

Benjamin Law Firm

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Federal Criminal

State Criminal

Civil Litigation

8th COURT OF APPEALS
EL PASO, TEXAS

6/8/2021 6:02:40 PM

ELIZABETH G. FLORES
Clerk

June 8, 2021

Elizabeth G. Flores
Clerk
Eighth Court of Appeals
500 E. San Antonio, Room 1203
El Paso, Texas 79901

RE: *Ramon Astorga*. 08-20-00180-CR. 20190D06768-243. Additional Authority.

Dear Ms. Flores:

The United States Supreme Court held last week in *United States v. Cooley*, No. 19-1414, 2021 WL 2194835, ____ S. Ct. ____ (June 1, 2021) (not yet published) that a tribal police officer has the authority to detain temporarily and search a non-Indian person traveling on public rights-of-way running through a reservation for potential violations of state or federal law.

Although the *Cooley* case addressed similar issues as those addressed in Mr. Astorga's case, the case is sharply distinguishable. It does not authorize Mr. Astorga's arrest, detention, search, and the discovery of contraband at issue in his case. The Government's petition for certiorari was granted in *Cooley*, in order to decide whether a tribal police officer has the authority to detain temporarily and search non-Indians traveling on public rights-of-way running through a reservation for potential violations of state or federal law.

In Mr. Astorga's case, the issue addressed in the *Cooley* case – that Tribal Police detained him to enforce state or federal law, was not raised in the trial court and was waived by the State. In fact, the Tribal Police Department could not have been enforcing State Law when they detained Mr. Astorga as the turn signal violation that they detained him for – was not a violation of State Law.

The *Cooley* case addressed a temporary detention at the scene – not a full-blown custodial arrest at Tribal Headquarters. The *Cooley* case is distinguishable because Mr. Astorga had been arrested by Tribal Police not temporarily detained; Mr. Cooley had been temporarily detained and not arrested. *Cooley* specifically found that, “[t]o deny a tribal police officer authority to **search and detain for a reasonable time any person** he or she believes may commit or has committed a crime would make it difficult for tribes to protect against ongoing threats.” [emphasis supplied]. As explained in detail in his briefing on the merits, Mr. Astorga was not detained for a reasonable time for a violation of State law, he was searched pursuant to a full-blown custodial arrest in a Tribal Police cell. Tribal Police authority to arrest was not addressed in the *Cooley* case.

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Cooley is further distinguishable as because there was no statutory or treaty limitation on Tribal Police Authority there. "Here, no treaty or statute has explicitly divested Indian tribes of the policing authority at issue." *Cooley, supra* *3. In Mr. Astorga's case, the Restoration Act, which is similar to Public Law 280 provides a substantial limitation on Tribal Law Enforcement authority by transferring that authority to the States. This is not a factor present in the *Cooley* case. Public Law 100-89, the Ysleta Del Sur Pueblo and the Alabama and Coushatta Indian Tribes Restoration Act, forced the Ysleta Del Sur Pueblo to concede to the State jurisdiction over criminal matters on the reservation.

Sincerely,

A handwritten signature in blue ink, appearing to be "Brock Benjamin", with a stylized, cursive script.

Brock Benjamin

BB/rml

Enclosures: As Stated

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