

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

KENNETH AGUILAR,
Petitioner,

Vs.

VICTOR RODRIGUEZ, ACTING WARDEN
Sandoval County Detention Center, Sandoval County New Mexico

&

ROBERT B. CORIZ, TRIBAL COURT JUDGE
AND GOVERNOR for the
Pueblo of Kewa (also known as the Pueblo of Santo Domingo)

&

KEWA PUEBLO
(Also known as Santo Domingo Pueblo)

Respondents

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

COMES NOW the Petitioner, Kenneth Aguilar, by and through his attorney of record, Barbara L. Creel, Supervising Attorney at the Southwest Indian Law Clinic, University of New Mexico School of Law Clinical Law Programs and petitions this court for a Writ of Habeas Corpus pursuant to 25 U.S.C. § 1302-1303. The writ should issue based upon the following:

INTRODUCTION

Petitioner Aguilar challenges the Tribal Court conviction dated December 6, 2017, and the 2,160-day sentence imposed by the Pueblo of Santo Domingo Tribal Court (“Indian Tribe”), along with the fines and restitution ordered by the Tribal Court. The conviction and sentence

violate the Indian Civil Rights Act, 25 U.S.C. §1301, et. seq. (2016) (“ICRA”). Petitioner Aguilar’s petition is meritorious and the writ should issue.

Petitioner Aguilar is a 66-year-old Indian man, and the former Lieutenant Governor of the Pueblo of Santo Domingo. He was educated at the Santa Fe Indian School until the eleventh grade, when he left to become a fire fighter. He did not graduate high school. While he was a fire fighter, he was involved in a serious helicopter crash and suffered serious injuries to his neck and back. More recently, he has suffered from diabetes and other medical issues and is under a doctor’s care. He is being held in the Sandoval County Detention Center.

The process initiated by the Indian Tribe allowed no due process, afforded no right to counsel nor any meaningful opportunity to prepare, be heard or defend on serious criminal charges. In addition, the six-year sentence is illegal, as it is above the statutory maximum of one year under 25 U.S.C. § 1302(a)(7)(B). The illegal sentence claim (CLAIM V) is dispositive on the record, and release is warranted pending further review and adjudication on the merits of the case.

FACTUAL AND PROCEDURAL BACKGROUND

Jurisdiction and Venue

Jurisdiction before this Court is proper under the Indian Civil Rights Act, 25 U.S.C. § 1303. Jurisdiction lies in New Mexico. The Indian Tribe is in New Mexico, the summary conviction took place in New Mexico, and Petitioner Aguilar’s conviction and sentence were issued by a New Mexico Pueblo Indian Tribe. The Bureau of Indian Affairs (BIA), the agency that oversees the BIA jail, is present in New Mexico and the Sandoval County Detention Center houses tribal prisoners in New Mexico.

Venue is proper in the Federal District Court of New Mexico, as Petitioner Aguilar remains in custody pursuant to the Pueblo of Santo Domingo Tribal Court's order and is currently incarcerated in New Mexico. All agents with authority to release Petitioner Aguilar reside and are present within the jurisdiction of this Court.

PROCEDURAL AND FACTUAL BACKGROUND

1. Petitioner Aguilar is an enrolled member of the Pueblo of Kewa (also known as the Pueblo of Santo Domingo), a federally recognized Indian Tribe in New Mexico. *See* Fed. Reg. 82, 4915 (January 17, 2017).¹
2. Petitioner Aguilar was born and raised on the reservation at all times with the exception of school and employment, and has no known criminal history.
3. In 2015 and 2016, Petitioner Aguilar served as the Lieutenant Governor of the Pueblo of Santo Domingo.

Arrest

4. Upon information and belief, on November 22, 2017, an arrest warrant was issued for Petitioner Aguilar by Felix Tenorio, a Tribal Council member, with no power or authority to order an arrest.
5. On November 24, 2017, Petitioner Aguilar was arrested at his home on the reservation.
6. Petitioner Aguilar was taken into custody by Tribal police officers and placed in solitary confinement at the Santa Fe Detention Center, under a no bond hold.

First Tribal Court Hearing November 27, 2017

7. Petitioner Aguilar remained in custody for three days from November 24 until November 27, 2017.

¹ The Tribe is listed in the Federal Register as Pueblo of Kewa. The Tribal Court documents bear the name Santo Domingo Tribal Courts or Tribal Court for the Pueblo of Santo Domingo. The names identify the same Tribe.

