UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DUSTIN PARKER

Petitioner,

-against-

5:24-cv-886
(BKS/TWD)

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.

BRIEF OF AMICUS CURIAE TRADITIONAL CAYUGA NATION COUNCIL OF CHIEFS AND CLAN MOTHERS IN SUPPORT OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

IDENTITY AND INTERESTS OF AMICI CURIAE AND LOCAL CIVIL RULE 7.2(d) STATEMENT

The Traditional Chiefs and Clan Mothers of the Cayuga Nation (the "Proposed *Amicus*") are the traditional leadership of the Cayuga Nation, recognized by the Haudenosaunee Confederacy, which consists of six member Nations: Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora. The Haudenosaunee Confederacy maintains a website that lists all recognized Chiefs and Clan Mothers. *Current Clan Mothers and Chiefs*, Haudenosaunee Confederacy, https://www.haudenosauneeconfederacy.com/government/current-clan-mothers-and-chiefs/.

The Proposed *Amicus* continue to carry out their responsibilities under the Great Law of Peace which require them to be stewards of the Nation's history, culture, ceremonies and languages; these responsibilities are the foundation for the unique information and perspective presented in this *amicus* brief that no other party can offer the Court. Since time immemorial, only the Chiefs and Clan Mothers of a Haudenosaunee Nation possess the ability to effectuate the banishment of one of their citizens. Even then, the authority to banish has been sparingly used, reserved for only the most serious of offenses. Defendants' haphazard and retaliatory attempt to banish the Petitioner, Cayuga Nation citizen Dusty Parker—based on alleged actions that do not rise to this level of seriousness—is in clear violation of this long-standing and fundamental cultural standard, and completely lacks the due process he should have been afforded.

The brief was not authored in whole or in part by either party's counsel. No person except the Proposed *Amicus*, its members, and its counsel contributed money to prepare or submit this brief.

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 1

I. The Petitioner was not Allowed to Participate in the Heron Clan Meetings Relating to his Banishment. 2

II. The Petitioner was Deprived of an Impartial and Disinterested Tribunal. 2

III. The Petitioner Was Denied the Ability to Present Witnesses and Compulsory Process for Obtaining Witnesses. 5

IV. The Petitioner Was Not Given Notice of the Procedures to Be Used in the Banishment Hearing. 6

V. The Petitioner Was Deprived of the Right of Confrontation Guaranteed by ICRA .. 7

VI. The Petitioner was Deprived of the Right to a Fair, Nonarbitrary Proceeding. 8

VII. Banishment Is a Cruel and Unusual Punishment for the Petitioner's Conduct. .. 10

VIII. Respondents' Post-Deprivation Judicial Review does not Satisfy its Due Process Obligation. 11

CONCLUSION 12

TABLE OF AUTHORITIES

Cases

33 Seminary LLC v. City of Binghamton, 120 F. Supp. 3d 223 (N.D.N.Y. 2015) 9

Assoc. of Nat'l Advertisers, Inc. v. FTC, 627 F.2d 1151 (D.C. Cir. 1979) 3

B.A.M. Brokerage Corp. v. New York, 718 F. Supp. 1195 (S.D.N.Y. 1989) 3

Bridgeforth v. Popovics, No. 8:09-CV-0545, 2011 WL 2133661 (N.D.N.Y. May 25, 2011) 3

Campo v. N.Y.C. Emps.' Ret. Sys., 843 F.2d 96 (2d Cir. 1988) 11, 12

Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868 (2009) 3

Chambers v. Mississippi, 410 U.S. 284 (1973) 5

Cinderella Career & Finishing Schs., Inc. v. FTC, 425 F.2d 583 (D.C. Cir. 1970) 3

