

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

DANIEL E. CORIZ,

Petitioner,

No. 1:17-CV-01258 JB/KBM

v.

VICTOR RODRIGUEZ, ACTING WARDEN

Sandoval County Detention Center,

ROBERT B. CORIZ, TRIBAL COURT JUDGE

and Governor for the Pueblo of Kewa, and

KEWA PUEBLO,

(Also known as Santo Domingo Pueblo),

Respondents.

**PETITIONER’S MOTION TO SUPPLEMENT
THE WRIT OF HABEAS CORPUS PETITION**

COMES NOW the Petitioner, Daniel B. Coriz, 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 moves this court for leave to supplement Petitioner’s original Writ of Habeas Corpus pursuant to 25 U.S.C. § 1302-1303 and Fed. R. Civ. P. 15(d).

The Grounds for this Motion Are as Follows

Petitioner Coriz challenges the order of detention, conviction, new embezzlement charge, and seven-year sentence imposed by the Tribal Court of the Pueblo of Santo Domingo (“Tribe”) in violation of the Indian Civil Rights Act, 25 U.S.C. §§1301, 1302 et.seq. (2016) (“ICRA”). The Tribal Court’s judicial process allowed Petitioner no pre-trial release, due process, right to counsel, meaningful opportunity to prepare, or be heard. In addition, the Tribal Court’s Amended Order

Vacating Convictions and Sentence (“Amended Order”) subjects Petitioner Coriz to repeated reprosecution for all crimes charged in his previous convictions, at the discretion of the prosecutor, without time limits or reference to the process he will be afforded. The Amended Order of detention, thus, subjects him to double jeopardy in a criminal proceeding, violating 25 U.S.C. § 1302(a)(3). [Doc. 51-1, page 2]. The absence of the opportunity for bail or detention review in Petitioner’s October 8, 2018 Arraignment on a separate charge of embezzlement under 25 CFR 11.414 violates due process and the ex post facto clause of ICRA. 25 U.S.C. § 1302(a)(7)(A) and 25 U.S.C. § 1302(a)(9). [See Doc. 51-1 and Doc. 51-2].

Although the date “4/18/18” appears on the Tribal Court’s arraignment document for the embezzlement charge, the actual arraignment occurred almost six months later in October. [Doc 51-2, page 1]. The additional embezzlement charge came after this Court’s May 15, 2018 Proposed Findings and Recommended Disposition stated that the Tribal Court violated ICRA in former jeopardy trial on December 6, 2017. [Doc. 40, p.12-15]. The alleged embezzlement took place between September 23, 2015 and February 1, 2016, the exact time period of the original charges. (See larceny charges—4, 6, and 7) [Doc 51-2 and Doc. 1-3]. After setting a hearing without any notice in September, the Tribal government inexplicably aborted an attempt to transport the Petitioner back to Santo Domino to be charged. He was then later arraigned on October 8, and ten days later, on October 18, 2018, the Tribal Court vacated the conviction. [Doc. 51-1]. Although the Tribal Court vacated those conviction, the Order of detention remained. The Amended order changes the custody status of Petitioner to “remain in custody pending the new charge” to avoid jurisdiction of this Court. Petitioner continues to remain in custody and served 334 days of the illegal sentence. [Doc. 51].

While Petitioner’s December 6, 2017 charges were vacated, in the Amended Order, the

Tribal Court retained the right to “retry any of the charges for which [Petitioner] Coriz was found guilty on December 6, 2017 [*sic*],” and that “each such charge against [Petitioner] Coriz shall be tried as soon as practical in a separate criminal trial and [leave Petitioner] subject to a sentence.” [Doc. 51-1].

The vacation and release from custody is illusory, because Petitioner will be recharged for those vacated crimes and face charges that are or may be precluded under double jeopardy, collateral estoppel, and res judicata. [Doc 51-1, p.3]. The Amended Order provides that “each [c]harge against [Petitioner] Coriz shall be tried as soon as practical in a separate criminal trial and subject to a sentence of up to one year for each charge.” [Doc. 51-1, p.2]. The new charge of embezzlement against Petitioner is based upon the original investigation and allows for the Tribe to repeatedly and abusively prosecute Petitioner Coriz until they are able to get a conviction to stand. By remaining Petitioner in custody in pre-trial detention, the Tribe ensures that any process is meaningless or evades review because he will have served the maximum sentence regardless of whether it is pre-trial or post-conviction.

