

**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,
Sandoval County New Mexico.**

ROBERT B. CORIZ, Tribal Court Judge,

**and THOMAS MOQUINO, Governor for the
Pueblo of Kewa (also known as the Santo
Domingo Tribe)**

Respondents.

**RESPONDENT ROBERT B. CORIZ'S RESPONSE
TO PETITIONER'S MOTION TO SUPPLEMENT
THE WRIT OF HABEAS CORPUS PETITION**

Petitioner's Motion to Supplement the Writ of Habeas Corpus Petition (Doc. 63) (the "Motion to Supplement") is essentially a rehash of Petitioner's arguments opposing Respondent's Expedited Motion to Dismiss (Doc. 51). It is a last-ditch effort to save the Petition from being dismissed as moot because Petitioner has already been granted all of the relief to which he is entitled under the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304. ("ICRA").

The Motion to Supplement should be denied because supplementation would be futile. "Futility" under Rule 15 turns on whether the proposed pleading would state a claim upon which relief could be granted. *Kalimantano GmbH v. Motion in Time, Inc.*, 939 F.Supp.2d 392, 403 (S.D.

N.Y. 2013) (citations omitted). “The Court accordingly considers the factual allegations both in the Amended Complaint and in Plaintiffs’ proposed supplement, so as to enable a determination whether the motion to supplement would be futile.” *Id.* at 404 (emphasis added). Petitioner failed to attach the proposed supplement to Petitioner's Motion to Supplement, as required by the District of New Mexico Local Rules of Civil Procedure, D.N.M.LR-Civ. 15.1. So, it is difficult to determine just how Petitioner proposes to supplement the Petition. It appears that Petitioner intends to try to state a new claim based on the fact that Petitioner is being held in pre-trial detention on a new charge of embezzlement. (Doc. 51-2 at 1.) As shown in Respondent's Motion to Dismiss, all of the convictions and sentence imposed on Petitioner related to the claims in the Petition have been vacated and he was released from custody on those convictions. (Doc. 51-1.) He has not yet been tried on the new charge of embezzlement.

Any allegation that Tribal Court proceedings on the new charge violates or will violate ICRA is only speculative at this point, not yet ripe for this Court's review, and this Court has no jurisdiction to review it. *Eddleman v. McKee*, 586 F.3d 409, 413 (6th Cir. 2009) (Federal habeas jurisdiction requires that the prisoner be held pursuant to a judgment, not an indictment or criminal information. The limitation is why petitions are brought after the prisoner is convicted, not before.). *See also Green v. Whetsel*, 164 F.App'x 710, 710-11 (10th Cir. 2006) (denial of habeas petition challenging pre-trial detention; certificate of appealability denied). Petitioner may or may not be found guilty of the new charge against him. If he is found guilty, he is required to exhaust his tribal remedied before he can bring a habeas claim in this court. *Valenzuela v. Silversmith*, 699 F.3d 1199 (10th Cir. 2012) Accordingly, any new claim based on the embezzlement charge would fail to state a claim on which relief could be granted and would be futile.

Based on the foregoing, Respondent Coriz respectfully requests that the Motion to Supplement be denied as futile and the Petition be dismissed as moot, as argued in Respondent's Motion to Dismiss (Doc. 51).

Respectfully submitted,

LEGER LAW AND STRATEGY, LLC

By /s/ Cynthia A. Kiersnowski

Cynthia A. Kiersnowski

414 Old Taos Highway

Santa Fe, NM 87501

cindy@legerlawandstrategy.com

(505) 982-3622

Attorneys for Respondents Robert B. Coriz and
Thomas Moquino

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of November, 2018, I filed the foregoing Respondent Robert B. Coriz's Response to Petitioner's Motion to Supplement the Writ of Habeas Corpus Petition using CM/ECF which caused the following counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Barbara Louise Creel
Attorney for Petitioner Coriz
creel@law.unm.edu

Heather Renee Smallwood, Robin Hammer
and David C. Mann
Attorneys for Respondent Rodriguez
hsmallwood@sandovalcountynm.gov
rhammer@sandovalcountynm.gov
dmann@sandovalcountynm.gov

/s/ Cynthia A. Kiersnowski