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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

KAY LEWIS,) NO. 3:12-CV-08073-SRB-DKD
Petitioner,)
vs.) MOTION TO DISMISS PETITION FOR
WHITE MOUNTAIN APACHE TRIBE,) WRIT OF HABEAS CORPUS
Respondent.) (Oral Argument Requested)

Respondent White Mountain Apache Tribe hereby moves this Court to dismiss the Petition for a Writ of Habeas Corpus with prejudice pursuant to Fed. R. Civ. Proc. 12(b)(1) and (6), for the reason that this Court is without jurisdiction over the subject

1 matter of the Petition and because the Petition fails to state a claim for which relief can
2 be granted. This Motion to Dismiss is supported by the following Memorandum of
3 Points and Authorities.

4

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. BACKGROUND**

7 The Petitioner, Kay Lewis, is an enrolled member of the White Mountain Apache
8 Tribe (“Tribe”) who unsuccessfully sought to become certified as a candidate for
9 elected office in the Tribe’s April 2012, general election. The Petition stems from his
10 dispute over Tribal authority to certify candidates seeking elected tribal office. The
11 gravamen of Lewis’ Petition is that he disagrees both with the administrative fact-
12 finding of the Tribal Election Commission which found him ineligible to be a candidate
13 for the office he sought, and with the Tribal Council’s exclusive constitutional authority
14 to certify candidates seeking office.

15 The Petition is fraught with misstatements of fact and conclusions of law. For
16 example, the dispositive issue for the Tribal Election Commission’s administrative
17 determination was that the Petitioner had not complied with application procedures
18 enacted into tribal law to confirm his constitutional qualification to become a candidate.
19 The Petitioner fails to inform this Court of this critical factual finding by the Tribal
20 Election Commission. Instead, the Petitioner, in Paragraph 8 of his Petition,
21 unconditionally states that he "operated cattle" within the district, and accordingly
22 satisfied a tribal constitutional requirement for elective office within the Tribal
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1 Council.¹ Similarly, the Petitioner in Paragraph 14 of his Petition misleads this Court in
 2 stating that, “. . . the *highest court* in the tribal government has ruled in favor of
 3 Petitioner” (emphasis added), when in fact there is an appeal pending in the Tribe’s
 4 Court of Appeals on the issue of the Petitioner’s eligibility to be a candidate and the
 5 Tribal Court’s claim of jurisdiction over a matter exclusively reserved to the Tribal
 6 Council in the Tribal Constitution.

8 The Tribe’s election procedures and the qualifications for persons seeking office
 9 are governed by the Tribe’s Constitution and the Tribe’s Election Code. A copy of the
 10 Tribe’s Constitution, approved by the Secretary of the Interior on November 12, 1993,
 11 is attached as RESPONDENT’S EXHIBIT 1 to this Memorandum.² A copy of the
 12 Tribe’s Election Code is attached as RESPONDENT’S EXHIBIT 2. The Constitution
 13 authorizes the Tribal Council to promulgate an election ordinance governing the
 14 conduct of elections and to appoint subordinate committees and commissions such as
 15 the Tribal Election Commission. *WMAT Constitution, Article VI, Section 8 and Article*
 16 *IV, Section 1 (s)*. Nevertheless, the Tribe’s Constitution reserves the authority to certify
 17 candidates for office exclusively to the Tribal Council. *WMAT Constitution, Article VI,*
 18 *Section 6.*

23 ¹ The Petitioner makes another unsupported statement of "fact" by declaring in
 24 Paragraph 13 that the Tribal government’s decision to act contrary to a Tribal Court
 25 ruling, for reasons which are explained in this Memorandum, is, "a rather obvious act of
 26 political corruption."

27 ² Petitioner, in paragraph 5 of his Petition, erroneously states the adoption date of the
 28 Tribe’s Constitution as June 18, 1934. The first Constitution adopted by the Tribe was
 on August 26, 1938. The date provided by the Petitioner, June 18, 1934, is the date
 when the Indian Reorganization Act of 1934 (48 Stat. 984) was enacted by Congress.