City of West Covina v. Perkins, 525 U.S. 234 (1999) 7

Crawford v. Washington, 541 U.S. 36 (2004) 8

Estelle v. McGuire, 502 U.S. 62 (1991) 8

Gobin v. Snohomish County, 304 F.3d 909 (9th Cir. 2002) 10

Graham v. Florida, 560 U.S. 48 (2010) 10

In re Murchison, 349 U.S. 133 (1955) 3, 4

Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963) 10

Lisa's Party City, Inc. v. Town of Henrietta, 185 F.3d 12 (2d Cir. 1999) 9

Lisenba v. California, 314 U.S. 219 (1941) 8

Marshall v. Jerrico, Inc., 446 U.S. 238 (1980) 2

McClanahan v. State Tax Comm'n of Ariz., 411 U.S. 164 (1973) 10

Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1 (1978) 7

Poodry v. Tonawanda Band of Seneca Indians, 85 F.3d 874 (2d Cir. 1996) 2, 5, 10, 12

Quair v. Sisco, 359 F. Supp. 2d 948 (E.D. Cal. 2004) 6

Selam v. Warm Springs Tribal Corr. Facility, 134 F.3d 948 (9th Cir. 1998) 6

Solem v. Helm, 463 U.S. 277 (1983) 10

Storey v. Morris, No. 7:16-CV-206, 2017 WL 933212 (N.D.N.Y. Feb. 1, 2017) 11, 12

Swinomish Tribal Community v. Peters, 15 Am. Tribal Law 377 (Swinomish Tribal Ct. 2018).... 8

United States v. Bryant, 579 U.S. 140 (2016) 5

Ward v. New York, 291 F. Supp. 2d 188 (W.D.N.Y. 2003) 10

Washington v. Texas, 388 U.S. 14 (1967)..... 5

Williams v. Pennsylvania, 579 U.S. 1 (2016)..... 3, 5

Withrow v. Larkin, 421 U.S. 35 (1975) 3

Statutes

25 U.S.C. § 1302.....1, 5, 6, 7, 10, 11

Other Authorities

David E. Wilkins, *Exiling One's Kin: Banishment and Disenrollment in Indian Country*, 17 W. Legal Hist. 235 (2004) 10

Constitutional Provisions

U.S. Const. amend. VI 7

INTRODUCTION

In this brief, *amicus curiae*, the Traditional Chiefs and Clan Mothers of the Cayuga Nation, offer their unique perspective and critically-important information in support of the Petitioner, Dusty Parker's position in his Memorandum of Law in Support of his Petition for a Writ of Habeas Corpus.

Banishment is the most serious punishment that the Cayuga Nation can levy against one of its citizens. It is sparingly used and reserved for only the most heinous of crimes, given its extremely punitive nature; it cuts off the citizen and, by extension, their family, from the lifeblood of the Nation—its citizens, lands, customs, culture, tradition and religion.

Here, Respondents weaponized banishment against the Petitioner. In that process, though, they have perverted the very foundation upon which banishment rests—one of ample due process and careful deliberation within the Clan itself, right at the outset, where the targeted individual stands before those closest to them and is given the opportunity to directly address their issues.

Respondents contend that their own internal laws and procedures regarding banishment, seemingly cobbled together to target the Petitioner, somehow satisfy the due process that the Petitioner is entitled to pursuant to Respondents' own statutes, governing documents and applicable federal law. It is not so.

ARGUMENT

As detailed *infra*, because banishment is a criminal sanction, the Petitioner should have been afforded a standard of due process that was otherwise absent from Respondents' proceedings. *See* 25 U.S.C. § 1302(a)(6), (8) (requiring Indian nations to inform those facing criminal punishment the nature of the charges against them and affording them the due process

of law in criminal proceedings); *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 901 (2d Cir. 1996) (banishment is a criminal sanction).

