1937 article in the *San Fernando Sun*, a portion of one of the 2007 interviews with Rudy Ortega, Sr., and a portion of a 2008 interview with Jimmie Ortega and Darlene Villaseñor. The article in the *San Fernando Sun* describes the revival of the Candle Day ritual, an event at which “tribute was paid to the early padres and the Indians at the SFR.”⁸⁹ No further information is provided about the origin or history of this ritual and whether it played a significant role in the culture of the ancestors of the petitioning entity. According to the petitioner, the newspaper reported that 200 people attended this event in 1937. There is no documentation of the number of FTB members at the event. It can be assumed that a significant number of attendees were non-FTB members. The only FTB participant named in the article was Josephine Gutierrez. Furthermore, the article lacks information on how this ritual was part of a pattern “shared among a portion of the entity that [is] different from those of the non-Indian population with whom it interacts.”

The quoted material from the November 2007 interview with Rudy Ortega, Sr., describes his organization of a youth group around 1940 and his efforts to get others to participate. He also asserted that they had developed cards “out of cardboard and it said San Fernando Mission Indian” for the purposes of identification.⁹⁰ This effort appears similar to many other attempts by interested and concerned Indian and non-Indian individuals to organize like-minded individuals and encourage them to participate in meetings. There is little here to suggest that the organization of Ortega, Sr.’s “club” is unique to the FTB entity, and the interview does not describe any cultural patterns or practices different from non-Indians. The cardboard identification cards demonstrate that interested members identified themselves as San Fernando Mission Indians, but there is no information about who those individuals were or whether they were actually members of the petitioning entity.

⁸⁹ FTB, 2023 Petition, p. 125 of pdf.

⁹⁰ FTB, 2023 Petition, p. 129 of pdf.

Moreover, the cards appear to be symbolic identification of the group as Indian without providing any evidence of actual differences in cultural beliefs or social organization.

The 2008 interviews with Jimmie Ortega and Darlene Villaseñor reveal that Antonio Ortega, the captain and Ortega lineage headperson between 1904 and 1941, spoke “the Indian language.” Villaseñor also recalled that Antonio’s son, Estanislao, spoke the language too. They do not identify any others who spoke Tataviam. While language certainly qualifies as a category of evidence, the petitioner is unable to provide evidence that any more than a couple of individuals from the distant past spoke the language. Furthermore, the only two identified persons were father and son.

The petitioner does not meet the requirements of this category of evidence.

§ 83.11(b)(1)(viii), The persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name

The petitioner identifies four sources as evidence that it meets this category: a map and GEDCOM file that encompasses data from several official records; two 1917 military registration cards; a 1941 article in the *San Fernando Sun*; and a portion of one of the oral interviews in 2007 with Rudy Ortega, Sr. The GEDCOM file includes data from many sources, including U.S. Censuses, California Indian Judgment Rolls, and birth, death and funeral records. The petitioner asserts that the file demonstrates that “the majority of FTB Christenings, Deaths and Burials occurred with FTB Tribal Territory. Births and Places of Residences follow the same pattern,” though with some exceptions.⁹¹ We do not have access to the GEDCOM files or necessary records to categorically prove or disprove this claim. However, unless these files consistently identify individuals as members of the petitioning entity, this source would not demonstrate “the persistence of a collective entity continuously.”

On the 1917 military registration cards of Luis Ortega and his brother, Eulogio, the two identify themselves as “Indian” and Eulogio identifies himself as “Fernandeno Indian.” The petitioner argues that the use of “Fernandeno” demonstrates “the persistence of a collective identity continuously over a period of more than 50 years.”⁹²

The 1941 article in the *San Fernando Sun* identifies Antonio Ortega as “reputed to be the last of the San Fernando Mission residents, born and raised on Mission

⁹¹ FTB, 2023 Petition, p. 126 of pdf.

⁹² FTB, 2023 Petition, pp. 121-122 of pdf.

grounds.”⁹³ The petitioner asserts that the article’s identification of Ortega as a Mission Indian is sufficient as evidence of the collective entity. However, the article only describes an individual’s birthplace and residence in the nineteenth century, and does not identify him as an adult, either as an Indian, a Mission Indian, or a member of the petitioning entity. The article does not contribute to the fulfillment of this category of evidence.

In one of his 2007 interviews, Rudy Ortega, Sr., recounts his organizing efforts in the 1950s. After his return from service, his aunt, Vera Salazar, approached him about starting a club “where she could go and talk with people and know the stories and everything.”⁹⁴ In discussing a name for their group, Ortega, Sr., related that:

We were born here in the San Fernando Valley and we came from the San Fernando Mission so choose the name what you want to be called. He said, how about San Fernando Mission Band of Indians? I says, well, that’s fine, because I heard that they used to call us . . . the San Fernando Mission Band Indians but then they took the Band out and they said San Fernando Mission Indians after that.⁹⁵

The quoted portion of the interview indicates the formation of an organized group through the efforts of Ortega, Sr., sometime in the 1950s. However, the petitioner does not demonstrate “persistence of a collective entity continuously over a period of more than 50 years,” and does not do so between 1900 and 1951.

The petitioner did not highlight Ortega, Sr.’s comments about his upbringing and lack of knowledge about his background and heritage. His oral interviews indicate that he did not identify as Indian in school and that he was angry after a teacher identified him as Indian and directed him into a drum group. When he complained to his mother, she responded: “Well, you are Indian. You ask your dad.”⁹⁶ When he then asked: “Well, what kind of Indian?”, his mother replied: “You ask your dad and he’ll tell you.”⁹⁷ Another family informant, possibly John Ortega, indicated that Ortega, Sr., “had a burning desire to know who he was, where they came from and get that family lineage.”⁹⁸ As he grew older in the years before Pearl Harbor, Ortega, Sr., “started doing my genealogy. I started getting my people together.”⁹⁹

⁹³ FTB, 2023 Petition, p. 127 of pdf.

⁹⁴ FTB, 2023 Petition, p. 130 of pdf.

⁹⁵ FTB, 2023 Petition, p. 130 of pdf.

⁹⁶ Interview with Rudy Ortega, Sr., Part 1, p. 4.

⁹⁷ Interview with Rudy Ortega, Sr., Part 1, p. 4.

⁹⁸ FTB, 2009 Petition, p. 142 of pdf, ftn 269.

⁹⁹ Interview with Rudy Ortega, Sr., Part 1, p. 5.

Ortega, Sr., further documents this lack of knowledge elsewhere in an oral interview. When asked about his grandfather, Antonio Ortega, Ortega, Sr., agreed that his grandfather was knowledgeable about the culture, but that:

[H]e never told us nothing. That's the thing I couldn't figure out. All my people, the elders who passed on, has never talked to their family about they lived back in those days, which that's interesting to me. I would like to know. . . . But I can't get nowhere. I run to get-ins after that person dies. And the family says, well, we don't know. My father never told use anything about it. Or my mother never told us nothing. We don't know where we came from.¹⁰⁰

Furthermore, when asked whether he knew the names of the captains during the twenties and thirties, Ortega, Sr., replied: "No." The interviewer then asked: "Would anyone know anywhere? Would that be written down anywhere?" Ortega answered: "I don't think so. There might be. I don't know if there might be something, but then I'm not sure. But I know none of my family knows. Because my family when now they're my age, and they didn't know nothing at that time when we were young."¹⁰¹

This evidence strongly suggests the absence of a functioning collective entity whose members knew each other and their historical continuity and had significant social relations. If the son of the claimed "captain" of the ancestors of the petitioning entity, and perhaps his mother, did not know what kind of Indian he was and apparently did not know related tribal members until he researched them in an effort to bring them together, this does not evince the existence of a vibrant interactive tribal community.

While there is occasional evidence that the petitioner's ancestors identified themselves as *Fernandeños* between 1900 and 1951, the petitioner does not present adequate evidence to meet the requirement of being a collective entity existing continually over a period of more than 50 years. The caveat to this is if the petitioner's members identify their collective identity in official records. That might provide additional evidence; however, without access to these records, we are unable to categorically prove or disprove such a claim. Even with such documentation, however, the lack of strong evidence of a collective identity from the oral interviews is indicative.

§ 83.11(b)(1)(ix), Land set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period

¹⁰⁰ Interview with Rudy Ortega, Sr., Part 1, pp. 29-30.

¹⁰¹ Interview with Rudy Ortega, Sr., Part 1, p. 30.

The petitioner bases its claim that it meets this category of evidence on a 1904 article by Horatio N. Rust in the journal *Out West*. The article recounts the occupation of Rogeria Rocha on a 10-acre plot of land for many years during the nineteenth century and his subsequent ejection from that land in 1885. The article makes clear that the plot had “always been his.”¹⁰² The petitioner provides no evidence that the petitioning entity or its collective ancestors actively used this land in the twentieth century. Moreover, in its October 2016 Technical Assistance letter to the FTB, the OFA stated that: “A Fernandeno tribe or any other Indian entity was not in possession of the tract in 1885 when a local sheriff forcibly ejected Rocha . . . from the land.”¹⁰³ Nor does the petition show that the land to which Rocha retreated, now known as Lopez Canyon, was set aside for the petitioner or its collective ancestors by the State of California and actively used by the petitioner’s community. OFA further stated in its October 2016 letter that Rust’s 1904 recollections pertaining to Rocha were of “an individual, not a group.”¹⁰⁴

The petitioner fails to demonstrate that Rocha’s plot from which he had been forcibly evicted in 1885 or the land to which he retreated afterward was set aside for the petitioner or its collective ancestors by the State of California and actively used by the community since 1900. This article does not meet the requirements of this category of evidence.

§ 83.11(b)(1)(x), Children of members from a geographic area were placed in Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(1)(xi), A demonstration of political influence under the criterion in § 83.11(c)(1) will be evidence for demonstrating distinct community for that same time period

The petitioner appears unable to demonstrate political influence for any of the categories under § 83.11(c)(1). Thus, the petitioner has not met this category of evidence.

¹⁰² FTB, 2023 Petition, p. 120 of pdf.

¹⁰³ U.S. Department of the Interior, Letter from R. Lee Fleming, Director, Office of Federal Acknowledgment, to Rudy Ortega, Jr., 10/17/2016, p. 8.

¹⁰⁴ U.S. Department of the Interior, Letter from R. Lee Fleming, Director, Office of Federal Acknowledgment, to Rudy Ortega, Jr., 10/17/2016, p. 9.

Section 83.11(b)(2), High Evidence: The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 83.11(b) at a given point in time if the evidence demonstrates any one of the following:

§ 83.11(b)(2)(i), More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area.

The petitioner claims that it meets this category of evidence because it has demonstrated that more than 50 percent of the members reside in a geographical area. However, the petitioner has omitted key language from the category in its 2023 submission. Applicants must demonstrate that “more than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area [underlined for emphasis].” As discussed elsewhere, we do not have access to the necessary records to categorically prove or disprove this claim.

To meet this category of evidence, the petitioner will need to identify a specific geographic area where its members resided and provide evidence that its members “exclusively or almost exclusively” accounted for the population of this area. It has not yet done so. It will then need to demonstrate that the members who did not live in these area “maintain consistent interaction with some members residing in that [the identified] area.” Other petitioners, such as the Shinnecock and Pamunkey, met this category for certain periods because their members were concentrated on State reservations, in New York and Virginia, respectively. The Mashpee petitioner met this category of evidence by demonstrating that from colonial times up through the 1960s the vast majority of its members almost exclusively made up the population of the town of Mashpee, Massachusetts. We do not know what the population was of the geographical area that the petitioner must identify to meet this criterion, but it seems that this criterion will be very difficult to meet.

§ 83.11(b)(2)(ii), At least 50 percent of the members of the entity were married to other members of the entity.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(2)(iii), At least 50 percent of the entity members maintain distinct cultural patterns such as, but not limited to, language, kinship system, religious beliefs and practices, or ceremonies.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(2)(iv), There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(2)(v). The petitioner has met the criterion in § 83.11(c) using evidence described in § 83.11(c)(2).

The petitioner does not appear to be able to meet the evidentiary burden for criterion § 83.11(c), political influence or authority, from 1900 to 1951 using the evidence described in §§ 83.11(c)(2). Thus, the petitioner has not met this category of evidence.

Conclusions for Criterion § 83.11(b), Community, 1900 through 1951

The petitioner's evidence appears to only meet two categories of evidence for community during some, but not all, of this period, with important caveats. The categories are (1) "social relationships connecting individual members" [§ 83.11(b)(1)(ii)]; and (2) having "evidence of strong patterns of discrimination or social distinctions by non-members" [§ 83.11(b)(1)(v)]. The limits of the evidence are that: (1) the evidence of social relationships between lineages only seems to include the period from the mid 1940s to 1951, and it depends on records (maps and GEDCOM files) proving that a substantial proportion of the entity's membership, particularly the Ortega and Ortiz lineages, lived in a certain area [likely a few blocks of old town San Fernando], and that these records are not accessible to the public; and (2) specific information about discrimination and social distinctions that only covers the period since the 1920s.

The Acknowledgement regulations require that a petitioner must meet a combination of categories for criterion § 83.11(b). However, the combination of somewhat minimal positive evidence for some years with important caveats for § 83.11(b)(1)(ii) and (v) is not sufficient to fulfill the regulatory requirements in the absence of strong evidence of significant social relations and informal social interaction across the entire period and between lineages. As noted above, the petitioner may be able to strengthen its case for significant social relationships by better defining and enumerating the core San Fernando community, and by specifically identifying other social events across the entire period and that encompassed all three lineage families. If it could provide more specific examples of how separate family lineages made social and political decisions, it might be able to use its assertion that family lineages were largely autonomous, particularly in politics, to argue that this pattern constitutes a unique kinship organization that meets §83.11(b)(1)(vii), distinct cultural patterns. However, the present evidence in the petition does not meet criterion § 83.11(b) for the required 52-year period from 1900 through 1951.

Comments on the Fernandeano Evidence for Criterion §83.11(b), Community, 1951 through 2023

According to the petition, after the death of Estanislao Ortega in 1951, his son, Rudy Ortega, Sr. was selected to be “Captain of the FTB by aunts and family elders.”¹⁰⁵ As a young man in high school around 1940, Ortega, Sr., began, with the encouragement of his aunt, Vera Salazar, to research family history and genealogy with the purpose of organizing a “social club for meetings and cultural activities.”¹⁰⁶ His first effort at organization focused on youth.¹⁰⁷ His oral interviews indicate that he did not identify as Indian in school and that he was angry after a teacher identified him as Indian and directed him into a drum group. When he complained to his mother, she responded: “Well, you are Indian. You ask your dad.”¹⁰⁸ When he then asked: “Well, what kind of Indian?”, his mother replied: “You ask your dad and he’ll tell you.”¹⁰⁹ Another family informant, possibly John Ortega, indicated that Ortega, Sr., “had a burning desire to know who he was, where they came from and

¹⁰⁵ FTB, 2023 Petition, p. 165 of pdf. The 2023 petition offers several different versions of this story. For example, the petitioner claims that Ortega, Sr., “served as an elected Captain” and did so “[f]rom at least 1946 through to his death in 2009” (p. 161 of pdf). Yet elsewhere in the petition, he was said to be appointed by his father’s sisters. In his 2008 interview, Stanley Salazar stated that captains were appointed. “It was hereditary, it was family” (p. 181 of pdf).

¹⁰⁶ FTB, 2009 Petition, p. 140-141 of pdf.

¹⁰⁷ Interview with Rudy Ortega, Sr., Part 1, pp. 5 and 8; Accessed at: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_fermtv_CA/web_docs/158_PFWO_2007_RudyOrtegaInterviewPart01.pdf.

¹⁰⁸ Interview with Rudy Ortega, Sr., Part 1, p. 4.

¹⁰⁹ Interview with Rudy Ortega, Sr., Part 1, p. 4.

get that family lineage.”¹¹⁰ As he grew older, Ortega, Sr., “started doing my genealogy. I started getting my people together.”¹¹¹

Ortega, Sr., further documents this lack of knowledge elsewhere in an oral interview. When asked about his grandfather, Antonio Ortega, Ortega, Sr., agreed that his grandfather was knowledgeable about the culture, but that:

[H]e never told us nothing. That’s the thing I couldn’t figure out. All my people, the elders that passed on, has never talked to their family about how they lived back in those days, which that’s interesting to me. I would like to know. . . . But I can’t get nowhere. I run to get-ins after that person dies. And the family says, well, we don’t know. My father never told us anything about it. Or my mother never told us nothing. We don’t know where we came from.¹¹²

Furthermore, when asked whether he knew the names of the captains during the twenties and thirties, Ortega, Sr., replied: “No.” The interviewer then asked: “Would anyone know anywhere? Would that be written down anywhere?” Ortega answered: “I don’t think so. There might be. I don’t know if there might be something, but then I’m not sure. But I know none of my family knows. Because my family when now they’re my age, and they didn’t know nothing at that time when we were young.”¹¹³

This evidence strongly suggests the absence of a functioning organic tribal entity whose members knew each other and their historical continuity and had significant social relations. If the son of the claimed “captain” of the ancestors of the petitioning entity, and perhaps his mother, did not know what kind of Indian he was and apparently did not know related tribal members until he researched them in an effort to bring them together, this does not evince the existence of a vibrant interactive tribal community.

After these initial efforts at organizing before the U.S. entered World War II, Ortega, Sr., was drafted and was away for several years during the 1940s. His organization appears to have dissolved in his absence, and with the departure of many to serve in the war effort.¹¹⁴ After he returned to the San Fernando area, he resumed his organization with his aunt Vera’s support:

So I started getting the people together and after we got the people together, we said, well, what are we going to call it? I said, well, that’s up to you people what you want to call yourselves. Don’t forget we were

¹¹⁰ FTB, 2009 Petition, p. 142 of pdf, fn 269.

¹¹¹ Interview with Rudy Ortega, Sr., Part 1, p. 5.

¹¹² Interview with Rudy Ortega, Sr., Part 1, pp. 29-30.

¹¹³ Interview with Rudy Ortega, Sr., Part 1, p. 30.

¹¹⁴ Interview with Rudy Ortega, Sr., Part 1, pp. 5-6.

born here in San Fernando and we came from the San Fernando Mission so chose the name what you want to be called. He said, how about San Fernando Band of Mission Indians? I says that's fine, because I heard that they used to call us the San Fernando Mission Band Indians but then they took the Band out and they said San Fernando Mission Indians after that. So I says, okay fine, so that's what we started on. So my aunt [Vera Ortega Salazar] said, well let's do something on the club. So we started, I said, lets see what we can do? First, he says, we've got to find out if we are Indians or not. Oh, I said, here we go, I know what you are trying to say. None of my people want to do anything, they want everything on a silver platter, so I said, let's get all the people together and let's talk it over and we'll go down to the park and we'll talk it over and see what happens this summer. Okay, so that's what we did, we went over and a lot of people didn't want to do nothing. Oh no, it's too hard to do anything. What about Rudy? Well, if that's the case you're going to leave me holding the bag, then I'll go ahead and do it then, I'll try. I don't know a thing about archeologist, genealogist, but I'll see what I can find about our ancestors. Okay, so they were all happy about that. At that time, they came out news in the paper that they were going to give some money out to the tribes if they could prove they were native Americans. So, they says, come on, Rudy, let's hurry up and see if we can get some money.¹¹⁵

In an interview cited in the 2009 petition, Ortega, Sr., stated that the organization was formed in the "middle of the fifties." "I was just thinking of trying to get the people together," he stated, "and do some fun things together."¹¹⁶ Another informant, when asked when he or she first started "hearing the name Tataviam," answered: "when Rudy made us aware and he made us all sign these roll papers back then."¹¹⁷ These statements suggest that the people involved did not have a collective identity as Indians or as members of a tribal entity and that they were not particularly inclined to organize. They also suggest that Ortega, Sr., was trying to organize an Indian descendency or recruitment group rather than reorganizing a continuing tribal entity, and that one of the incentives for organizing was the pursuit of claims.

According to the 2009 petition, the entity organized by Ortega, Sr., adopted the name "San Fernando Mission Indians" during the mid-1950s and created a booth with a tribal banner that it took to the festivals of various tribes.¹¹⁸ The entity held monthly meetings and "discussed issues and problems within the community and

¹¹⁵ FTB, 2009 Petition, pp. 141-142 of pdf, ftn 267.

¹¹⁶ FTB, 2009 Petition, p. 163 of pdf, ftn 337.

¹¹⁷ FTB, 2009 Petition, p. 162 of pdf, ftn 325.

