

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

**MILTON TOYA,**  
*Petitioner*

vs.

No. 17-CV-00258 JCH/KBM

**AL CASAMENTO, DIRECTOR**  
Sandoval County Detention Center

&

**PUEBLO OF JEMEZ**  
*Respondents.*

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

**COMES NOW** the Petitioner, Milton, by and through his counsel of record, Nicholas E. Mendoza, Attorney at Law, and hereby replies to Respondents' Answer to his petitioning this court for a Writ of Habeas Corpus pursuant to 25 U.S.C. § 1302-1303 as follows:

1. Respondent Al Casamento, Director (Warden) of Sandoval County Detention Center, is a proper party. In Rumsfeld v. Padilla, the United States Supreme Court held that “in habeas challenges to present physical confinement—‘core challenges’—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held.” Rumsfeld v. Padilla, 542 U.S. 426, 435 (2004). In addition, in another case involving a similar petition and the same Respondent before this Court, United States Magistrate Judge William Lynch found that the above Respondent is a proper party. (Exhibit 1.) (See also Case Number 1:16-cv-01404-RB-WPL (Doc.12, 1, n.1)).

2. In regards to the issue of exhaustion of tribal remedies, the Respondent now states that he is not in possession of any of the documents or the recordings ordered to be produced by the Court's order. However, interestingly, in two other cases before this court, including the aforementioned case, not only did the Respondent possess and provide the documents, namely the Jemez Tribal Code, but he also produced the tribal court recording of the proceedings. (Exhibit 1, Exhibit 2). (See also Case Numbers 1:16-cv-01404-RB-WPL Document 12 and 1:16-cv-01405-RB-LF Document 18 respectively.) For the Court's convenience, the Petitioner shall attach a copy of the Tribal Code that the Respondent once did possess and was able to obtain. (Exhibit 3). (See Case Number 1:16-cv-01405-RB-LF Doc. 11-1). However, the Petitioner cannot obtain the recordings of the tribal Court Proceedings.

### **CONCLUSION**

**WHEREFORE**, Mr. Toya respectfully requests that this Court: (1) issue the writ of habeas corpus commanding Respondent to release Mr. Toya from their custody immediately; or in the alternative, (2) hold an expedited evidentiary hearing to inquire as to the legality of the detention, and (3) grant any other further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED:

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/ss/  
Nicholas E. Mendoza  
Attorney for Petitioner  
P.O. Box 1153  
Tijeras, New Mexico 87059  
(505) 503-0492

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17<sup>th</sup>. day of May 2017, I filed the foregoing pleading electronically through the CM/ECF system, which caused counsel of record to be served by electronic means.

Al Casamento, Director  
Sandoval County Detention Center

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Petitioner Milton Toya's Response to Answer to Petition for Writ of Habeas Corpus  
Pursuant to 25 U.S.C. 1303

1100 Montoya Rd.  
Bernalillo, New Mexico 87004

Electronically filed  
/s/Nicholas E. Mendoza  
Attorney for Petitioner