



## INTRODUCTION

The Petitioners in this case are charged with various crimes under Titles 11 and 14 of The Muscogee (Creek) Nation Code by Special Prosecutor Roderich Wiemer, acting on behalf of the Muscogee (Creek) Nation. Acting Attorney General Marcy J. Moore contracted with Mr. Wiemer to prosecute alleged crimes arising from the misappropriation of funds at the Duck Creek Indian Community. The various Criminal Complaints and Information were filed with the Muscogee (Creek) Nation District Court on October 29, 2010. All of the Petitioners have remained free on a bond posted in the Muscogee (Creek) Nation District Court for the duration of the criminal cases. Currently all of the Petitioners in the present case are scheduled for jury trials during a two-week jury term beginning on April 25, 2011. Petitioners filed a Joint Notice of Appeal in the Muscogee (Creek) Nation Supreme Court on March 21, 2011 pursuant to Muscogee (Creek) Nation Rules of Appellate Procedure 2 (B) and 6 (C) after the Muscogee (Creek) Nation District Court denied the Petitioners Motion to Dismiss the criminal charges on March 4, 2011. That appeal of the March 4, 2011 Order of The District Court is still pending.

## ARGUMENT AND AUTHORITY

The Petitioner's Writ of Habeas Corpus pursuant to 25 U.S.C. § 1303 and Petitioner's Emergency Motion for Temporary Restraining Order and for Preliminary Injunction must be dismissed for a lack of jurisdiction. The Petitioner's are asking this Court to enjoin the Muscogee (Creek) Nation District Court from the administration of justice and have failed to provide any credible information to show why this Court has jurisdiction. A basic element necessary for this Court to have jurisdiction to grant a Writ of Habeas Corpus pursuant to 25 U.S.C. § 1303 is the "detention" requirement. The "detention" requirement is analogous to the "in custody"

requirement of 28 U.S.C. § 2241 (c) (3). Dry v. CFR Court of Indian Offenses for the Choctaw Nation, 168 F. 3d 1207, 1208 n. 1 (10<sup>th</sup> Cir. 1999). The facts and the Petitioner's own brief show that there is no actual custody in this case. The Petitioners remain free on a bond pending the disposition of the underlying criminal cases that are the subject of this Writ. Petitioners cannot show that there are "severe restraints on [his or her] individual liberty." Hensley v. Municipal Court, 411 U.S. 345, 351 (1973). Petitioners were able to post a bond to ensure their continued appearance at required court proceedings but that amount would be exonerated if the Petitioner's were to prevail in the Muscogee (Creek) Nation District Court. Furthermore, Petitioners have direct control over whether or not they appear in court. The Tenth Circuit has determined that "a person sentenced to only a fine or restitution is not 'in custody' " for purposes of habeas corpus jurisdiction. Fields v. State of Oklahoma, 243 Fed. Appx. 395, 2007 WL 2122066 \*2 (10<sup>th</sup> Cir. 2007). If a fine or restitution are insufficient to meet the "in custody" or "detention" requirement for habeas corpus jurisdiction then a small amount posted as a court bond would also be insufficient. A court bond will be returned to the person who posts the bond at the disposition of the case whereas a fine or restitution is surrendered permanently. There has been no restraint on Petitioner's liberty.

Petitioners are currently docketed for jury trials during a two-week jury term beginning on April 25, 2011. The Petitioners are asking this Court to enjoin the administration of justice, a basic tenet of our rule of law. The Muscogee (Creek) Nation is a sovereign Indian Nation with laws, a court system and a Constitution. A key element in the exercise of sovereignty is to punish those who have committed crimes against the Nation. Petitioners have failed to meet the elements necessary for this Court to have jurisdiction to hear this case. Petitioners have failed to meet the detention element and have failed to exhaust available Tribal remedies. Petitioners'

failure to meet the basic elements for a Writ of Habeas Corpus leaves this Court without jurisdiction in this matter. This Court must deny Petitioner's Motion for Temporary Restraining Order and for Preliminary Injunction and dismiss Petitioner's Writ of Habeas Corpus.