8. On the evening of November 27, 2017, The Tribe transported Petitioner Aguilar from the Santa Fe County Detention Center to the Santo Domingo Pueblo for a hearing. *See*, Exhibit A, Arraignment/Judgement Form.
9. Petitioner Aguilar was arraigned in Tribal Court on charges of larceny, fraud, and conspiracy in violation of “Tribal traditional law.” *See*, Exhibit B, Criminal Complaint”.
10. The Criminal Complaint in the Tribal Court Cause Number: SDPMR-1117-22, cites to no written code or elements of an offense. Upon information and belief, the complaint was drafted and signed by BIA Special Agent Franklin Chavez and Special Prosecutor John Day. *See*, Exhibit B, Criminal Complaint.
11. The alleged six charges related to financial transactions in 2015 and 2016: Count 1 (Larceny) related to a charge for \$100 in 2015; Count 2 (Fraud) related to a voucher submitted in 2016 to request payment in Count 1; Count 3 (Larceny) related to a July 13, 2106 check for \$600; Count 4 (Conspiracy) related to the \$600 check in Count 3; , Count 5 (Fraud) related to an alleged “settlement agreement,” and; Count 6 (Conspiracy) also related to the same allegations of a purportedly unauthorized “settlement agreement.” *See*, Exhibit B.
12. Petitioner Aguilar pled “Not Guilty” to all six charges. The form – a pre-printed Arraignment and Judgement [sic] duplicate form – mistakenly has boxes for “Guilty” and “Not Guilty” checked. *See*, Exhibit B.
13. Lieutenant Governor Esquipula T. Tenorio presided over this arraignment and signed the advisement of rights form, which is dated November 27, 2017. *See*, Exhibit C, Advisement of Rights Order.
14. Lt. Governor Tenorio issued Conditions of Release, dated November 28, 2017, and signed and dated by Petitioner Aguilar on November 29, 2017. *See*, Exhibit D.

15. The conditions of release imposed by the Santo Domingo Tribal Courts required Kenneth Aguilar to turn in his passport and prohibited contact with co-defendant Daniel Coriz, Tribal Council members and the Tribal Governor and Lt. Governors. The conditions also prohibited travel outside of Sandoval County, and required notice and a doctor's note for medical appointments outside Sandoval County. *See*, Exhibit D, Conditions of Release.
16. The Santo Domingo Tribal Court also issued a summons signed by Lt. Governor Tenorio summoning Petitioner Aguilar to appear nine days later, on December 6, 2017 for his trial on the charges listed in the complaint. *See*, Exhibit E, Summons.
17. On or about December 1, 2017, Petitioner Aguilar filed a Motion for Continuance. *See* Exhibit F.
18. On December 4, 2017, the Governor and Tribal Court Judge Robert B. Coriz denied the Motion for Continuance in a document on Santo Domingo Tribal Court letterhead which provided:

The Santo Domingo Tribal Courts you that your motion for continuance has been **denied**. It has been denied because Tribal Courts has allowed additional time for you to find an attorney which is more than the normal time. You were made aware of your charges since November 24, 2017 upon your arrest.

Your trial date is on December 6, 2017 at 1:00pm.

See, Exhibit GIN (emphasis in original).

Hearing on December 6, 2017

19. December 6, 2017, Petitioner Aguilar appeared again before the Santo Domingo Tribal Court.
20. At this hearing, upon information and belief, the Tribal Court consisted of Governor Robert B. Coriz, Lt. Governor Esquipula T. Tenorio, ten tribal officials, and seven former tribal officials from 2016.

21. Petitioner Aguilar was not represented by counsel during this December 6, 2017, hearing.

The Tribal Court did not provide defense counsel at the Tribal Government's expense, nor was the defendant represented by counsel at his own expense.

22. The proceeding was conducted in the tribal traditional language of Keres.

23. Petitioner Aguilar did not admit to any of the charges or agree to change his original plea of "Not Guilty."

24. The Tribal officials found Petitioner Aguilar guilty on all six charges, and imposed a sentence of 360 days on each count. *See*, Arraignment/Judgement form, Exhibit A.

25. The pre-printed form provides, in relevant part:

The accused appeared before the Court on _____, 20__ was read and given a copy of the Complaint, was advised of his/her rights and freely entered a Plea of:

☐ Guilty ☐ Not Guilty to the listed charge(s).

