

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WEST TEXAS**

**ROBERT RODRIGUEZ, JR.,**

**Petitioner,**

**v.**

**Case No. 1:09-CV-01164**

**JOHN D. WARDEN, as Warden of the  
Regional Correctional Center, &  
ATTICUS G. DADE, as Governor and War  
Chief for Sovereign Pueblo,**

**Respondents.**

**PETITION FOR WRIT OF HABEAS CORPUS**

Robert Rodriguez, Jr. appears herein through counsel and moves the Court to issue a writ of habeas corpus pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-1303), because his civil rights were violated in the process of the Sovereign Pueblo Tribal Court criminal proceedings that resulted in his current incarceration at the Capital City Correctional Center. As demonstrated herein, Mr. Rodriguez was denied his rights to a public trial, to assistance of counsel, to confront witnesses against him, to not be compelled to be a witness against himself, to a jury trial, and to due process, all guaranteed to him by the Indian Civil Rights Act of 1968. Accordingly, Mr. Rodriguez' detention is illegal and he moves the Court to order his immediate release.

**STATEMENT OF FACTS AND CASE**

Robert Rodriguez, Jr. was charged with Driving While Intoxicated in Sovereign Pueblo Tribal Court Case Number CR10-000. Rodriguez pled not guilty to this charge at his arraignment on August 7, 2008 (Exhibit A). At this arraignment, Rodriguez was told that he had a "right to a jury trial," but it is well known that the Sovereign Pueblo Tribal

Court has no facilities for a jury trial, and has never held a jury trial (Exhibits B and C). Rodriguez was not represented by counsel at his arraignment.

On the date of the arraignment, Robert Rodriguez, Jr.'s parents, Robert Rodriguez Sr. and Angela Rodriguez, went to the Tribal Court with Rodriguez, Jr. *Id.* The Tribal Court judge told the parents that they were not allowed to attend proceedings in this matter because Robert Jr. was over twenty one (21) years of age *Id.* No other findings were entered to justify the closure. *Id.* Accordingly, during his son's criminal trial on December 10, 2008, Robert Rodriguez Sr. had to wait in his car outside the courthouse (Exhibit B). When his son came out, he told his father the judge was sending him to jail in Capital City for one (1) year. *Id.*

The Tribal Court has "denied" Rodriguez' counsel's<sup>1</sup> request for the audio from the arraignment and trial (Exhibit D), and in conjunction with the closure of the trial such that Rodriguez' parents could not attend, it is not entirely clear as to what exactly went on in the courtroom on December 10, 2008. What is certain is that Rodriguez was unrepresented (Exhibit A), not permitted to have his parents with him in the courtroom (Exhibits B and C), was questioned by the judge (Exhibit C), and was convicted based on the probable cause statement (Exhibit F). The probable cause statement contained an admission allegedly made by Rodriguez Jr. to his father, such statement having been overheard by Officer Juan Gonzales, although the reporting officer failed to give any specific words that he alleges having overheard (Exhibit E). These facts about the trial are confirmed in the Tribal Court's Jail Commitment Sentencing Order dated December 12, 2008 (Exhibit F).

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<sup>1</sup> Counsel was retained after the December 10, 2008, conviction for the purposes of post-trial relief.

Rodriguez Sr. was not subpoenaed for trial (nor was he unavailable, since he had to wait just outside the Tribal Court during trial), and did not testify as to the alleged admission made by his son to him (Exhibit B). Instead, the tribal court judge relied on the allegations in the probable cause statement, as she explained in her December 12, 2008, Order (See Exhibit F). It is unclear whether Officer Gonzales gave any testimony at trial, or whether Rodriguez, Jr. was given the opportunity to cross-examine him. The questioning at trial of Rodriguez, Jr. was at least in part performed by the judge, and being that Rodriguez, Jr. was alone in the Courtroom with two officials against him, he felt compelled to answer. He did not admit to driving while intoxicated, but did concede that he had an accident and his truck was damaged (Exhibit F).

Rodriguez was convicted and sentenced to one (1) year incarceration in the Capital City Correctional Center, a non-tribal facility in Capital City, VT, and a one thousand dollar (\$1,000) fine. *Id.* This sentence is justified in the December 12, 2008, Jail Commitment Sentencing Order with a finding that Rodriguez abused his ankle monitoring, although no factual findings are given to support that conclusion. *Id.* The Tribal Court has been requested to either reconsider the finding or disclose what facts it is based upon (Exhibit G), but the Court to date has not done either.