1 The Tribal Council enacted the Tribe's Election Code into law pursuant to its
2 Constitutional authority and established and appointed an Election Commission, as
3 required by the Election Code.³ On behalf of the Tribal Council, the Election
4 Commission conducts administrative functions and engages in fact-finding necessary to
5 carry out the Tribal election process. *Election Code, Section 2.1B.* Among other things,
6 these duties include the duty by the Election Commission to verify that applicants are
7 qualified to be certified as candidates. This verification is done through the use of an
8 application process to confirm compliance with the Tribe's Constitution. *Election*
9 *Code, Section, 4.6.* However, after the Election Commission reports its fact-finding
10 regarding each candidate application, it is only the Tribe's governing body, the Tribal
11 Council, which has the constitutional authority and duty to certify those persons who
12 have demonstrated their eligibility to be a candidate for office. This structure of
13 authority is consistent with other provisions of the Tribe's Constitution which vests
14 much of the Tribe's governmental authority exclusively in a single governing council.⁴
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21³ The Election Commission is established pursuant to Section 2.1A of the Election Code.
22 The Commission is composed of nine members none of whom may be an immediate
23 family member of any elected official or any candidate. Commission members are
24 appointed to serve a term ending not more than six months after the close of the election.

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26⁴ Although the Tribe's Constitution delegates some authority to certain Tribal officials,
27 unlike the U.S. Constitution, it does not allocate separation of power among the three
28 branches of government. Instead, the Tribal Constitution vests broad plenary powers in
the Tribal Council to exercise the inherent powers of the Tribe, the powers of the Tribe
under existing law, and powers enumerated in the Tribal Constitution. *WMAT*
Constitution, Article IV, Section 1.

After the Tribal Council certifies the candidates, those decisions become final. The Election Code authorizes Tribal Court review only for alleged impropriety or fraud during election balloting, *WMAT Election Code, Chapter 8*, but it does not provide for court review of the Tribal Council's candidate certification decision. Most importantly, the Tribe's laws confirm that except as expressly and unequivocally authorized by the Tribal Council, the Tribe and the Tribal Council are absolutely immune from suit.⁵

In order to qualify as a candidate for Tribal Council office, *inter alia*, a person must reside, operate cattle, or have farm land assigned in the voting district from which the person intends to seek office. *WMAT Constitution, Article XII, Section 1.*⁶ The

⁵ The White Mountain Apache Tribe Judicial Code, Section 1.7, states as follows:

The White Mountain Apache Tribe, as a sovereign government, is absolutely immune from suit, and its Tribal Council, officers, agents, and employees shall be immune from any civil or criminal liability arising or alleged to arise from their performance or non-performance of their official duties. Nothing in this code shall be deemed to constitute a waiver of the sovereign immunity of the White Mountain Apache Tribe except as expressly provided herein or by action of the Tribal Council.

The Judicial Code was enacted pursuant to the Tribal Council's delegated authority under Article IV, Section 1(q) of the Tribe's Constitution to, "enact ordinances establishing and governing tribal courts."

⁶ The full requirements of Article XII, Section 1, are as follows:

Any member of the Tribe who has reached the age of twenty-five years, and who can speak Apache, and who is a resident of the district which he or she is to represent, or who operates cattle within the said district or who has farm land assigned to him or her in said district, shall be qualified to be a candidate for election to the Council. No person who has been convicted of a felony shall be eligible to hold office in the Council. No person who within the past year preceding the election has been convicted of a crime involving moral integrity, shall be eligible to hold office in the Council. The following crimes and no others, shall be considered crimes involving moral integrity: adultery, bribery, embezzlement, extortion, fraud, forgery, misbranding, perjury, theft or public intoxication.

Petitioner in this matter sought to become a candidate in the Tribe's District I on the basis that he "operates cattle" in the District. The Election Commission administratively found that the Petitioner failed to comply with the Election Code requirement that an applicant provide corroborating documentation to verify he or she meets the qualification criteria. *Election Code, Appendix A-2, Candidate Application Form.* In contrast to the successful applicants for candidacy, the Petitioner failed to comply with the written procedures enacted into tribal law in the Election Code, which by their very terms, are the exclusive procedures by which a person can be certified as a candidate. *WMAT Election Code, Section 4.4.*

The Election Commission's administrative findings were subsequently accepted by the Tribal Council which certified the candidates for office---a certification which did not include the Petitioner. RESPONDENT'S EXHIBIT 3, TRIBAL COUNCIL RESOLUTION 12-2011-241. Thus, the Petitioner makes yet another material misstatement of fact in informing this Court that he was, "a candidate for the office of Tribal Council Member." (Petition, paragraph 2). The Petitioner was never recognized as a candidate in the 2012 Tribal election, and his name never appeared on the ballot. Furthermore, his ineligibility to be a candidate for office was not the work of a "corrupt government," as the Petitioner recklessly claims. (Petition, paragraph 13). Instead, as shown above, the Petitioner's disqualification was solely the result of uniform application of binding standards to all applicants by the Election Commission and the Tribal Council.