After a Trial held on _____, the Defendant was sentenced as follows:

☐ Fine(s)

☐ Jail term ☐ Court Costs: \$ ☐ Total \$

See, Exhibit A.

26. The box for "Guilty" is checked. The hand-written jail term of "2160 days" was imposed along with Court Costs of \$10, and a fines totaling \$700. *See*, Exhibit A.

27. Governor Robert B. Coriz signed the Arraignment/Judgement [sic] form order dated December 6, 2017, imposing a total jail term of 2160 days (6 x 360), and fines (\$100 for Count 1 and \$600 for Count 3). *See*, Exhibit A.

28. The form also listed Restitution in the amount of \$20,000. *See*, Exhibit A.

29. The Tribal Court issued a Court Order dated December 6, 2017, listing the offenses, jail time, and restitution amount, signed by Governor Robert B. Coriz in the space marked “TRIBAL COURT JUDGE.” See, Exhibit H.
30. Petitioner Aguilar was taken into custody immediately after sentencing and placed at the Sandoval County Detention Center. While incarcerated he has reported health issues due to diabetes related illnesses.

THE CURRENT PETITION

Exhaustion

31. There is no exhaustion requirement under the habeas provision of the Indian Civil Rights Act. 25 U.S.C. § 1303.
32. Petitioner Aguilar knows of no available remedy from the Tribal Courts. The form advice of rights provides that appeal must be taken within 7 days. *See*, Exhibit C. Petitioner Aguilar was incarcerated and without counsel during that time. Importantly, there is no appeal procedure provided in the tribal court’s traditional law and process. Instead, the Tribal Council reviews the decisions of the Governor, as needed.
33. Upon information and belief, there is no written tribal code. In addition, efforts to engage the sovereign action or response of the Tribal Court are futile. Therefore, Petitioner Aguilar has exhausted all tribal remedies, and this Petition for Writ of Habeas Corpus (“Petition”), follows, pursuant to Section 1303.
34. The Tribal Court conviction, Tribal Court Order of detention, and sentence imposed by the Governor or Tribal Court Judge are illegal and in violation of 25 U.S.C. § 1302. Petitioner Aguilar is entitled to immediate Habeas Corpus relief based on the following violations:

I. THE SANTO DOMINGO PUEBLO TRIBAL COURT VIOLATED PETITIONER AGUILAR'S RIGHT TO COUNSEL UNDER THE INDIAN CIVIL RIGHTS ACT WHEN IT TRIED HIM WITHOUT THE BENEFIT OF RETAINED OR APPOINTED COUNSEL.

Concise Statement of Facts on the Record in Support of Claim I.

RIGHT TO COUNSEL VIOLATIONS

The Indian Tribe, in exercising its powers of self-government, violated Petitioner Aguilar's right to counsel guaranteed under the Indian Civil Rights Act, 25 U.S.C. §1302(c)(1-2). The Indian Civil Rights Act requires the Tribal Government to provide the effective assistance of a defense attorney, at the Tribal Government's expense, in order to issue a total sentence of more than one year. 25 U.S.C § 1302(c)(1-2). The Tribal Court in this case failed to do so. Specifically, Section 1302(c)(1-2) provides:

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

- (1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution, and
- (2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

The Indian Tribe did not provide qualified indigent defense counsel for Defendant Aguilar at the December 6, 2017 trial, as required by the statute.

Petitioner Aguilar also has a right to counsel at his own expense under 25 USC § 1302(a)(6), but the Tribal Court did not allow him sufficient time to retain counsel or prepare a defense based upon any of his rights. 25 USC § 1302(a)(8). Petitioner Aguilar was given a few days to prepare and forced to appear *pro se*.

When Petitioner Aguilar was arrested and incarcerated on November 24, 2017, he was not permitted to call anyone, and was placed in solitary confinement and held without bond. Upon his release from jail on the night of November 27, 2017, he began his search for an attorney. Petitioner Aguilar attempted to retain counsel by contacting several attorneys. On Friday, December 1, 2017, Petitioner Aguilar filed a Motion for Continuance requesting a continuance of the trial set for December 6, 2017 so that he could have more time to find counsel. On Monday December 4, 2017, the Court denied Petitioner Aguilar's Motion for Continuance, finding that he knew of his charges from his arrest one week before, and that he had had enough time to find an attorney.