I. The Petitioner was not Allowed to Participate in the Heron Clan Meetings Relating to his Banishment.

Respondents' claim to authority rests on a governing document submitted to, and approved by, the BIA. *See* Decl. of Att'y Michael D. Sliger ("Sliger Decl.") Ex. G, at 2. This document establishes the Respondents' processes for clan meetings which, in relevant part, require that all members of the clan be provided "at least fourteen (14) days' offici[al] [sic] notice by regular mail" of a forthcoming clan meeting, "the date, time and place of the meeting," and, after the meeting, a copy of the minutes of the meeting "by regular or electronic mail." *Id.*

In effectuating the Petitioner's banishment at the clan level, Respondents held at least two clan meetings, on October 22, 2022 and on January 21, 2023. *See* Resp't's Answer to Pet. for Writ of Habeas Corpus ("Answer") Ex. C, at SR 60, 66–67, ECF No. 48-3. For each of these meetings, the Petitioner received no notice at all of "the date, time and place of the meeting," and was not given a copy of the minutes therefrom. Sliger Decl. Ex. G, at 2. The Petitioner was denied his right to attend and share his perspective at these critical first steps of the banishment process. Thus, from the outset, Respondents engaged in a concerted effort to deny the Petitioner due process, in contravention of the very document that forms the basis of their purported authority.

II. The Petitioner was Deprived of an Impartial and Disinterested Tribunal.

An "impartial and disinterested tribunal" is a core component of due process "in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). "Due process guarantees 'an absence of actual bias,'" *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (quoting

In re Murchison, 349 U.S. 133, 136 (1955)), and, similarly, an absence of "prejudgment," *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 883–84 (2009) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)); *see also Assoc. of Nat'l Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1158 (D.C. Cir. 1979) ("The standard for . . . prejudgment is whether 'a disinterested observer may conclude that [the decisionmaker] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it." (alteration in original) (quoting *Cinderella Career & Finishing Schs., Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970))).[1] The Petitioner thoroughly discusses the "open and continuous enmity" towards the Petitioner that dominated the banishment proceeding. Pet.'s Mem. of Law at 13–15, ECF No. 70. That aside, though, the Petitioner's due process rights were violated because the Nation Council prejudged that he deserved banishment.

Here, Respondents Clint Halftown and Jonathan Dekanski—both members of the Heron Clan, and two members of the Nation Council that ordered the Petitioner's banishment—determined that the Petitioner deserved banishment long before the banishment hearing. Pursuant to Respondents' own governing document, "[d]ecisions at a clan meeting are made on a consensual basis," and even "[m]embers of a clan who are not present at a particular clan meeting are bound by any decisions reached at such clan meeting." *See* Sliger Decl. Ex. G, at 2. In a letter dated November 14, 2022, Irene Jimerson wrote to the Petitioner that it was the "consensus" of the Heron Clan that he was engaging in "several . . . continuing activities" that warranted banishment. Answer Ex. C., at SR 60. Ms. Jimerson later wrote to the Petitioner, on

[1] Put another way, "prejudgment can create bias." *Bridgeforth v. Popovics*, No. 8:09-CV-0545, 2011 WL 2133661, at *8 (N.D.N.Y. May 25, 2011) (quoting *B.A.M. Brokerage Corp. v. New York*, 718 F. Supp. 1195, 1202 (S.D.N.Y. 1989)). The substance is the same: due process is violated when a decisionmaker makes up their mind about a particular dispute before deciding it, even if that decisionmaker is, as a general matter, neutral towards those involved in the dispute.

February 8, 2023, that "*the Clan* has asked me to make a request to the Nation's Council that it consider potentially banishing you." *Id.* at SR 66 (emphasis added).

The "continuing activities" that the entirety of the Heron Clan requested that the Nation Council consider as bases for the Petitioner's banishment were ultimately identical to the activities that the Nation Council used as the reason for his banishment. *Compare id.* at SR 60, *with id.* at SR 12–13. Clearly, then, Heron Clan member-Respondents Halftown and Dekanski decided that the Petitioner deserved banishment at the Heron Clan meeting held long before they acted as adjudicators in his banishment hearing at the Council level.