¹¹⁸ FTB, 2009 Petition, p. 163 of pdf.

made decisions by consensus.”¹¹⁹ Ortega, Sr., was officially recognized as the tribal coordinator of the San Fernando Band of Mission Indians in 1967.¹²⁰

One of the activities led by Ortega, Sr., was an effort to get eligible people enrolled for what became the California Indian Judgment Fund of 1972. However, the entity was still not formally organized. Rudy Sr. recalled that he was reluctant to head an organization because “I had enough work trying to get this genealogy to get it for ‘68 [the Judgment Fund applications] to get everything done,” but finally “almost at the seventies . . . I said, Okay. Let’s get the people.”¹²¹ He recalled further that:

When we had them at the Mission to give all the documents to everything [Judgment Fund applications], I says ‘Everybody you want to have a group together? We’ll have it’ They said, ‘Yeah. Let’s have a group together.’ ‘We’ll meet where?’ They said, ‘Let’s meet here at the Mission.’ ‘Okay.’ So we started getting the people together. We started meeting at the Mission for a while. The wintertime came, then we started meeting them at the homes. But then I started, I went to the County in Pacoima, which is the Department of Social Services, and I have a friend . . . anyway he gave us an office. He gave us a phone. We didn’t have to pay for this service. And he gave us paper. He gave us a typewriter.¹²²

Ortega, Sr.’s son Larry recalled that:

They called my father up and told him they wanted him to be the leader. So my father started putting things together, projects and all of that, and the next thing you know the organization just started growing with the family [emphasis added], and then we started getting people [to] say they were Indian. So it started building up that way.¹²³

Ortega, Sr., was officially recognized as the tribal coordinator of the San Fernando Band of Mission Indians (SFBMI) in 1967. The organization adopted bylaws in 1972, met monthly to discuss “issues and problems within the community, and made decisions by consensus.”¹²⁴ The 2009 petition maintained that “Rudy Ortega and community assisted about 500 individuals to apply for the 1972 California Indian Judgment Roll.”¹²⁵ As this is a much larger number of people than would have comprised the petitioner’s three lineage families during that period, this

¹¹⁹ FTB, 2009 Petition, p. 165 of pdf.

¹²⁰ FTB, 2009 Petition, p. 165 of pdf.

¹²¹ FTB, 2009 Petition, p. 165 of pdf, fn. 347.

¹²² FTB, 2009 Petition, p. 167 of pdf, fn. 347.

¹²³ FTB, 2009 Petition, p. 169 of pdf.

¹²⁴ FTB, 2009 Petition, p. 165 of pdf.

¹²⁵ FTB, 2009 Petition, p. 170 of pdf.

statement creates confusion in the petition between the community and leadership of the three family lines now claimed by the petitioning entity and the much broader and larger group of descendants of the Indians that had been gathered together at the San Fernando Mission. For example, the organization headed by Rudy Sr. established the San Fernando Mission Inter-Tribal Club (which in 1973 was incorporated as San Fernando Valley Inc. (SFMITI). The petition describes this non-profit entity as being “the center for organization and government for the San Fernando Mission Indians.”¹²⁶ While it is clear from descriptions that the non-profit was serving the broader community of Indians (“any needy Indian, regardless of tribal affiliation”), it is not clear if its governance also served that community or just the three family lines of the petitioner.¹²⁷ The SFMITI charged membership dues, managed social and community support services, and sponsored cultural events. Rudy Sr. served as president, but its board consisted of “band members and non-band members.”¹²⁸ In 1976, the tribal government was organized under separate bylaws as the Fernandeno Band of Mission Indians.¹²⁹

Ortega, Sr.’s organization, however, was not the only Fernandeno organization to be formed after the Second World War. In her book, *TIQ SLOW: The Making of a Modern Chief*, Mary Louise Contini Gordon described how Charlie Cooke, of the Garcia lineage, became increasingly interested and engaged in Indian heritage in the 1950s and attended meetings led by Sam Kolb.

Many of the Indians at San Fernando Mission had come from the Newhall area. So Sam came to Newhall where the Cooke brothers lived and where together they started organizing American Indians in the area. Sam was not from any of the Indian groups who had lived at the San Fernando Mission and Charlie and Alvin did not yet know the details of their ancestry; but like Sam, they were beginning to think about the importance and preservation of Indian heritage in general.¹³⁰

In 1959, Mary Garcia stepped back from her role as leader of the Garcia lineage, and with the concurrence of her family, she chose Charlie Cooke as their leader.

Charlie started to bring people together in Newhall who had records of ancestry at the San Fernando Mission. In 1960, about thirty Indian people all came together [to] form the San Fernando Mission Band with Charlie and Alvin [his brother] as founding members. Similar to the San Luis Rey Mission where Sam Kolb came from, and where

¹²⁶ FTB, 2009 Petition, p. 170 of pdf.

¹²⁷ FTB, 2009 Petition, p. 171 of pdf.

¹²⁸ FTB, 2009 Petition, pp. 171-172 of pdf.

¹²⁹ FTB, 2009 Petition, p. 172 of pdf.

¹³⁰ FTB, 2023 Petition, p. 182 of pdf.

Indians were referred to as Luiseños, Indians from many tribes who lived at San Fernando Mission became known as Fernandeños.¹³¹

During the 1960s, the two Fernandeño organizations, Ortega, Sr.'s San Fernando Band of Mission Indians and Cooke's San Fernando Mission Band, operated as parallel organizations with similar concerns- to organize ancestors of the San Fernando Mission Indians and to assist Indians in applying for the 1972 California Indian Judgement Roll. The petitioner claims that Charlie Cooke attended meetings of Ortega's organization and remained "in communication about cultural and some political issues." However, there is no evidence in either the 2009 or the 2023 petition to substantiate this assertion.¹³² Combined with the lack of compelling evidence of regular social interaction between the Newhall community and those in San Fernando, the creation of a second organization so near the first suggests that there were few social or political connections between the two groups in these years.

The 2009 petition claimed that in the 1950s "most tribal members [were] concentrated within a three mile radius of old town San Fernando, and virtually all tribal members [emphasis added], a mix of Ortega and Ortiz family households, lived within an 8 mile radius of old town San Fernando and within 3.5 miles of old town San Fernando."¹³³ This proximity of members was illustrated on maps that were submitted to the DOI but are not accessible to the public and are not a part of the response materials evaluated here. One must read further to understand that virtually all tribal members does not mean all of the petitioner's members, but instead means all members that lived in close proximity to San Fernando. The petition explains that other families lived in Fresno and Ventura.

The 2023 petition states that "[t]ribal members lived close to each other and gathered socially quite frequently, as well as for major holidays."¹³⁴ The interview from which this information is cited indicates that there were gatherings in Newhall and that most weddings and funerals were held at a San Fernando church.¹³⁵ Although this statement is not very specific, it does suggest that there was periodic social interaction between the petitioner's three lineages.

Although the membership became more dispersed in the 1960s, the majority continued to live "within a three mile radius of old town San Fernando,"¹³⁶ and "most FTB members continued to live in the area within ten-mile radius of Old Town San Fernando."¹³⁷ The 2023 petition states that "tribal members participated

¹³¹ FTB, 2023 Petition, pp. 182-183 of pdf.

¹³² FTB, 2023 Petition, pp. 160-161 of pdf.

¹³³ FTB, 2009 Petition, p. 164 of pdf. The 2023 petition does not comment on the residence patterns of its tribal members in the 1950s.

¹³⁴ FTB, 2023 Petition, p. 114 of pdf.

¹³⁵ FTB, 2009 Petition, p. 164 of pdf, fn. 344.

¹³⁶ FTB, 2009 Petition, pp. 165-166.

¹³⁷ FTB, 2023 Petition, p. 114 of pdf.

in ceremonies and social gatherings with each other during this time [the 1960s and 1970s].”¹³⁸ However, the narrative provides no quoted statements from interviews to support this, and there is limited evidence included in the petition. In the 2009 petition, it was stated that during that decade “the families had regular meetings where identity and tribal related issues were discussed and decisions made in traditional leadership and meeting patterns.”¹³⁹ The source for this statement is cited to two interviews. The first informant described gatherings of her extended family (“my dad’s brothers and sisters” and “kids”) where there were discussions about tribal issues, but admitted that these were memories as a “young kid” and that he or she had not been involved since “45 years ago maybe.”¹⁴⁰ The second informant, perhaps David Salazar, Jr., also talked about family gatherings in terms of “all my uncles and aunts,” where issues were discussed, sometimes using native language, but he or she was also a child at the time, and the gatherings he or she most remembered took place in Bakersfield and not in the core area of San Fernando.¹⁴¹ Neither informant described any leadership or decision-making pattern. Nor did they provide any evidence of gatherings that involved all the petitioner’s three lineage families.

In the 1970s, the residential pattern continued much as it was in the previous decade:

During the 1970s eighty six percent of San Fernando Mission Indians (40 of 46 households) continued to live in the eastern portion of the San Fernando Valley mainly in the towns of San Fernando, Pacoima, Sylmar, Mission Hills, Van Nuys, and a few others. The majority of tribal members lived within a three mile radius of old town San Fernando, and all lived within a 10 mile radius.¹⁴²

In regard to social interaction in the 1970s, the 2009 petition provided much more detail than the 2023 submission. The 2009 petition indicated that “[m]embers of both the Ortega and Ortiz families actively engaged in community events, some intermarriage, and continued relationships started as children in local San Fernando neighborhoods.”¹⁴³ The interview that was cited as the source of this information mentions gatherings and marriage connections, but it does not specifically describe social interaction or intermarriage between the Ortega and Ortiz families or interaction with the petitioner’s third family line (Garcia).

¹³⁸ FTB, 2023 Petition, p. 115 of pdf.

¹³⁹ FTB, 2009 Petition, p. 166 of pdf.

¹⁴⁰ FTB, 2009 Petition, p. 166 of pdf, fn. 353.

¹⁴¹ FTB, 2009 Petition, pp. 166-167 of pdf, fn. 353.

¹⁴² FTB, 2009 Petition, p. 172 of pdf. The 2023 petition also states that most members lived within a 10-mile radius of Old Town San Fernando.

¹⁴³ FTB, 2009 Petition, p. 173 of pdf.

The 2009 petition stated further that during the 1970s:

Picnics, camp outs, fund raisers, and meetings at people's houses were both social and political events and entire families were invited. Social activities, children's activities, potluck dinners were carried on as elders and adults gathered to discuss issues, often federal recognition, and to produce the necessary paperwork.¹⁴⁴

The interview from which this information was based generally substantiates this statement, but does not specifically describe the families involved. The 2009 petition provided citations to dozens of photographs that it described as demonstrating social relationships and interaction at events.¹⁴⁵ The 2023 petition notes that "tribal members participated in ceremonies and social gatherings with each other during this time [the 1960s and 1970s]."¹⁴⁶ However, the narrative provides no quotes from interviews to support this, and there is limited evidence included in the petition.

In describing the pattern of residencies in the 1980s, the 2009 petition observed that "information on residency patterns is less complete. . . . Nevertheless, the available residence data indicates that most Tataviam tribal members lived within a radius of a few miles around the old town part of San Fernando, near where the San Fernando Mission was located."¹⁴⁷ The core of the entity's social activity remained within eastern San Fernando Valley even as:

[T]he community [became] more dispersed within the valley. . . [M]ost tribal members lived within a short driving distance to the Mission and the old part of San Fernando where the Ortiz and Ortega families were long time residents. Community members participated in family-tribal events, despite the urban environment around them. The Tataviam community organized powwows, Christmas parties, and protected sacred sites and burial grounds whenever possible.¹⁴⁸

The source for the statement on "family-tribal events" describes certain events held at the Mission church without any indication of the families involved. The sole annotated source for the statement of other activities describes only the Christmas parties organized by Ortega, Sr., which ended in 1990 and again does not indicate the specific families involved. However, four other unannotated sources are cited for this statement and these likely describe other events and may indicate the families involved. The most recent petition included almost no evidence for social interaction in the 1980s.

¹⁴⁴ FTB, 2009 Petition, p. 173 of pdf.

¹⁴⁵ FTB, 2009 Petition, p. 175 of pdf, fn. 385.

¹⁴⁶ FTB, 2023 Petition, p. 115 of pdf.

¹⁴⁷ FTB, 2009 Petition, p. 175 of pdf.

¹⁴⁸ FTB, 2009 Petition, p. 176 of pdf.

For the 1990s, the 2009 and 2023 petitions note that the residential patterns shift. Due to high housing costs, nine households move from the San Fernando area to the Lancaster-Palmdale area.”¹⁴⁹

All nine households in the Lancaster-Palmdale area are from the Ortega lineages. . . . These households, about 40 to 50 miles distant from San Fernando, continued [to] participate in the Tataviam community and government. . . . [A]bout another 20 households were not located in the eastern San Fernando Valley. There were four households of the Ortiz family in the Fresno-Hansford area, and four households of the Ortega family in Simi Valley, Santa Barbara, and Oxnard area. In addition there were households in Long Beach, Whittier, Rosemead, and San Diego. . . . [other households are in] Oregon, Pueblo, Colorado, and Redlands, CA. . . . about 33 households remained in the eastern San Fernando Valley, while about 30 households are outside of the San Fernando Valley.¹⁵⁰

What is most significant about the move of the Ortega families to Lancaster-Palmdale is that it included the petitioner’s primary political leader, Rudy Ortega, Sr. Despite the greater dispersion of its members, the petitioner held many more entity activities during the decade of the 1990s. These events are better documented in sources such as newspaper accounts rather than just being dependent on information provided by informants in oral history interviews, though oddly, the 2023 petition includes none of these accounts as evidence. The 2009 petition stated that the entity held powwows until 1998 and that it established a newsletter.¹⁵¹ It also claimed that “funerals were widely attended.” In the 2023 petition, the guestbook for the funeral of Irene Reyes in 1991 includes members of both the Ortega and Garcia lineages.¹⁵² The 2009 and 2023 petitions describe ceremonial activities, cultural demonstrations, and fundraising events.¹⁵³ Again, the sources cited for this information do not specifically reference the participation of the Garcia lineage members. However, in 1999, the petitioner’s newsletter did note the passing of two of the “Newhall Garcias.”¹⁵⁴

In the period from 2000 through 2009, the petitioner’s membership became even more dispersed at the same time that its tribal activities continued to increase. The statistics in the 2009 petition presented on residential distribution during this decade, although a bit unclear, may account for 143 households. The 2009 petition

¹⁴⁹ FTB, 2023 Petition, p. 115 of pdf.

¹⁵⁰ FTB, 2009 Petition, pp. 176-177 of pdf.

¹⁵¹ FTB, 2009 Petition, p. 177 of pdf.

¹⁵² FTB, 2023 Petition, pp. 141-142 of pdf.

¹⁵³ FTB, 2009 Petition, pp. 177-178 of pdf; FTB, 2023 Petition, p. 116 of pdf.

¹⁵⁴ FTB, 2009 Petition, p. 178 of pdf.

stated that there were 90 households of both Ortega and Ortiz lineages in the Valley, under 20 that are out-of-state, and 33 households of the Ortega lineage that are in “Lancaster-Palmdale-Rosamond” (which is not within the San Fernando Valley). The statistics do not specifically reference the Garcia lineage group, but they did reference 10 households in the Santa Clarita area, which is close to Newhall, where the Garcia lineage was based. A total of 143 households seems like a large number of separate residences for a total enrollment of 266 (an average of 1.8 persons per household). This suggests that the individual families may be small, that there may be many non-members in member’s households (non-member spouses and/or children, etc.), or that the statistics are inaccurate.¹⁵⁵

The 2009 and 2023 petitions document two funerals that took place in the early 2000s that were attended by members of all three lineages, including the Garcia descendants.¹⁵⁶ Both petitions describe numerous tribal activities that did not take place or were not documented during the earlier decades. A group photograph of a 2000 event shows “about 80 tribal members.”¹⁵⁷ At the 2000 tribal meeting, about 110 tribal members attended, and the petitioner has provided a set of photographs documenting the event.¹⁵⁸ There is more documented participation in native ceremonies, cultural and religious site monitoring, and more tribal involvement in health, education, and charity programs.¹⁵⁹

Comments on the Fernandeño Documentation for Categories of Evidence for Criterion § 83.11(b), Community, 1952 through 2021

§ 83.11(b)(1)(i), Rates or patterns of known marriages within the entity, or, as may be culturally required, known patterned out-marriages.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(1)(ii), Social relationships connecting individual members.

The petitioner identifies several sources as evidence that it meets this category: a 1956 photo of a tribal council meeting; a 2008 interview with Charlie Cooke, Rudy Ortega, Sr., and Rudy Ortega, Jr.; a 1966 funeral book; a 1991 funeral book; photographs of a tribal meeting in 2000; an image of a funeral remembrance for Frances Cooke in 2001; photographs of a 2003 gathering; and three guestbooks for

¹⁵⁵ FTB, 2009 Petition, p. 179 of pdf.

¹⁵⁶ FTB, 2023 Petition, pp. 144-148 of pdf; FTB, 2009 Petition, pp. 182-183 of pdf.

¹⁵⁷ FTB, 2009 Petition, p. 182 of pdf.

¹⁵⁸ FTB, 2023 Petition, p. 143-144 of pdf.

¹⁵⁹ FTB, 2009 Petition, pp. 183-184 of pdf.

funerals in 2002, 2003, and 2004. There also are several oral interviews with elders, including Rudy Ortega, Sr., that are relevant.

The oral interviews for this period and the 1940s strongly suggest that the petitioner was not a functioning organic tribal entity whose members across all three lineages knew each other and their historical continuity and collective identity until well into the twentieth century. Much of the petitioner's claim for the 1950s rely on a single source, Rudy Ortega, Sr., who organized a youth group around 1940, and then, after returning from military service around 1948-49, organized a social club with his aunt, Vera Salazar, and become captain after his father's death in 1951. The 2023 petition provides very limited evidence of social interactions until the 2000s, with the exceptions of the 1966 funeral book for Eulugio Ortega and the 1991 funeral guestbook of Irene Reyes. Several Ortega and Garcia lineage members were in attendance at both events. Another isolated example is from the 2008 oral interview with Charlie Cooke and the Ortegas when Charlie indicates a social connection with Jack Rios and Ernest John Ortega through their work in the cement industry in the 1960s. The 2009 petition included more evidence, particularly long quotes from oral interviews; however, many of these sources either lack specific information or do not document participation of all three major lineages.

Instead, the petitioner must rely on the evidence of residential proximity from the 1950s through the 1990s. There appears to be a core group of members in or around San Fernando that lived in close enough proximity to maintain social relationships and informal social interaction. Several of the petitioner's oral interviews (quoted in the 2009 submission, rather than in 2023) confirmed these interactions, particularly within and between the Ortega and Ortiz lineages.¹⁶⁰ However, even when including the 2009 submission, the petition does not present strong evidence regarding the specific families involved and their actual participation level. The Garcia lineage is largely absent in the evidence involving social relationships until the 2000s with the isolated exceptions of two funerals (in 1966 and 1991), Charlie Cooke's recollections about Jack Rios, and Ortega, Sr.'s relationship with Mary Garcia.¹⁶¹ Charlie Cooke's activities are particularly striking. He organized a separate group with Alvin Cooke in 1960 known as the San Fernando Mission Band to represent Fernandeños around Newhall, and there is remarkably little evidence of any communication between his group and Ortega, Sr.'s group in the record.

¹⁶⁰ See, for example, FTB, 2009 Petition, p. 173 of pdf, fn. 383; and p. 167 of pdf, fn. 354; and p. 168 of pdf, fn. 358-359.

¹⁶¹ The petitioner claimed in its 2009 submission that Mary Garcia was a political confidant of Ortega, Sr., and actively participated in the San Fernando community during the 1950s, 1960s and 1970s. The origin of this information is unknown (FTB, 2009 Petition, p. 147 of pdf). In the 2023 petition, the FTB reiterated that Mary Garcia was "very involved in planning, gathering family, and executing these meetings [of Ortega's group]" (FTB, 2023 Petition, p. 113 of pdf).

Although the membership had dispersed somewhat by the 2000s, there are more documented tribal activities that demonstrate significant social relations between all three family tribal activities and their sub-lineages. If the petitioner can produce more evidence of family interaction that includes the Garcia line, it may be able to meet this category of evidence from 1952 on. With its present evidence, however, it only approaches meeting this category since around 2000.

§ 83.11(b)(1)(iii), Rates or patterns of informal social interaction that exist broadly among the members of the entity.

The petitioner identifies several sources as evidence that it meets this category: a 1956 photo of a tribal council meeting; the 1991 funeral book for Irene Reyes; photographs of a tribal meeting in 2000; an image of a funeral remembrance for Frances Cooke in 2001; and three guestbooks for funerals in 2002, 2003, and 2004. The petitioner also states that between the 1950s and 1980s many tribal members lived close to each other and regularly gathered socially. That proximity began to shift in the 1990s as housing prices rose and many households moved to the Lancaster-Palmdale area.¹⁶² Nonetheless, the petitioner asserts that tribal members continued to participate in social gatherings with each other in the 1990s and to the present.

The petitioner's evidence on residential proximity from the 1950s through the 1980s indicates that there was a core group of members in or around San Fernando that lived in close enough proximity to maintain social relationships and informal social interactions. Several of the petitioner's oral interviews (quoted in the 2009 submission, rather than in 2023) confirmed these interactions, particularly within and between the Ortega and Ortiz lineages.¹⁶³ However, even when including the 2009 submission, the petition does not present strong evidence regarding the specific families involved and their actual participation level.