Petitioner Aguilar was unreasonably prevented from securing an attorney after he was arrested on November 24, 2017, because he was held in solitary confinement without bail or bond until the date he was read the charges on November 27, 2017 at arraignment. He was not able to locate or hire any attorney after his release on November 27, 2017, before his trial date on December 6, 2017.

This process, an arraignment, summary trial, and sentencing – all “critical stages” in a criminal case – was condensed and completed in less than ten days. Because these were “critical stages” of criminal proceedings, Petitioner Aguilar's right to counsel under Section 1302(a)(6) and Section 1302(c)(1) required the presence of counsel unless he waived this right. *Mempa v. Rhay*, 389 U.S. 128, 134 (1967). The time in which Petitioner Aguilar was advised of his charges, asked to plead, and sentenced, transpired so quickly that there was no opportunity for him retain an attorney, much less give the attorney time to adequately prepare his defense. *Powell v. State of Alabama*, 287 U.S. 45, 58 (1932) (holding that defendants' right to counsel was violated when a defense attorney was appointed immediately before trial and had no time to prepare for the proceedings). In this case, there was no waiver of the right to counsel.

NO VALID WAIVER

The Indian Tribe, in exercising its powers of self-government, did not obtain a knowing, voluntary, and intelligent waiver of Petitioner Aguilar's right to counsel under Section 1302(a)(6). *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009); *See Also Johnson v. Zerbst*, 304 U.S. 458, 465 (1938) (providing that it is the duty of the trial court judge to determine whether the defendant has made a valid waiver); *See Also Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948) (stating that a defendant cannot not waive his right to counsel unless the court conducts a colloquy in which the judge makes "certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is tendered"). The record is devoid of any review of the enumerated rights to appointed counsel or retained counsel, and no waiver of those rights.

Petitioner Aguilar did not waive his right to counsel. The only documents that Petitioner Aguilar signed during his initial hearing were the Arraignment and Judgment form and the Advisement of Rights Order form. See, Exhibits A and C). Petitioner Aguilar entered a plea of "Not Guilty."

The Arraignment and Judgment form does not contain a waiver. The form did not inquire whether Petitioner Aguilar wanted counsel, and did not indicate that by signing he was waiving any rights. *Carnley v. Cochran*, 369 U.S. 506, 515 (1962) (stating a waiver of any substantive trial and pre-trial rights may not be presumed from a "silent" record). The Tribal Officers who presided over the hearing provided no "active inquiry" explaining the legal consequences of waiving the right to counsel to Petitioner Aguilar. *Faretta v. California*, 422 U.S. 806, 835 (1975) (stating that courts must make defendants aware of the "dangers and disadvantages of self-representation"). There is no evidence that the Tribal Officers even asked if Petitioner Aguilar wanted to retain an

attorney at his own expense, let alone informed him that the Tribal Government is required to pay for one in this case. There is no knowing, intelligent, and voluntary waiver of Petitioner Aguilar's right to counsel. *Montejo*, 556 U.S. 786. The conviction is illegal and the writ should issue.

II. THE INDIAN TRIBE VIOLATED PETITIONER AGUILAR'S RIGHTS UNDER THE INDIAN CIVIL RIGHTS ACT WHEN THE SANTO DOMINGO TRIBAL COURT FAILED TO FOLLOW THE REQUIREMENTS TO IMPOSE AN ENHANCED SENTENCE OVER ONE YEAR.

Concise Statement of Facts in Support of Claim II

The Indian Tribe, in exercising its powers of self-government, violated Petitioner Aguilar's rights under ICRA by failing to meet the protections of Section 1302, which provides:

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

1. Has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or
2. Is being prosecuted for any offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

In addition, Section 1302(c)(3), adds specific constitutional guarantees as requirements, including a law-trained judge and a public trial and record of the proceeding, in order to impose a “total term of incarceration of more than 1 one year.” Specifically, ICRA provides:

(c) Rights of defendants In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

1. provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
2. at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
3. require that the judge presiding over the criminal proceeding—
 - (A) has sufficient legal training to preside over criminal proceedings; and
 - (B) is licensed to practice law by any jurisdiction in the United States;

4. prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and
5. maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

As set forth above, the right to constitutionally effective defense counsel was not provided by Tribal Court. Governor Robert B. Coriz, Lt. Governor Esquipula T. Tenorio, ten tribal officials and seven former tribal officials presided over the trial held on December 6, 2017. None of these individuals has the required legal training to preside over criminal proceedings and none of these individuals is licensed to practice law by any jurisdiction in the United States. Petitioner Aguilar was provided no written law, criminal code, rules of evidence or criminal procedure of the Tribal Government. Importantly, Petitioner was not informed of any record of the criminal trial proceeding.