Robert Rodriguez, Jr. retained the AB & C Law Firm for the purpose of post-trial representation. An Entry of Appearance, Demand for Discovery, Demand for Speedy Trial, Demand for Jury Trial and Demand for Preservation of Evidence was filed on December 17, 2008 (Exhibit H). A responsive Order was entered on December 18, 2008, accepting the admission to the Sovereign Pueblo Tribal Court of Rodriguez' attorneys, but denying all other requests as untimely (Exhibit A).

A Demand for Release from Custody was filed on December 18, 2008 (Exhibit I). To date, no responsive Order has been received.

Recordings and transcripts of his arraignment and trial were requested by Rodriguez' counsel on Wednesday, December 25, 2008 (Exhibit J). After two follow up calls and a visit to the courthouse, on January 2, 2009, the Tribal Court administrator called to inform Rodriguez' counsel that the request for audio had been "denied" (Exhibit D).

An ancillary issue at play in this matter is that the Sovereign Pueblo Law & Order Code has a provision requiring that the Tribal Court judge be a licensed member of the West Texas bar (Exhibit K). However, the only acting judge at the Sovereign Pueblo Tribal Court is Joan Kaiser who, upon information and belief, is not a licensed member of any bar<sup>2</sup> and has never attended law school.

Since the incidents described in this Writ, Robert Rodriguez Jr.'s parents have been circulating a petition to have Judge Kaiser removed from the bench (Exhibit C). For unclear reasons, the Tribal Court judge called Angela Rodriguez' place of work in order to alert her employer as to Angela Rodriguez' dissidence. *Id.* This fact, when taken in conjunction with the Tribal Court's refusal to provide Rodriguez' counsel with audio from the arraignment and hearing, reveals a disturbing tone to the ongoing events.

Rodriguez argues herein that his continued detention is illegal because his conviction was obtained in violation of several of his rights guaranteed by the Indian Civil Rights Act, namely: (1) his right to a public trial, (2) his right to be confronted with the witnesses against him, (3) his right to not be compelled to be a witness against

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<sup>2</sup> Rodriguez' counsel has verified via the West Texas State Bar website that she is not a licensed member of the West Texas Bar.

himself, (4) his right not to be deprived of liberty without due process of law, and (5) his right to a trial by jury.

In light of the violations of his civil rights described herein, Rodriguez requests the Court grant him habeas relief and order his immediate release.

### **STATEMENT OF JURISDICTION**

This Court has jurisdiction to issue a writ of habeas corpus under the Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-1303), which provides in Section 1303 as follows:

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

As is discussed in more detail elsewhere in this Petition, it is well established that the appropriate remedy for violations of rights under the Indian Civil Rights Act in the course of securing a criminal conviction is to grant habeas relief and order release.

### **ARGUMENT**

#### **I. THE DECISION OF THE SOVEREIGN PUEBLO TRIBAL COURT TO CLOSE THE CRIMINAL PROCEEDINGS AGAINST ROBERT RODRIGUEZ, JR, SUCH THAT HIS PARENTS COULD NOT ATTEND VIOLATED HIS RIGHT TO A PUBLIC TRIAL GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT.**

Section 1302(6) of the Indian Civil Rights Act provides that no tribe in exercising powers of self-government shall "deny to any person in a criminal proceeding the right to a speedy and public trial[.]" In this case, the arraignment was held on August 7, 2008 (Exhibit A). On that date, Robert Rodriguez' parents went to the court with him (Exhibits B and C). The Sovereign Tribal Court Judge instructed his parents that they were not permitted to be in the courtroom and that the criminal proceedings against their

son were closed to them because Rodriguez Jr. was over twenty one (21) years of age. *Id.* No other justification was given. *Id.* Robert Rodriguez pled not guilty at his arraignment (Exhibit A).

The trial was scheduled for December 10, 2008. On that date, Robert Rodriguez, Sr. waited in the car in the court parking lot since he was not allowed in the Courtroom (Exhibit B). No other members of the public were in the courtroom for the trial (Exhibits B and C). In fact, the only people in the courtroom were Robert Rodriguez, Jr., the Tribal Court Judge, and Officer Gonzales (Exhibit C).