When membership disperses during the 1990s, the assumption of residential proximity no longer holds. Of the four funeral guestbooks, the petitioner evinces that the 2002 and 2003 funerals included representatives of all three lineages of the FTB.¹⁶⁴ The petitioner's assertions of continued and broad-based informal social interaction across all three family lineages in the twentieth and twenty-first centuries has not been demonstrated.

¹⁶² FTB, 2023 Petition, p. 115 of pdf.

¹⁶³ See, for example, FTB, 2009 Petition, p. 173 of pdf, fn. 383; and p. 167 of pdf, fn. 354; and p. 168 of pdf, fn. 358-359.

¹⁶⁴ FTB, 2023 Petition, pp. 144-146 of pdf; FTB, 2009 Petition, p. 181 of pdf.

§ 83.11(b)(1)(iv), Shared or cooperative labor or other economic activity among members.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(1)(v), Strong patterns of discrimination or other social distinctions by non-members.

The petitioner identifies two sources as evidence that it meets this category of evidence: a 1985 article in the *Daily News*, and a 2021 article in the *Los Angeles Times*. The 1985 article provides no evidence of contemporaneous patterns of discrimination or social distinctions. Instead, it quotes Rita Rivera, a cousin of Rudy Ortega, Sr., observing that “when I was growing up, if you said you were an Indian, people would treat you like you were dumb. Now if you’re an Indian you’re something special.”¹⁶⁵ The article also notes that “the attitude towards Indians had changed dramatically since she was a child.”¹⁶⁶ This is not contemporaneous evidence of discrimination or social distinction but an observation that Indians, including presumably Ms. Rivera, had once been the victim of discriminatory attitudes. However, she also stated that this attitude has changed for the better.

The 2021 article describes a blessing ceremony at Chatsworth Nature Preserve with city officials and discusses the FTB’s desire to reclaim lands, including the Chatsworth Preserve. The petitioner suggests that the City of Los Angeles’ resistance to “handing over control of the preserve” is evidence of a pattern of discrimination, as is opposition to FTB land acquisition “due to fears of a casino.”¹⁶⁷ The petitioner’s interpretation of the City’s policy is rather reductive; the City of Los Angeles could have any number of reasons why they’d decline to transfer this piece of land that are not discriminatory. Furthermore, the same city official acknowledged that the City was interested in finding lands that could be returned to tribes and that they were already in discussions over a potential easement at Chatsworth. The petitioner does not provide sufficient evidence to demonstrate a pattern of discrimination by the City toward the FTB. Moreover, the petitioner does not identify those who opposed to the FTB receiving land over concerns about a casino and whether they have sufficient influence to create social distinctions.

The petitioner has not met this category of evidence.

§ 83.11(b)(1)(vi), Shared sacred or secular ritual activity.

¹⁶⁵ FTB, 2023 Petition, p. 139 of pdf.

¹⁶⁶ FTB, 2023 Petition, p. 139 of pdf.

¹⁶⁷ FTB, 2023 Petition, p. 150 of pdf.

The petitioner provides several sources as evidence that it meets this category of evidence: a 1970s era photo of schoolchildren; a 1974 letter to the Bureau of Indian Affairs (BIA); 1975 permit from the U.S. Fish and Wildlife Service; photographs from the 2000 tribal meeting; a photo of a funeral remembrance in 2001; three funeral guestbooks from 2002 to 2004; and a 2021 article in the *Los Angeles Times*. When scrutinized, many of these sources fail to demonstrate a sacred or secular ritual activity that is shared by “a significant and meaningful portion of the petitioner’s members.” The 1970s-era photo of schoolchildren learning about FTB heritage for a school performance includes only three children of tribal members, and apparently all relatives of Mary Cooke, the headperson of the Garcia lineage. The provided evidence does not describe the sacred or secular activity, and it is not clear that this is a tribal event. This does not qualify as evidence under this category. The 1974 letter from Rudy Ortega, Sr., and the subsequent U.S. Fish and Wildlife permit show that Ortega, Sr., successfully applied for and received a permit from the U.S. Government for a golden eagle “for ceremonial and religious purposes.” Neither source describes what those purposes entailed, and crucially, the petitioner neglected to provide evidence on whether the activities were shared among a significant portion of its members. Those are the only pieces of evidence provided for a nearly fifty-year period of time.

The photographs of attendees of the 2000 tribal meeting at the SFR are strong evidence of social relationships and interaction; however, the petitioner provides no information on how they would demonstrate ritual activity. Likewise, it is unclear how the 2001 photo of tribal members attending a funeral remembrance for Frances Cooke shows shared sacred or secular ritual activity as there is no description of the ceremony and no evidence of rituals being performed. The 2021 article in the *Los Angeles Times* describes a blessing ceremony as part of a Winter Solstice ceremony involving Alan Salazar, a tribal member, and Mayor Garcetti. However, there is no evidence that a significant number of tribal members attended.

The petitioner also asserts that guestbooks from funerals in 2002, 2003, and 2004 are evidence under this category. There is another funeral book in this time period, for Irene Reyes in 1991, that might be included but that the petitioner did not claim as evidence. These guestbooks are excellent evidence of social relationships and interaction, particularly within and between the Ortega and Garcia lineage families. It is unclear, however, whether the guestbooks document shared sacred or secular ritual activity under the regulations. If they do, these guestbooks would allow the petitioner to meet this category of evidence between 2002 and 2004 and perhaps back to 1991.

§ 83.11(b)(1)(vii), Cultural patterns shared among a portion of the entity that are different from those of the non-Indian populations with whom it

interacts. These patterns must function as more than a symbolic identification of the group as Indian. They may include, but are not limited to, language, kinship organization or system, religious beliefs or practices, and ceremonies.

The petitioner provides several sources as evidence that it meets this category of evidence: a 1970s-era photo of schoolchildren; a 1970 meeting roster of a San Fernando Mission Indian cultural event; a 1971 newspaper article in an unnamed newspaper; a 1974 letter to the BIA; a 1975 permit from the U.S. Fish and Wildlife Service; a 1985 article in the *Daily News*; a 1986 article in the *Los Angeles Times*; a 1999 tribal newsletter; photographs from the 2000 tribal meeting; a 2020 application for COVID-19 services; and 2022 public affairs document on a Tribal Conservation Corps. The petitioner also states that “FTB members, including Vera Salazar, continue to practice traditional gathering practices,”¹⁶⁸ and some members “learned some of the language from their parents, including Victoria Stokes.”¹⁶⁹ According to the petition, “[o]ther FTB members did not speak Spanish, distinguishing them from the surrounding Latino community.”¹⁷⁰ Furthermore, “[o]utsiders noticed that they wore different clothing and had a distinct identity from other groups.”¹⁷¹

Nearly all of the pieces of evidence identified by the petitioner to meet this category are insufficient to demonstrate shared cultural patterns by a meaningful portion of the entity. There are no sources identified by the petitioner for this category between 1951 and 1970. It is unclear whether the 1970s-era photo of schoolchildren is a tribal event or an effort at school to teach children about FTB heritage for a school performance. The petitioner claims both; however, it also may show many more people, possibly non-members, than just the three identified by the petitioner. If so, that would undercut its value as evidence for shared cultural patterns. As it is, the petitioner asserts that only three FTB children were involved. That is not a meaningful portion of the membership. The 1970 roster does not provide any information on the nature or content of the cultural event. The 1971 article in an unnamed newspaper stated that the involved young people “are preparing uniforms and dances for a celebration of Mexican independence.”¹⁷² The petitioner, however, does not provide any evidence indicating that this celebration demonstrated actual differences in cultural beliefs or social organization. In its 1993 Proposed Finding in favor of acknowledgement for the Snoqualmie, the DOI stated:

To be meaningful as evidence concerning the maintenance of a cohesive, distinct social community, cultural differences should extend

¹⁶⁸ FTB, 2023 Petition, p. 114 of pdf.

¹⁶⁹ FTB, 2023 Petition, p. 114 of pdf.

¹⁷⁰ FTB, 2023 Petition, p. 114 of pdf.

¹⁷¹ FTB, 2023 Petition, p. 114 of pdf.

¹⁷² FTB, 2023 Petition, pp. 136-137 of pdf.

beyond purely symbolic expressions of identity. An example of the latter is the revival and performance of traditional style dances, in contexts such as parades or performances before non- members, as a means of affirming identity, but without the context of beliefs, worldview and supporting social and economic obligations that the dance had in its original cultural and social setting.¹⁷³

The petitioner fails to demonstrate that any of these three events functions “as more than a symbolic identification of the group as Indian.”

The 1974 letter from Rudy Ortega, Sr., and the subsequent U.S. Fish and Wildlife permit show that Ortega, Sr., successfully applied for and received a permit from the U.S. Government for a golden eagle “for ceremonial and religious purposes.” Neither source describes what those purposes entailed, and crucially, the petitioner neglected to provide evidence on whether the activities were shared among a significant portion of its members.

The 1985 and 1986 articles in area newspapers document opposition by at least two members of the petitioner, Rudy Ortega, Sr., and Charlie Cooke, to the disturbance of Indian remains. In the 1986 article, Rudy Ortega, Sr., explained that “Native-Americans have different religious beliefs than many white people,” and that all share “the desire for our deceased relations to ‘rest in peace’ in ground made sacred by the presence of their remains.”¹⁷⁴ However, the petitioner has failed to establish that separate religious beliefs and practices were shared among a meaningful portion of the entity and are different from non-Indians. The petitioner has neither described church involvement nor native religious practices as a distinct cultural pattern, and has not distinguished them from, for example, the Latino community. Furthermore, the petitioner only documented the participation of two tribal members in these protests, though it claims that Linda Terrones and Rita Rivera also were involved.¹⁷⁵ It has not shown that a meaningful portion of its entity concurred with Ortega, Sr., and supported their efforts.

The 1999 tribal newsletter recounted the participation of Rudy Ortega, Jr., in a bear ceremony in 1998 and noted a successful tribal gathering (pow-wow), their first. However, the same newsletter observed that the last bear ceremony had been performed by Santiago Garcia “over a hundred years ago.”¹⁷⁶ Furthermore, the petitioner provided no details on the tribal gathering and any cultural practices. Nor does it indicate that any practices had been in use in the decades before 1998. The photo of the 2000 tribal meeting is excellent evidence for social relationships

¹⁷³ U.S. Department of Interior, Office of Federal Acknowledgment, Proposed Finding, Snoqualmie Indian Tribe, 1993, p. 20.

¹⁷⁴ FTB, 2023 Petition, p. 141 of pdf.

¹⁷⁵ FTB, 2023 Petition, p. 116 of pdf.

¹⁷⁶ FTB, 2023 Petition, p. 142 of pdf.

and interaction but provides no information on cultural practices or their importance within the petitioning entity. The 2020 application for COVID services, while reflecting well on FTB tribal governance, does not demonstrate cultural patterns different from those of non-Indian populations. Concern for those deemed at high-risk for the virus was widespread among many populations in the U.S. in 2020. The petitioner also alleges that the “cultural and traditional knowledge related to improving ecosystem health, community wildfire preparedness and fire resilience” to be included in a new tribal conservation corps program “is unique to FTB as an Indian group.”¹⁷⁷ The petitioner does not provide any information on what that cultural and traditional knowledge was, how it is unique to FTB, and how it contributes to cultural distinctiveness of a meaningful portion of the petitioning entity’s membership.

The petitioner fails to establish that language was a distinct cultural pattern during this period. There is insufficient evidence that the native language was spoken by a significant portion of the petitioning entity. Likewise, there is insufficient evidence to establish that traditional gathering practices were shared among a meaningful portion of the membership or that they played an important role in other significant and widespread cultural practices such as medicine or ceremonies.

The petitioner also claimed that tribal members became more involved in parades and other events to represent the tribe as well as other events such as at pan-Indian pow-wows. As discussed elsewhere, these cultural differences must “extend beyond purely symbolic expressions of identity.”¹⁷⁸ The petitioner fails to demonstrate that any of these three events functions “as more than a symbolic identification of the group as Indian.”

The petitioner could have asserted that it has a distinct kinship organization based on its claim that family lineages were autonomous and made their own social and political decisions for much of the petitioner’s history, but it has made no such claim. All members allegedly shared this cultural pattern, but few, if any, examples are given of how specifically this worked in this time period. Of course, this evidence might help the petitioner meet this category of evidence, but it may harm its claim of being a tribal entity.

§ 83.11(b)(1)(viii), The persistence of a collective identity continuously over a period of more than 50 years, notwithstanding any absence of or changes in name.

¹⁷⁷ FTB, 2023 Petition, p. 151 of pdf.

¹⁷⁸ U.S. Department of Interior, Office of Federal Acknowledgment, Proposed Finding, Snoqualmie Indian Tribe, 1993, p. 20.

The petitioner provides several sources as evidence that it meets this category of evidence: a 1956 photo of tribal council meeting; maps and GEDCOM files showing distribution of FTB members; a 1970 photo of a tribal community with BIA attendees; a 1970 meeting roster of a San Fernando Mission Indian cultural event; a 1971 article in *The Valley News and Green Sheet*; a 1985 article in the *Daily News*; and a 1986 article in the *Los Angeles Times*. Furthermore, there is evidence that the petitioner adopted the tribal name of the San Fernando Mission Indians in the 1950s, maintained its identity, and changed its name to the Fernandeano Tataviam Band of Mission Indians in 1976.

The petitioner meets this category of evidence.

§ 83.11(b)(1)(ix), Land set aside by a State for the petitioner, or collective ancestors of the petitioner, that was actively used by the community for that time period.

The petitioner claims to meet this category of evidence via a 1956 photo from a tribal council meeting in Brand (or Mission) Park. According to the petitioner, this park is across the street from the SFR and was used by the petitioner regularly for tribal council meetings. The photo was of Rudy Ortega, Sr.'s wife (a non-FTB member) with a child. It is unclear exactly what the petitioner is suggesting here; presumably, it is claiming that Brand Park was land set aside by a State for the collective ancestors of the petitioner and that the petitioner actively used them for an undetermined amount of time in the 1950s. The petitioner does not provide any evidence that the land that became Brand Park was set aside for the petitioner or its collective ancestors by the State of California, and there is no evidence in the record supporting such a claim. Furthermore, the photo provided as described does not appear to show use of the park by the petitioner for a meeting; the petitioner only asserts that it depicts a non-FTB member and a child.¹⁷⁹

The petitioner has not met this category of evidence.

§ 83.11(b)(1)(x), Children of members from a geographic area were placed in Indian boarding schools or other Indian educational institutions, to the extent that supporting evidence documents the community claimed.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

¹⁷⁹ FTB, 2023 Petition, p. 133 of pdf.

§ 83.11(b)(1)(xi), A demonstration of political influence under the criterion in § 83.11(c)(1) will be evidence for demonstrating distinct community for that same time period.

The petitioner may be able to partially meet § 83.11(c)(1)(viii) of the revised regulations, having a continuous line of leaders and a means of leadership selection or acquiescence by a significant number of members. The petitioner has identified a continuous line of leaders since 1951. One of the problems the petitioner has in meeting this category with its existing evidence is that it has not clearly documented a leadership selection process until the 1970s when it began holding elections. The petitioner has argued that there was no formal selection process; instead, the tribe was a gerontocracy and the elders chose lineage leaders using a number of factors and by consensus. There is virtually no evidence demonstrating how other lineage leaders were selected. The petitioner appears to argue that lineage members usually passively acquiesced to the selections of their leaders, including the captain; however, the petition lacks documentation that a “significant” number of members acquiesced to their leadership because the petitioner has not quantified member involvement.

Sometime in the 1970s, the San Fernando Mission Indians of San Fernando, “or what is also known as ‘Rudy Sr.’s organization,” began to elect its leaders.¹⁸⁰ This may coincide with the adoption of bylaws in 1975. However, the petitioner has not provided documentation of attendance of the organization’s meetings (with one exception, a 2000 tribal meeting), a list of candidates or officers, and vote tallies.

Because its focus has been primarily on the political actions of the leadership rather than the participation of the membership, the petition has generally failed to evince the existence of an interactive political relationship between tribal leaders and membership. The petitioner has not provided documentation of attendance at meetings, issues discussed, and vote tallies. Even in the few cases of internal conflict, the petitioner has not documented the extent of the disagreement and the size of different factions. These omissions cast doubt on the ability of the petitioner to meet this category of evidence.

Section § 83.11(b)(2), High Evidence: The petitioner will be considered to have provided more than sufficient evidence to demonstrate distinct community and political authority under § 83.11(b) at a given point in time if the evidence demonstrates any one of the following:

§ 83.11(b)(2)(i), More than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members

¹⁸⁰ FTB, 2023 Petition, p. 165 of pdf.

of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area.

The petitioner claims that it meets this category of evidence because it has demonstrated that more than 50 percent of the members reside in a geographical area. However, the petitioner has omitted key language from the category in its 2023 submission. Applicants must demonstrate that “more than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area [underlined for emphasis].” As discussed elsewhere, we do not have access to the necessary records to categorically prove or disprove this claim.

We can review the petitioner’s earlier submissions, however, and draw a few conclusions. In its 2009 submission, the petitioner provided greater detail in its petition of the geographical distribution of its members. It claimed that most tribal member households lived in the eastern San Fernando Valley between the 1950s and the 1990s, and as late as the 1970s, “the majority of tribal members lived within a three mile radius of old town San Fernando.”¹⁸¹ Even by the 1990s, “most tribal members lived within a 10 mile radius of the old town part of San Fernando.”¹⁸² However, the petitioner neglects to grapple with the fact that the regulations require that this geographical area must be “exclusively or almost exclusively composed of the members of the entity.” The petitioner does not provide a population estimate of the relevant neighborhoods in and around the old town of San Fernando. In 1950, San Fernando had a population of over 9,000 and grew rapidly in the second half of the twentieth century. According to the U.S. Census, the City of San Fernando had a population of 23,645 in 2010. As a means of comparison, the 2023 petition shows that the tribe had 175 members on its roll in 1995 and 292 members in 2010.¹⁸³

To meet this category of evidence, the petitioner will need to identify specific geographic areas where its members resided and provide evidence that its members “exclusively or almost exclusively” accounted for the population of these areas. Other petitioners, such as the Shinnecock and Pamunkey, met this category for certain periods because their members were concentrated on State reservations, in New York and Virginia, respectively. The Mashpee petitioner met this category of evidence by demonstrating that from colonial times up through the 1960s the vast majority of its members almost exclusively made up the population of the town of Mashpee, Massachusetts. We do not know what the population was of the neighborhoods that the petitioner must identify to meet this category of evidence, but it seems that this category will be very difficult to meet.

¹⁸¹ FTB, 2009 Petition, p. 172 of pdf.

¹⁸² FTB, 2009 Petition, p. 177 of pdf.

¹⁸³ FTB, 2023 Petition, p. 204 of pdf.

§ 83.11(b)(2)(ii), At least 50 percent of the members of the entity were married to other members of the entity.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(2)(iii), At least 50 percent of the entity members maintain distinct cultural patterns such as, but not limited to, language, kinship system, religious beliefs and practices, or ceremonies.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(2)(iv), There are distinct community social institutions encompassing at least 50 percent of the members, such as kinship organizations, formal or informal economic cooperation, or religious organizations.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(b)(2)(v), The petitioner has met the criterion in § 83.11(c) using evidence described in §83.11(c)(2).

The petitioner has not claimed that it has met this category of evidence. However, the petitioner may be able to meet the criterion in § 83.11(c) between 1996 to 2023 via § 83.11(c)(2)(i)(A), allocate entity resources such as land, residence rights, and the like on a consistent basis, and § 83.11(c)(2)(i)(B), settle disputes between members or subgroups by mediation or means on a regular basis. The 2000 Tribal Constitution provided internal mechanisms to allocate entity resources and created judicial bodies with the power to settle disputes. Furthermore, a chapter in *A Second Century of Dishonor: Federal Inequities and California Indian Tribes* discussed the tribe's approach to mediating disputes. However, the petitioner provided no examples of either allocating entity resources or settling disputes in its submission. If it does so, it may be able to meet this category of evidence between 1996 and 2023.

Conclusions for Criterion § 83.11(b), Community, 1952 through 2023

The petitioner meets § 83.11(b)(1)(viii) for this period, having demonstrated a collective Indian identity for more than 50 years. It might meet § 83.11(b)(1)(vii), distinct cultural patterns, if it made an argument that the autonomous family lineages constitute a distinct cultural pattern (which it does not do in this petition). To support this argument, it would need to provide more specific examples of how the separate family lineages made social and political decisions throughout the relevant period.

The petition may meet § 83.11(b)(2)(v), meeting the criterion in § 83.11(c) using evidence described in § 83.11(c)(2) between 1996 and 2023. Those criterion in § 83.11(c) are: § 83.11(c)(2)(i)(A), allocate entity resources such as land, residence rights, and the like on a consistent basis, and § 83.11(c)(2)(i)(B), settle disputes between members or subgroups by mediation or means on a regular basis. While the tribe had evidence of possessing internal mechanisms to address these matters, the petitioner provided no specific examples of either allocating entity resources or settling disputes in its submission. If it does so, it should be able to meet this criterion between 1996 and 2023.