Respondents Halftown and Dekanski's prejudgment violates *Murchison*. In *Murchison*, the Supreme Court held that then-existing "judge-grand jury" systems—in which a judge would gather evidence of a crime, charge a defendant with the crime, and then preside over the trial on that crime—violated the due process clause. 349 U.S. at 133–34, 139. To reach that holding, the Court reasoned that lay grand jurors serving as petit jurors would violate due process, so *a fortiori* a single judge-grand jury violated due process. *Id.* at 137 ("A single 'judge-grand jury' is even more a part of the accusatory process than an ordinary lay grand juror. Having been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused."). In the instant matter, Respondents Halftown and Dekanski effectively served as grand jurors in the Petitioner's banishment proceeding. As members of the Heron Clan, they were part of the consensus decision that the Petitioner should be subject to a formal banishment hearing, just as a grand juror votes to true bill an indictment.

Further, Respondents Halftown and Dekanski's prejudgment is imputed on the other members of the Nation Council that adjudicated the Petitioner's banishment proceeding. In *Williams*, the Court "ha[d] little trouble concluding that" that the bias of one judge on a

seven-judge panel destroyed impartiality "regardless of whether the judge's vote was dispositive." 579 U.S. at 14. The Court explained that "the deliberations of an appellate panel, as a general rule, are confidential. As a result, it is neither possible nor productive to inquire whether the jurist in question might have influenced the views of his or her colleagues during the decisionmaking process." *Id.* at 14–15. Just so here. While the Nation Council is not an appellate tribunal, its deliberations are confidential, so equally impossible to review, and the risk of mutual influence applies to any multimember body.

In sum, taking into account elements of the unique politics and culture of the Cayuga such as consensus decisionmaking, *United States v. Bryant*, 579 U.S. 140, 149 (2016), the Petitioner was deprived of an impartial tribunal because the Nation Council had decided the Petitioner deserved banishment long before his banishment hearing.

III. The Petitioner Was Denied the Ability to Present Witnesses and Compulsory Process for Obtaining Witnesses.

The ability to present witnesses in one's defense is "a fundamental element of due process of law." *Washington v. Texas*, 388 U.S. 14, 19 (1967); *see also, e.g.*, *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973) ("Few rights are more fundamental than that of an accused to present witnesses in his own defense."). ICRA explicitly applies this right to Indian nations, mandating that Indian nations shall not "deny to any person in a criminal proceeding the right . . . to have compulsory process for obtaining witnesses in his favor." 25 U.S.C. § 1302(a)(6).[2]

Here, however, the Petitioner was prevented from presenting witnesses. On April 18, 2023, one day before the scheduled banishment hearing, Respondents' counsel informed the

[2] Since the banishment proceeding is properly characterized as criminal for purposes of § 1303, *see Poodry*, 85 F.3d at 889, it is also criminal for purposes of § 1302. *See Quair v. Sisco*, 359 F. Supp. 2d 948, 977–78 (E.D. Cal. 2004) (concluding that the proceeding was criminal for purposes of § 1303 and applying § 1302(a)(6) without further discussion).

Petitioner's counsel that the banishment "process is not designed to have additional witnesses" beyond the Petitioner and instructed them to "refrain from that type of presentation." Answer Ex. C, at SR 971.

Furthermore, even if Respondents had allowed the Petitioner to present witnesses, they provided no "compulsory process for obtaining witnesses in [the Petitioner's] favor." § 1302(a)(6). As the Petitioner notes, he was afforded no discovery, Pet. for Writ of Habeas Corpus ("Pet.") ¶ 73, ECF No. 1-16, and Respondents' purported refutation that "'both parties agreed to a mutual exchange of exhibits two days prior to the hearing' and the 'hearing was kept open for two weeks following its conclusion to provide Petitioner with opportunity to submit additional material in his defense,'" Resp't's Mem. of Law at 17, ECF No. 65, is unavailing. *See Selam v. Warm Springs Tribal Corr. Facility*, 134 F.3d 948, 952 (9th Cir. 1998) (finding that a tribal court did not violate a petitioner's right to compulsory process because the court "advised [petitioner] of his right to compel the appearance of witnesses"). Therefore, Respondents violated the Petitioner's right to present witnesses and to have compulsory process for obtaining favorable witnesses.

