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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Kay Lewis,

Petitioner,

vs.

**Gregg Henry, Clinton Kessay, Jr.,
 Kino Kane, Theresa Larzelere, Arnold
 Beach, Alvin Declay, Sr., Kino Torino,
 Cline Griggs, Sr., Justin Williams,**

Respondents.

No. 3:12-CV-08073-SRB-DKD

**AMENDED PETITION FOR WRIT
 OF HABEAS CORPUS PURSUANT
 TO 25 U.S.C. § 1303**

Pursuant to 28 U.S.C. § 2242 and Rule 15(a), Fed.R.Civ.P., Petitioner amends his petition for a writ of habeas corpus as follows:

1. This action arises under the Indian Civil Rights Act, 25 U.S.C. § 1303. Petitioner is an enrolled member of the White Mountain Apache Tribe.

2. Petitioner was a candidate for the office of Tribal Council Member.

3. Respondents are the members of the Tribal Council, which is the government of the White Mountain Apache People ("Council").

4. The members of Respondent White Mountain Apache Tribe ("Tribe") reside on the Fort Apache Reservation in northeastern Arizona. The Tribe is organized under a constitution approved by the Secretary of the Interior under the Indian Reorganization Act, 25 U.S.C. § 476. The Fort Apache Reservation was originally

1 established as the White Mountain Reservation by an Executive Order signed by
2 President Grant on November 9, 1871. By the Act of Congress of June 7, 1897, 30 Stat.
3 64, the White Mountain Reservation was divided into the Fort Apache and San Carlos
4 Reservations.

5 5. The Tribe's Constitution ("Constitution") was approved by the Department
6 of Interior on June 18, 1934.

7 6. Under the Constitution, Petitioner has numerous rights, including the
8 following:

- 9 a. The right to run for the office of Tribal Council Member, Article VI,
10 Section 6 and Article XII, Section 1;
- 11 b. The right to equal political rights and equal opportunities to participate
12 in the economic resources and activities of the Tribe, Article V; and
- 13 c. The right to the freedom of conscience, speech, association or assembly,
14 and the right to petition for the redress of grievances, Article V.

15 **BACKGROUND AND EXHAUSTION OF TRIBAL REMEDIES**

16 **I. The Origin Of This Dispute.**

17 7. Petitioner has fulfilled all of the Tribal requirements for registering as a
18 candidate for the office of Tribal Council Member.

19 8. Specifically, Petitioner has reached the age of twenty-five years, can speak
20 Apache, and operates cattle within the district for which he desired to run for the office of
21 Tribal Council Member.

22 9. Petitioner presented his name at least fifteen days before the election to the
23 proper Tribal authorities. Petitioner presented a petition signed by at least five percent of
24 the resident voters of the district, of the age of not less than eighteen years.

25 10. Under the Constitution, Petitioner had the right to be declared by the
26 Council to be regularly nominated as a Council member and to be a candidate for the

1 office of a Council member as indicated in such petition. He also had the right to have his
2 name posted in a public place at least ten days prior to the election.

3 11. In strict violation of his Constitutional rights, Respondents denied Petitioner
4 his right to run for the office of Tribal Council Member, and wrongfully conducted a
5 primary and general election for the office without adding his name to the ballot.

6 **II. Petitioner Exhausts His Tribal Remedies**

7 12. Petitioner properly filed a challenge with the Tribal Court. Petitioner was
8 successful in his challenge, and the Tribal Court entered an injunction restraining the
9 election from going forward. *See* Exhibit “A”.

10 13. Although Respondents have claimed that the matter is pending in the White
11 Mountain Apache Court of Appeals, there are currently no judges appointed to that Court.
12 Respondents have the power to appoint judges. Thus, Respondents can deny Petitioner his
13 liberty indefinitely by declining to appoint Appellate Judges.

14 14. Respondents, in a rather obvious act of political corruption, ignored the
15 Tribal Court and conducted an election without including Petitioner’s name on the ballot.

16 15. Accordingly, the highest court in the Tribal Government (since there is no
17 active Court of Appeals) has ruled in favor of Petitioner. Respondents are simply refusing
18 to obey the lawful order of the Court.

19 **PETITIONER’S RIGHTS UNDER THE INDIAN
20 CIVIL RIGHTS ACT HAVE BEEN VIOLATED**

21 16. Respondents have conspired with others to violate Petitioner’s
22 constitutional rights by depriving him his liberty to run for office. This deprivation
23 occurred despite the rather obvious fact that Petitioner qualified for the office and had the
24 right to run for the office.

25 17. The loss of the liberty to run for office is a “detention” in that it involves
26 the stripping of liberty rights by governmental action. Because of the extremely punitive
nature of the government action, a criminal “detention” has occurred, and this Court has

1 jurisdiction to review the legality of the detention under the Indian Civil Rights Act.
2 *Poodry v. Tonawanda Band Of Seneca Indians*, 85 F.3rd 874 (2nd Cir. 1996). *See also*
3 Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-1303.

4 18. The detention in this case is not lawful in that Plaintiff has been stripped of
5 his right to run for office without due process. This is a loss of liberty without due process
6 that violates 25 U.S.C. § 1302(8). He has followed all lawful court procedures within the
7 Tribal Government to challenge this action, and he has been successful in obtaining Court
8 orders recognizing his unlawful detention. However, Respondents are not obeying the
9 Tribal Court orders. Accordingly, Petitioner's only remaining remedy is habeas corpus
10 relief to the Federal Court.

11 WHEREFORE having plead the jurisdiction of this Court and his right to relief,
12 Petitioner pleads to this Court for an order recognizing his fundamental liberty rights and
13 ordering the Respondents to immediately take all possible remedial steps to reinstate his
14 liberty rights, including declaring the election null and void and reholding the election
15 with Petitioner's name restored to the ballot.

16 DATED this 6th day of June, 2012.

17 ***The Law Offices of David R. Jordan, P.C.***

18 /s/ David R. Jordan filed electronically 6/6/12

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Richard J. Palmer, Tribal Attorney
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/s/ David R. Jordan