The petitioner could meet § 83.11(b)(1)(ii), significant social relationships, and § 83.11(b)(1)(iii), informal social interaction, since 1952 if it presents more specific evidence regarding the relationships and interaction both between the core group families in and near San Fernando and between those families and the outlying families, including the Garcia lineage group. At present, the petitioner only has good documentation for meeting these categories of evidence since about 2000.

Although the petitioner's evidence for community during this period fails to document the social interaction of members of Garcia lineage prior to 2000, its evidence for political influence and authority evinces the political participation of at least some members of the Garcia family in the entity organized by Rudy Ortega, Sr., as early as the 1950s. Conversely, the political participation of Ortiz family members during these years is not well-documented in the petition, although there is better evidence of its social interaction. While it can reasonably be assumed that political participation also involved social interaction, neither is adequately established for all three family lineages in the petitioner's existing evidence.

The Acknowledgment regulations require that a petitioner must demonstrate that it comprises a distinct community and that it has existed since 1900. The Fernandefio petitioner appears to only meet the community criterion based on a combination of evidence since about 2000. Therefore, it does not meet criterion § 83.11(b) for the entire period from 1952 through 2023.

Criterion § 83.11(c), Political Influence or Authority

Explanation of the Criterion and its Requirements

This criterion reads as follows:

(c) Political influence or authority. The petitioner has maintained political influence or authority over its members as an autonomous entity from 1900 until the present. Political influence or authority means the entity uses a council, leadership, internal process, or other mechanism as a means of influencing or controlling the behavior of its members in significant respects, making decisions for the entity which substantially affect its members, and/or representing the entity in dealing with outsiders in matters of consequence. This process is to be understood flexibly in the context of the history, culture, and social organization of the entity.

§ 83.11(c)(1), The petitioner may demonstrate that it meets this criterion by some combination of two or more of the following forms of evidence or by other evidence that the petitioner had political influence or authority over its members as an autonomous entity:

§ 83.11(c)(1)(i), The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.

§ 83.11(c)(1)(ii), Many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance.

§ 83.11(c)(1)(iii), There is widespread knowledge, communication, or involvement in political processes by many of the entity's members.

§ 83.11(c)(1)(iv), The entity meets the criterion in § 83.11(b) at greater than or equal to the percentages set forth under § 83.11(b)(2).

§ 83.11(c)(1)(v), There are internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions.

§ 83.11(c)(1)(vi), The government of a federally recognized Indian tribe has a significant relationship with the leaders or the governing body of the petitioner.

§ 83.11(c)(1)(vii), Land set aside by a State or petitioner, or collective ancestors of the petitioner, that is actively used for that time period.

§ 83.11(c)(1)(viii), There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.

§ 83.11(c)(2), High Evidence: The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point of time if the evidence demonstrates any one of the following:

§ 83.11(c)(2)(i), Entity leaders or internal mechanisms exist or existed that:

§ 83.11(c)(2)(i)(A), Allocate entity resources such as land, residence rights, and the like on a consistent basis;

§ 83.11(c)(2)(i)(B), Settle disputes between members or subgroups by mediation or other means on a regular basis;

§ 83.11(c)(2)(i)(C), Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms or the enforcement of sanctions to direct or control behavior; or

§ 83.11(c)(2)(i)(D), Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

§ 83.11(c)(2)(ii), The petitioner has met the requirements in § 83.11(b)(2) at a given time.

This criterion requires that a petitioner must have maintained the political characteristics of a tribal entity throughout time since 1900. A successful tribal entity must show that it has existed as a separate political body that exercises political influence or authority over its membership. The leadership can be formal, such as a tribal council with a constitution, and/or informal, such as any tribal member who is able to influence the behavior of other tribal members.

Comments on the Fernandeno Evidence for Criterion § 83.11(c), Political Influence or Authority, 1900 through 1951

The evidence provided by the petitioner for the period from 1900 to 1951 for criterion (c) attempts to straddle two separate concepts: that there was a unified, politically autonomous Fernandeno entity; and that this entity was composed of three separate family lineages who had their own leaders, known as headpersons or spokespersons, who held significant influence over their lineages but no others. These traditional leaders tended to be elders who held respect within their families; at one point, the petitioner describes the political system as a "gerontocracy." The headpersons also selected a lineage headperson as captain to represent the entity to outsiders and to oversee common community resources. However, as the petitioner describes this post-Mission system, there are at least two fundamental tensions. First, the concept of separate lineages with independent leaders is potentially at odds with its claim that it was a single, unified, politically autonomous entity. The regulations require that a petitioner demonstrate political influence or authority over its members as an autonomous entity, and having separate lineages with their own leaders that make their own decisions calls into question how these lineage groups can qualify as a tribal entity. The petitioner might be able to overcome this tension by demonstrating that the headpersons communicated with each other regularly and had at least indirect influence over each other's decisions through persuasion and consensus-building; that evidence, however, is lacking in the current petition. Second, while the captain might be an influential and unifying force among the lineages, common community resources had dwindled over the second half of the nineteenth century as the lineage families dispersed and were dispossessed of their lands. As a result, the role of the captain had become unsettled and fluid with few responsibilities. The petitioner has been unable to adequately document political influence or authority upon all three of the lineage families of the Fernandeno entity from any of the four captains identified by the petitioner between 1900 and 1951 and has provided no specific examples of documented actions they took as captain for the benefit of the petitioning entity. These tensions emerge consistently in the petition and undercut the petitioner's claims under criterion (c).

The petitioner maintains that Rogerio Rocha was the recognized captain of the Fernandenos from 1852 until his death in 1904. Rocha "represented the

Fernandeños to other groups, and multiple lineages deferred to his authority on certain issues.”¹⁸⁴ However, the petitioner fails to describe what those certain issues were and provides only one example. The petitioner claims that Rocha “represented the entire Fernandeno historical tribe at a ceremonial event in Saticoy in 1869.”¹⁸⁵ No information is offered about this event or its importance to the Fernandeños. Moreover, this was decades before the twentieth century and does not demonstrate Rocha’s authority or an ability to mobilize members and resources for the benefit of the Fernandeno petitioner.

The only other instance is the petitioner’s claim that Rocha had undefined political authority to grant Frank Lewis permission “to open a legal case [in 1892] to recover land from the Mexican grant of 1843. . . . Lewis asked Rocha to sign over the right to represent the Indians in the case.”¹⁸⁶ The petitioner fails to provide any further details of the legal case or of Rocha’s participation. In their 2021 book, *A Coalition of Lineages*, Champagne and Goldberg recount the controversy around Lewis’ aborted efforts; crucially, Rocha later alleged that “he had no understanding of what he was signing [a quitclaim deed to all of Rocha’s rights and title to the 1843 grant] but trusted the fact that Lewis was his lawyer.”¹⁸⁷ Furthermore, at least one lineage headperson, Felicita Buendia of the Cano family, refused to agree to Lewis’ demands when asked to “put their marks on a paper.”¹⁸⁸ Lewis never followed up on a legal action. Much of the attention in the newspapers at that time focused on the plight of Rocha and his 1885 ejection from a land on the San Fernando land grant. In its 2016 Technical Assistance letter for Petition #158, the OFA argues that Lewis’ actions amounted to “legal representation of one Indian landowner” and thus they did not “constitute action by a Federal Government agency on behalf of a Fernandeno Indian entity.”¹⁸⁹ If Lewis’ actions were only for Rocha, instead of a collective Fernandeno entity, and Rocha understood them as such, then Rocha’s actions were that of an individual rather than as a tribal leader. The petitioner provides no examples of Rocha’s leadership as a captain of the petitioning entity between 1900 and 1904 in its 2023 or its earlier 2009 petition.

The petition identifies several others as leaders, including Maria Rita Alipas at Encino and Jose Miguel Triumfo at Rancho Cahuenga, but most of these named leaders died before the twentieth century, and Alipas and Triumfo passed before the 1870s. Rita’s son, Antonio Maria Ortega, who succeeded Rita as a leader, is one of the few leaders named in the petition from this period who survived into the twentieth century. The petition does not provide any evidence of leadership by these

¹⁸⁴ FTB, 2023 Petition, p. 157 of pdf.

¹⁸⁵ FTB, 2023 Petition, p. 157 of pdf.

¹⁸⁶ FTB, 2023 Petition, p. 157 of pdf.

¹⁸⁷ Champagne, Duane and Carole E. Goldberg, *A Coalition of Lineages: The Fernandeno Tataviam Band of Mission Indians*, Tucson, AZ: University of Arizona Press, 2021, p. 164.

¹⁸⁸ Champagne and Goldberg, p. 164.

¹⁸⁹ U.S. Department of Interior, Office of Federal Acknowledgment, Technical Assistance Review Letter, R. Lee Fleming to Rudy Ortega, Jr., October 17, 2016, p. 8.

persons or that significant resources were mobilized for the purposes or benefits of the petitioning entity as a whole. Nor does it evince that a significant number of the petitioner's ancestors were mobilized for any entity purpose at the end of the nineteenth century and the first five years of the twentieth century.

After the death of Rogerio Rocha in 1904, the petitioner maintains that Antonio Maria Ortega (of the Ortega lineage group) was selected as the captain of the Fernandinos in 1904 and served in that capacity until 1941.¹⁹⁰ Rocha had no descendants in the petitioning entity, and it is somewhat unclear as to the process by which Ortega was chosen. According to notes taken by his daughter Sally, tribal leadership was passed down through the actions of elders in what could best be called a gerontocracy.¹⁹¹ In their 2009 petition, FTB asserted that "the main criteria for serving as captain was still very traditional and relied on cultural knowledge and ability to speak one or more of the San Fernando dialects. Antonio Maria Ortega took on the role of captain because he is at the head of a large family, spoke an Indian language, Tataviam according to some family members, and he had cultural knowledge."¹⁹² In the 2023 petition, the assertion that Antonio was a captain appears to be based solely on statements from the oral interviews of his grandson, Rudy Ortega, Sr., who was told by his father, Estanislao Ortega, that Antonio "was in charge of the tribe."¹⁹³ The petition presents little, if any, evidence to evince that he had political influence or authority within all three of the lineage families and provides no specific examples of actions he took as captain for the benefit of the petitioning entity.

The only political issue focused on during this period was whether entity members should apply for the California Judgment Act roll (the roll created by the California Indian Jurisdictional Act of 1928). The members of the Ortiz and Garcia families favored enrollment, but Antonio argued against it out of fear that the people would be removed to a reservation. Elders, led by Antonio and his wife Ysidora, allegedly influenced all of the Ortega lineage members not to enroll.¹⁹⁴ Members of the Ortiz and Garcia lineages, however, did apply and the petition documents the applications of Joseph Ortiz, Frances Garcia Cooke, and many members of the Garcia lineage.

The petition asserts that the process highlighted the consensus-driven nature of Fernandino politics. First, "each lineage tries to form an internal consensus through discussion." Once a lineage position is developed: "All the lineages have the right to decide major issues within their lineage group first before presenting their decisions to other lineages. If there is no consensus among the leaders and lineages,

¹⁹⁰ FTB, 2023 Petition, p. 158 of pdf.

¹⁹¹ FTB, 2023 Petition, p. 171 of pdf.

¹⁹² FTB, 2009 Petition, p. 130 of pdf.

¹⁹³ FTB, 2023 Petition, pp. 170-171 of pdf.

¹⁹⁴ FTB, 2023 Petition, p. 89 of pdf.

then each lineage makes its own decision.”¹⁹⁵ However, the petitioner fails to support this interpretation with clear evidence documenting the decision-making process.

Although the petition presents the 1928-1933 registration as a key political issue, it provides no specific examples of meetings or other gatherings at which the issue was discussed by all three of the lineage families together. While the issue may evince the political influence of the family leaders within their own lineages, it does not demonstrate their political influence over the broader tribal group because they did not influence the decision of those outside of the family who chose to enroll. Moreover, the petition fails to evince that these decisions were “of importance” to the membership other than the few elders named and that they involved entity goals rather than desires of individual members.

Following the death of Antonio Maria Ortega in 1941, the petitioner states that his eldest son Estanislao became the captain of the Fernandinos until his own death ten years later in 1951. In one of his interviews quoted in the 2009 petition, Rudy Ortega, Sr., stated that the position “was idle” for about a year until “my dad took over to bring the people, keep the people together.”¹⁹⁶ There is no information as to how this decision was made or on who participated in the process. The 2023 petition indicates that Estanislao Ortega held political and social meetings for tribal members where tribal members practiced consensus decision-making.¹⁹⁷ The tribe also “participated in joint economic activities, including raising money for funerals, and collecting food for the elderly, and procuring food donations for tribal meetings.”¹⁹⁸ These statements appear to be based primarily on the oral history testimony of Estanislao’s son, Rudy Ortega, Sr. These interviews, at least as quoted in the petition, include no examples of decision-making, provide little or no description of specific events, and fail to establish that these activities encompassed all three of the petitioner’s lineage families. Furthermore, it is unclear as to how much of this charitable work was directed toward Fernandino families as opposed to needy members of the broader San Fernando community.¹⁹⁹

The weakness of these assertions become apparent when one reviews the oral interviews. When asked by the interviewer if the community had meetings or festivals, Ortega, Sr. responded: “they had festivals. They had meetings. But I don’t know when their meetings were. I was still small.”²⁰⁰ If his father was the captain of the petitioning entity from around 1941 to 1951, Ortega, Sr., should have known where community meetings were held and what was discussed. Another possibility

¹⁹⁵ FTB, 2023 Petition, p. 89 of pdf.

¹⁹⁶ FTB, 2009 Petition, p. 139 of pdf.

¹⁹⁷ FTB, 2023 Petition, p. 113 of pdf.

¹⁹⁸ FTB, 2023 Petition, p. 113 of pdf.

¹⁹⁹ FTB, 2009 Petition, p. 140 of pdf, fn. 260.

²⁰⁰ FTB, 2023 Petition, p. 173 of pdf.

is that Ortega, Sr., is actually referring to his grandfather's activities in the 1930s. That would explain his inability to remember them and his reference to being too young. If so, this leaves a gap in the petitioner's evidence for the 1940s when Estanislao was captain and a leader of the Ortega lineage.

Furthermore, according to Ortega, Sr., his father "never talked about the family background" and "worked most of the time" as a caretaker.²⁰¹ He was active in helping others such as acquiring food for the elderly or informally raising small sums for families in need, but it is unclear how much of this work was directed toward Fernandeano families as opposed to needy members of the broader San Fernando community.²⁰² In his later years, Estanislao was in bad health, and his illness left "a leadership vacuum during the late 1940s."²⁰³

In his one of his interviews, Ortega, Sr., described his own beginnings in leadership around 1940. He formed a youth group and emerged as a leader with little involvement from the elders in the families.²⁰⁴ According to Ortega, Sr., they initially "didn't have enough to say that we were Mission Indians yet. I was still working on the genealogy part."²⁰⁵ He then answered some very leading questions from the interviewer about the makeup of the organization. In response to the question, "So these were people that always went to the festivals and always went to the events?," he replied: "Yeah."²⁰⁶ In answer to the question, "And these were sort of leaders in their families and stuff?" he again replied "Yeah."²⁰⁷ He stated that he held meetings twice a month at his home attended by over 20 of "my people."²⁰⁸ He did not, however, name any of the participants or describe any particular matter or issue that might have been discussed by the group. Curiously, these somewhat unconvincing statements were not included in the 2023 petition.

Much of the energy captured in the youth group appears to have dissipated when Ortega, Sr., left sometime after Pearl Harbor, and there is little evidence of further tribal activity in the 1940s after 1941. Ortega, Sr., returned sometime around 1948-1949 and formed a group in the 1950s with his aunt, Vera. As Ortega, Sr.,

²⁰¹ Interview with Rudy Ortega, Sr., Part One, November 4, 2007, pp. 30-32. Accessed from: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFWD_2007_RudyOrtegaInterviewPart01.pdf

²⁰² FTB, 2009 Petition, p. 228 of pdf, fn 92.

²⁰³ FTB, 2009 Petition, p. 228 of pdf.

²⁰⁴ Interview with Rudy Ortega, Sr., Part One, November 4, 2007, p. 8; Accessed from: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFWD_2007_RudyOrtegaInterviewPart01.pdf

²⁰⁵ Interview with Rudy Ortega, Sr., Part Two, November 4, 2007, pp. 11-12; Accessed from: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFWD_2007_RudyOrtegaInterviewPart02.pdf

²⁰⁶ *Ibid.*, p. 12.

²⁰⁷ *Ibid.*, p. 12.

²⁰⁸ *Ibid.*, p. 12.

described, “they’ve been waiting for you to come back.”²⁰⁹ Estanislao died in 1951, and the organization that Ortega, Sr., formed after his return to the San Fernando area adopted the name “San Fernando Mission Indians” in 1955.

Comments on the Fernandeno Documentation for Categories of Evidence for Criterion § 83.11(c), Political Influence or Authority, 1900 through 1951

§ 83.11(c)(1), The petitioner may demonstrate that it meets this criterion by some combination of two or more of the following forms of evidence or by other evidence that the petitioner had political influence or authority over its members as an autonomous entity:

§ 83.11(c)(1)(i), The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.

The petitioner claims that most of its sources for the years 1900-1951 demonstrate the entity’s past mobilization of members and resources for entity purposes. These include: a 1904 article in *Out West* by H.N. Rust, a 1924 letter to the Attorney General, two applications for enrollment as California Indians under the 1928 California Indian Jurisdictional Act, several oral interviews, and the guestbook for the funeral of Estanislao Ortega.

The petitioner asserts that it meets this category of evidence because its leaders, primarily Estanislao Ortega and Rudy Ortega, Sr., organized meetings, community events, and festivals. According to Rudy Ortega, Sr., his father, Estanislao Ortega, and others organized these meetings and events; however, Ortega, Sr., could not recall much about them. It also notes that families collected resources to help needy members. For example, in his oral interview, Rudy Ortega, Sr. stated that fundraising “was one of the traditions” and that they once held a car wash for a family who needed money for a burial. It is unclear as to whether these events were for tribal members or other non-tribal members of the San Fernando community. In a separate interview cited in the petitioner’s 2009 submission, Ortega, Sr., replied to a question about the recipients of his father’s charitable efforts: “They were families. I don’t know whether they were Indian or not Indian, but he never denied anything to any family that were in need of help. That’s the way he looked at it, I guess.”²¹⁰ The petitioner also noted that the lineages gathered during the holidays and other occasions such as baptisms.²¹¹ The only source for this information is Rudy Ortega, Sr., and by his own admission, he was too small to remember much before the late 1930s and early 1940s [Ortega, Sr. was born around

²⁰⁹ FTB, 2023 Petition, p. 179 of pdf.

²¹⁰ FTB, 2009 Petition, p. 228 of pdf, fn 92.

²¹¹ FTB, 2023 Petition, p. 164 of pdf.

1926]. The petition does not provide any specific examples of either family or community gatherings or issues that were discussed at these events. Moreover, the petition fails to describe or document a community “network” that encompassed all of the petitioner’s three family lineages. In fact, the oral interviews are unclear as to whether Fernandeno members participated in many of these events (holidays excepted) aside from Antonio and/or Estanislao. Again, “significant numbers of members” cannot be determined because the total number of members is not enumerated for the period, and the petition does not provide any material on attendees or the rate of participation.

The petitioner asserts that the meetings led by Vera Salazar and Rudy Ortega, Sr., after the war also demonstrate that the Fernandeno meet this category of evidence. In his interview, Ortega, Sr., described how “we started our meetings again after the war” once he had returned around 1948-49. According to Ortega, his aunt, Vera Salazar, “was interested in a club, she wanted where she could go and talk with people and know the stories” and Ortega took the initiative and “started getting people together.”²¹² This suggests that the petitioner had stopped its meetings and gatherings for much of the 1940s. As with earlier assertions of community events, the petitioner does not provide any specific examples of family or community gatherings or issues that were discussed on these meetings. No evidence of significant mobilization of either members or resources are documented. Nor is there any evidence of multi-lineage participation.

One of the only controversial issues in the first half of the twentieth century was the decision whether or not to apply for enrollment as California Indians under the 1928 California Indian Jurisdictional Act. The petitioner alleges that the families split over the matter: the Ortegas feared that there would be negative consequences such as forced removal to reservations, while members of the Ortiz and Garcia lineages saw possible benefits and wished to apply. Apparently, each family agreed to go its own way, and the petitioner has submitted applications for enrollment for Frances Garcia Cooke and Jose Ortiz as evidence of entity mobilization. The petitioner suggests that since Frances Cooke and Jose Ortiz were headpersons of their lineages, that these two applications were meant to represent their entire extended families. However, there were several additional applications by members of these lineages, and it is unclear as to why the petition neglects to include them as evidence. The petitioner does not provide specific examples of meetings or gatherings in which the matter was discussed by all three of the lineage families together. Moreover, since the total number of members is not enumerated and the petition neglects to provide a detailed description of the debate between and within lineages, it is not possible to determine whether “significant numbers of members” were involved. The petition only provides two applications for enrollment; this does not suggest “significant numbers of members and significant resources.” Furthermore, the applications as presented and explained do not support the

²¹² FTB, 2023 Petition, p. 130 of pdf.

assertion that these were “for entity purposes.” Individuals had to apply and demonstrate historical descent, and they derived the eventual benefits from the Act; the Fernandeno entity gained nothing. The debate as presented by the petitioner includes no discussion of entity goals or “purposes;” in Jose Ortiz’s application, he states that: “I am not making any land claim in particular but wish to benefit with other California Indians if settlement is made.”²¹³ There is no mention of the Fernandeno entity or of loss of entity lands.