The right to a public trial as articulated in the Indian Civil Rights Act parallels the right to a public trial guaranteed by the Sixth Amendment to the United States Constitution (made applicable to the states via the Fourteenth amendment). The U.S. Supreme Court has recognized that there is a strong presumption in favor of public trials. *Bell v. Smith*, 236 F.3d 149, 165 (4th Cir., 2000) (citing to *Waller v. Georgia*, 467 U.S. 39, 45 (1984) and *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980)).

While the right to a public trial is not absolute, and can be overridden by a motion of closure, no such motion was filed in Rodriguez' case, nor were there any facts which would reasonably result in closure to avoid publicity or an injury to the well-being of participants. The Sovereign Pueblo Tribal Court judge did not base the closure on substantial or legitimate public interest, and instead just summarily dismissed those members of the public (namely: Rodriguez' parents) for the criminal proceedings against Robert Rodriguez, Jr. No reasonable alternatives to close were discussed or considered.

In order to override the interests in a public trial, the trial court must make findings adequate to support the closure. *Bell v. Smith*, 236 F.3d 149 (4th Cir., 2000)

(citing to *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984) and *Waller v. Georgia*, 467 U.S. 39, 48 (1984)). No such findings were made in the case of Robert Rodriguez.

The right to a public trial is grounded in the idea that "judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings," *Waller v. Georgia*, 467 U.S. 39, 46 n.4 (1984) (quoting *Estes v. Texas*, 381 U.S. 532, 588 (1965) (Harlan, J., concurring)), and that "contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power," *id.* (quoting *In re Oliver*, 333 U.S. 257, 270 (1948)).

"The violation of the constitutional right to a public trial is a structural error, not subject to harmless error analysis." *Bell v. Smith*, 236 F.3d 149 (4th Cir., 2000), citing to *Neder v. United States*, 527 U.S. 1, 8 (1999); *Waller v. Georgia*, 467 U.S. 39, 49-50 n.9 (1984); *Sherman v. Smith*, 89 F.3d 1134, 1138 (4th Cir. 1996); *McGurk v. Stenberg*, 163 F.3d 470, 473 (8th Cir. 1998) (noting that the prejudice component of the Strickland analysis may be presumed if the nature of the deficient performance is that of a structural error).

The appropriate remedy when a criminal defendant's right to a public trial has been diminished is habeas relief. *Lewis v. Peyton*, 352 F.2d 791, 792 (4th Cir. 1965) (granting habeas relief based upon the denial of the accused's right to a public trial in a rape case where the accused waived his right to a jury trial, the judge heard all testimony at the home and in the bedroom of the eighty-seven-year-old bedridden prosecutrix, and even the neighbors were told to leave the bedroom to make room for the court personnel);

*In re Oliver*, 333 U.S. 257, 270 (1948) (granting habeas relief to accused convicted of contempt of court by a state judge acting as a one-man grand jury in secret session).

In light of the foregoing, Rodriguez' right to a public trial under the Indian Civil Rights Act was violated when the Sovereign Pueblo Tribal Court exercised closure of Rodriguez' criminal proceeding without any justification or consideration of reasonable alternatives to closure. The infringement was compounded when the Tribal Court refused to release any recordings or transcripts of the proceedings against Rodriguez. The appropriate remedy for this infringement on Rodriguez' right is to grant this petition for writ of habeas corpus and to order his release.

**II. THE DECISION OF THE SOVEREIGN PUEBLO TRIBAL COURT TO CONVICT ROBERT RODRIGUEZ, JR. OF DWI BASED ON A PROBABLE CAUSE STATEMENT AND HEARSAY TESTIMONY VIOLATED HIS RIGHT TO BE CONFRONTED WITH WITNESSES AGAINST HIM AS GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT.**

Section 1302(6) of the Indian Civil Rights Act provides that no tribe in exercising powers of self-government shall "deny to any person in a criminal proceeding the right... to be confronted with the witnesses against him." Rodriguez pled not guilty and maintained his innocence of the charges, even when interrogated by the Tribal Court judge at trial. The real "witness" against Rodriguez at trial was the probable cause statement, and it was upon this that his conviction was based (Exhibit F). Due to the Tribal Court's refusal to release the audio of the trial, it is unclear to what extent, if any, Officer Gonzales testified against Rodriguez, or if Rodriguez was given the opportunity to cross-examine him. The Tribal Court cited to the fact that the probable cause statement says that Robert Rodriguez, Jr. told his father that he had been drinking, and allegedly Officer Gonzales overheard this statement, but failed to provide any details

such as the words which he overheard. Robert Rodriguez, Sr. was not subpoenaed for trial (or even allowed to attend as an observer).