IV. The Petitioner Was Not Given Notice of the Procedures to Be Used in the Banishment Hearing.

Due process requires "notice of the procedures for protecting one's property interests . . . when those procedures are arcane and not set forth in documents accessible to the public," let alone one's *liberty* interests. *City of West Covina v. Perkins*, 525 U.S. 234, 240 (1999); *see also Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 14–15 (1978). The purpose of such notice is to "permit adequate preparation for[] an impending 'hearing.'" *Memphis Light*, 436 U.S. at 14.

Here, the Petitioner never received formal notice of the procedures governing the banishment hearing. The Notice of Potential Banishment did not inform the Petitioner what type of evidence he could present in his defense, the manner in which evidence could be presented, if he could object to evidence, or the burden of proof to be employed. Answer Ex. C, at SR 12–13. In fact, the Petitioner's counsel only learned about the procedures that would be used during the banishment hearing—including that they would not be able to present witnesses at the hearing—through an informal meeting with the Respondents' counsel a mere eighteen hours before the banishment hearing itself. *See id.* at SR 970–72. Therefore, the Petitioner was not given sufficient notice to enable him to adequately prepare for the hearing.

V. The Petitioner Was Deprived of the Right of Confrontation Guaranteed by ICRA.

ICRA guarantees an individual the "right . . . to be confronted with the witnesses against him," just as the federal Constitution does. 25 U.S.C. § 1302(a)(6); U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to . . . to be confronted with the witnesses against him . . . ."). The Petition alleges that the Petitioner was deprived of this right insofar as he was unable to "cross-examine witnesses" against him. Pet. ¶ 73. Respondents answer that "there was no one to cross-examine: the Nation's attorney informed [the Petitioner] before the hearing that he would not call any witnesses" and that instead the Nation presented testimony through exhibits. Resp't's Mem. of Law at 17–18.

That response is self-defeating. Out-of-court testimony is the "principal evil" at which the framers directed the Confrontation Clause and thus the "primary object" of the right of confrontation. *Crawford v. Washington*, 541 U.S. 36, 50, 53 (2004); *see also Swinomish Tribal Community v. Peters*, 15 Am. Tribal Law 377, 380 (Swinomish Tribal Ct. 2018) ("[T]he language of the 'confrontation clause' in the Sixth Amendment and the ICRA are identical and

the rulings of the U.S. Supreme Court are controlling."). Accordingly, "[t]estimonial statements of witnesses absent from trial" are admissible only under narrow circumstances inapplicable here. *Crawford*, 541 U.S. at 59.

Indeed, *Crawford* turned on one declarant's hearsay testimony. *Id.* at 38–39. The Nation introduced *three* declarants' hearsay testimony. The Nation's attorney referenced the declaration of a private investigator "with some specificity . . . because it provide[d] a detailed overview of the operations" in the Bayard Street Pipekeepers. Answer Ex. C, at SR 839. The Nation's attorney also referenced affidavits given by two Cayuga Nation Police Department officers. *Id.* at SR 841–42. The affidavits were offered to prove "dangerous situations . . . in which Petitioner or his associates were involved," and the Nation's attorney "urge[d] the Council to consider those activities." *Id.* at SR 842. Declarations and affidavits are in the "core class" of testimonial statements. *Crawford*, 541 U.S. at 51–52. Accordingly, the hearsay presented at the Petitioner's banishment proceeding violated his confrontation rights as guaranteed by ICRA.