The petition also cites this category in its description of H.N. Rust’s efforts to provide relief to Rogerio Rocha after his forced eviction and in a 1924 letter from a Special Assistant to the Attorney General exploring the idea of condemnation of lands for dispossessed Mission Indians. In both cases, the petitioner’s understanding of the criterion is mistaken. The criterion requires that the entity, the Fernandeno, mobilize significant numbers of members and significant resources from its members for entity purposes. Neither source demonstrates that the petitioner mobilized any members or resources for any purposes whatsoever. Instead, the sources describe either an effort by a U.S. Indian agent to provide relief to an individual Indian [the 1904 article in *Out West*] or an exploration of the reasoning behind the potential use of condemnation by the U.S. Government to secure lands for dispossessed Mission Indians [the 1924 letter].

Estanislao Ortega died on October 6, 1951, and his funeral was held three days later on October 9. The petitioner submits the guest book from the funeral, provides the name of several of the attendees, and argues that this demonstrates mobilization for entity purposes. As with the H.R. Rust article and the 1924 letter, the petitioner misunderstands the criterion and its requirements. While the guest book is excellent evidence for criterion (b) as it demonstrates relationships between tribal and lineage members, it fails to show mobilization of substantial numbers of members and resources for entity purposes. The petition does not explain how a funeral meets an entity purpose or how the tribe employed significant numbers of members and used resources to meet such a purpose.

§ 83.11(c)(1)(ii), Many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance.

The petitioner claims that it meets its category of evidence in the 1940s due to Rudy Ortega, Sr.’s interaction with the BIA about acquiring genealogical information on his cousins in the Garcia lineage. As Ortega told the story, he asked the BIA about a family tree for one of his cousins, and they responded by offering information confirming that Mary Garcia was registered as a Mission Indian of San Fernando. Furthermore, her sons were “under Chumash.” Oddly, Ortega observed that one of these men “was my treasurer, when I first started the organization, back in the

²¹³ FTB, 2023 Petition, p. 175 of pdf.

forties.”²¹⁴ This exchange begs the question of how it is that a lineage headperson who is organizing these tribal meetings is unaware of the affiliation of one of his officers. Furthermore, it seems strange that Ortega didn’t simply ask his cousins these questions, particularly if they are seeing each other regularly at meetings. That question aside, this exchange does not reveal that the membership considered Ortega’s search for genealogical information to be “of importance,” and no other evidence supports such a conclusion.

The petitioner does not assert that membership considered other actions taken by leadership to be of importance. These actions could include the debates around the enrollment onto the California Indian rolls between 1928 and 1933 or the numerous festivals and meetings mentioned by Ortega, Sr., However, the record lacks any evidence demonstrating that the enrollment issue was relevant for members of the Fernandeno petitioner other than a few elders and headpersons. Therefore, there is no evidence within the petition that these actions were thought to be important by “many of the membership.”

§ 83.11(c)(1)(iii), There is widespread knowledge, communication, or involvement in political processes by many of the entity’s members.

The petitioner claims that it meets this category of evidence through the debates around enrollment as Indians under the 1928 California Indian Jurisdictional Act. According to the petition, “members of the Ortega family explain why Ortega family members chose not to apply for recognition as Indians” under the Act in five oral interviews.²¹⁵ With the exception of Rudy Ortega, Sr.’s interview, we do not have access to these interviews, and the petitioner does not quote from them in its explanation of the matter. The petitioner asserts that there was “debate within the lineage, and, once Headpersons decided to not apply, no one from the lineage applied.”²¹⁶ The petition provides no examples of family or lineage meetings where this issue was discussed, and despite the assertion of debate within the lineage, there is no evidence that the matter was discussed or even widely known by many of the entity’s members.

§ 83.11(c)(1)(iv), The entity meets the criterion in § 83.11(b) at greater than or equal to the percentages set forth under § 83.11(b)(2).

The petitioner has not made any claims regarding this category of evidence. However, in its discussion of criterion § 83.11(b), the petitioner claims that it meets this category of evidence because it has demonstrated that more than 50 percent of

²¹⁴ FTB, 2023 Petition, p. 180 of pdf.

²¹⁵ FTB, 2023 Petition, p. 176 of pdf.

²¹⁶ FTB, 2023 Petition, p. 176 of pdf.

the members reside in a geographical area. The petitioner has omitted key language from the category. Applicants must demonstrate that “more than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area [underlined for emphasis].” As discussed elsewhere, we do not have access to the necessary records to categorically prove or disprove this claim. However, the petitioner does not appear to be able to meet the evidentiary burden for criterion § 83.11(b) from 1900 to 1951. Thus, it would not be able to meet the criterion at greater than or equal to the 50 percent standard set forth under § 83.11(b)(2).

§ 83.11(c)(1)(v), There are internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions.

The petitioner asserts that it meets this category of evidence over two separate matters: due to internal disagreements regarding whether to register for the judgment rolls under the California Indian Jurisdictional Act (CIJA), and due to conflict between members of the Ortega lineage over inheritance of leadership as an example of internal conflict. The petitioner uses several oral interviews with members of the Ortega family to assert that the Ortegas elected not to apply under the CIJA due to a fear of removal to an Indian reservation. No quotes from the interviews are provided and aside from Rudy Ortega, Sr.’s interview, there is no public access to these interviews so these assertions cannot be verified. Elsewhere in the petition, it is claimed that the three lineages took different positions over the matter and that members of the Garcia and Ortiz lineages submitted applications. While this shows that there were differences in approach among the lineage families, the petitioner does not clearly describe entity goals, policies, processes or decisions in regards to the CIJA. Instead, the petition focused on the lineages and the explanations for their choices. For example, the petitioner provides no evidence that the entity possessed a goal or policy of accepting or refusing the judgment funds and avoiding relocation, or that it made a decision through a political process that was opposed by some families. The petition also lacks any specific evidence that the three families even discussed the matter with each other. Furthermore, even if it is accepted that the disagreements over registration qualified under this category, it would only document political influence or authority for the 1928-1933 period and not on a substantially continuous basis for the first half of the twentieth century.

The petitioner also refers to a conflict between members of the Ortega lineage over the inheritance of a leadership role as an example of internal conflict. After Antonio Ortega’s death in 1941, his eldest son, Estanislao Ortega, was chosen as captain over the objection of Sally Verdugo, who argued that she should be the captain since she was favored by Antonio Ortega. Sally and her daughter, Martha, also refused to

support the selection of Rudy Ortega, Sr., in 1951 when Estanislao died. While this dispute could qualify under the category, the petitioner neglects to provide any evidence for this. The sole quoted source, an interview of Rudy Ortega, Sr., only discusses a disagreement over who should be conducting genealogy and how some Ortegas became upset with Martha over her lack of cooperation with Ortega. There are no sources discussing views of the matter outside of the Ortega lineage. It is unclear whether this conflict was even known outside of a small circle of Ortega family members. Without demonstrating any involvement or even comment from other families, this could be interpreted as a family squabble rather than a significant internal conflict over valued entity decisions.

§ 83.11(c)(1)(vi), The government of a federally recognized Indian tribe has a significant relationship with the leaders or the governing body of the petitioner.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(c)(1)(vii), Land set aside by a State for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.

The petitioner has not submitted evidence regarding this category of evidence, and it appears that the petitioner does not meet its requirements.

§ 83.11(c)(1)(viii), There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity's members.

The petitioner has provided a list of entity leaders from the three lineages throughout this period. Much of this information appears to originate from a single source – the interview of Rudy Ortega, Sr. The petitioner indicates that family elders chose lineage headpersons and that those decisions were respected and acquiesced to by the rest of the family. However, there is no evidence that these headpersons had broad influence over the petitioner's ancestors rather than merely within their separate family lineages. No evidence has been provided that the Garcia and Ortiz lineages had an interactive relationship with the captain. In fact, specific evidence of cross-lineage relationships and communication is lacking throughout the period. No evidence has been provided of acquiescence to the captain's leadership by the Garcia and Ortiz lineages.

§ 83.11(c)(2), The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point of time if the evidence demonstrates any one of the following:

§ 83.11(c)(2)(i), Entity leaders or internal mechanisms exist or existed that:

§ 83.11(c)(2)(i)(A), Allocate entity resources such as land, residence rights, and the like on a consistent basis.

The petitioner does not claim that it meets this category of evidence for this period.

§ 83.11(c)(2)(i)(B), Settle disputes between members or subgroups by mediation or other means on a regular basis.

The petitioner appears to claim that it meets this category of evidence because Rudy Ortega, Sr., and his aunt, Vera Salazar, apparently restarted Fernandeano meetings as Estanislao Ortega, the captain of the lineage, was ill and in poor health. In these meetings, it is claimed that the participants elected not to use bylaws or formal rules, but discussed problems in a communal, traditional way. The petitioner neither provides any examples of disputes or ways in which its leaders or the tribe's internal mechanisms contributed to settle disagreements, nor does the petitioner show how this was conducted "on a regular basis." Furthermore, it is not clear that these meetings took place before Ortega, Sr., succeeded his father as captain. At one point in the quoted interview, Ortega, Sr. explicitly stated that these events took place "when my father passed on."²¹⁷

Curiously, the petitioner does not assert that its leaders or internal mechanisms played a role in settling other disputes, even though its petition indicates at least two in this period: the differing approaches on enrolling as Indians under the California Indian Jurisdictional Act, and the conflict between members of the Ortega lineage over inheritance of leadership. The disagreement between lineages over the decision to enroll as an Indian under the 1928 act was one of the few controversial issues discussed in the petition, and after some debate, the different families went their own way. However, the petitioner provides no examples of family or lineage meetings where this issue was discussed and does not explain how this took place within and between lineages. It is unclear if the matter was discussed between lineages. If the petitioner is able to provide adequate documentation about the process, however, it would be only one example and hardly qualify as "on a regular basis."

The petitioner's interpretation of the conflict within the Ortega lineage in the 1940s and early 1950s is not fully supported by the cited portion of the oral interview with Rudy Ortega, Sr., though there appear to be other interviews and documents with

²¹⁷ FTB, 2023 Petition, p. 179 of pdf.

additional information.²¹⁸ According to Ortega, Sr., Sally Ortega became upset when she learned that he was conducting research into the family's genealogy when her daughter, Martha, was already doing the same. Martha subsequently abandoned her research. Apparently, other members of the family thought that Martha should have collaborated with Ortega, Sr., and also became upset. While neither the petitioner nor Ortega, Sr., states this, it is possible that the act of conducting research into the family's genealogy was understood to be a meaningful act of accruing knowledge and a precursor to taking a leadership role. The petitioner's interpretation is that Sally "expected to be leader of the Tribe after [Antonio Ortega's] death" in 1941, and she did not support Rudy Ortega, Sr.'s ascension as Captain in 1951. The petitioner does not explain how the tribe addressed this dispute.

§ 83.11(c)(2)(i)(C), Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms or the enforcement of sanctions to direct or control behavior.

The petitioner does not claim that it meets this category of evidence for this period.

§ 83.11(c)(2)(i)(D), Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

The petitioner asserts that it meets this category of evidence because there were fundraising events during the 1930s. In the quoted part of an interview, Rudy Ortega, Sr., recalled that it "was one of the traditions of the group."²¹⁹ However, Ortega, Sr., provided only one example, a car wash to help a family pay for a burial. It is unclear as to whether the needy family was of the tribe or just a member of the local community. In a separate interview cited in the petitioner's 2009 submission, Ortega, Sr., replied to a question about the recipients of his father's charitable efforts: "They were families. I don't know whether they were Indian or not Indian, but he never denied anything to any family that were in need of help. That's the way he looked at it, I guess."²²⁰ There are no other examples. This activity appears to have been carried out over a limited period and not by the petitioning entity or its leaders on a consistent basis throughout the first half of the century. Occasional fundraising among the members of a geographically based, rather than the entity's, community is insufficient to meet the requirement of this category of evidence. There is no evidence in the record that demonstrates that the petitioner organized or influenced economic subsistence activities among its members.

²¹⁸ FTB, 2023 Petition, pp. 161-162 of pdf.

²¹⁹ FTB, 2023 Petition, pp. 176-177 of pdf.

²²⁰ FTB, 2009 Petition, p. 228 of pdf, fn 92.

§ 83.11(c)(ii), The petitioner has met the requirements in § 83.11(b)(2) at a given time.

The petitioner claims that it meets this category of evidence because it has demonstrated that more than 50 percent of the members reside in a geographical area. However, the petitioner has omitted key language from the category. Applicants must demonstrate that “more than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area [underlined for emphasis].” As discussed elsewhere, we do not have access to the necessary records to categorically prove or disprove this claim. However, the petitioner does not appear to be able to meet the evidentiary burden for criterion § 83.11(b) from 1900 to 1951.

Conclusions for Criterion § 83.11(c), Political Influence or Authority, 1900 through 1951

The petition identifies and documents four entity members as captains who may have had political influence or authority during this period, including Rogerio Rocha, Antonio Maria Ortega, Estanislao Ortega, and Rudy Ortega, Sr. Other members identified as lineage headpersons include Mary Garcia/Cooke, Joseph Ortiz, Vera Ortega Salazar, Erolinda Tapia, Maria Josefa Leyva, and Francis Cooke. However, it fails to demonstrate that any of these individuals had broad influence over the petitioner’s ancestors rather than just with their separate family lineages. Nor is it clear that there were meaningful interactions between leaders of the three lineages, including elders and named leaders. No evidence is provided that an interactive political relationship existed between named leaders and entity members as a whole, or that the petitioning entity as a whole mobilized members and resources or made significant decisions and maintained a consensus among its members. Moreover, the petition fails to demonstrate on a substantially continuous basis that the lineage headpersons mobilized their members and resources or made significant decisions and maintained a consensus, nor that these headpersons interacted with leaders in other lineages for the benefit of the petitioning entity.

The petitioner presents limited evidence of its past activities, including baptisms, meetings, fundraising, and festivals. The only source for much of this information is Rudy Ortega, Sr., and by his own admission, he was too young to remember much before the late 1930s. The petition does not provide any specific examples of either family or community gatherings or issues that were discussed at these events. Furthermore, no evidence is presented that these events were for the Fernandoño tribal entity rather than one family lineage, or in some cases, for an undefined San Fernando community. Nor can it be determined if “significant numbers of members”

were involved because the total number of members is not enumerated for the period, and the petition does not provide any material on attendees or the rate of participation.

The petition also presents limited evidence of internal conflicts and political controversy concerning whether or not to register for the California judgement roll authorized in 1928 and over the selection of the captain in 1941 and 1951. However, the petitioner provides minimal documentation that the issue of registration was discussed by or was of importance to many of the membership, and the petition lacks evidence that the entire matter served entity purposes rather than individual or lineage needs. Likewise, the petitioner neglects to provide evidence that the dispute over the selection of the captain in 1941 and 1951 concerned many of the members, including other lineages, or whether it was considered to be a family squabble. Furthermore, even if these conflicts are deemed to be of importance to most of the members and of non-Ortega lineages, they would only document political influence or authority for a few years of the period in question (1928-1933, around 1941 and 1951). They do not document political influence or authority on a substantially continuous basis for the entire 51-year period.

The petitioner fails to meet criterion § 83.11(c), political influence or authority, from 1900 to 1951 because its evidence does not sufficiently meet any of the separate categories of evidence for this criterion.

Comments on the Fernandeno Evidence for Criterion § 83.11(c), Political Influence or Authority, 1952 through 2023

After a long illness, Estanislao Ortega died in October 1951. The petitioner states that his sisters, likely including Vera, Christina, Erolinda, Katherine, and Sally, gathered and selected his younger son, Rudy Ortega, Sr., as their next captain. His aunt, Vera Salazar, had encouraged his exploration of his Indian identity as a young man in the 1930s and 1940s, and she had supported him in the discussions about who should succeed his father as captain.²²¹ The petitioner argues, without clear evidence, that Sally opposed Ortega, Sr.'s selection and perhaps preferred that either she or her daughter, Martha, take on that role.²²²

²²¹ FTB, 2023 Petition, p. 181.

²²² The petitioner's explanation of the internal conflict over leadership selection in 1941 and 1951 is incoherent and unsupported in the 2023 petition. The petitioner quotes extensively from a Rudy Ortega, Sr., interview describing a dispute about conducting genealogy and using that to explain the origin of Sally's unhappiness about the selection of Estanislao in 1941 as well as an alleged family conflict between Sally and her immediate kin and Ortega, Sr., and his allies. The petitioner suggests that this disagreement revealed a conflict between the concept of gerontocracy and the lineal descent of leaders. While that is possible, the petitioner does not support the theory with evidence (FTB, 2023 Petition, pp. 177-179 of pdf).

For someone who was supposedly groomed for leadership, Ortega, Sr., has seemed uncertain about the tribe's traditions and his own role in them in the 1940s and 1950s. In an interview, he was asked a series of questions about his experience as the son of a tribal leader and the inheritance of that role: "How did you acquire the information about there being a chiefly lineage in your family?; How did you learn about that, because I understand you have inherited the chief role in your tribe?; How did you inherit?; From who did you inherit it?"²²³ Ortega, Sr., replied:

You know, I really don't know. I just took it and my people voted me to take it, to start doing the research on our people and to find our heritage and that was it. Then afterwards, about a couple of years later, then they named me the chief of the tribe and gave me the name. . . Chief Little Bear.²²⁴

Even accounting for his age and the many years that had elapsed between the events asked about and this interview, that answer reveals a lack of understanding as a young man about his lineage's place within the Fernandeño petitioner.

This lack of understanding emerges elsewhere as well. His oral interviews indicate that he did not identify as Indian in school and that he was angry after a teacher identified him as Indian and directed him into a drum group. When he complained to his mother, she responded: "Well, you are Indian. You ask your dad."²²⁵ When he then asked: "Well, what kind of Indian?", his mother replied: "You ask your dad and he'll tell you."²²⁶ However, as Ortega, Sr., relates later on in the same interview, his father did not speak to him about their heritage or his activities as captain.²²⁷ As a young man in high school around 1940, Ortega, Sr., began, with the encouragement of his aunt, Vera Salazar, to research family history and genealogy with the purpose of organizing a "social club for meetings and cultural activities."²²⁸ His first effort at organization focused on youth.²²⁹ Another family informant, possibly John Ortega,

²²³ FTB, 2009 Petition, p. 239 of pdf, fn. 119.

²²⁴ FTB, 2009 Petition, p. 239 of pdf, fn. 119.

²²⁵ Interview with Rudy Ortega, Sr., Part 1, pp. 4; Accessed at: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFW_D_2007_RudyOrtegaInterviewPart01.pdf

²²⁶ Interview with Rudy Ortega, Sr., Part 1, pp. 4; Accessed at: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFW_D_2007_RudyOrtegaInterviewPart01.pdf

²²⁷ Interview with Rudy Ortega, Sr., Part 2, pp. 13-14; Accessed at: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFW_D_2007_RudyOrtegaInterviewPart02.pdf

²²⁸ FTB, 2009 Petition, p. 140-141 of pdf.

²²⁹ Interview with Rudy Ortega, Sr., Part 1, pp. 5 and 8; Accessed at: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFW_D_2007_RudyOrtegaInterviewPart01.pdf

indicated that Ortega, Sr., “had a burning desire to know who he was, where they came from and get that family lineage.”²³⁰

After his initial efforts to organize a youth group before World War II, Ortega, Sr., served in the Army for several years during the 1940s. When asked about the social and political activity within the tribal community during his absence, Ortega, Sr., stated that: “But the community, no, they didn’t start nothing up until I had my people come back after I got out of the service.”²³¹ In various oral history interviews, he described his efforts to form an organization in the early and mid-1950s:

They were waiting for me. . . . my aunt says ‘Rudy, let’s form something, I need something to where I can go out and enjoy and talk to the people.’ I said ‘Okay.’ So that’s what we did. We formed a group and after the war, when I come back, they said, come on, let’s get the people. They’re ready. They’ve been waiting for you to come back. I says okay. So we started doing the meetings again [likely referencing the meetings of the youth group he organized around 1940 before this later effort].²³²

We never called ourselves any Mission Indians or nothing until later in time when we find out where exactly we were from. . . . They weren’t sure where they were from. They lived in San Fernando but they weren’t particularly sure whether they were from here or from over there. Until after when I started doing everything and started giving them information.²³³

So I started getting the people together and after we got the people together, we said, well, what are we going to call it? I said, well, that’s up to you people what you want to call yourselves. Don’t forget we were born here in San Fernando and we came from the San Fernando Mission so chose the name what you want to be called. He said, how about San Fernando Band of Mission Indians? I says that’s fine, because I heard that they used to call us the San Fernando Mission Band Indians but then they took the Band out and they said San Fernando Mission Indians after that. So I says, okay fine, so that’s what we started on. So my aunt [Vera Ortega Salazar] said, well let’s do something on the club. So we started, I said, lets see what we can do? First, he says, we’ve got to find out if we are Indians or not. Oh, I

²³⁰ FTB, 2009 Petition, p. 142 of pdf, ftn 269.