The confrontation clause in the Indian Civil Rights Act parallels the same right to confront witnesses as is guaranteed by the Sixth Amendment of the United States Constitution. The confrontation clause gives persons accused of a crime the right to look their accusers in the eye. It prevents the admission of hearsay evidence that has not had its reliability tested through the procedural crucible of cross-examination.

It is well established that the judge's subjective opinion on the reliability of the evidence does not excuse infringement on a criminal defendant's rights under the confrontation clause. In *Crawford v. Washington*, 541 U.S. 36 (2004), the lower court felt that the reliability of an out-of-court statement justified its admission, despite the fact that the defendant would not have the opportunity to cross examine the declarant. The Supreme Court held that where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is confrontation.

Rodriguez was denied the opportunity to confront his accuser when the tribal court judge admitted the probable cause statement as evidence against him and then based Rodriguez' conviction upon it. The error could not have been harmless because the Jail Commitment Sentencing Order states frankly that the probable cause statement was the basis for his conviction (Exhibit F). The Jail Commitment Sentencing Order explains, in pertinent part:

4. On August 4, 2008, the defendant was reported as traveling on Star Road and that he got into an accident and left the scene of the accident when the officer stopped him. He admitted to having an accident and the truck was damaged.

5. The defendant admitted he was drinking to the Officer Gonzales and to his father according to the probable cause statement.

The test for determining whether an infringement on the right to confront justifies the granting of habeas relief is to examine whether the error was harmless. If the error “clearly had a substantial or injurious effect on the verdict,” then it was not harmless beyond a reasonable doubt. *Hoversten v. Iowa*, 998 F.2d 614, 617 (8th Cir.1993) (court found remaining evidence insufficient to support conviction). In the instant case, the Jail Commitment Sentencing Order states frankly that the probable cause statement had a substantial effect on the verdict (Exhibit F).

The appropriate remedy for denial of a criminal defendant’s right to confront witnesses against him in violation of the confrontation clause is to grant habeas relief. *Burbank v. Cain*, 535 F.3d 350 (5th. Cir., 2008), *Fratta v. Quarterman*, No. 07-70040 (5th. Cir., 2008), *Teel v. Burton*, 904 F.Supp. 1294 (M.D. Ala., 1995).

In light of the foregoing, Rodriguez’ right to confront witnesses against him under the Indian Civil Rights Act was violated when the Sovereign Pueblo Tribal Court convicted defendant based on factual allegations in a probable cause statement. The appropriate remedy for this infringement on Rodriguez’ right is to grant this petition for writ of habeas corpus and to order his release.

**III. THE DECISION OF THE SOVEREIGN PUEBLO TRIBAL COURT JUDGE TO PERSONALLY PERFORM THE QUESTIONING OF ROBERT RODRIGUEZ, JR. AT HIS TRIAL VIOLATED HIS RIGHT TO NOT BE COMPELLED TO BE A WITNESS AGAINST HIMSELF IN A CRIMINAL CASE AS GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT.**

Section 1302(4) of the Indian Civil Rights Act provides that no tribe in exercising powers of self-government shall "compel any person in a criminal case to be a witness

against himself.” In this case, the Tribal Court judge questioned Robert Rodriguez, Jr. at his trial and, due to the atmosphere of coercion, Rodriguez did not feel he had a choice but to answer.

The right to not be compelled to testify against oneself in the Indian Civil Rights Act parallels the same right as is guaranteed by the Fifth Amendment of the United States Constitution.

To try a criminal defendant in a room alone with the judge and police officer, without allowing him to even have a family member there for support, creates an atmosphere of intimidation that would make it impossible for him not to answer the judge’s questions. Rodriguez did say that he had an accident and his truck was damaged (Exhibit F), but this does not amount to a confession for driving while intoxicated. This kind of “trial” is not a trial at all; it is a violation of due process whether under the Indian Civil Rights Act or any other interpretation of due process, and it violated Rodriguez’ right not to be compelled to be a witness against himself. He never had the opportunity to decline to take the stand, because he was on the stand, subject to examination, from the moment he walked into the courtroom.

