

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW MEXICO**

**JERMAINE GARCIA,**

**Petitioner,**

**vs.**

**Cause No. 1:17-cv-00333 WJ-GJF**

**MATTHEW ELWELL, DIRECTOR**  
**Sandoval County Detention Center**

**DAVID RIVAS, WARDEN**  
**San Luis Regional Detention and Support Center,**

**STEVE AFEMAN, CHIEF EXECUTIVE OFFICER**  
**Emerald Companies, Inc.**

**ROBERT B. CORIZ, TRIBAL COURT JUDGE**  
**GOVERNOR for the Pueblo of Kewa**

**&**

**PUEBLO OF KEWA**  
**(Formerly known as the Pueblo of Santo Domingo)**

**Respondents.**

**RESPONDENT DAVID RIVAS' RESPONSE TO**  
**PETITION FOR WRIT OF HABEAS CORPUS FOR RELIEF**  
**FROM A TRIBAL COURT CONVICTION PURSUANT TO 25 U.S.C. §1303**

COMES NOW, the Respondent, DAVID RIVAS, Warden, San Luis Regional Detention and Support Center, by and through his attorney of record, ADAM D. RAFKIN, P.C. (Adam Daniel Rafkin, Esq.), and hereby submits his Response to Petition for Writ of Habeas Corpus for Relief from A Tribal Court Conviction Pursuant to 25 U.S.C. §1303, and in support thereof, would state

the following:

### **Introduction**

Respondent David Rivas is the Warden of the San Luis Regional Detention Center (Respondent). The Warden does not contest that the facility he administers is the custodian of Petitioner. However, the San Juan Regional Detention Center is holding Petitioner pursuant to a facially valid Tribal Court order and hence, Respondent has no discretion to do anything but abide by the Order sentencing Petitioner to incarceration.

### **Response to Factual Allegations Set Forth in the Petition**

1. Respondent lacks sufficient information to form a belief as to the truth of the allegations asserted in paragraphs 1-12 of the Petition, and therefore denies the same.
2. With regard to paragraph 13 of the Petition, Respondent admits generally that he understands that the Tribe ordered Petitioner to be incarcerated. As to the documents attached to the petition, Respondent had no firsthand knowledge of the circumstances surrounding them.
3. Respondent lacks sufficient information to form a belief as to the truth of the allegations asserted in paragraphs 14-20 of the Petition, and therefore denies the same.
4. The remaining (un-enumerated) paragraphs set forth in the Petition constitute legal conclusions which Respondent is not qualified to respond to and therefore denies the same.

### **Affirmative Defenses**

- A. Failure to state a claim upon which relief can be granted.

**Argument**

As stated above, Petitioner is being lawfully held at the San Luis Regional Detention Center in Arizona, pursuant to a facially valid Tribal Court order. Respondent is merely the administrator for Emerald Correctional Management, L.L.C., which is the contractor managing and operating the facility. As such, Respondent has no discretion to do anything but abide by the facially-valid court order and retain custody of Petitioner unless and until he receives a court order instructing him to do otherwise.

WHEREFORE, the Respondent, DAVID RIVAS, prays this Court enter its Order determining whether Petitioner is being lawfully incarcerated, and for such other and further relief as the Court deems just and proper.

Respectfully Submitted:

**/s/ Adam Daniel Rafkin, Attorney at Law**

ADAM DANIEL RAFKIN, Esq.

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ATTORNEY FOR RESPONDENT RIVAS

**Certificate of Service**

I HEREBY CERTIFY THAT on the 30<sup>th</sup> day of March, 2017, I filed the foregoing electronically through the CM/ECF system, which caused the following parties to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Ms. Barbara Louise Creel, Esq.  
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ATTORNEY FOR PETITIONER

**/s/ Adam Daniel Rafkin, Attorney at Law**  
**ADAM DANIEL RAFKIN, Esq.**