²³¹ Interview with Rudy Ortega, Sr., Part 1, p. 6.

²³² Interview with Rudy Ortega, Sr., Part 1, p. 26.

²³³ Interview with Rudy Ortega, Sr., Part 2, pp. 16-17; Accessed at:

<https://www.bia.gov/sites/default/files/dup/assets/as->

[ia/ofa/petition/158_ferntv_CA/web_docs/158_PFWD_2007_RudyOrtegaInterviewPart02.pdf](https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFWD_2007_RudyOrtegaInterviewPart02.pdf).

said, here we go, I know what you are trying to say. None of my people want to do anything, they want everything on silver platter, so I said, let's get all the people together and let's talk it over and we'll go down to the park and we'll talk it over and see what happens this summer. Okay, so that's what we did, we went over and a lot of people didn't want to do nothing. Oh no, it's too hard to do anything. What about Rudy? Well, if that's the case you're going to leave me holding the bag, then I'll go ahead and do it then, I'll try. I don't know a thing about archeologist, genealogist, but I'll see what I can find about our ancestors. Okay, so they were all happy about that. At that time, they came out news in the paper that they were going to give some money out to the tribes if they could prove they were native Americans. So, they says, come on, Rudy, let's hurry up and see if we can get some money.²³⁴

In an interview cited in the 2009 petition, Ortega, Sr., stated that the organization was formed in the "middle of the fifties." "I was just thinking of trying to get the people together," he stated, "and do some fun things with them."²³⁵ Another informant when asked when he or she first started "hearing the name Tataviam," answered: "when Rudy made us aware and he made us all sign these roll papers back then."²³⁶

This evidence strongly suggests the absence of a functioning organic tribal entity whose members knew each other and their historical continuity and had significant social relations and an interactive political relationship with recognized leaders prior to the mid-1950s. The evidence indicates that Rudy Ortega, Sr., a son of the claimed captain of the ancestors of the petitioning entity, and perhaps his mother, did not know what kind of Indian he was and apparently did not know related tribal members until he independently conducted research in an effort to learn about his ancestry and that of other members. They, in turn, did not know conclusively if they were San Fernando Mission Indians until he completed genealogical research that confirmed that they were. This evidence further indicates that the people involved did not have a collective identity as Indians or as a tribal entity and that they were not particularly inclined to organize. It also indicates that Ortega, Sr., was trying to organize an Indian descendency or recruitment group rather than reorganizing a continuing tribal entity and that one of the incentives for organizing was the pursuit of claims.

According to the 2023 petition, the entity organized by Ortega, Sr., adopted the name "San Fernando Mission Indians of San Fernando" during the middle 1950s and created a booth with a tribal banner that it took to the festivals of various

²³⁴ FTB, 2023 Petition, p. 91 of pdf.

²³⁵ FTB, 2009 Petition, p. 163 of pdf, ftn. 337.

²³⁶ FTB, 2009 Petition, p. 162 of pdf, ftn. 325.

tribes.²³⁷ The entity held regular biweekly meetings at Brand Park in San Fernando.²³⁸ In reference perhaps to the 1950s, the petition states that “the Tapia, Salazar, Ortega, Verdugo, and Newman lineages were active and engaged in the community.”²³⁹ It appears that individuals with the Tapia, Salazar, Verdugo, and Newman surnames were related to the primary Ortega family.

Ortega, Sr., was officially recognized as the tribal coordinator of the San Fernando Band of Mission Indians in 1967.²⁴⁰ One of the activities he led was an effort to encourage eligible people to enroll for what became the California Indian Judgment Fund of 1972. However, the entity was still not formally organized. Ortega, Sr., recalled that he was reluctant to head an organization because “I had enough work trying to get this genealogy to get it for ‘68 [the Judgment Fund applications] to get everything done,” but finally “almost at the seventies . . . I said, Okay. Let’s get the people.”²⁴¹ He recalled further that:

When we had them at the Mission to give all the documents to everything [Judgment Fund applications], I says ‘Everybody you want to have a group together? We’ll have it.’ They said, ‘Yeah. Let’s have a group together.’ ‘We’ll meet where?’ They said, ‘Let’s meet here at the Mission.’ ‘Okay.’ So we started getting the people together. We started meeting at the Mission for a while. The wintertime came, then we started meeting them at the homes. But then I started, I went to the County in Pacoima, which is the Department of Social Services, and I have a friend . . . anyway he gave us an office. He gave us a phone. We didn’t have to pay for this service. And he gave us paper. He gave us a typewriter.²⁴²

Ortega, Sr.’s son Steve recalled that:

They called my father up and told him they wanted him to be a leader. So my father started putting things together, projects and all of that, and the next thing you know the organization just started growing with the family [emphasis added], and then we started getting people [to] say they were Indian.²⁴³

²³⁷ FTB, 2023 Petition, p. 179 of pdf. The petitioner uses a few variations of this name in the 2009 and the 2003 petitions. They include: “San Fernando Mission Indians,” “San Fernando Band of Mission Indians,” and “San Fernando Mission Indians of San Fernando.”

²³⁸ FTB, 2023 Petition, p. 94 of pdf.

²³⁹ FTB, 2009 Petition, p. 240 of pdf.

²⁴⁰ FTB, 2009 Petition, p. 242 of pdf.

²⁴¹ FTB, 2009 Petition, p. 241 of pdf, fn. 127.

²⁴² FTB, 2009 Petition, pp. 241-242 of pdf, fn. 127.

²⁴³ FTB, 2009 Petition, p. 240 of pdf.

Prior to the adoption of formal bylaws in the early 1970s, the petition states that “the community conducted their monthly meetings by traditional procedures, discussing issues of concern until a consensus was reached and deferring to the chief.”²⁴⁴ The only source for this information is Rudy Ortega, Sr. There also is some confusion within the petition as to the process by which Ortega, Sr., became and remained a leader. The petitioner claims that “from at least 1946 through to his death in 2009, Rudy [Ortega, Sr.] served as an elected Captain. He often stood for election every year, with other officers, until the establishment of a four-year term of the tribal constitution in 2002.”²⁴⁵ The evidence submitted elsewhere within the petition tells a different story. There is no evidence supporting the claim that Rudy Ortega, Sr. was elected as a captain between 1946 and 1950 when his father, Estanislao was alive and acting as captain. According to Ortega, Sr., he was away until 1948 or 1949 and did not start the group that would become FTB until the mid-1950s. Furthermore, the petitioner provides no evidence that Ortega, Sr., was elected until perhaps the adoption of formal bylaws in the 1970s.

Interviews cited in the 2009 and 2023 petitions evince the political participation of at least some members of the Garcia family in the entity organized by Rudy Ortega, Sr., as early as the 1950s. For example, in its 2023 petition, the petitioner asserts that Mary G. Garcia, a headperson in the Garcia lineage, “was particularly involved in FTB meetings, and she assisted Rudy Ortega, Sr., in genealogical research and communication with the Federal government.”²⁴⁶ She had moved to San Fernando with her family around 1940 before relocating to nearby Pacoima by the 1950s. However, she decided to abdicate her role as a lineage leader in the late 1950s because neither she nor her husband drove and “she felt she could not maintain an active role in the Tribe.”²⁴⁷ The petitioner described her as “a close political confidant of Rudy Ortega, Sr.” and claimed that she “actively participated in the community of the San Fernando Indians through the 1950s, 1960s, and 1970s.”²⁴⁸ It states further that although Mary’s son Theodore became an officer in what became the Fernandeno Band, she and her other descendants identified as Chumash and did not become Fernandeno members.²⁴⁹

Another informant, likely Charlie Cooke, observed that Ortega, Sr., was elected “chief” of the San Fernando Mission group, and that his cousin Theodore Garcia Sr. was present at the election.²⁵⁰ Other oral history evidence indicates that Theodore Garcia, Sr., attended meetings of the entity in the 1950s and 1960s.²⁵¹ Another informant indicated that a “big meeting” was held in Newhall (perhaps in the late

²⁴⁴ FTB, 2009 Petition, p. 242 of pdf.

²⁴⁵ FTB, 2023 Petition, p. 161 of pdf.

²⁴⁶ FTB, 2023 Petition, p. 160 of pdf.

²⁴⁷ FTB, 2023 Petition, p. 160 of pdf.

²⁴⁸ FTB, 2009 Petition, p. 236 of pdf.

²⁴⁹ FTB, 2009 Petition, p. 236 of pdf; and FTB, 2023 Petition, p. 167 of pdf.

²⁵⁰ FTB, 2009 Petition, p. 242 of pdf, fn. 134.

²⁵¹ FTB, 2009 Petition, p. 236 of pdf, fn. 111.

1960s and likely about registration for the Indian Judgment Fund), where the informant's cousins from the Garcia family are known to have resided.²⁵²

While interviews cited in the 2009 petition (though not the 2023 petition) evinced the political participation of a few members of the Garcia family in the entity organized by Rudy Ortega, Sr., the political participation of Ortiz family members is not well-documented in the petition. In reference to the early 1970s, the petition states that “members of both the Ortiz and Ortega lineages regularly engaged in ceremonies as well as meetings.”²⁵³ However, the source for this information is cited to an interview in which the informant only recalled that an Ortiz family member, Gloria Ortiz, was constantly involved in ceremonies. This informant makes no reference to meetings, although he or she was only a child at the time.²⁵⁴ In the 2023 petition, the petitioner asserts that the descendants of Helen Ortiz lived in and around San Fernando and enrolled in the tribe, but makes no claims to political participation.²⁵⁵ The 2023 petition also identifies Angie Campero as a Garcia lineage leader who was “active in community events and involved in the formation of the nonprofit.”²⁵⁶ However, the petitioner clearly states that she “does not assume political power.”²⁵⁷

The 2009 petition claimed that during the late 1960s Rudy Ortega, Sr., held political meetings, and that many members of the Ortiz families applied for eligibility for the 1972 California Indian Judgment Fund as a result of his leadership.²⁵⁸ It also indicated that many members of the Ortega and Ortiz families lived in relatively close proximity in the 1950s (within 3.5 miles of old town San Fernando).²⁵⁹ The 2023 petition documents that Ortiz family members attended the 1951 funeral of Estanislao Ortega, the petitioner's claimed captain.²⁶⁰ It is reasonable to assume based on the limited evidence of social relations between the Ortiz and Ortega families (i.e., residential proximity and shared life events and ceremonies) that Ortiz family members also were involved in the political entity organized by Rudy Ortega, Sr., in the mid-1950s. However, concrete evidence of political participation of Ortiz family members in the organization is lacking.

While the petition demonstrates the participation of a few Garcia lineage members in Ortega, Sr.'s organization, members of the Garcia lineage also have created their own organization with little or no evidence of coordination or collaboration with

²⁵² FTB, 2009 Petition, p. 243 of pdf, fn. 136.

²⁵³ FTB, 2009 Petition, p. 243 of pdf.

²⁵⁴ FTB, 2009 Petition, p. 243 of pdf, fn. 137.

²⁵⁵ FTB, 2023 Petition, p. 163 of pdf.

²⁵⁶ FTB, 2023 Petition, p. 168 of pdf.

²⁵⁷ FTB, 2023 Petition, p. 168 of pdf.

²⁵⁸ FTB, 2009 Petition, p. 246 of pdf.

²⁵⁹ FTB, 2009 Petition, p. 164 of pdf.

²⁶⁰ FTB, 2023 Petition, pp. 132-133 of pdf.

FTB. In her 2013 biography of Charlie Cooke, Mary Louise Contini Gordon states that Charlie and Alvin Cooke started attending pan-Indian meetings in the Los Angeles area in the 1950s and were becoming aware of Indian issues. In 1960, the two brothers organized a new group centered around Newhall known as the San Fernando Mission Band. As it happens, just the previous year, in 1959, Mary Garcia had relinquished her position as headperson in the Garcia lineage and Charlie Cooke had been chosen to take her place. Gordon described Cooke in her 2013 book as “chief of his group of the Southern Chumash” rather than as a political leader within a Fernandeno tribal entity.²⁶¹ He served in that role until 2008, at which time Ted Garcia, Jr., succeeded him.

While the petitioner claims that Charlie Cooke was involved in creating the San Fernando Mission Indians of San Fernando group (Ortega, Sr.’s entity), there is no evidence in either the 2023 or the 2009 petition to substantiate this assertion. Instead, it appears that Charlie Cooke was aware of Ortega, Sr.’s group but had, as headperson of the Garcia lineage, organized an entirely separate group in Newhall, possibly focused on Chumash heritage. There is no evidence of any coordination or collaboration with Ortega, Sr., or his group.

In the 1960s, John Valenzuela of the Garcia lineage organized a separate Indian organization in Ventura County known as the Ish-Panesh Band of Mission Indians. The group would later move to Los Angeles County. Valenzuela was chair of the group from its founding until his death in 2017. The petitioner observed that they remain “connected through cultural and social gatherings,” though little evidence is provided of this.²⁶² Curiously, the petitioner provided a 2000 newspaper article in its evidence to meet criterion (c) on the intentions of the Ish-Panesh Band to seek Federal recognition and on the desire of a splinter group from Valenzuela’s organization, Antik, to also gain Federal recognition. No evidence was provided on the reasons for the Valenzuela split or whether the groups coordinate on political matters.

The evidence indicates that by the early 1970s, the petitioner had a leader in Rudy Ortega, Sr., allegedly chosen by some political process, a formal entity name, San Fernando Mission Indians of San Fernando, political issues, including applying for the California Indian Judgment Fund, and at least nominal participation in political meetings by all three lineages (Ortega, Ortiz, and Garcia).

The 2023 petition omits any discussion of the band’s work on enrolling Indians on the 1972 California Indian Judgement Act roll. However, the 2009 petition maintained that “Rudy Ortega and community distributed “500 copies of the

²⁶¹ FTB, 2015 Supplement, Criterion (c), p. 24.

²⁶² FTB, 2023 Petition, p. 166 of pdf. The only documents provided that show John Valenzuela with members of the petitioner are 2002 photographs of an event dedicating the Tataviam Village at North Hollywood High School (FTB, 2023 Petition, pp. 189-190 of pdf).

enrollment applications” for individuals to apply for the 1972 California Judgment Act roll.²⁶³ As this is a much larger number of people than would have comprised the petitioner’s three lineage families during that period, this statement creates confusion between what constituted the community and leadership of the three family lines now claimed by the petitioner, and what constituted the community and leadership of the much broader and larger group of descendants of the Indians that had been gathered together at the San Fernando Mission.

Another example is the establishment of the San Fernando Inter-Tribal Indian Club in Ortega, Sr.’s home in San Fernando. The petition describes the “Rincon house” as being “the center for organization and government for the San Fernando Mission Indians.”²⁶⁴ In 1973, the Inter-Tribal Club was incorporated as San Fernando Valley Inter-Tribal Inc. (SFVITI).²⁶⁵ While it is clear from descriptions that the non-profit was serving the broader community of Indians, it is not clear if its governance also served that community or just the three family lines of the petitioner. The SFVITI charged membership dues, managed social and community support services, and sponsored cultural events. Ortega, Sr., served as president, but its board consisted of “band members and nonband members.”²⁶⁶

The 2009 petition stated that “for about three years the San Fernando Valley Inter-Tribal Inc. nonprofit served as the main organization of the San Fernando Mission Indians.”²⁶⁷ In 1976, the tribal government was organized under separate bylaws as the Fernandeno Band of Mission Indians (FBMI).²⁶⁸ These bylaws distinguished “members” from “registered members.” Registered members were those enrolled for the 1928, 1950, or 1972 judgment funds, and only they had a right to vote or discuss tribal issues. The non-profit continued to have members who were not members of the FBMI.²⁶⁹ The 2023 petition states that throughout the 1970s and 1980s, the FTB was engaged in the protection of cultural resources, and sacred, historical, and burial sites.²⁷⁰

While the 2023 petition does not document them, the petitioner held many more social and political activities during the decade of the 1990s (evinced in the 2009 petition), and these events are better documented in sources such as newspaper accounts rather than just being dependent on information provided by informants in oral history interviews. The petition describes ceremonial activities, cultural demonstrations, fundraising events, and the existence of a council of elders.²⁷¹ In

²⁶³ FTB, 2009 Petition, p. 245 of pdf.

²⁶⁴ FTB, 2009 Petition, p. 170 of pdf.

²⁶⁵ FTB, 2009 Petition, p. 170 of pdf.

²⁶⁶ FTB, 2009 Petition, p. 171 of pdf.

²⁶⁷ FTB, 2009 Petition, p. 172 of pdf.

²⁶⁸ FTB, 2009 Petition, p. 246 of pdf.

²⁶⁹ FTB, 2009 Petition, pp. 246-247 of pdf.

²⁷⁰ FTB, 2023 Petition, pp. 161-162 of pdf.

²⁷¹ FTB, 2009 Petition, pp. 177-178 of pdf.

1995, the petitioner formalized a written roll and requested its members to complete formal applications for enrollment, though this was opposed by some, including Ted Garcia, Sr.²⁷² In its 2009 petition, the petitioner observed that the entity held powwows until 1998 and that it established a newsletter.²⁷³

Much like for the 1990s, the 2023 petition describes relatively few tribal activities for the 2000s; however, its 2009 petition documented numerous tribal activities that did not take place or were not documented during the earlier decades. There is much more documented participation in native ceremonies, as well as cultural and religious site monitoring and more tribal involvement in health, education, and charity programs.²⁷⁴ The petitioning entity adopted a new constitution in 2002. This governing document established a Tribal Senate as the governing body of the Band. It split the formerly combined boards into two separate entities: the Band's governing body and the non-profit organization. The Senate was composed of elected members of the Band.²⁷⁵ Four of the nine board members of the separated non-profit organization, which became known as Pakúu Cultural Community Services in 2006, are voted on by members of "the native community" and thus not members of the petitioning entity.²⁷⁶

In the early 2000s, the Band established an administrative office in San Fernando. It subsequently created an administrative department, tribal codes, voting districts, and more formal membership criteria and procedures.²⁷⁷ Using the name Fernandeano Tataviam Band of Mission Indians, the petitioner formally incorporated in 2006 as a nonprofit Mutual Benefit Corporation under California law.²⁷⁸ In 2003 and 2008, the petitioner updated its rolls and removed dozens of members in 2008 for non-compliance with documentation standards.²⁷⁹

After the death of Rudy Ortega, Sr., in 2009, his son Larry Ortega was elected and served as president of the petitioner's constitutional government until 2015. In June of that year, Rudy Ortega, Jr., who had served since 2008 as captain of the Ortega lineage community, was elected president.²⁸⁰

For the 2010s and 2020s, the petitioner again evinces relatively few tribal activities in its 2023 petition. However, its evidence for criterion (a) documents its work in developing and implementing education and cultural enrichment activities, and it

²⁷² FTB, 2023 Petition, p. 162 of pdf.

²⁷³ FTB, 2009 Petition, p. 248 of pdf.

²⁷⁴ FTB, 2009 Petition, pp. 76-78 and pp. 253-254 of pdf.

²⁷⁵ FTB, 2009 Petition, p. 250 of pdf.

²⁷⁶ FTB, 2009 Petition, p. 185 of pdf.

²⁷⁷ FTB, 2009 Petition, pp. 253-255 of pdf.

²⁷⁸ FTB, 2009 Petition, p. 252 of pdf.

²⁷⁹ FTB, 2023 Petition, p. 204 of pdf.

²⁸⁰ FTB, 2023 Petition, p. 165 of pdf.

has maintained its governmental duties including the management of a new enrollment procedure and impeachment of a Senator.

Comments on the Fernandeno Documentation for Categories of Evidence for Criterion § 83.11(c), Political Influence or Authority, 1952 through 2023

§ 83.11(c)(1)(i), The entity is able to mobilize significant numbers of members and significant resources from its members for entity purposes.

The petitioner provides several sources as evidence that it meets this category: a 2001 article in the *Los Angeles Times*, two 1970 articles in different newspapers, a 1972 article in an unnamed newspaper, a 1974 photograph of tribal members and a California State Senator, a 1985 article in the *Los Angeles Times*, a chapter on the Fernandeno Tataviam in a 1996 report on California Indian tribes, a 2000 photograph of attendees of a tribal meeting, 2002 photograph of attendees at a tribal gathering, a 2002 article in the *Daily News*, a 2004 letter from U.S. Congressman Howard Berman to the U.S. Department of Health and Human Services, and an unidentified statement on the Council of Elders from the FTB Tribal Archives.