Petitioner Coriz moves to supplement the Writ of Habeas Corpus filed in this Court on December 22, 2017 [Doc. 1]. This request to supplement is made pursuant to the Federal Rules of Civil Procedure Rule 15(d) which states in relevant part that “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened *after* the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d) (emphasis added). There is no time limit and the original habeas application may be amended or supplemented as provided in the rules of procedure applicable to civil actions. In the words of the Tenth Circuit: “Rule 15(d) gives trial courts broad discretion to permit a party to serve a supplemental pleading setting forth post-complaint transactions, occurrences or events.”

Walker v. United Parcel Service, Inc., 240 F.3d 1268 (10th Cir. 2001, citing *Gillihan v. Shillinger*, 872 F.2d 935, 941 (10th Cir.1989)). Such authorization “should be liberally granted unless good reason exists for denying leave, such as prejudice to the defendants. *Id.* See also, *Carter v. Bigelow*, 787 F.3d 1269, 1278 (10th Cir. 2015) (citing 28 U.S.C. § 2242). Therefore, supplemental pleadings are appropriate to “set forth new facts in order to update [an] earlier pleading.” *Id.* (Citing 6A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1504 (3d ed.2014)).

The Tribe has a duty to abide by the requirements set out in ICRA. Specifically, “Section 1302(c) imposes requirements that apply ‘[i]n 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.’” [Doc. 40]. In his opinion on Petitioner Coriz’s Petition for the Writ of Habeas Corpus, Judge Browning cited to *Miranda v. Anchondo*, 684 F.3d 844, 849 n.4 (9th Cir. 2012) to explain the extent and the nature of obligation that a Tribe owes to a criminal defendant under ICRA:

In 2010, Congress rewrote § 1302. Unlike the former version, the amended statute permits up to a three-year term for “any 1 offense” in certain circumstances. 25 U.S.C. § 1302(a)(7)(C), (b) (2011). It also explicitly defines “offense” to mean “a violation of criminal law,” *id.* § 1302(e), and permits consecutive sentences up to a cumulative total of nine years, *id.* § 1302(a)(7)(D). However, if a tribal court metes out this enhanced punishment in a single “criminal proceeding,” the defendant must receive something akin to a full panoply of procedural rights that would be due a criminal defendant prior to conviction. *Id.* § 1302(c).

[Doc. 40]. Because the Tribe has a duty to abide by the requirements set out in ICRA, such duty is continuous and extends to all stages of judicial process. See generally *Carter*, 787 F.3d 1269, 1278. The Tribal Court has manifested its intent to sidestep the law by ordering that Petitioner Coriz be subjected to additional charges from the original investigation, but with the benefit of time, and an analysis of ICRA that will repeatedly subject Petitioner Coriz to prosecution over and

over again. See [Doc. 51-1]. The Amended Order embodies claims that were not present or existing at the time of filing, and Petitioner Coriz should be allowed to supplement his habeas petition before this Court. See generally *Carter*, 787 F.3d 1269, 1278.

Respondent Coriz opposes this motion. Concurrence from Respondent Rodriguez was sought after hours and no response had been provided at the time of filing.

Relief Requested

Based on the Arguments made herein, Petitioner Coriz respectfully requests the following:

1. This Court allow him to supplement his Writ of Habeas Corpus petition filed in December 22, 2017, to add the Claims presented by the governmental action in the subsequent Order of detention.
2. Grant any other relief that the Court deems appropriate.

Respectfully Submitted this 5th Day of November 2018,

/s/ Barbara Creel
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On the Brief:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of November, 2018, I filed the foregoing Motion to Supplement the Writ of Habeas Corpus Petition electronically through the CM/ECF system, and served the parties of record through that system, and that on such date I served the foregoing on the following

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