WMAT Constitution, Article XII, Section 1.

1 There is no authority under tribal law for court review of candidate certification,
2 but the Petitioner sought and obtained a hearing in the Tribe's Tribal Court, held on
3 January 13, 2012, challenging the Election Commission's findings and the Tribal
4 Council's subsequent certification of candidates. The Election Commission members
5 attended the hearing pursuant to court subpoena. At the conclusion of the hearing, the
6 Tribal Court issued an order directing the Election Commission to add the Petitioner's
7 name to the ballot.
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10 The Election Commission objected to the basis for the court ruling, but, under
11 protest, did submit the Petitioner's name to the Tribal Council for certification. The
12 Election Commission does not possess the constitutional authority to certify candidates
13 itself, so it could only recommend to the Tribal Council that it add the Petitioner's name
14 to the ballot. The Tribal Council declined to accept the Election Commission's
15 recommendation, as was its right, based on the Tribal Council's exclusive and reserved
16 constitutional authority to certify candidates and the Tribal Court's limited jurisdiction
17 over election matters. The Election Commission then timely filed its notice of appeal of
18 the Tribal Court ruling with the Tribal Court of Appeals.⁷ That appeal is still pending.
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22 ⁷ Among other things, the Election Commission appeal contends the Tribal Court had no
23 basis by which it could assert jurisdiction, and that its assertion of jurisdiction, for which
24 it has never identified any basis in law, was in violation of established Tribal law. The
25 appeal also challenges the Tribal Court's erroneous, arbitrary, capricious, and
26 extrajudicial disregard for the Election Commission's fact-finding which had concluded
27 that the Petitioner did not provide the corroborative documentation required to verify his
28 eligibility as a candidate.

29 Even after filing the filing of the appeal, which deprived the Tribal Court of
30 jurisdiction, the Tribal Court judge continued to convene hearings and to issue rulings,
31 contempt orders and warrants for arrest against various officials and attorneys because
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1 This fact directly contradicts the Petitioner's claim to this Court that all tribal remedies
2 have been exhausted in this matter (Petition, Section II heading) and that the "highest
3 court in the Tribal Government has ruled in favor of petitioner," (Petition, paragraph
4 14).
5

6 Notwithstanding the ruling in the Tribe's trial court, the Tribal Council
7 proceeded with the election, limited to those persons who had been duly certified as
8 candidates. The Tribe's primary election was held on February 1, 2012, and the general
9 election was held on April 4. The Tribal Council formally accepted and ratified the
10 election outcome, and the winning candidates were sworn into office on May 2, 2012,
11 and have now assumed their new duties as duly elected officials of the Tribe.
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13 At no point in these proceedings or in any events thereafter has the Tribe or any
14 representative of the Tribe taken any action or suggested any threat of action which
15 could be construed as a form of detention against the Petitioner or other form of
16 restraint on his liberty. The sole consequence of the Tribe's actions for which the
17 Petitioner seeks a writ of habeas corpus, was that the Petitioner was found ineligible to
18 run for office in the 2012 tribal election.
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26 the Tribal Council proceeded with the Tribal election date, as mandated in the Tribal
27 Constitution. In addition to the appeal, the Tribal Court judge's extrajudicial conduct
28 relating to the Tribal election is under review while he is on a leave of absence from his
appointed position.