Of the evidence provided, only the photographs of the 2000 tribal meeting qualify under this category of evidence. The photographs show several members of the tribes from different families. According to the petitioner, approximately 110 tribal members attended the meeting, and there were both political and social aspects.

None of the rest of these pieces of evidence demonstrate the entity's ability to mobilize "significant numbers of members and significant resources from its members for entity purposes." The three newspaper articles dating from the 1970s all fail to show the mobilization and participation of significant numbers of members. Two of the articles, the 1970 *Los Angeles Times* piece and the 1972 article, are announcements of upcoming meetings and provide no evidence of membership participation. The other 1970 article in *The Valley News and Green Sheet* requested donations from the public to assist "the Valley's Indians descendants" of those who had lived and worked at the Mission. It does not describe any member participation aside from Rudy Ortega, Sr., or any member resources. The 1974 photograph of tribal members and Senator Robbins includes only five tribal members: Rudy Ortega, Sr., and four of his children. It hardly qualifies as demonstrating the mobilization of significant numbers of members and does not include any tribal member aside from Ortega's immediate family.

The petitioner also asserts that FTB members were involved in cultural resource protection in the 1980s, "particularly the uncovering of Encino and the process of

protecting Lopez Canyon.”²⁸¹ To that end, the 1985 article in the *Los Angeles Times* is one of the few pieces of evidence that includes a number of attendees. However, the 25 attendees to the February 1985 meeting on reburials were described as “members of the Chumash and Fernandino [sic] tribes,” and it is uncertain how many of these participants were members of the petitioning entity.²⁸² There is no further documentation to support the petitioner’s claim of significant mobilization of membership and resources. Likewise, the 2002 photographs of a gathering to dedicate the North Hollywood High School Tataviam Village Project only list six Fernandinos, and at least one, John Valenzuela, was the leader of a splinter group and not a member of the FTB.

The chapter on the Fernandino Tataviam in a 1996 report on California Indian tribes describes the governance of the Fernandino Tataviam tribe and includes no information on mobilization of entity members or resources. The 2002 article in the *Daily News* describes discussions for a park within a public meeting and includes Ortega, Sr.’s contribution. It provides no indication of additional member attendance, and there is no documentation that the creation of a Native American village was an entity purpose. The 2001 article in the *Los Angeles Times* describes the involvement of a single tribal member, Rita Rivera, and does not show any further mobilization of membership or resources. The 2004 letter from Congressman Berman is merely forwarding a request from the FTB for access to Tribal Temporary Assistance for Needy Families (TANF) funds. This only shows the work of the Tribal Government to obtain resources for the Tribe, and it does not demonstrate efforts by “significant numbers of members or significant resources from its members.” The 2021 statement on the Council of Elders indicates the existence of such a group and their influence, but it fails to show how many members are on or involved with the Council and whether those participants are of a significant number of members or command substantial resources from members.

While the 2023 petition does not document them, the petitioner held many more social and political activities since the 1990s (as evinced in the 2009 petition), and these events are better documented in sources such as newspaper accounts rather than just being dependent on information provided by informants in oral history interviews. The petition describes ceremonial activities, cultural demonstrations, fundraising events, cultural and religious site monitoring, and more tribal involvement in health, education, and charity programs. However, the petitioner fails to show how many members participated or even supported these programs.

With only one piece of qualifying evidence that applies to one year, the photographs of the 2000 tribal meeting, the petitioner does not meet this category of evidence for the entire period from 1952 to 2023.

²⁸¹ FTB, 2023 Petition, p. 162 of pdf.

²⁸² FTB, 2023 Petition, p. 186 of pdf.

§ 83.11(c)(1)(ii), Many of the membership consider issues acted upon or actions taken by entity leaders or governing bodies to be of importance.

The petitioner provides three sources as evidence that it meets this category: a 2001 article for 1960s, a 1971 letter, and a 1989 legal statement. The 2001 article in the *Los Angeles Times* discussed the life of Rita Rivera and her involvement in the San Fernando Mission Indians of San Fernando group in the 1960s. According to the article, she took particular interest in preserving tribal heritage and participated in the revival of the Fernandeno-Tataviam Council in the 1960s, an effort to support Federal recognition of Tataviam people. This article only documents the involvement of one person in the petitioning entity rather than of “many of the membership.” It also fails to identify and document what issues or actions of entity leaders or governing bodies were considered to be of importance by the membership.

The 1971 letter from Acting Area Director Oliver to Ortega was in reply to a letter from Ortega, Sr., inquiring about the possibility of establishing an Indian reservation, presumably for the benefit of the petitioning entity. Oliver responded by advising Ortega to “verify the status of the lands, obtain a legal description and explore with the Band’s State Congressional Delegation the possibility of having a bill introduced.”²⁸³ This letter does not demonstrate that Ortega’s action was supported or even known by the membership of the petitioning entity or that it was considered to be of importance.

In 1989, California Indian Legal Services produced a legal statement describing a lawsuit filed by Rudy Ortega, Sr., to “protest the development of the area in and around Encino” where an Indian burial site existed. This statement does not document that “many of the membership” consider the lawsuit or efforts to protect this burial site to be of importance.

The petitioner does not meet this category of evidence.

§ 83.11(c)(1)(iii), There is widespread knowledge, communication, or involvement in political processes by many of the entity’s members.

The petitioner has not submitted evidence regarding this category of evidence in its 2023 submission. However, it claimed to meet this category in its 2009 submission through many of the assertions made elsewhere in the 2023 petition, including member participation in lineage, family, and community meetings prior to 1971, as well as regular political meetings after 1971. The petitioner generally fails to document the number of members that participated in meetings in order to determine if this involvement included “many of the entity’s members.” Moreover,

²⁸³ FTB, 2023 Petition, p. 185 of pdf.

no measure is provided of member knowledge or communication of the petitioner's political processes to determine if it was "widespread." Due to these deficiencies, it appears that the petitioner does not meet this category of evidence.

§ 83.11(c)(1)(iv), The entity meets the criterion in § 83.11(b) at greater than or equal to the percentages set forth under § 83.11(b)(2).

The petitioner has not made any claims regarding this category of evidence. However, in its discussion of criterion § 83.11(b), the petitioner claims that it meets this category of evidence because it has demonstrated that more than 50 percent of the members reside in a geographical area. The petitioner has omitted key language from the category in its 2023 submission. Applicants must demonstrate that "more than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area [underlined for emphasis]." As discussed elsewhere, we do not have access to the necessary records to categorically prove or disprove this claim. However, the petitioner does not appear to be able to meet the evidentiary burden for criterion § 83.11(b) from 1952 to 2023 and thus would not be able to meet the criterion at greater than or equal to the 50 percent standard set forth under § 83.11(b)(2).

§ 83.11(c)(1)(v), There are internal conflicts that show controversy over valued entity goals, properties, policies, processes, or decisions.

The petitioner provides three sources as evidence that it claims meets this category: a 2000 article in the *Los Angeles Times*, the process of implementing the tribe's 2016 rules on tribal citizen enrollment, and the impeachment of Steven Ortega in 2019-2020. The 2000 article in the *Los Angeles Times* reveals the existence of two splinter groups: the Ish-Panesh United Band of Indians led by John Valenzuela, and the Antik, which split from Ish-Panesh in 1999 and was led by Beverly Folkes. The petitioner asserts that the article discussed internal conflicts concerning the question of "how to determine leadership," but the article does not describe the reason for the initial Ish-Panesh split. Instead, it references Folkes' split from Ish-Panesh and explains it as "rivalry over leadership of the Oakbrook Regional Park and Chumash Interpretive Center in Thousand Oaks."²⁸⁴ The article does not clearly explain whether the conflict indicated by the creation of the Ish-Panesh faction was over "valued entity goals, properties, policies, processes, or decisions" of the petitioning entity. Furthermore, it is unclear as to whether the petitioner's explanation refers to the Ish-Panesh split or the subsequent Antik split from Ish-Panesh. In either case, this explanation is unsupported. While factional division have been deemed sufficient evidence of meaningful internal conflicts in previous

²⁸⁴ FTB, 2023 Petition, p. 189 of pdf.

petitions, the article's explanation of the Antik split does not meet the category of evidence since it describes a conflict within a splinter group rather than within the petitioner. The petitioner should submit further evidence and description of these factional divisions.

In 2014, the FTB requested that all citizens sign a statement attesting that they were not enrolled in another tribe. At least one family did not wish to sign the document since they were enrolled elsewhere, and in November 2016, a member of that family spoke at a Senate meeting and asked the Tribal Senate to postpone any removal and allow their family to remain on the FTB rolls without signing the statement. The citizen also denounced the policy of disenrollment as "discriminatory, unethical, and illegal."²⁸⁵ The Senate heard his request, considered the matter, and continued the process. Before a special hearing on the family in question in January 2017, the family voluntarily disenrolled themselves before the Senate removed them. This source suggests the existence of substantial internal conflict over a tribal policy; however, the petitioner only provides documentation of one family's disagreement, and of only one brief demonstration of that disagreement. In order to meet this category, the petitioner should supply further evidence of a controversy about the policy that goes beyond one family.

The impeachment of Senator Ortega is also cited as evidence of internal conflicts that demonstrate controversy over valued entity policies. After a series of disputes between Senator Ortega's child and the tribe, Senator Ortega was accused of breaching his duty as an FTB elected official and brought up on charges. Officials of the tribal government initiated the impeachment process; however, the Senator resigned before the hearing. While this demonstrates the tribe's ability to enforce its rules and constitution, it does not meet this criterion. There is no explanation of the internal conflict itself; thus, we cannot determine if it shows a controversy within the entity and what that controversy entails. Moreover, the petitioner indicates that only two persons were involved: Senator Ortega and his child. In order to meet this category of evidence, the petitioner should provide additional evidence describing the conflict and that it was important to a larger portion of the membership.

Elsewhere in its 2023 petition, the petitioner refers to a conflict between members of the Ortega lineage over the inheritance of a leadership role as an example of internal conflict. After Antonio Ortega's death in 1941, his eldest son, Estanislao Ortega, was chosen as captain over the objection of Sally Verdugo, who argued that she should be the captain since she was favored by Antonio Ortega. Sally and her daughter, Martha, also refused to support the selection of Rudy Ortega, Sr. in 1951 when Estanislao died. The petitioner asserts that the conflict lasted until Sally's death, and then was taken up by Martha.²⁸⁶ While this dispute could qualify under the category, the petitioner neglects to provide any evidence for this matter. The

²⁸⁵ FTB, 2023 Petition, p. 192 of pdf.

²⁸⁶ FTB, 2023 Petition, pp. 161-162 of pdf.

main quoted source, an interview of Rudy Ortega, Sr., only discusses a disagreement over who should be conducting genealogy and how some Ortegas became upset with Martha over her lack of cooperation with Ortega, Sr. The petitioner provided two additional quotes from other informants; however, neither source clearly documents the conflict or Sally's/Martha's actions. There are no sources discussing views of the matter outside of the Ortega lineage. It is unclear whether this conflict was even known outside of a small circle of Ortega family members. Without demonstrating any involvement or even comment from other families, this could be interpreted as a family squabble rather than a significant internal conflict over valued entity decisions.

The petitioner does not meet this category of evidence.

§ 83.11(c)(1)(vi), The government of a federally recognized Indian tribe has a significant relationship with the leaders or the governing body of the petitioner.

The petitioner provides two sources as evidence that it meets this category: a 1970 article in the *Los Angeles Times*, and a 1995 legal statement from California Indian Legal Services. The 1970 article in the *Los Angeles Times* simply announces a meeting of the San Fernando Mission Indians to “organize a July 4 meeting with the Chuma[sic] Indians of Santa Inez.”²⁸⁷ There is no information about the agenda or content of the meeting and no evidence indicating that the federally recognized Santa Inez Chumash “had a significant relationship with the leaders or the governing body of the petitioner.” The fact that there are not any additional claims of meetings or gatherings with the Chumash further suggests that this was not “a significant relationship” between the two. Moreover, the article does not actually confirm that such a meeting took place.

In 1995, California Indian Legal Services produced a legal statement about a child custody case involving an enrolled member of the Cherokee Nation of Oklahoma and an enrolled member of the FTB. No information is provided about the relationship of the Fernandeno petitioner with the Cherokee Nation or whether there was any government-to-government contact.

§ 83.11(c)(1)(vii), Land set aside by a State for petitioner, or collective ancestors of the petitioner, that is actively used for that time period.

The petitioner provides two sources as evidence that it meets this category: a 1971 letter from Acting Area Director William Oliver to Rudy Ortega, Sr., and a 1989 legal statement from California Indian Legal Services. The 1971 letter from Oliver

²⁸⁷ FTB, 2023 Petition, p. 184 of pdf.

to Ortega was in reply to a letter from Ortega, Sr., inquiring about the possibility of establishing an Indian reservation, presumably for the benefit of the petitioning entity. Oliver responded by advising Ortega to “verify the status of the lands, obtain a legal description and explore with the Band’s State Congressional Delegation the possibility of having a bill introduced.”²⁸⁸ This letter does not demonstrate that lands had been set aside by the State of California for the petitioner or their collective ancestors. Nor does it indicate that any lands of interest were “actively used for that time period.”

In 1989, California Indian Legal Services produced a legal statement describing a lawsuit filed by Rudy Ortega, Sr., to “protest the development of the area in and around Encino” where an Indian burial site existed.²⁸⁹ The petitioner does not provide any information about active use of the site by the Fernandeseños, and there is no evidence that it has been set aside by the State of California for the petitioner or its collective ancestors.

§ 83.11(c)(1)(viii), There is a continuous line of entity leaders and a means of selection or acquiescence by a significant number of the entity’s members.

The petitioner has identified a continuous line of entity leaders since 1951 in both a chart and as a narrative.²⁹⁰ Sufficient information has not been submitted to determine if a significant number of members acquiesced to this leadership, particularly of the captain, prior to recent times when leaders were formally elected.

§ 83.11(c)(2), The petitioner will be considered to have provided sufficient evidence of political influence or authority at a given point of time if the evidence demonstrates any one of the following:

(i) Entity leaders or internal mechanisms exist or existed that:

§ 83.11(c)(2)(i)(A), Allocate entity resources such as land, residence rights, and the like on a consistent basis.

The petitioner claims to meet this category of evidence based on the 2002 constitution of the petitioning entity. While the petitioner does not appear to possess entity resources such as land and residence rights, the 2002 constitution gives the Tribal Senate the right to manage and allocate resources such as tribal funds. However, there are no clear examples of decision-making by either entity

²⁸⁸ FTB, 2023 Petition, p. 185 of pdf.

²⁸⁹ FTB, 2023 Petition, p. 187 of pdf.

²⁹⁰ FTB, 2023 Petition, pp. 164-167 of pdf.

leaders or internal mechanisms that allocated entity resources, and no specific information is provided describing entity resources. Even if it is granted that the 2002 constitution showed internal mechanisms to allocate entity resources, it would only document political influence or authority from 2002 to the present and not on a substantially continuous basis for the entire period from 1952 on.

§ 83.11(c)(2)(i)(B), Settle disputes between members or subgroups by mediation or other means on a regular basis.

The petitioner provides several pieces of evidence to demonstrate that it meets this category: a 2013 biography of Charlie Cooke, a 1995 legal statement from the California Indian Legal Services, a chapter on the Fernandeno Tataviam in a 1996 report on California Indian tribes, the 2002 constitution of the petitioning entity, the process of implementing the tribe's 2016 rules on tribal citizen enrollment, and the impeachment of Steven Ortega in 2019-2020. Of these sources, only two may qualify as evidence for this category: the 1996 article and the 2002 constitution.

In the quoted portion of the 2013 biography of Charlie Cooke, *TIQ SLOW: The Making of a Modern Chief*, the author describes how Cooke became involved in learning about Indian heritage and activism in the late 1950s. The quoted passages do not discuss the settlement of disputes by the petitioning entity or any other entity by any means.

The petitioner also claims to meet this category of evidence based on a 1995 legal statement from the California Indian Legal Services about a child custody case involving an enrolled member of the Cherokee Nation of Oklahoma as the child's mother and an enrolled member of the FTB as the child's father. The petitioning entity went to court over the issue. This statement does not qualify as evidence for this category for at least two reasons. First, one of the parties in the dispute was not a member of the FTB or a subgroup of the tribe. The mother in the dispute was an enrolled member of a separate Indian tribe, and no evidence is provided on her relationship to the tribe aside from being the mother in a child custody case. Second, if the tribe went to court to resolve the custody matter, then the tribe is not settling the dispute but acting as a party in the dispute and redirecting it to a court of law to settle.

The chapter in the 1996 report on California Indian tribes briefly summarizes the tribe's manner of dispute resolution:

The Tribe uses traditional forms of settling disputes among its members. The tribal council appoints someone to initiate the process of mediation, notifying the persons involved to schedule the time and location. In the mediation process, a neutral third person helps the two parties resolve their

differences and to arrive at an agreed-upon solution. The parties are immersed in resolving the dispute, creating ownership of the solution, and producing an agreement that both can accept.²⁹¹

This indicates that the tribe has internal mechanisms to settle disputes between members via mediation. This evidence would be strengthened if the petitioner provided specific examples of disputes that the tribe attempted to mediate.

The petitioner asserts that its 2002 constitution includes language that meets this category of evidence. The relevant provision of the constitution, "Chapter 7- The Judiciary," addresses the establishment of the Judiciary, their duty under the tribal constitution, the appointment of judges, and the extent of their authority. Article 39 also stipulates that the tribal Senate may "provide for alternative methods of dispute resolution" by ordinance.²⁹² As with the chapter in the 1996 report, this evidence would be strengthened if the petitioner provided specific examples of dispute resolution.

The petitioner claims that the process of tribal citizen enrollment and confirmation as implemented in 2016 demonstrates that the tribe meets this category of evidence. In 2014, the tribe requested that all citizens sign a statement attesting that they were not enrolled in another tribe. At least one family did not wish to sign the document since they were enrolled elsewhere, and in November 2016, a member of that family spoke at a Senate meeting and asked the Tribal Senate to postpone any removal and allow their family to remain on the FTB rolls without signing the statement. The Senate heard his request, considered the matter, and continued the process. Before a special hearing on the family in question in January 2017, the family voluntarily disenrolled themselves before the Senate removed them. In another example, the petitioner includes a letter from a citizen relinquishing their enrollment with a splinter group, the San Fernando Band of Mission Indians, and joining the FTB. These documents demonstrate that the tribe had an internal mechanism to resolve conflicts between members and the tribal government and provided examples of that mechanism. They do not, however, show the settling of a dispute between "members or subgroups."

The impeachment of Senator Ortega is cited as evidence of the existence of the tribe's internal mechanism concerning dispute resolution. Senator Ortega was accused of breaching his duty as an FTB elected official and brought up on charges. Officials of the tribal government initiated the impeachment process; the Senator resigned before the hearing. This demonstrates the tribe's internal mechanism to take action against those who violate the Tribe's constitution; however, it does not show the settling of disputes between "members or subgroups."

²⁹¹ FTB, 2023 Petition, p. 188 of pdf.

²⁹² FTB, 2002 Tribal Constitution, p. 12; Accessed from: https://www.bia.gov/sites/default/files/dup/assets/as-ia/ofa/petition/158_ferntv_CA/web_docs/158_PFW2002_Constitution.pdf.

§ 83.11(c)(2)(i)(C), Exert strong influence on the behavior of individual members, such as the establishment or maintenance of norms or the enforcement of sanctions to direct or control behavior.

The petitioner has not submitted evidence regarding this category of evidence. However, the impeachment of Senator Ortega could be considered as evidence for this category. Senator Ortega was accused of breaching his duty as an FTB elected official in 2019 and brought up on charges of neglect of duty, corruption, and moral turpitude. Officials of the tribal government initiated the impeachment process; the Senator resigned before the hearing. However, while impeachment may qualify as evidence, it would only document political influence or authority from 2019 to the present and not on a substantially continuous basis for the entire period from 1952 on.

§ 83.11(c)(2)(i)(D), Organize or influence economic subsistence activities among the members, including shared or cooperative labor.

The petitioner asserts that it meets this category of evidence based on a 1970 article in *The Valley News and Green Sheet* that requests the contribution of vehicles, Christmas toys, and food by the public to the San Fernando Mission Band of Indians. This article does not qualify as evidence for this category as it does not demonstrate any economic subsistence activities among the members of the petitioning entity. Instead, the article shows a request to the public for donations for Christmas to the petitioning entity. Nor does it indicate any activity by members aside from Rudy Ortega, Sr.

(ii) § 83.11(c)(2)(ii), The petitioner has met the requirements in § 83.11(b)(2) at a given time.