In order for Petitioners to obtain habeas corpus relief under Title 25 U.S.C., Petitioners must show that they have been denied substantive or procedural due process. Petitioners cannot show any substantive due process violation. Petitioners are still engaged in the procedural process required in a criminal case including the pending appeal in the Supreme Court of the Muscogee (Creek) Nation.

Petitioners have misrepresented the current laws and amended the Constitution of the Muscogee (Creek) Nation. Petitioners argue that the District Court of the Muscogee (Creek) Nation has been abolished pursuant to NCA 10-189. What Petitioners have failed to mention is the fact that the District Court of the Muscogee (Creek) Nation is a constitutionally established court per Article VII, Section 6 of the Constitution of the Muscogee (Creek) Nation. On December 15, 2010, the District Court of the Muscogee (Creek) Nation held that NCA 10-189 was unconstitutional and void. That December 15, 2010 Order has never been overturned and in fact the Supreme Court of the Muscogee (Creek) Nation issued an Order and Opinion on March 1, 2011 in SC-10-05 affirming the existence of a constitutional District Court as well as the extended term of District Judge Patrick E. Moore.

Petitioners also argue that the alleged crimes occurred outside the Nation's Indian country but didn't bother addressing how the Muscogee (Creek) Nation defines Indian country. Petitioners cite 18 U.S.C. § 1151 as their authority for a purported lack of criminal jurisdiction for the Muscogee (Creek) Nation in Petitioner's underlying criminal cases in the Muscogee (Creek) Nation District Court. What Petitioners fail to understand is that 18 U.S.C. § 1151

applies to prosecutions by The United States and is only a portion of the jurisdiction provided by Muscogee (Creek) Nation law. The Muscogee (Creek) Nation has criminal jurisdiction to prosecute “all Indians alleged to have committed an offense involving theft, misappropriation or misuse of Muscogee (Creek) Nation property or funds, regardless of the geographical location of any act or omission involved or resulting in such theft, misappropriation or misuse” MCNCA Title 27 § 1-102 (C). The Muscogee (Creek) Nation further defines Indian Country as “any property owned by Muscogee (Creek) Nation” MCNCA Title 27 § 1-102 (A) (3). Furthermore, Petitioners fail to understand that 18 U.S.C. § 1151 must also be read in conjunction with 18 U.S.C. § 1152 which states that this section shall not extend to crimes involving “one Indian against the property or person of another Indian.” The Petitioner’s argument that the Muscogee (Creek) Nation does not have criminal jurisdiction to hear cases involving theft of the Nation’s funds by citizens of the Nation or other Indians that occurred on property owned by the Nation is simply preposterous.

Finally, Petitioners claim that Marcy J. Moore is not the lawful Attorney General and Roderich Wiemer is not a lawful Special Prosecutor for the Muscogee (Creek) Nation. Both notions are quite contrary to the statutes of the Muscogee (Creek) Nation as well as the March 4, 2011 Order of the District Court of the Muscogee (Creek) Nation. Pursuant to Title 16 § 3-104 (A) Muscogee (Creek) Nation Attorneys General are vested with the authority to appoint a Special Prosecutor in the interest of justice. Marcy J Moore was appointed as Acting Attorney General by principal Chief A.D. Ellis and since that date has been commissioned as Acting Attorney General. Petitioners argue that the Muscogee (Creek) Nation National Council passed Tribal Resolution 2011-10 Not Recognizing Marcy Moore as Attorney General and Tribal Resolution 2011-13 not recognizing Rod Wiemer as the Special Prosecutor. When presented

with the two Tribal Resolutions, Tribal Resolution 2011-10 and Tribal Resolution 2010-13, the Principal Chief refused to sign the Tribal Resolutions and returned them to the National Council with objections. Pursuant to Article VI § 6 (c) of the Constitution of the Muscogee (Creek) Nation a Tribal Resolution must be signed by the Principal Chief to “reflect the policy of the Muscogee (Creek) Nation.” Principal Chief A.D. Ellis returned Tribal Resolution 11-10 and Tribal Resolution 11-13 to the National Council unsigned and with objections thereby rendering them null and void.

#### CONCLUSION

**WHEREFORE**, premises considered, the Respondent requests that this matter be dismissed for lack of jurisdiction.

/S/ Signature

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