IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

DUSTIN PARKER,

Petitioner,

v.

CLINT HALFTOWN, TIMOTHY TWOGUNS, DONALD JIMERSON, GARY WHEELER, MICHAEL BARRINGER, and JONATHAN DEKANSKI, in their official capacities as members of the Cayuga Nation Council, and JOSEPH E. FAHEY, in his official capacity as Cayuga Nation Tribal Court Judge,

Respondents.

Case No. 5:24-cv-886 (BKS/TWD)

RESPONDENTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

The Court lacks jurisdiction over the petition for habeas corpus. The Court's jurisdiction under the Indian Civil Rights Act is limited to habeas petitions challenging "the legality of detention." 25 U.S.C. § 1303. Petitioner, however, is not challenging the legality of any detention. Instead, he is challenging orders affecting his economic interests. Such a challenge is not cognizable in a habeas petition.

Even if Petitioner could overcome that jurisdictional hurdle, his challenge to the Writ of Execution would be moot. On October 16, 2024, the Cayuga Nation Court of Appeals vacated the Writ of Execution. The Court of Appeals' decision confirms the fairness of the Nation's judicial system and demonstrates the wisdom of adhering to tribal exhaustion requirements. Petitioner also challenges his banishment order. But he did not adequately present his challenges to the tribal court, and in any event, those challenges are meritless.

Finally, Petitioner's challenge to the confinement order—which postdates the filing of this petition—is not properly before the Court. Even if that issue were properly presented, Petitioner has identified no basis for overturning the tribal court's judgment. As the Court of Appeals' recent decision regarding the Writ of Execution illustrates, the Nation's legal system is fundamentally fair. Petitioner has shown no basis for interfering with the Nation's exercise of its sovereignty.

ARGUMENT

I. PETITIONER'S CLAIM CHALLENGING THE WRIT OF EXECUTION SHOULD BE DISMISSED (COUNT THREE).

The Court lacks jurisdiction under ICRA over Petitioner's challenge to the Writ of Execution because Petitioner is not challenging his detention. In addition, Petitioner's challenge is moot because the Cayuga Nation Court of Appeals has vacated the Writ of Execution. To prevent future disputes, however, the Court should dismiss Petitioner's challenge to the Writ of Execution

based on ICRA's jurisdictional limitation rather than on mootness grounds. Finally, if the Court reaches the merits, it should hold that the now-vacated Writ did not violate Due Process.

A. ICRA Does Not Provide For Federal Review Of Property-Seizure Claims.

The Court lacks jurisdiction over Petitioner's property-seizure claim because "federal habeas jurisdiction does not operate to remedy economic restraints." *Shenandoah v. Halbritter* ("*Shenandoah II*"), 366 F.3d 89, 92 (2d Cir. 2004). In *Shenandoah II*, the Second Circuit held that a federal court lacked jurisdiction under ICRA when the "[t]he gravamen of Petitioners' Complaint focuse[d] on the destruction of their homes." *Id.* The court reasoned that the petitioners were challenging "an economic restraint, rather than a restraint on liberty." *Id.* Here, too, Petitioner is challenging an economic restraint: the seizure of his property. *Shenandoah II* establishes that Petitioner's challenge is not cognizable in habeas.

Petitioner acknowledges that there are "many similarities between the claims made here and in [*Shenandoah II*]," Opp'n at 7, but nonetheless attempts to distinguish *Shenandoah II* on two grounds. First, Petitioner claims that in *Shenandoah II*, the petitioners were challenging the "mere enforcement of an otherwise likely valid housing ordinance," whereas here, "Respondents are attempting to seize Parker's own private property in satisfaction of contempt fines." Opp'n at 7. But this distinction is relevant to the merits of whether the seizure is justified—not the question of whether habeas jurisdiction exists to challenge the seizure. *Shenandoah II* holds that destruction of a house is not "detention." 366 F.3d at 92. If that is so, seizure of the house is not "detention" either, regardless of whether the Nation's justification for the seizure here differs from the tribe's justification for destroying the house in *Shenandoah II*.

Second, Petitioner contends that "the Writ is just a recent link in a very long chain of events between Parker and Respondents," and insists that his banishment and the Writ are "intertwined."

Opp'n 9-10. But even setting aside that the Court lacks jurisdiction over the banishment order, *infra* at 5-7, Petitioner cannot bootstrap his challenge to the banishment order into a challenge to the seizure order. The banishment order and the Writ of Execution were issued at different times in different tribal-court cases under different laws. Opening Br. at 6-7. "[C]ognizable claims in a [habeas petition] do not run interference for non-cognizable claims." *United States v. Thiele*, 314 F.3d 399, 402 (9th Cir. 2002). The Court should thus dismiss Count Three for lack of jurisdiction.