VI. The Petitioner was Deprived of the Right to a Fair, Nonarbitrary Proceeding.

Finally, due process guarantees that decisions affecting liberty and property not be made on arbitrary, irrelevant grounds. In the context of a criminal jury trial, this guarantee means that the introduction of irrelevant evidence can "so infuse[] the trial with unfairness as to deny due process of law." *Estelle v. McGuire*, 502 U.S. 62, 75 (1991) (quoting *Lisenba v. California*, 314 U.S. 219, 228 (1941)). In the context of an administrative proceeding, the guarantee means that government action can be "so outrageously arbitrary as to be a gross abuse of governmental authority." *33 Seminary LLC v. City of Binghamton*, 120 F. Supp. 3d 223, 244 (N.D.N.Y. 2015) (quoting *Lisa's Party City, Inc. v. Town of Henrietta*, 185 F.3d 12, 17 (2d Cir. 1999)).

While a banishment proceeding lacks a perfect analogue among those proceedings more familiar to United States law, the amount of irrelevant evidence and argumentation in the Petitioner's banishment hearing rendered the hearing fundamentally unfair by any measure. The Nation's counsel repeatedly accused the Petitioner of somehow usurping the Nation's sovereignty, asserting that individual Indians receive no benefit from the Indian sovereignty guaranteed by federal law.[3]

This argumentation was doubly improper. First, it was improper because it was irrelevant: "usurping the Nation's sovereignty" is nowhere on the list of activities of which the Petitioner was accused. *See* Answer Ex. C., at SR 60. Second, it was improper as a misrepresentation of federal law. While Indian governments exclusively possess sovereign *immunity from suit*, individual Indians regularly prevent state laws from being enforced against them on the basis of Indian sovereignty. *See, e.g.*, *Ward v. New York*, 291 F. Supp. 2d 188, 193 (W.D.N.Y. 2003) ("Plaintiffs [are] two enrolled members of the Seneca Indian Nation . . . ."); *Gobin v. Snohomish County*, 304 F.3d 909, 911 (9th Cir. 2002) ("[Plaintiffs are] registered

[3] *See* Answer Ex. C, at SR 833–34 ("Mr. Parker is operating that store within the Nation's Reservation as if it was a Nation owned store entitled to sovereignty from state law."); *id.* at SR 837–39 ("Mr. Parker sold untaxed cigarettes, unlicensed marijuana and untaxed gasoline as if he was sovereign in his own right. He is [sic] never accounted for those revenues to the Nation even though he was acting as if it was a Nation store. The same way with respect to the Montezuma property, he has never accounted to the Nation for those revenues. He has never shared them with the Nation's citizens. He has never made distributions to the Nation's citizens the way that all the Nation's businesses doing [sic]."); *id.* at SR 840 ("And then finally in the declaration documents that Mr. Parker himself sold the investigator cigarettes without sales tax being collected on them which is a privilege for the Nation as a sovereign Indian Nation with its own Reservation. It's not a privilege for an individual to engage in."); *id.* at SR 845 ("He has never shared any of his revenue or profits with the Nation or its citizens. He has never accounted for it, yet he cloaks himself with the Nation's sovereign status."); *id.* at SR 868 ("Mr. Parker sees fit to sit back, operate a store, enjoying, trying to enjoy the sovereignty of the Nation, but keeping all the proceeds for himself.").

members of the Tulalip Tribes of Washington . . . ."); *see also McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 181 (1973) (rejecting argument that only Indian governments can enjoin state law on the basis of Indian sovereignty).

VII. Banishment Is a Cruel and Unusual Punishment for the Petitioner's Conduct.

Generally, a punishment is cruel and unusual if it is disproportionate to the crime, *Solem v. Helm*, 463 U.S. 277, 284 (1983), a standard that applies to Indian nations under ICRA. 25 U.S.C. § 1302(a)(7)(A). In deciding disproportionality, courts consider "the gravity of the offense and the severity of the sentence," "the sentences received by other offenders in the same jurisdiction," and "the sentences imposed for the same crime in other jurisdictions." *Graham v. Florida*, 560 U.S. 48, 60 (2010).

