

1 JON M. SANDS  
2 Federal Public Defender, District of Arizona

3 DANIEL L. KAPLAN, AZ Bar #021158  
4 Assistant Federal Public Defender  
5 KEITH J. HILZENDEGER, AZ Bar #023685  
6 Research & Writing Specialist  
7 850 West Adams Street, Suite 201  
8 Phoenix, Arizona 85007  
9 Telephone: (602) 382-2767  
10 Fax: (602) 382-2800  
11 [dan\\_kaplan@fd.org](mailto:dan_kaplan@fd.org)  
12 [keith\\_hilzendeger@fd.org](mailto:keith_hilzendeger@fd.org)  
13 *Attorneys for Petitioner*

14 IN THE UNITED STATES DISTRICT COURT  
15 DISTRICT OF ARIZONA

16 Beatrice Miranda,

17 Petitioner,

18 vs.

19 Tracy Nielsen *et al.*,

20 Respondents.

No. CIV 09-08065-PCT-PGR (ECV)

**PETITIONER'S MOTION FOR  
SUMMARY JUDGMENT**

21 Petitioner Beatrice Miranda, by and through undersigned appointed counsel,  
22 pursuant to Fed. R. Civ. P. 56(c), submits this motion for summary judgment. In  
23 the interest of expediting the Court's ruling, Ms. Miranda is not requesting oral  
24 argument. However, counsel for Ms. Miranda stand ready to present oral  
25 argument if the Court believes that it would be helpful.

26 //

27 //

28 //

//

//

## MEMORANDUM OF POINTS AND AUTHORITIES

Ms. Miranda is before the Court on a petition for a writ of habeas corpus to secure her release from illegal confinement on order of the Pascua Yaqui Tribe (“the Tribe”), of which she is an enrolled member. The sole ground for relief she has asserted is that the 910-day sentence imposed by the tribal court violates the limit on tribal sentencing imposed by the Indian Civil Rights Act, 25 U.S.C. § 1302(7), because it resulted from consecutive sentencing on multiple counts arising out of a single criminal transaction. She has exhausted her remedies in the tribal courts, and now seeks relief from this Court.

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Mangum v. Action Collection Serv., Inc.*, 575 F.3d 935, 938 (9th Cir. 2009). In this case, the parties do not dispute that the tribal court imposed a 910-day sentence in Ms. Miranda’s case, and that the tribal appellate court has already ruled on the merits of the claim on which Ms. Miranda is seeking relief before this Court. All that remains is for this Court to decide two questions of law; hence, this case is ripe for resolution on summary judgment.

### **1. Ms. Miranda’s claim is exhausted because she presented it to the Pascua Yaqui Tribe Court of Appeals on her direct appeal.**

Ms. Miranda presented her claim on direct appeal to the Pascua Yaqui Tribe Court of Appeals. Statement of Facts in Support of Petitioner’s Motion for Summary Judgment (“SOF”) ¶ 46. The Pascua Yaqui Tribe Court of Appeals is the Tribe’s court of last resort. *Id.* ¶ 48. That court rejected her claim on the merits. *Id.* ¶ 47. Under directly controlling Ninth Circuit precedent, this Court should rule that Ms. Miranda has thus exhausted her tribal-court remedies with respect to her claim.

As a general rule, a habeas petitioner must exhaust her tribal-court remedies before seeking relief in federal court from illegal detention imposed by tribal courts. *See Selam v. Warm Springs Tribal Corr. Facility*, 134 F.3d 948, 953 (9th

1 Cir. 1998). “Considerations of comity, along with the desire to avoid procedural  
 2 nightmares, have prompted the Supreme Court to insist that the federal court stay[]  
 3 its hand until after the Tribal Court has had a full opportunity . . . to rectify any  
 4 errors it may have made.” *Id.* (alterations in original) (quoting *Nat’l Farmers*  
 5 *Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 857 (1985)). Although the general  
 6 policy favors exhaustion of claims in tribal court, courts may waive or relax that  
 7 requirement when the need to “immediately adjudicate alleged deprivations of  
 8 individual rights” outweighs “the need to preserve the cultural identity of the tribe  
 9 by strengthening the authority of the tribal courts.” *Id.* (quoting *United States ex*  
 10 *rel. Cobell v. Cobell*, 503 F.2d 790, 793 (9th Cir. 1974)). Courts will strike that  
 11 balance in favor of the tribal court system when the petitioner does not present her  
 12 claim to the tribe’s highest appellate court on direct appeal from her conviction,  
 13 and in favor of the individual petitioner when she does.