II. ARGUMENT

A. SUMMARY OF ARGUMENT.

There is no colorable claim to jurisdiction in this Court over the Petition. Under the Indian Civil Rights Act, 25 U.S.C. §1303, a habeas corpus action must be grounded upon a claim of the petitioner’s detention and upon confirmation that the petitioner has first exhausted tribal remedies. In this matter, there are no alleged circumstances which could be remotely construed as a “detention” under the Act or under any published federal court opinion interpreting its application. Furthermore, tribal procedures have not been exhausted to address petitioner’s underlying claims. For these reasons, and as directed in Ninth Circuit precedence, this Court lacks subject matter jurisdiction, and the Petitioner’s claim must be dismissed pursuant to the Federal Rules of Civil Procedure, Rule 12(b)(1). The Petitioner also fails to state a claim for which relief may be granted, and the claim must be dismissed pursuant to the Federal Rules of Civil Procedure, Rule 12(b)(6).

In addition, by naming the White Mountain Apache Tribe as the respondent in this matter, the Petition has not named the appropriate party. Under its own laws, and as recognized by federal common law, the White Mountain Apache Tribe is absolutely immune from suit, absent a waiver of its immunity by the Tribe or by federal law. Thus, even if a proper and legitimate claim for habeas corpus were raised in the pleadings, federal habeas corpus jurisprudence holds that the tribal government is not the appropriate party to be named as a respondent in this action.

B. PETITIONER'S ALLEGATIONS FAIL TO ESTABLISH GROUNDS FOR A HABEAS CORPUS ACTION, THEREBY DEPRIVING THIS COURT OF JURISDICTION.

The Petitioner has the burden to establish that this Court has subject matter jurisdiction over this action. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103-04 (1998). To establish habeas corpus jurisdiction under the Indian Civil Rights Act, 25 U.S.C. §1303, the Petitioner must demonstrate, (1) that he is in custody and, (2) that he has first exhausted his tribal remedies. *Jeffredo v. Macarro*, 599 F.3d 913, 918 (9th Cir. 2010). Unless both threshold standards are met, there can be no jurisdiction in this Court. *Id.* Those necessary preconditions are absent here.

The Petitioner relies upon *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2nd Cir. 1996), a case concerning habeas corpus jurisdiction under the Indian Civil Rights Act, but based on fundamentally different facts than those presented here. In *Poodry*, the Tribal Council of the Tonawanda Band of Seneca Indians had issued permanent banishment orders against several members of the tribe who were found to have engaged in treason against the tribe. 85 F.3d at 878. As a further consequence of the charge, the banished individuals became subject to harassment and assault by other members of the tribal community while facing the threat of their forced removal from the reservation. *Id.*

The *Poodry* court concluded that these circumstances constituted a severe restraint on the petitioners' individual liberty, sufficient to merit habeas corpus jurisdiction under the Indian Civil Rights Act. 85 F.3d at 878-80, 895. The court noted