B. The Challenge to the Writ of Execution is Moot, But the Court Should Not Dismiss Count Three on that Ground.

On October 16, 2024, the Cayuga Nation Court of Appeals vacated the Writ of Execution on the ground that the Nation's trial court "erred in concluding that [Parker] is 'exempt from the protections afforded by' the homestead exemption" under the Cayuga Nation Rules of Civil Procedure. Mem. and Order at 2, *Cayuga Nation v. Parker*, Index No. CV-21-016 (Cayuga Nation Ct. App. Oct. 16, 2024), ECF No. 42. The Court of Appeals determined that the trial court "did not determine whether the Montezuma Property is Mr. Parker and/or his family's principal residence," and hence remanded to the trial court for a hearing on that issue. *Id.* Because the Writ of Execution has now been vacated, Petitioner's challenge to that order is moot. Although the Court of Appeals' decision contemplates that the Writ of Execution might be reinstated following future proceedings, any challenge to such a hypothetical future decision is unripe.

The Nation respectfully requests, however, that the Court dismiss Petitioner's challenge to the Writ of Execution based on lack of habeas jurisdiction, rather than based on mootness. Although the Court must address jurisdictional issues before reaching the merits, "the same principle does not dictate a sequencing of jurisdictional issues"—the Court is free to dismiss based on lack of statutory subject-matter jurisdiction rather than mootness. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999). Here, Petitioner's failure to show "detention" is a jurisdictional

defect. *See Shenandoah II*, 366 F.3d at 92 (emphasizing that "federal habeas jurisdiction does not operate to remedy economic restraints" and holding that "the District Court properly dismissed Petitioners' claim for lack of subject matter jurisdiction"). Hence, the Court has the discretion to dismiss for lack of habeas jurisdiction rather than on mootness grounds. The Court should exercise that discretion to provide guidance for the parties. The Cayuga Nation Court of Appeals' decision remands for further proceedings on whether Pipekeepers is Petitioner's primary residence. If the answer is "no," and the trial court reinstates the Writ of Execution, Petitioner may file a new habeas petition. To foreclose such a future dispute, the Court should hold that it lacks habeas jurisdiction over the challenge to the Writ of Execution.

C. Petitioner's Remaining Arguments Lack Merit.

To the extent Petitioner's challenge to the Writ of Execution is still relevant in view of the Cayuga Nation Court of Appeals' decision, it is meritless. First, the Court of Appeals' decision illustrates the wisdom of requiring exhaustion before a federal case is filed. Petitioner's insistence that he should not have to exhaust tribal-court remedies because the Nation's judicial process is unfair, Opp'n at 4-6, has been proven wrong.

Further, Petitioner has not shown a due process violation. "[E]very court possesses the inherent power to enforce compliance with their lawful orders through civil contempt." *Spallone v. United States*, 493 U.S. 265, 276 (1990). Petitioner violated the Nation's laws and flouted the Nation's court orders for years. As a result, he incurred fines—none of which he now challenges. Having failed to pay those fines, it should hardly come as a surprise that the Nation's court would issue a Writ of Execution to enforce its judgment. It is not a due process violation that lawfully-entered judgments against Petitioner would be enforced.

II. PETITIONER'S CLAIMS CHALLENGING THE BANISHMENT ORDER SHOULD BE DISMISSED (COUNTS ONE AND SIX).

Petitioner alleges that the banishment order constituted a deprivation of liberty without due process of law (Count One) and a bill of attainder (Count Six). These claims are not cognizable under ICRA, are not exhausted, and fail on the merits.

A. Petitioner's Banishment Does Not Amount To Detention Under ICRA.

Just like Petitioner's property-seizure claim, Petitioner's banishment claim is not cognizable in an ICRA writ of habeas corpus, and the Court thus lacks jurisdiction. The banishment order does not require Petitioner to be detained. Instead, it states that Petitioner must leave the Nation's reservation and not come back. Notice of Total Banishment at 2, ECF No. 1-19. That order is not akin to the type of custodial orders traditionally cognizable in habeas corpus.

Petitioner relies on *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2d Cir. 1996), which held that a permanent banishment order gave rise to habeas jurisdiction under ICRA. Opp'n 11-15. But *Poodry* differs from this case in multiple respects.

First, unlike in *Poodry*, the Banishment Ordinance recites that the Cayuga Nation Council has the discretion to lift the banishment order. Banishment Ordinance § 2.7, ECF No. 1-5. Although Petitioner argues that the Ordinance gives the Council discretion on whether Petitioner should be reinstated, *see* Opp'n at 12-13, that discretion differentiates this case from *Poodry*, which repeatedly emphasized the permanent nature of the banishment as an important factor in the court's determination that the order gave rise to habeas jurisdiction. 85 F.3d at 876, 879, 895.