14 Ms. Miranda presented the same claim she is raising before this Court to the  
 15 Pascua Yaqui Tribe Court of Appeals on her direct appeal. SOF ¶ 46. In *Selam*,  
 16 the court reviewed the merits of a compulsory-process claim under 25 U.S.C.  
 17 § 1302(6) because the petitioner had presented it to the tribe’s appellate court on  
 18 direct appeal from his conviction. *Selam*, 134 F.3d at 951-53. Just as the court in  
 19 *Selam* ruled that the compulsory-process claim in that case had been exhausted  
 20 and reached the merits, this Court should likewise rule that Ms. Miranda’s claim is  
 21 exhausted and reach the merits.

22 **2. Ms. Miranda’s sentence violates the sentencing restriction of the Indian**  
 23 **Civil Rights Act because it exceeds one year for a single criminal**  
 24 **transaction.**

25 Under the Indian Civil Rights Act (ICRA), “No Indian tribe exercising  
 26 powers of self-government shall . . . impose for conviction of any one offense any  
 27 penalty or punishment greater than imprisonment for a term of one year.” 25  
 28 U.S.C. § 1302(7). When Congress passed ICRA, it “found that many tribes were

1 not psychologically or financially prepared to extend every constitutional right to  
2 their members.” *Spears v. Red Lake Band of Chippewa Indians*, 363 F. Supp. 2d  
3 1176, 1179 (D. Minn. 2005). ICRA’s restriction on sentencing authority thus  
4 limited the ability of Indian tribes to impose lengthy prison sentences on their  
5 members in exchange for permitting them to deny to their members the  
6 fundamental right to representation by appointed counsel when facing lengthy  
7 prison sentences. *See id.* Congress could comfortably strike this balance because  
8 of the Major Crimes Act, 18 U.S.C. § 1153, which required felonies committed in  
9 Indian country to be prosecuted in federal court, where the defendant would be  
10 entitled to representation by appointed counsel. *Spears*, 363 F. Supp. 2d at 1180.

11 In order to maintain the balance Congress struck between the ICRA and the  
12 Major Crimes Act, it makes sense to interpret ICRA in such a way as to guarantee  
13 that only low-stakes criminal prosecutions take place in tribal court. At the time  
14 ICRA was enacted in 1968, states were not required to appoint counsel for persons  
15 facing only misdemeanor charges carrying a maximum sentence of six months in  
16 jail. *See id.* at 1179 (citing *Beck v. Winters*, 407 F.2d 125, 127-28 (8th Cir. 1969)).  
17 If ICRA could be interpreted to allow persons facing much greater punishment to  
18 be required to face trial without counsel, “tribal court defendants would be  
19 routinely exposed to serious sentences for minor crimes without guaranteeing  
20 them all their basic constitutional rights.” *Id.* at 1180.

21 Hence, when ICRA forbids imposing a sentence of more than one year in  
22 prison for “any one offense,” that phrase must refer to “any single criminal  
23 transaction.” *Id.* In light of prevailing constitutional requirements at the time of  
24 enactment, Congress would not have intended a contrary result. *See id.* This  
25 Court should therefore conclude that “Congress intended to adopt the concept that  
26 separate crimes arising from a single criminal episode should normally be treated  
27 as a single offense for sentencing purposes” under ICRA. *Id.* (citing *Prince v.*  
28 *United States*, 352 U.S. 322 (1957)).

1 For purposes of ICRA's sentencing provision, criminal charges stem from a  
2 "single criminal transaction" when they are "factually and legally intertwined."  
3 *Id.* at 1181. Ms. Miranda's eight criminal charges satisfy these criteria. They are  
4 based on a single episode involving three people and taking place within a brief  
5 period of time within a one- or two-block area. SOF ¶¶ 3-4. Ms. Miranda and the  
6 two victims were involved in an argument; Ms. Miranda waved a knife at the  
7 victims until one of the victims threw a basketball at her, striking her in the face,  
8 and then she fled. *Id.* ¶¶ 8-33. This one episode led to the eight separate criminal  
9 charges in this case. These charges plainly stem from a "common nucleus of  
10 operative fact," and are thus factually intertwined. *Spears*, 363 F. Supp. 2d at  
11 1181.