1 that the act of treason is a serious criminal offense and the sentence of banishment is
2 historically recognized as a harsh penalty which is reserved for only the most serious
3 crimes, such as murder, rape, and treason. 85 F.3d at 895. This resulted in what the
4 court characterized as a proceeding arising in a criminal context and resulting in a
5 serious deprivation of the petitioners' liberty interests. 85 F.3d at 879. Those factors
6 were sufficient to justify federal court jurisdiction for a habeas corpus proceeding under
7 the Indian Civil Rights Act.
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10 The contrast between the justiciable facts in *Poodry* and the conclusory
11 allegations here could not be more stark. In the issue before this Court, the unfavorable
12 outcome for the Petitioner in the Election Commission's administrative review
13 precluded his candidacy for office in the 2012 election, and nothing more. Although
14 this was undoubtedly a disappointment for the Petitioner, his ineligibility to be a
15 candidate in the 2012 election carries no other negative impact or repercussions, and it
16 bears no relation to the criminal charge and resulting restraints on individual liberty at
17 issue in *Poodry*. It is reckless on the Petitioner's part to even suggest such a
18 comparison. Accordingly, there is no habeas corpus jurisdiction in this Court over this
19 matter on the basis of *Poodry*, as the Petitioner claims.
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23 Even the Second Circuit, which issued the *Poodry* opinion, would acknowledge
24 the non-application of the *Poodry* holding to the matter presented here, as confirmed in
25 a case coming after *Poodry*, entitled *Shenandoah v. U.S. Department of Interior*, 159
26 F.3d 708 (2nd Cir. 1996). In that case, the Second Circuit Court of Appeals easily
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1 distinguished the severe restraints upon liberty described in *Poodry* from the tribal
2 action at issue in *Shenandoah*, in which the petitioners alleged wrongful termination of
3 employment by the tribe and the resulting loss of access to tribal facilities and removal
4 from tribal membership rolls. 159 F.3d at 714. Those events, although serious, did not
5 constitute, in the Second Circuit's view, the, "severe actual or potential restraint on
6 liberty" it saw in *Poodry*. 159 F.3d at 714 quoting *Poodry*, 85 F.3d at 880.
7 Accordingly, the *Shenandoah* court, in reliance on *Poodry*, found no basis to support a
8 claim of habeas corpus jurisdiction.
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10 Similarly, the Ninth Circuit, in several recent opinions involving the Indian Civil
11 Rights Act, has confirmed that in the absence of a severe impact on individual liberty,
12 no federal habeas corpus jurisdiction is established. In *Liska v. Macarro*, 2010 WL
13 3718300 (S.D.Cal.2010), the federal court for the Southern District of California found
14 no severe restraint on liberty to warrant habeas corpus jurisdiction because of the
15 Pechanga Indian Tribe's exclusion of a non-member non-resident who sought entry
16 onto the reservation to pray at his father's gravesite and who alleged he was prevented
17 from obtaining membership in the tribe. 2010 WL 37718300 at *6. The *Liska* court
18 held that these allegations, even if true, could not constitute a "detention" for purposes
19 of a habeas corpus petition under the Indian Civil Rights Act. *Id.* Similarly, in *Jeffredo*
20 *v. Macarro*, 599 F.3d 913, 918 (9th Cir.2010), the Ninth Circuit Court of Appeals
21 confirmed that even the disenrollment of a tribal member by the tribe and the loss of
22 privileges which it entails would not constitute a "detention" for purposes of the Indian
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1 Civil Rights Act as such circumstances do not result in a “severe actual or potential
 2 restraint on liberty” as necessary to justify jurisdiction. 599 F.3d at 919, quoting
 3 *Poodry*, 85 F.3d at 880.

4 Similarly, in *Quitiquit v. Robinson Rancheria Citizens Business Council*, 2011
 5 WL 2607172 (N.D.Cal.2011), the federal court for the Northern District of California
 6 found no habeas corpus jurisdiction under circumstances in which the petitioners had
 7 been disenrolled from the Tribe and then, in a separate proceeding, ordered out of the
 8 reservation or face arrest for trespass following an unlawful detainer action for non-
 9 payment of rent. As with the *Jeffredo* court, the court in *Quitiquit* saw no restraint on
 10 individual liberty as a result of the tribe’s civil proceedings against the petitioner. The
 11 court also relied upon the Ninth Circuit standard for determination of 25 USC §1303
 12 jurisdiction---that there must be a demonstration that, (1) the petitioner is in custody,
 13 and (2) the petitioner has first exhausted tribal remedies. *Id.*, and compare to *Jeffredo*,
 14 599 F.3d at 918. The *Quitiquit* court found that neither requirement had been met.
 15 2011 WL 2607172 at *5. The Petitioner’s claims in the case before this Court likewise
 16 fail to meet either requirement.

17 The only recent cases reported in the Ninth Circuit in which habeas corpus
 18 jurisdiction has been granted under 25 USC §1303 have involved the permanent
 19 banishment of tribal members, as in *Poodry*, such as to constitute “constructive
 20 detention” or custody. See, *Quair v. Sisco*, 359 F.Supp.2d 948 (E.D.Ore.2004) and
 21 *Sweet v. Hinson*, 634 F.Supp.2d 1196 (W.D.Wash.2008). Those circumstances are
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1 simply not present here. There were no sanctions or other negative consequences for
2 the Petitioner, other than the disqualification of his application for candidacy. The
3 Petitioner alleged no conduct which even remotely suggests an imposition of custody or
4 other restraint or restriction on individual liberty that would warrant a writ of habeas
5 corpus.

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7 In short, the Petitioner has failed to satisfy the necessary elements to establish
8 subject matter jurisdiction in this Court and he has failed to state a claim for which relief
9 may be granted by this Court. The Petitioner's claim must also fail because he has not
10 exhausted his tribal remedies, due to the pending appeal to the Tribe's Court of Appeals.