Since Petitioner Aguilar's total sentence is greater than one year, the Tribal Government is required to ensure that the presiding judge is legally trained, specifically to preside over criminal proceedings and is licensed to practice law in any jurisdiction in the United States. This Tribal Court failed to do so. The conviction is illegal and the writ should issue.

III. THE SANTO DOMINGO TRIBAL COURT VIOLATED PETITIONER AGUILAR'S RIGHT TO A JURY TRIAL UNDER 25 U.S.C. § 1302(10) WHEN IT CONSTITUTED A JURY THAT WAS COMPRISED OF THE SAME PEOPLE WHO ISSUED THE CHARGES AND RESULTED IN NO MEANINGFUL TRIAL BY JURY.

Concise Statement of Facts in support of Claim III

The Indian Tribe, in exercising its powers of self-government, violated Petitioner Aguilar's right to a jury trial under Section 1302(10). The Tribe did not provide a fair and impartial jury. Nor did it allow for a public trial. The Tribal Court's instead, empaneled a group of former tribal officials to interrogate and hurl accusations at him during the December 6, 2017, trial proceeding.

This action prevented Petitioner Aguilar from exercising his statutory right to a jury trial, as required by the Indian Civil Rights Act. Petitioner Aguilar was denied the right to assistance of counsel necessary to decisions regarding this affirmative right and benefit of a jury trial.

The Tribal Court's failure to appoint counsel, failure to allow Petitioner Aguilar to obtain counsel, failure to provide a full and fair jury trial renders this conviction in violation of the Indian Civil Rights Act and invalid. The conviction is illegal and the writ should issue.

IV. THE INDIAN TRIBE VIOLATED PETITIONER AGUILAR'S RIGHT TO DUE PROCESS OF LAW GUARANTEED UNDER 25 U.S.C. § 1302(a)(8), WHEN THE TRIBAL OFFICER WHO ISSUED THE ARREST ORDER WAS NOT AUTHORIZED TO DO SO, AND WHEN THE INDIAN TRIBE CREATED A NEW PROCESS SPECIFICALLY FOR THIS PROSECUTION OUTSIDE OF TRIBAL LAW, TRADITION AND CUSTOM.

Concise Statement of Facts in Support of Claim IV

The Indian Tribe, in exercising its powers of self-government, violated Petitioner Aguilar's due process rights under Section 1302(a)(8) when it allowed tribal council member to issue an arrest warrant. Petitioner Aguilar has knowledge of tribal traditional law. According to traditional law and custom, only the Governor or Lt. Governor has the power to issue orders. Even while sitting as an "Acting" official in place of the Governor or Lt. Governor, tribal officers have no power or authority. Their solemn duty is to collect information on behalf of the Governor or Lt. Governor.

In addition, the Indian Tribe created a special summary proceeding, and invented a jury-type proceeding that did not comport with justice and fairness in order to find Petitioner Aguilar guilty of the allegations. The records show that the Indian Tribe apparently attempted an investigation of fiscal transactions that allegedly involved many council members. The Tribe hired a special prosecutor for the purpose of charging and jailing the former Tribal Governor and Lt. Governor from 2015 and 2016.

The special prosecutor and tribal officials failed to provide any semblance of due process. The basic and foundational requirements of a fair hearing were missing. The Indian Tribe has no written code or process. There was no notice of the legal basis for charges nor any description of the elements of the alleged offenses, orally or in writing. The “trial” proceeding did not include any discovery of the allegations or evidence against the defendant. The trial was not public. There was no opportunity for Petitioner Aguilar to call or compel testimony in his own defense. He was not able to view documents or cross-examine the Tribe’s witnesses. He was not provided a fair and impartial jury. All of these fundamental rights are meaningless without the benefit of counsel and importantly, Petitioner Aguilar was tried and sentenced in the same proceeding with a prosecuting attorney and without a defense. The conviction is illegal and the writ should issue.