The appropriate remedy for constitutional violations of this nature is habeas relief. *In re Oliver*, 333 U.S. 257, 270 (1948) (granting habeas relief to accused convicted of contempt of court by a state judge acting as a one-man grand jury in secret session).

In light of the foregoing, Rodriguez’ rights to due process and to not be compelled to be a witness against himself under the Indian Civil Rights Act were violated when the Sovereign Pueblo Tribal Court conducted a closed trial with the judge serving on the side of the Pueblo, performing questioning of Rodriguez, rather than as an impartial observer.

The appropriate remedy for this infringement on Rodriguez' rights is to grant this petition for writ of habeas corpus and to order his release.

**IV. THE FAILURE OF THE SOVEREIGN PUEBLO TRIBAL COURT TO HAVE FACILITIES OR AN AVENUE FOR CRIMINAL DEFENDANTS WHO WANT A JURY TRIAL CONSTITUTES A DENIAL OF ROBERT RODRIGUEZ' RIGHT TO A JURY TRIAL AS GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT.**

Section 1302(10) of the Indian Civil Rights Act provides that any person accused of an offense punishable by imprisonment the right to a jury trial. The Sovereign Pueblo Tribal Court does not have the facilities to have a jury trial, and has never held a jury trial, so it is well known that even though the words "right to a jury trial" June be spoken at arraignment, that this is not actually an option. This reality makes the right to a jury trial a legal fiction for criminal defendants at the Sovereign Pueblo Tribal Court.

The very act of trying a person in a court which the person knows cannot offer jury trials constitutes a denial of that defendant's right to a jury trial. For a judge to tell a defendant that he has the right to something that the defendant knows does not exist, is not meaningful for that defendant, and undermines the integrity of the court and judicial process. Upon information and belief, every request ever made for a jury trial at the Sovereign Pueblo Tribal Court has been denied. Defendants no longer have a reason to even ask for one, despite the recitations at their arraignments.

In light of the foregoing, Rodriguez' right to a jury trial as guaranteed by the Indian Civil Rights Act was violated when he was tried at the Sovereign Pueblo Tribal Court, when he knew that the Court did not have the facilities to hold a jury trial and has never, in fact, held a jury trial. The appropriate remedy for this infringement on

Rodriguez' rights is to grant this petition for writ of habeas corpus and to order his release.

**V. THE REFUSAL OF THE SOVEREIGN PUEBLO TRIBAL COURT TO PROVIDE RODRIGUEZ' COUNSEL WITH AUDIO OR TRANSCRIPTIONS OF THE ARRAIGNMENT AND TRIAL FOR PURPOSES OF POST-TRIAL MOTIONS CONSTITUTES A DENIAL OF ROBERT RODRIGUEZ, JR.'S RIGHT TO HAVE THE ASSISTANCE OF COUNSEL AT HIS OWN EXPENSE AS GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT.**

Section 1302(6) of the Indian Civil Rights Act provides that all criminal defendants shall have the right to have the assistance of counsel at their own defense.

Robert Rodriguez, Jr. retained the AB & C Law Firm for the purpose of post-trial motions. An Entry of Appearance, Demand for Discovery, Demand for Speedy Trial, Demand for Jury Trial and Demand for Preservation of Evidence was filed on December 17, 2008 (Exhibit H). A responsive Order was entered on December 18, 2008, accepting the admission to the Sovereign Pueblo Tribal Court of Rodriguez' attorneys, but denying all other requests as untimely (Exhibit A).

A Demand for Release from Custody was filed on December 18, 2008 (Exhibit I). To date, no responsive Order has been received.

On December 25, 2008, Rodriguez' counsel requested that the Court provide audio (transcriptions not being available) for the arraignment and trial of Robert Rodriguez, Jr. (Exhibit J). After two follow up calls and one follow up visit, the Sovereign Pueblo Tribal Court administrator finally advised Rodriguez' counsel that the judge was "denying" the request for audio (Exhibit D).

The fact that the judge held a closed trial, and is now denying Rodriguez' counsel's request for records from his criminal proceedings implicates two rights: (1)

Rodriguez' right to a public trial, and (2) his right to assistance of counsel. Since Robert Rodriguez, Jr. is being held in Capital City, and since there were no witnesses to his trial due to its being closed, the Sovereign Pueblo Tribal Court is attempting to foreclose his attorneys from acting on his behalf at all. By not releasing what happened at trial, the Tribal Court is stymieing the legal efforts of Rodriguez' counsel, for no legitimate reason, and in violation of Rodriguez' right to the assistance of counsel under the Indian Civil Rights Act.