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12 **C. THE TRIBE IS NOT A PROPER PARTY FOR A 25 USC §1303 HABEAS
13 CORPUS ACTION.**

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15 As a sovereign Indian tribe, the White Mountain Apache Tribe is immune from
16 suit, absent an express and unequivocal waiver of its immunity by the Tribe or by
17 congressional action. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*,
18 523 U.S. 751 (1998). This immunity is also recognized in 25 USC §1303 federal
19 habeas corpus jurisprudence. For that reason, even if the grounds alleged here
20 somehow met the rigid standards necessary to constitute a "detention," the proper party
21 would not be the Tribe itself, but the tribal official who is alleged to be wrongfully
22 holding the Petitioner in custody, either directly or constructively. *Poodry*, 85 F.2d at
23 899, and *Acosta-Vigil v. Delorme-Gaines*, 672 F.Supp.2d 1194 (D.N.M.2009). This
24 action against the Tribe must therefore be dismissed on the basis of the Tribe's
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1 sovereign immunity from suit and the Petitioner's failure to name an individual tribal
2 official he claims to be unlawfully "detaining" him.

3 The designation of the wrong party need not in itself eliminate habeas corpus
4 jurisdiction, provided that the Petition can be amended to name the appropriate official
5 who is alleged to be wrongfully holding the Petitioner in custody. 672 F.Supp.2d at
6 1195. However, based on the facts alleged here, this is a burden the Petitioner cannot
7 meet, as there is no indication or allegation by the Petitioner of any action by any person
8 which would constitute a restraint of the Petitioner's liberty. Thus, the requirement to
9 name the proper party serves to filter out specious claims, such as here, in which the
10 alleged facts cannot meet the minimum jurisdictional requirements for granting a
11 petition of habeas corpus.

12 **D. CONCLUSION.**

13 The Petitioner has alleged no factual basis to invoke subject matter jurisdiction in
14 this Court pursuant to 25 U.S.C. §1303. There is no evidence of any kind of a restraint,
15 direct or otherwise, on the Petitioner's individual liberty and the applicable tribal
16 remedies and procedures have not been exhausted.

17 A writ of habeas corpus is an extraordinary measure reserved for only the most
18 serious restraints on individual liberty which would be deemed to constitute "custody"
19 or "detention." *Liska v. Macarro*, 2010 WL 3718300 (S.D.Cal.2010), quoting *Hensley*
20 *v. Municipal Court*, 411 U.S. 345, 351 (1973). Its purpose is to safeguard the interests
21 of individual liberty from wrongful government-imposed restraint. *Shenandoah*, 85
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1 F.3d at 893-94, quoting *Jones v. Cunningham*, 371 U.S. 236, 240 (1963). This is a far
2 different objective than that of the Petitioner who is seeking federal court intervention in
3 a misguided attempt to substitute this Court's fact-finding and judgment over internal
4 tribal candidate qualification procedures and standards.
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6 The Petition is replete with conclusions of law and fact as well as legal
7 contentions which are not warranted by existing law. The Petitioner fails to present any
8 argument for extending, modifying, or reversing existing law or for establishing new
9 law that would make a habeas corpus proceeding applicable to the case at Bar. For
10 these reasons, the White Mountain Apache Tribe requests that the Petition for Writ of
11 Habeas Corpus be denied and the matter dismissed with prejudice.
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III. REQUEST FOR RELIEF

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15 **WHEREFORE**, the White Mountain Apache Tribe requests that this Court
16 grant the Tribe's Motion to Dismiss with prejudice pursuant to Fed. R. Civ. Proc.
17 12(b)(1) and (6) and grant the Tribe such other and further relief at law or in equity as
18 this Court deems just or appropriate in the premises.
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Respectfully submitted this 25th day of May, 2012.
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/s/ Richard J. Palmer
Richard J. Palmer, Tribal Attorney
White Mountain Apache Tribe
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26 /s/ George Hesse
George Hesse
George Hesse, PLLC
27 Attorneys for White Mountain Apache Tribe
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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May, 2012, I electronically transmitted the foregoing document to the Clerk's Office using the ECF System, which will send notification of this filing to the attorneys of record.

Respectfully submitted this 25th day of May, 2012.

/s/ George Hesse
George Hesse
George Hesse, PLLC