Here, as the Petition notes, "Parker's banishment . . . has deprived Parker of his previous home, his lifestyle, and his ability to meaningfully engage in his community as punishment for operating a business without a license." Pet. ¶ 98. Operating a business without a license is a nonviolent infraction that under the Cayuga Nation's own law typically only results in fines. *See id.* Ex. B, at 6, ECF No. 1-2. In comparison, banishment is an extremely severe punishment. *See Poodry*, 85 F.3d at 889 ("Banishment . . . was always adjudged a harsh punishment . . . ." (quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 170 n.23 (1963))). Moreover, both the Cayuga Nation and other Indian nations have traditionally only imposed banishment for the most severe crimes. *See* David E. Wilkins, *Exiling One's Kin: Banishment and Disenrollment in Indian Country*, 17 W. Legal Hist. 235, 239–42 (2004). For instance, the Haudenosaunee Great Law of Peace provides for the banishment of native-born citizens only for murder committed by a chief. *See id.* at 239–41. Therefore, the imposition of banishment is grossly disproportionate to the Petitioner's conduct, constituting cruel and unusual punishment.

VIII. Respondents' Post-Deprivation Judicial Review does not Satisfy its Due Process Obligation.

Respondents claim that their provision of judicial review after the Petitioner's banishment proceeding sufficiently satisfies the requirements of procedural due process pursuant to ICRA. 25 U.S.C § 1302(a)(8); Resp't's Mem. of Law at 20 ("Even assuming that the banishment proceeding itself provided insufficient process . . . the process provided by the Nation *as a whole*, including judicial review, satisfied the Nation's due process obligation."). To support their assertion, Respondents analogize the Nation-level process offered to the Petitioner to cases holding "that states may satisfy their due process obligation by offering judicial review after, rather than before, a state action alleged to deprive a person of property or liberty." Resp't's Mem. of Law at 20; *Campo v. N.Y.C. Emps.' Ret. Sys.*, 843 F.2d 96, 98 (2d Cir. 1988); *Storey v. Morris*, No. 7:16-CV-206, 2017 WL 933212, at *2 (N.D.N.Y. Feb. 1, 2017).

Respondents' analogy, though, is unavailing. Both *Campo* and *Storey* are easily distinguishable from the present matter, as neither case supports the claim that habeas review in a tribal court satisfies the requisite due process that the Petitioner should have been afforded, pursuant to ICRA, in Respondents' banishment proceedings. The Petitioner's brief correctly notes that *Campo* and *Storey*, taken together, establish that in the context of a state administrative proceeding, a post-deprivation Article 78 hearing provides adequate first remedy to a claimant alleging due process violations that occurred in the course of that administrative hearing or were otherwise denied in an administrative process. Pet.'s Mem. of Law at 17. This is because an Article 78 court has jurisdiction to hear constitutional claims, and can provide "a hearing, a means of redress, and a trial if needed." *Id.* In both cases, the claimants brought their deprivation claims to federal court before exhausting the options available to them in the Article

78 process—the relevant factor in the dismissal of their 42 U.S.C. § 1983 claims. *Campo,* 843 F.2d at 102–03; *Storey*, 2017 WL 933212, at *4.

That is not equivalent to the procedural process in the instant matter. Here, the Petitioner did avail himself of the review process offered by Respondents. In that process, Respondents' court determined that it lacked jurisdiction to provide habeas relief after a banishment proceeding regardless of the merits of the claim, which precluded review of the Petitioner's claims alleging due process violations—in reality, then, Respondent provided no appellate review. Pet.'s Mem. of Law at 18. Only then did the Petitioner initiate this federal suit, after exhausting the remedies available to him at the Nation level.

As Respondents would have it, their banishment decisions would be completely unreviewable, either by their own court or in a federal forum. This, though, is not the law. *E.g.*, *Poodry*, 85 F.3d at 901.

CONCLUSION

Respondents subjected the Petitioner to a banishment process rife with due process violations, in contravention of ICRA and well-established federal common law. This Court should grant the Petitioner's petition for habeas relief.

DATED: New York, New York
March 12, 2026

/s/ *Michael D. Sliger*

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

DATED: New York, New York
March 12, 2026

/s/ *Michael D. Sliger*
Michael D. Sliger