Rodriguez' right to assistance of counsel at his own expense as guaranteed by the Indian Civil Rights Act was violated when the Sovereign Pueblo Tribal Court refused to provide his counsel with audio or a transcript from the criminal proceedings which resulted in one (1) year incarceration and a fine of \$1,000 against Rodriguez. The appropriate remedy for this infringement on Rodriguez' rights is to grant this petition for writ of habeas corpus and to order his release because it is, in fact, the only remedy which can be provided by the federal court pursuant to the Indian Civil Rights Act.

**VI. SINCE THE SOVEREIGN PUEBLO CODE REQUIRES THAT THE TRIBAL COURT JUDGE BE A LICENSED MEMBER OF THE WEST TEXAS BAR, THE TRIAL AND CONVICTION OF ROBERT RODRIGUEZ, JR. BY A JUDGE WHO IS NOT SO QUALIFIED CONSITUTED A VIOLATION OF RODRIGUEZ, JR.'S DUE PROCESS RIGHTS AS GUARANTEED BY THE INDIAN CIVIL RIGHTS ACT.**

Rules for Change of Venue for Criminal and Civil Complaints Filed in the Sovereign Pueblo Tribal Court, Section 1-2-3, Rule 4(b) on Composition of the Judiciary, provides:

The Judge of the modern Tribal Court shall be a licensed member of the West Texas Bar who shall be hired pursuant to the Sovereign Pueblo personnel procedures and commissioned to serve as the presiding judge of the Modern Tribal Court.

(Exhibit K).

Meanwhile, Section 1302(8) of the Indian Civil Rights Act provides:

No Indian tribe in exercising powers of self-government shall—deny to any person within its jurisdiction... of liberty or property without due process of law.

Judge Kaiser is the only judge at the Sovereign Pueblo Tribal Court, and a search of the West Texas State Bar website reveals she is not a licensed attorney in the state of West Texas. Upon information and belief, she has never attended law school.

Rodriguez submits that being tried by a Tribal Judge who does not meet the qualifications of the Sovereign Pueblo Law & Order Code for judgeship (1) denies him due process insofar as the Code creates rights enforceable by every tribal member, and (2) renders his conviction void. In light of the foregoing, Rodriguez requests that his request for habeas relief be granted and that his immediate release be ordered.

**VII. THE APPROPRIATE AND ONLY REMEDY FOR THE VIOLATION OF ROBERT RODRIGUEZ, JR.'S RIGHTS UNDER THE INDIAN CIVIL RIGHTS ACT IN THE COURSE OF HIS TRIAL AND CONVICTION IS TO ORDER HIS IMMEDIATE RELEASE VIA A WRIT OF HABEAS CORPUS.**

It is well established that the federal courts have jurisdiction to enforce the substantive provisions of the Indian Civil Rights Act when the remedy sought is a writ of habeas corpus. *Payer v. Turtle Mountain Tribal Council*, Case No. A4-03-105 (D. N.D. 10/1/2003). Section 1303 of the Act states, in full:

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

Rodriguez' conviction was obtained by way of a series of violations of his rights under the Indian Civil Rights Act and therefore his detention is illegal. What is particularly disturbing is that Rodriguez was sentenced to one (1) year incarceration in

Capital City Regional Correctional Center, which has no tribal affiliation. In theory, Rodriguez could have a cellmate who was afforded indigent defense, a fair jury trial, a public trial, the opportunity to cross examine witnesses against him, and the opportunity not to testify against himself. The fact that these two men could be cellmates and that one was given the panoply of protections while the other was incarcerated via a draconian process which resembles an inquisition more than a trial, highlights the exact kind of injustice which made enactment of the Indian Civil Rights Act necessary.

### **PRAYER FOR RELIEF**

In light of the foregoing, Robert Rodriguez, Jr. prays that the Court:

1. Finds the Jail Commitment Sentencing Order for Sovereign Pueblo Tribal Court Case Number CR10-000 void for the reasons stated,
2. Grants him habeas relief and order his immediate release, and
3. Grants him general relief.

Respectfully Submitted,

**AB & C LAW FIRM, P.C.**

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