The petitioner claims that it meets this category of evidence because it has demonstrated that more than 50 percent of the members reside in a geographical area. However, the petitioner has omitted key language from the category in its 2023 submission. Applicants must demonstrate that “more than 50 percent of the members reside in a geographical area exclusively or almost exclusively composed of members of the entity, and the balance of the entity maintains consistent interaction with some members residing in that area [underlined for emphasis].” As discussed elsewhere, we do not have access to the necessary records to categorically

prove or disprove this claim. However, the petitioner does not appear to be able to meet the evidentiary burden for criterion § 83.11(b) from 1952 to 2023.

Conclusions for Criterion § 83.11(c), Political influence or Authority, 1952 through 2023

The Fernandeno petitioner fails to meet criterion § 83.11(c) for the period from 1952 through 1995 for nearly every category because its documentation does not adequately meet any of the separate categories for this criterion for the entire period. This is primarily due to its failure to evince member participation in political processes.

Between 1996 and 2023, the petitioner may meet the High Evidence criteria § 83.11(c)(2)(i)(A) and (B). The 2002 constitution provided for an internal mechanism to allocate entity resources and to settle disputes between members; however, the petition provides no specific examples of either mechanism in action. Moreover, a chapter in the 1996 report on California Indian tribes briefly summarizes the tribe's manner of dispute resolution; however, like the 2002 constitution, it provides no specific examples of this matter.

The petitioner may meet the High Evidence criterion § 83.11(c)(2)(i)(C) from 2019 to the present. The impeachment process of Senator Ortega demonstrates the ability of the petitioner to exert strong influence on the behavior of individual members by establishing norms of conduct in its political bodies and enforcing those norms with sanctions to direct or control behavior. However, the petitioner offers no further evidence of this category previous to 2019.

The petitioner is able to meet § 83.11(c)(1)(i), mobilization of significant numbers of members and significant resources from its members for entity purposes, but only for the year 2000. The petitioner has provided a set of photographs from well-attended tribal meeting that year and claims that a significant portion of the tribe's members attended – approximately 110. However, the petitioner has not been able to meet a second category of evidence with certainty, and even if it did, this evidence would only apply to the year 2000. Without additional evidence of member attendance and participation in tribal events, this meeting appears to be an isolated instance rather than proof of a pattern of participation in political processes.

The petitioner may be able to partially meet § 83.11(c)(1)(viii) of the revised regulations, having a continuous line of leaders and a means of leadership selection or acquiescence by a significant number of members. The petitioner has identified a continuous line of leaders since 1951. The problem the petitioner has in meeting this category with its existing evidence is that it has not clearly documented a leadership selection process until the 1970s. The petitioner has argued that there

was no formal selection process; instead, the tribe was a gerontocracy and the elders chose lineage leaders using a number of factors and by consensus. Even though the captain was considered both a lineage leader and a tribal leader responsible for representing the tribe to outsiders, it is unclear whether the selection was conducted by elders in all the lineages. For example, Rudy Ortega, Sr., was apparently chosen by his aunts within the Ortega lineage to become captain after the death of his father, Estanislao; however, there is no documentation demonstrating the acquiescence of the other lineages. In fact, there is evidence that Charlie Cooke formed an independent organization in 1960 centered around tribal members living around Newhall with no obvious links to the Ortegas or to Ortega, Sr.'s organizations. There is virtually no evidence demonstrating how other lineage leaders were selected. The petitioner appears to argue that lineage members usually passively acquiesced to the selections of their leaders, including the captain; however, the petition lacks documentation that a "significant" number of members acquiesced to their leadership, because the petitioner has not quantified member involvement.

Sometime in the 1970s, the San Fernando Mission Indians of San Fernando, "or what is also known as 'Rudy Sr.'s organization,'" began to elect its leaders.²⁹³ This may coincide with the adoption of bylaws in 1975. However, the petitioner has not enumerated attendance of the organization's meetings (with one exception, a 2000 tribal meeting), provided a list of candidates, or supplied vote tallies. There is no listing of officers until around 2005.²⁹⁴ There is no evidence in the 2023 petition of participation in the tribal government from the Ortiz lineage, and of the Garcia lineage, it appears that only Ted Garcia, Sr., has participated, though there may be evidence of this within the documents cited in the 2009 submission by the FTB.²⁹⁵

Because its focus has been primarily on the political actions of the leadership rather than the participation of the membership, the petition has generally failed to evince the existence of an interactive political relationship between tribal leaders and membership. The petitioner has not provided documentation of attendance at meetings, issues discussed, and vote tallies. Even in the few cases of internal conflict, the petitioner has not documented the extent of the disagreement and the size of different factions. These omissions have the effect of making the petitioner's political processes somewhat opaque and, thus, difficult to demonstrate that it meets the required criteria.

In sum, the petitioner has not provided sufficient evidence to meet criterion § 83.11(c) from 1952 to 1995. It may meet High Evidence criterion § 83.11(c)(2)(i)(A) from 2002 to 2023, High Evidence criterion § 83.11(c)(2)(i)(B) from 1996 to 2023, and/or High Evidence criterion § 83.11(c)(2)(i)(C) from 2019 to the present. At best,

²⁹³ FTB, 2023 Petition, p. 165 of pdf.

²⁹⁴ FTB, 2009 Petition, p. 254 of pdf.

²⁹⁵ FTB, 2009 Petition, pp. 251-254 of pdf.

this would meet the requirements from 1996 to the present. The petitioner is also able to meet criterion § 83.11(c)(1)(i) for the year 2000, but this is inadequate to meet the requirements for that year as petitioner must qualify under two categories of evidence. It also does not address the forty-four year gap between 1952 and 1995. Therefore, the petitioner has failed to demonstrate that it has maintained political influence or authority over its members since 1900.

Criterion § 83.11(d), Governing Document

Explanation of the Criterion and its Requirements

This criterion reads as follows in the 2015 regulations:

(d) Governing document. The petitioner must provide:

§ 83.11(d)(1), A copy of the entity's present governing document, including its membership criteria; or

§ 83.11(d)(2), In the absence of a governing document, a written statement describing in full its membership criteria and current governing procedures.

The petitioner must have a governing document or some other written document that defines membership criteria. This criterion is required primarily so that the OFA can adequately measure a petitioner's membership to determine if the current members meet the membership criteria. To the extent that the membership criteria require descent from ancestors in the historical tribe claimed by the petitioner, the criterion also helps measure the evidence for criterion (e), descent from a historical tribe. While a governing document is not required, if one is submitted, it also helps the OFA evaluate the evidence for criterion (c), political influence or authority, by understanding how the petitioner has formally defined its political structure and then measuring the extent to which the petitioner actually abides by its governing document. As noted, no petitioner has ever failed to meet this criterion, because it only requires a statement of the membership criteria. However, if the membership criteria are not adequate and are included in a governing document that also is inadequate, this can greatly hinder the petitioner's ability to meet criteria (c) and (e).

In its Phase I Proposed Finding against acknowledgment of the Fernandeño Tataviam Band as Petitioner #158, the DOI determined that the "FTB submitted a governing document that describes its governing procedures and its membership criteria" and met the requirements of criterion § 83.11(d). It is very likely that the petitioner's 2023 submission has adequate membership criteria in its governing

document or could readily provide a written description of its current membership criteria. It likely meets criterion § 83.11(d).

Criterion § 83.11(e), Descent

Explanation of the Criterion and its Requirements

The criterion reads as follows in the 2015 regulations:

The petitioner's membership consists of individuals who descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity).

§ 83.11(e)(1), The petitioner satisfies this criterion by demonstrating that the petitioner's members descend from a tribal roll directed by Congress or prepared by the Secretary on a descendancy basis for purposes of distributing claims money, providing allotments, providing a tribal census, or other purposes, unless significant countervailing evidence establishes that the tribal roll is substantively inaccurate; or

§ 83.11(e)(2), If no tribal roll was directed by Congress or prepared by the Secretary, the petitioner satisfies this criterion by demonstrating descent from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity) with sufficient evidence including, but not limited to, one or a combination of the following identifying present members or ancestors of present members as being descendants of a historical Indian tribe (or of historical Indian tribes that combined and functioned as a single autonomous political entity):

§ 83.11(e)(2)(i), Federal, State, or other official records or evidence;

§ 83.11(e)(2)(ii), Church, school, or other similar enrollment records;

§ 83.11(e)(2)(iii), Records created by historians and anthropologists in historical times;

§ 83.11(e)(2)(iv), Affidavits of recognition by tribal elders, leaders, or the tribal governing body with personal knowledge; and

§ 83.11(e)(2)(v), Other records or evidence.

Criterion § 83.11(e) requires proof that that a petitioner's current membership descends from an historical tribe or from two or more tribes that have joined together and acted politically as a single entity. This criterion requires a petitioner to provide a list of its current members and ancestry charts and vital records that demonstrate how current members descend from ancestors who were members of an historical tribe. Under the 2015 regulations, "historical" is interpreted as meaning "before 1900."

There are several components to this criterion, including: identifying a historical tribe (or two or more tribes that have joined together and acted as a single autonomous entity) for the purpose of calculating descent; whether a petitioner had demonstrated that this tribe existed before 1900; and whether a petitioner has documented descent of the petitioner's members to that historical tribe. Meeting criterion § 83.11(e) is usually more straightforward than criteria § 83.11(b) and (c). What constitutes evidence of tribal community and political influence is often subject to interpretation, but Indian ancestry is not. One can either prove descent from a historical tribe or one cannot. Exceptions can be made for some families that may lack documentation, but that have been a part of the historical tribal community (if there is a high probability that they have Indian ancestry), as well as for members of other tribes who marry into the community. However, non-Indian spouses, non-Indian collateral relatives, and non-Indians adopted by the petitioner should not be included in any official tribal membership roll submitted to the OFA.

It should be obvious that the inclusion of non-Indians in the membership is not acceptable. But there are also important factors that must be considered regarding the inclusion of those individuals who can demonstrate Indian descent. In addition to being able to prove ancestry, it must also be shown (in order to meet criteria § 83.11(b) and (c)) that a substantial portion of the members descend from families

that interacted more or less continually as part of the petitioner's historical community. As noted, the Fernandeno petitioner has a problem in documenting the continuous social and political interaction of the three primary lineage families it claims. The DOI accepts the fact that some family members move away and then later rejoin the community, but it looks askance at members who have not had any social or political connection until recent times. Therefore, the guiding principle should be that a petitioner should not accept a person into membership if either they or their parents and grandparents are not known by present members to have been a part of the petitioner's community. The hard reality is that if there are

present members who cannot demonstrate their ancestry and connection to the historical tribe the petitioner is claiming, it is imperative to drop them from membership. This is because their presence on the tribal roll may kill the chances of gaining Federal acknowledgment. It may be possible to add some of these dropped members after a petitioner becomes federally acknowledged, because there is almost no scrutiny by the DOI of the membership procedures of tribes after they are federally acknowledged.

It should be noted that the DOI has in the past made some allowance for petitioner's members who could either not document descent from the historical tribe or for whom there was not sufficient information on which to make a determination. In the Mohegan case, for example, what is now the OFA determined that 15 percent of the tribal membership could not document descent from a historical tribe, but the AS-IA still determined in a proposed finding that the tribe met criterion § 83.7(e), which was then the section number for the descent criterion. The Mohegan petitioner chose to drop those members that could not be documented. However, it was not required to take this action in order to meet criterion § 83.7(e). The precedents of Federal acknowledgment decisions under the 1978 and 1994 regulations indicate that a minimum of 80 percent of a petitioner's current members must demonstrate descent from an historical tribe in order to meet criterion 83.7(e) (see the OFA's 2005 Draft Acknowledgment Precedent Manual, pp. 232-33.)

Most petitioners have been able to identify a historical tribe and use a tribal roll or an acceptable equivalent to attempt to document descent from that tribe. However, in 2020, in response to the Fernandefio petitioner's submissions as Petition #158, the DOI determined that the petitioner had not identified a historical tribe for the purpose of calculating descent under the criterion and issued a negative proposed finding against the FTB. The petitioner had argued that its current members were linked to members of native villages predating Spanish colonization through "three mid-nineteenth century 'progenitors' (Rita, Leandra, and Rosario), who themselves descended from ancestors from numerous native villages."²⁹⁶ Each of the three progenitors was from a family group or lineage, and that these lineages survived the Mission period and functioned as politically autonomous entities through the rest of the nineteenth century and to the present. The DOI disagreed with this novel approach and determined the regulations required proof of descent from a historical tribe, not from lineages. Moreover, the DOI stated that the evidence in the record did not demonstrate that any of the named lineages was an Indian tribe between the end of the mission period and 1900, or that the three lineages had combined and functioned as a single Indian tribe.

²⁹⁶ U.S. Department of Interior, Office of Federal Acknowledgment, Phase I- Negative Proposed Finding, Fernandefio Tataviam Band of Mission Indians, 2020, p. 12.

The DOI alerted the petitioner to its concern about deficiencies in its argument and evidence for criterion (e) in its 2016 Technical Assistance (TA) letter, and suggested that the petitioner could either submit new historical evidence supporting its claims or consider an alternate theory based on OFA's observation of a historical Indian tribe at SFR that might be linked to the petitioner's progenitors. In its August 23, 2017, TA Response Letter, the FTB rejected OFA's suggestion of an alternate theory and stated "that OFA's 'conception of the Tribe as an amalgamation' of Indians at SFR 'is inconsistent with contemporaneous evidence and subsequent ethnographic analyses.'"²⁹⁷ FTB declined to alter its claims of its historical Indian tribe, and in its Phase I Proposed Finding against acknowledgment of the Fernandeño Tataviam Band as Petition #158, the DOI determined that the petitioner's assertions did not meet the requirements of the regulations and therefore did not meet criterion (e).

In its current petition, FTB (as Petition #403) appears to have conceded in its disagreement with OFA and adopted DOI's suggestion of a different theory in place of its previous approach. Instead of its novel coalition of lineages theory, the petitioner now argues that the FTB predecessor villages that existed before Spanish colonization "joined together at the Mission San Fernando Rey ('SFR') to create a unified tribal entity and combined into a single autonomous political entity."²⁹⁸ It remains to be seen whether the petitioner has provided sufficient evidence to support this argument. As noted, the petitioner often struggles to demonstrate regular social interaction between the lineages before or after 1900. Furthermore, the petitioner's arguments for political authority or influence are often undercut by its failure to show that the different lineages had influence with each other or even discussed important political matters, such as the decision to enroll in the California Indian Jurisdictional Act rolls. The existence of seemingly parallel organizations in the 1960s and beyond that were centered around different geographical areas associated with separate lineages could also be a problem.

The Fernandeño petitioner's evidence concerned with documenting descent for criterion § 83.11(e) could not be commented on because its genealogical data and records and membership lists were not made accessible. These records are, at least in part, protected from public disclosure under provisions of the Privacy Act and the Freedom of Information Act. The OFA's 1997 technical assistance review of the initial petition questioned the Indian ancestry of those current members claiming descent from Antonio Maria Ortega, whom the petition claims to be a tribal captain from 1904 to 1941, and whom is a progenitor of most of the defined leaders and members of the petitioning entity following that period. The petitioner submitted additional evidence regarding the ancestry of Antonio Maria Ortega in its 2009 documented petition.²⁹⁹ However, it cannot be determined, absent the full

²⁹⁷ U.S. Department of Interior, Office of Federal Acknowledgment, Phase I- Negative Proposed Finding, Fernandeño Tataviam Band of Mission Indians, 2020, p. 10.

²⁹⁸ FTB, 2023 Petition, p. 201 of pdf.

²⁹⁹ FTB, 2009 Petition, pp. 267-274 of pdf.

genealogical record, whether this new evidence will be sufficient to permit the petitioner to meet criterion § 83.11(e).

If the present evidence does not meet criterion § 83.11(e), the petitioner is subject to an expedited proposed finding declining Federal acknowledgment under the 2015 regulations (§ 83.26(a)(1)(ii)). Should OFA find that the petitioner fails to adequately support its new theory of descent from a historical Fernandeno tribe at SFR, the petition would meet the same fate as its previous attempt via Petition #158. Furthermore, failure to document the Indian ancestry of Antonio Maria Ortega would be fatal to the Fernandeno petitioner's case. Under § 83.26(a)(3) of the revised regulations, the OFA can issue a negative proposed finding if a petitioner does not meet criteria § 83.11(e), (f), or (g) during a Phase I evaluation.

Criterion § 83.11(f), Unique membership

Explanation of the Criterion and its Requirements

The criterion reads as follows in the 2015 regulations:

The petitioner's membership is composed principally of persons who are not members of any federally recognized Indian tribe. However, a petitioner may be acknowledged even if its membership is composed principally of persons whose names have appeared on rolls of, or who have been otherwise associated with, a federally recognized Indian tribe, if the petitioner demonstrates that:

§ 83.11(f)(1), It has functioned as a separate politically autonomous community by satisfying criteria in paragraphs (b) and (c) of this section; and

§ 83.11(f)(2), Its members have provided written confirmation of their membership in the petitioner.

This criterion is required because the DOI did not want federally recognized tribal components or factions to be able to use the Federal acknowledgment process to break up acknowledged tribes. Even though the Federal government sometimes consolidated unrelated Indian entities on the same reservation, and those historical tribes then became one entity (e.g., the Mandan, Hidatsa, and Arikara Nation of North Dakota), the DOI wanted to make sure that entities that desired to separate would have to do so through Congressional legislation or some other route.

In its Phase I Proposed Finding against acknowledgment of the Fernandeno Tataviam Band through Petition #158, the DOI determined that "the petitioner's

membership is composed principally of persons who are not members of federally recognized Indian tribes” and met the requirements of criterion § 83.11(f).³⁰⁰ The petitioner’s current governing document provides that applicants for membership must submit a sworn letter of relinquishment of membership in any other tribe and the FTB has “established documentation to compliance with single tribe enrollment.”³⁰¹ Therefore, the petitioner appears to meet criterion § 83.11(f).

Criterion § 83.11(g), Congressional termination

Explanation of the Criterion and its Requirements

The criterion reads as follows in the 2015 regulations:

Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Department must determine whether the petitioner meets this criterion, and the petitioner is not required to submit evidence to meet it.

Criterion § 83.11(g) is a mandatory requirement because the DOI does not have the authority to acknowledge tribes or tribal members whose Federal relationship was terminated by Congress. Only Congress can restore such a relationship.

The Fernandeno petitioner has provided the OFA with a statement, signed by its governing body, indicating that neither the band nor its individual members have been the subject of legislation terminating a Federal relationship.³⁰² Under the revised regulations, a petitioner is not required to submit evidence demonstrating that it meets this criterion because the DOI will determine if the criterion is met. The only tribal entities in California whose Federal trust relationship was terminated by Congress were a number of recognized Rancherias (small reservations), primarily in northern California. Most of those tribal entities have subsequently had their Federal relationship restored by Congress. It does not appear from the historical record that the Fernandeno petitioner was a part of any of those terminated tribal entities.

Furthermore, in its Phase I Proposed Finding against acknowledgment of the Fernandeno Tataviam Band as Petitioner #158, the DOI found that neither the petitioner or nor its members were the subject of congressional legislation to terminate or prohibit a Federal relationship as an Indian tribe and thus met the

³⁰⁰ U.S. Department of Interior, Office of Federal Acknowledgment, Phase I- Negative Proposed Finding, Fernandeno Tataviam Band of Mission Indians, 2020, p. 5.

³⁰¹ FTB, 2023 Petition, p. 211 of pdf.

³⁰² FTB, 2023 Petition, p. 213 of pdf.

requirements of criterion § 83.11(g). Therefore, it appears that the current petition will meet criterion § 83.11(g).

Conclusions

These comments have provided an evaluation of the evidence that the Fernandeno Tataviam Band of Mission Indians has submitted to the DOI under Petition #403 in its 2023 petition for Federal acknowledgment as a tribe in accordance with 25 CFR § 83. At times, we have also included evidence that the petitioner submitted in its 2009 petition and three supplemental reports it submitted in 2015 when it was under consideration via Petition #158. The comments have evaluated this evidence under the revised regulations published by the Assistant Secretary of the Interior for Indian Affairs (AS-IA) as a Final Rule in the *Federal Register* on July 1, 2015. In accordance with § 83.7(b) of the revised regulations, the Fernandeno petitioner proceeded under the 2015 regulations. The revised 2015 regulations provide that the evaluation period for criteria § 83.11(a), (b), and (c) begins in 1900.

Our evaluation found that the Fernandeno petitioner does not have adequate evidence to meet three of the seven mandatory criteria for Federal acknowledgment under the 2015 regulations. The three criteria that have not been met are: criterion § 83.11(a), identification as an Indian entity since 1900; § 83.11(b), community since 1900; and § 83.11(c), political influence or authority since 1900. For reasons explained in these comments, it could not be determined at present whether the petitioner met criterion § 83.11(e), descent from an historical tribe. Failure to meet this criterion would result in the DOI issuing an expedited proposed finding denying the petitioner Federal acknowledgment.

We have found that the Fernandeno petitioner does appear to have sufficient evidence to meet criterion § 83.11(d), having a governing document that defines its membership criteria; § 83.11(f), not being comprised principally of members of federally recognized tribes; and § 83.11(g), never having had a Federal relationship terminated by Congressional legislation.