12 The charges are also legally intertwined. The Tribe charged Ms. Miranda  
13 with eight crimes—violations of four different provisions of its criminal code  
14 against each of two victims. SOF ¶ 4. The crimes were aggravated assault,  
15 endangerment, threatening or intimidating, and disorderly conduct. *Id.* Under the  
16 Pascua Yaqui Tribal Code, aggravated assault is committed by "us[ing] a deadly  
17 weapon or dangerous instrument" to "intentionally plac[e] another person in  
18 reasonable apprehension of imminent physical injury." SOF ¶ 5. Endangerment is  
19 committed by "recklessly endanger[ing] another person with a substantial risk of  
20 imminent death or physical injury." SOF ¶ 6. Threatening or intimidating is  
21 committed by "caus[ing] another person to reasonably believe that he/she is in  
22 danger of receiving physical injury." SOF ¶ 7. And disorderly conduct is  
23 committed by "engag[ing] in fighting or provoking a fight in a public place." SOF  
24 ¶ 8. Brandishing a knife at a person during the course of a verbal altercation is  
25 conduct sufficient to constitute all four of these crimes. Thus these four  
26 crimes—and all eight charges—are legally intertwined. *Spears*, 363 F. Supp. 2d at  
1181-82.

27 Ms. Miranda's sentence is thus based on a "single criminal transaction,"  
28 which constituted a single "offense" within the meaning of ICRA. The 910-day

1 sentence exceeds the maximum allowable under ICRA by 545 days, or a year and  
2 a half. Because Ms. Miranda's sentence was thus imposed in violation of ICRA,  
3 this Court should grant her petition.

4  
5 Respectfully submitted: October 1, 2009

6  
7 JON M. SANDS  
8 Federal Public Defender

9 s/Daniel L. Kaplan  
10 DANIEL L. KAPLAN  
11 Assistant Federal Public Defender  
12 KEITH J. HILZENDEGER  
13 Research & Writing Specialist  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Copy of the foregoing transmitted by CM/ECF for filing and transmittal  
2 to the following ECF registrant this 1st day of October, 2009, to:

3 CLERK'S OFFICE

4 United States District Court  
5 Sandra Day O'Connor Courthouse  
6 401 West Washington Street  
7 Phoenix, Arizona 85003

8 ALFRED LOPEZ URBINA

9 Pascua Yaqui Office of the Prosecutor  
10 7474 South Camino de Oeste  
11 Tucson, Arizona 85757

12 AMANDA JOANNE SAMPSON

13 Pascua Yaqui Tribe  
14 Office of the Attorney General  
15 4725 West Calle Tetakusim, Bldg. B  
16 Tucson, Arizona 85757-9264

17 KIMBERLY CHASTAIN VAN AMBURG

18 Van Amburg Law Firm PLLC  
19 325 West Franklin Street, Suite 115  
20 Tucson, Arizona 85701

21 RICARDO ROLANDO FLORES

22 Office of the Attorney General  
23 Pascua Yaqui Tribe  
24 4725 West Calle Tetakusim, Bldg. B  
25 Tucson, Arizona 85757

26 TIMOTHY G. MCNEEL

27 Coconino County Attorney's Office  
28 110 East Cherry Street  
Flagstaff, Arizona 86001-4627

JOHN R. LOPEZ, IV

Assistant United States Attorney  
Two Renaissance Square  
40 North Central Avenue, Suite 1200  
Phoenix, Arizona 85004-4408

CHRIS HARNEY

Main Officer  
Truxton Cañon Correctional Facility  
P.O. Box 69  
Peach Springs, AZ 86434

1 Copy mailed this 1st day  
2 of October, 2009, to:

3 BEATRICE MIRANDA  
4 Petitioner

5  
6 s/ Susan L. West  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28