V. THE KEWA TRIBAL COURT VIOLATED PETITIONER AGUILAR’S RIGHTS UNDER SECTION 1302(c) WHEN IT IMPOSED A PENALTY IN EXCESS OF THE STATUTORY MAXIMUM AND FAILED TO FOLLOW THE REQUIREMENTS NECESSARY TO ISSUE A TOTAL SENTENCE OF LONGER THAN ONE YEAR.

Concise Statement of Facts in Support of Claim V

The Indian Tribe, in exercising its powers of self-government, violated Petitioner Aguilar’s right under Section 1302(c) by issuing a total sentence of greater than one year while failing to follow the statutory requirements for imposing such a sentence. Prior to 2010, the Indian Civil Rights Act provided that the Indian Tribe could *in no event* impose a sentence of over 365 days. § 1302(a)(7)(B)(2006).

However, the Tribal Law and Order Act of 2010, amended ICRA to allow longer sentences under specific circumstances if and only if, certain requirements are met. Those requirements include, but are not limited to, providing competent counsel for the defendant at the Tribal

Government's expense and guaranteeing that a judge with sufficient legal training presides over the criminal proceedings. Section 1302(c)(3)(A).

The requirements of the ICRA and Tribal Law and Order Act were ignored during Petitioner Aguilar's hearing. The presiding judge, who is also the current Governor and the Respondent in this case, does not have a license to practice law in any jurisdiction in the United States in violation of Section 1302(c)(3)(B). In addition, the Indian Tribe must have a criminal code that is available to the public. It does not. Petitioner Aguilar, who knows his own traditional law and custom was not able to defend himself in this newly formed adversarial process. The Indian Tribe has never met any of the requirements to legally impose an enhanced sentence, and it failed to do so in this case, even with the assistance of a law-trained special prosecutor. The conviction and sentence are both illegal, individually and separately, and the writ should issue.

CONCLUSION

WHEREFORE, Petitioner Aguilar respectfully requests that this Court review his Petition for Writ of Habeas Corpus pursuant to 25 U.S.C. 1303 and grant the following relief:

- 1) Find the Claims meritorious and the Conviction dated December 6, 2017, to be invalid and in violation of the Indian Civil Rights Act, and;
- 2) Issue the Writ of Habeas Corpus ordering Respondents to release Petitioner Aguilar from custody immediately.
- 3) In the alternative, Order the Respondent to Respond and produce the record of the underlying criminal trial proceeding as required by ICRA, to deny these Claims, and Order an expedited evidentiary hearing on the merits, and;

- 4) Find the sentence above the statutory maximum, CLAIM V, is dispositive on the record,
Order Petitioner Aguilar's immediate release pending review and resolution on the merits,
and;
- 5) Grant any other further relief that this Court deems just and proper.

Respectfully Submitted this 27th Day of December, 2017,

/s/ Barbara Creel

Barbara Creel, Director & Supervising Attorney

Kenneth Bobroff

Attorneys for Petitioner Kenneth Aguilar

Southwest Indian Law Clinic

UNM School of Law MSC11 6070

1 University of New Mexico

Albuquerque, New Mexico 87131-0001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of December, 2017, I filed the foregoing Petition for Writ of Habeas Corpus and Exhibits A thru H electronically through the CM/ECF system, and served the parties of record through that system and on the 28th of December Via First Class U.S. Mail addressed as follows:

Victor Rodriguez, Acting Superintendent
Sandoval County Detention Center
1100 Montoya Rd
Bernalillo, New Mexico 87004

Robert B. Coriz, Governor and Tribal Court Judge
Pueblo of Santo Domingo Tribal Court
P.O. Box 279
Santo Domingo Pueblo, New Mexico 87052

John Day, Special Prosecutor
The Law Office of John Day
505 Cerrillos Rd, Suite A205
Santa Fe, New Mexico 87501-3049

Teresa Leger de Hernandez
General Counsel for Pueblo of Santo Domingo
Leger Law & Strategy LLC
414 Old Taos Hwy
Santa Fe, NM 87501-1204

And on 28th of December, 2017, I caused a True and Correct filed copy of the foregoing Petition for Writ of Habeas Corpus and Exhibits to be served on the following non-CM/ECF Participants by personal service through a non-party.

Robert B. Coriz, Governor and Tribal Court Judge
Pueblo of Santo Domingo
Santo Domingo Pueblo, New Mexico 87052

/s/ Barbara Creel
Barbara Creel
Attorney on behalf of Petitioner Aguilar