

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AMIDOOOL PACHECO,
Petitioner

vs.

No. CV 10-cv-00923 RB/WDS

BILLY MASSINGILL, WARDEN
Regional Correctional Center
Respondent

EMERGENCY MOTION TO EXPEDITE REVIEW
OR SET STATUS CONFERENCE

COMES NOW, the Petitioner, AmiDooli Pacheco, through his attorneys of record, Barbara L. Creel, and Sherrie L. Harris, hereby requests an Expedited Review or Status Conference, on Mr. Pacheco's Petition for Writ of Habeas Corpus currently pending before this Court, to clarify the Court's *sua sponte* Order dated October 1, 2010, and determine the Party or Parties responsible for Answering the Petition and remedying Mr. Pacheco's illegal detention. An Expedited Review is necessary in this case for the following reasons:

FACTUAL AND PROCEDURAL BACKGROUND

On September 28, 2010, Mr. AmiDooli Pacheco timely filed his Petition for Writ of Habeas Corpus pursuant to 25 U.S.C. § 1303, "to test the legality of his detention by order of an Indian [T]ribe." [Doc #1] The Petition outlines six meritorious claims, including a claim of an illegal sentence (Claim V) imposed in violation of the statutory maximum allowable for "any one offense" under the Indian Civil Rights Act. 25 U.S.C. § 1302(7) (1990). Petitioner Pacheco

remains incarcerated at the Regional Correctional Center, pursuant to a Kewa Tribal Court Order, and had already served more than the one-year maximum sentence at the time his Petition was filed.

On October 1, 2010, this Court, *sua sponte*, ordered the Clerk “to substitute Respondent Massingill as the sole named Respondent in this proceeding.” [Doc. #4, p.1] The Court further directed the Clerk to “forward copies of the Petition ...and [the Court’s] Order to Respondent Massingill and the Governor of the Pueblo of Kewa.” [Doc. #4, p.2] Finally, the Court Ordered that “Respondent answer Petitioner’s Petition within fourteen (14) days.” [Doc. #4, p.2]

Respondent Massingill filed a non-responsive formulaic Answer on October 8, 2010. [Doc. # 6] Instead of investigating or addressing Mr. Pacheco’s meritorious Claims or providing the underlying Tribal Court or Detention record in Respondent’s possession, Respondent improperly denied all allegations or alleged no knowledge, and set forth inapplicable defenses without due diligence. The Pueblo of Kewa did not Answer.

As a result, Mr. Pacheco is without the underlying record and without a proper Answer from which to seek summary judgment or traverse.

AN EXPEDITED REVIEW IS REQUIRED TO ORDER THE RELEASE OF MR. PACHECO IMMEDIATELY OR ORDER AN ANSWER IN CONFORMITY WITH HABEAS LAW AND PROCEDURE

1. Clarification of the Court’s Order dated October 1, 2010, terminating the named Respondents, which may or may not have included the Pueblo of Kewa is necessary for review of Mr. Pacheco’s Petition.
2. The Petition for Writ of Habeas Corpus, filed pursuant to 25 U.S.C. § 1303 challenges the legality of a detention order by an Indian tribe; therefore the Pueblo of Kewa, as a sovereign entity with access to the underlying Tribal Court records, is indispensable in this matter.

3. Petitioner Pacheco is incarcerated pursuant to a Kewa Tribal Court order, but is not held at a tribal jail.

4. The Regional Correctional Center, is a private jail facility, located in Albuquerque, New Mexico, outside the Indian Tribe's jurisdiction. Respondent Massingill is the Warden for the Regional Correctional Center.

5. Respondent Massingill, "as the sole named Respondent in this proceeding," is required to either release Mr. Pacheco or Answer as to the legality of the detention on behalf of the Indian Tribe. [Doc # 4, p.1]

6. In the event Respondent is not Answering as to the legality of Mr. Pacheco's detention, Mr. Pacheco is entitled to the underlying Tribal Court records and detention order. Records which prove the merits of his Claims are likely in the possession of both Respondent Massingill and the Governor of the Pueblo of Kewa who have been properly served with the Petition. [Doc # 4, p.2]

7. Petitioner Pacheco has a reasonable belief that the Pueblo of Kewa may have contracted with the Regional Correctional Center through the Bureau of Indian Affairs, and thus clarification of the proper Respondents with records and authority to release Mr. Pacheco is needed.

8. There is urgency in requesting a hearing on this matter, as Petitioner Pacheco has outlined six meritorious claims warranting an Answer; including the fact that he has served more than the one year statutory maximum sentence. [Doc #1, p.7 (Claim V)]

9. An Expedited Review or Status Conference is necessary in the interest of justice and judicial economy, to allow Petitioner Pacheco to obtain records, receive clarification of the Court's October 1, 2010, Order as to the proper parties before the Court, determine the proper

Party or Parties required to Answer or provide the underlying court records, and move the Petition toward federal review.

Based on the foregoing, Petitioner Pacheco respectfully requests an Expedited Review or that a Status Conference be set within seven days to prevent prejudice to Mr. Pacheco, as the delay is through no fault of his own. Furthermore, Petitioner Pacheco requests immediate release pending the resolution of this and other procedural issues, as he is suffering irreparable harm with each day he is incarcerated due to the Indian Tribe's illegal sentence, and the unnecessary delay caused by Respondent's failure to diligently produce records and information.

CONCLUSION

WHEREFORE, Mr. Pacheco respectfully requests that this Court: (1) Schedule a status conference within seven days; (2) Order his immediate release from custody pending review and resolution of this matter and the meritorious Claims in his Petition; (3) Order the Respondent(s) to file an Answer within seven days that is responsive to the meritorious Claims, and provide the underlying Tribal Court records and detention orders that Mr. Pacheco is entitled to, and; (4) grant any other further relief that this Court deems just and proper.

Respectfully submitted this 20th day of October, 2010,

/s/ Barbara Creel

Barbara Creel
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/s/ Sherrie L. Harris

Sherrie L. Harris
Clinical Law Student for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of October, 2010,
I filed the foregoing Emergency Motion to Expedite Review or Set Status Conference
electronically through the CM/ECF system,
which caused all parties of record to be served

Electronically filed
/s/Barbara Creel
Attorney for Petitioner