Second, Petitioner's banishment is not criminal. As *Poodry* recognized, there is strong evidence that "[ICRA] § 1303 applies only in the context of a criminal charge or prosecution." 85 F.3d at 887. *Poodry* stated that "[b]ecause … the tribal action in this case indeed arose in a criminal context, we ultimately need not resolve the question of whether habeas review is restricted to cases

involving a tribal criminal conviction." *Id.* at 888. But "many courts have found that Petitioners seeking relief under § 1303 must establish that[] … the proceeding at issue is criminal and not civil in nature." *Jeffredo v. Macarro*, No. 07-cv-1851, 2007 WL 9728449, at *3 (C.D. Cal. Dec. 4, 2007) (quotation mark omitted), *aff'd on other grounds*, 599 F.3d 913 (9th Cir. 2010).

Petitioner does not contest that a court should exercise habeas jurisdictions only over challenges to tribal-court orders imposing criminal sanctions. Instead, Petitioner insists that the banishment order *was* a criminal sanction. Opp'n at 13. But the Notice of Total Banishment repudiates that suggestion. Petitioner emphasizes that one of the five grounds for his banishment is his failure to respond to criminal charges and his ignoring of an arrest warrant. Notice of Total Banishment at 2, ECF No. 1-19. But the Notice does not state that he was *convicted* of those criminal charges, or even *guilty* of those criminal charges beyond a reasonable doubt. Instead, his failure to participate in the criminal process—which is not itself a crime—was a ground for his banishment. And the other four grounds—operating of an illegal business, occupying a building without paying rent, and engaging in "behavior that poses a threat to the safety, welfare, and order of the Nation"—are similarly not characterized as crimes in the Notice of Total Banishment. *Id.* Petitioner claims that those activities are "illegal" under the Nation's law, Opp'n at 13, but they are not remotely comparable to the type of crimes that gave rise to banishment in *Poodry*. 85 F.3d at 895 ("To determine the severity of the sanction, we need only look to the orders of banishment themselves, which suggest that banishment is imposed (without notice) only for the most severe of crimes: murder, rape, and treason.").

Third, in *Poodry*, the Indian nation labeled the petitioners literal traitors by determining they had committed "treason," and it made "deprivation of [the petitioners'] citizenship" part of the banishment, thereby "work[ing] a destruction of [their] social, cultural, and political

existence." 85 F.3d at 895, 897; *see Napoles v. Rogers*, No. 16-cv-01933, 2017 WL 2930852, at *6 (E.D. Cal. July 10, 2017) (explaining that *Poodry* "found permanent banishment *and* disenrollment sufficient to constitute detention because it analogized such actions to the stripping of citizenship in denaturalization and denationalization proceedings" (emphasis added)), *aff'd*, 743 F. App'x 136 (9th Cir. 2018). Consistent with *Poodry*, *Shenandoah II* emphasized the "logical inconsistency" that would arise if a tribe could "circumvent the ICRA's habeas provision by permanently banishing, rather than imprisoning, members 'convicted' of the offense of treason." 366 F.3d at 92 n.1 (quoting *Poodry*, 85 F.3d at 895). That "logical inconsistency" does not arise here, where the banishment order is not even close to an order convicting Petitioner of treason. In sum, the Court should not extend *Poodry* to the very different circumstances of this case.

B. Petitioner Has Not Presented His Banishment Arguments to the Tribal Court.

Petitioner's banishment claim also fails because he has not exhausted remedies. Although Petitioner did challenge his banishment order in tribal court, he presents several new arguments here that he did not present in tribal court, such as that Judge Fahey could not be impartial because he is an at-will employee whose salary is controlled by the Nation's leaders, that Judge Fahey was not properly appointed to decide civil matters, and that the court did not establish subject matter or personal jurisdiction over the controversy or him. Opening Br. at 20-21. Contrary to Petitioner's argument, Opp'n at 5-6, the Nation is not arguing that Petitioner has to present these arguments to the Nation's courts *repeatedly*; it is arguing that Petitioner has to present them *once*. As the Court of Appeals' recent decision shows, the Nation's courts provide a fair forum, and Petitioner should have availed himself of that forum.

C. Respondents Complied With ICRA When They Banished Petitioner.

On the merits, Petitioner's due process claim (Count One) and bill of attainder claim (Count

Six) should be dismissed.

The Nation's trial court provides an extensive discussion of how the banishment process was fair. Decision and Order at 6-16, *Parker v. Halftown*, Index No. CV-23-001 (Cayuga Nation Civ. Ct. Sept. 25, 2023), ECF No. 1-14 (discussing how Petitioner and his counsel "were extended every consideration and courtesy sought by them in preparation and scheduling of the Banishment Hearing," at which Petitioner elected to have his counsel appear on his behalf and during which his counsel was provided unlimited time to be heard). And the outcome was hardly surprising, because Petitioner voluntarily "did not appear, make a statement, put on any proof or otherwise participate" personally in the banishment hearing. *Id.* at 14.

In this Court, Petitioner's due process argument consists of the ad hominem assertion that the Nation had "enmity toward Parker" and then "created the banishment ordinance solely to target Parker." Opp'n at 15-16. But on its face, the Banishment Ordinance is a broadly written provision applicable to a wide variety of conduct. *See* ECF 1-5. Petitioner complains that the Nation's leaders "determine the grounds for banishment" and then banished him "based upon their own discretion," Opp'n at 15-16, but tribal leaders commonly exercise a tribe's power of expulsion. *See, e.g.*, *Chegup v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 28 F.4th 1051, 1056-58 (10th Cir. 2022); *Tavares v. Whitehouse*, 851 F.3d 863, 867-68 (9th Cir. 2017). In view of the detailed findings in the Notice of Total Banishment and the due process Petitioner received in the Nation's court, Petitioner cannot overturn his banishment order based on these generalized accusations of wrongdoing.

Petitioner also challenges the Banishment Ordinance as a bill of attainder. He argues that "[t]hough the banishment ordinance does not directly 'call out' Parker, the timing of the passage of the ordinance and the inclusion of violation of the business ordinance as grounds for banishment

shows a clear intent to target Parker." Opp'n at 17. The Second Circuit rejected the identical argument in *Shenandoah II*: "Petitioners claim that the housing ordinance is designed to remove them from the Nation as punishment for their constant dissent. However, the terms of the Ordinance apply to all residents of the territory at issue, and cannot be said to single out any individuals. Petitioners have not shown that the housing ordinance is a bill of attainder." 366 F.3d at 92. The same reasoning forecloses Petitioner's bill of attainder claim.

D. At a Minimum, Petitioner's Banishment Claims Should Be Dismissed with Respect to Respondent Timothy Twoguns.

Petitioner does not dispute that, at a minimum, his banishment challenge should be dismissed against Respondent Twoguns. Opening Br. at 23.

III. PETITIONER'S CLAIMS CHALLENGING VIOLATIONS OF HIS PROPERTY RIGHTS SHOULD BE DISMISSED (COUNTS TWO, FOUR, AND FIVE).

As the opening brief explained, Counts Two, Four, and Five are not cognizable in this habeas petition because Petitioner is challenging economic restraints, not restraints on liberty. Those claims seek compensation for Petitioner's years-old eviction from the Seneca Falls Property—relief fundamentally different from a writ of habeas corpus. Opening Br. at 23-24. Petitioner confines his response to a single footnote, in which he claims that the Nation's actions against the Seneca Falls Property "follow the same pattern of unlawful deprivation of liberty." Opp'n at 7 n.2. But that is a merits argument. Petitioner's cursory footnote does not explain how the Court could have habeas jurisdiction over a years-old property dispute.

IV. THE CONFINEMENT ORDER IS NOT AT ISSUE AND ANY CLAIM CONCERNING IT IS LIKEWISE MERITLESS.

On August 5, 2024, after the Petition was filed, the Nation's court issued an order stating that if Petitioner did not cease Pipekeepers' operations by 5:00 PM on August 9, 2024, he would

be confined until he ceased Pipekeepers' operations. Order, *Cayuga Nation*, Index No. CV-21-016 (Cayuga Nation Civ. Ct. Aug. 5, 2024), ECF No. 33-12.

Petitioner's challenge to that confinement order is not properly before the Court because he never amended his petition to challenge it. Petitioner contends that he "should not be forced to amend and refile his Petition because Respondents changed the Nation's laws after this litigation commenced." Opp'n at 6. But the requirement to amend his petition does not arise because of a change in the Nation's laws. Rather, the requirement to amend his petition arises because Petitioner is challenging a completely new order. The confinement order differs from the seizure and banishment orders at issue in the petition, so Petitioner should amend his complaint if he wishes to challenge it. The confinement order was entered over two months ago; Petitioner does not explain why he has not amended his petition.

Even if an amendment was not required, any challenge to the confinement order would fail on the merits. The Nation's opening brief explained how Petitioner's challenge to the confinement order was both unexhausted and substantively meritless. Mot. to Dismiss at 24-25. Petitioner ignores these arguments altogether, and they demonstrate that the confinement order was lawful.

CONCLUSION

The motion to dismiss should be granted.

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