

Andrew J. Yellowbear, Jr., #24244  
pro se,  
Wyoming State Penitentiary  
P.O. Box 400  
Rawlins, WY 82301

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF WYOMING**

FILED  
U.S. DISTRICT COURT  
DISTRICT OF WYOMING  
JAN 13 2009  
Stephan Harris, Clerk  
Cheyenne

ANDREW JOHN YELLOWBEAR, JR.,     )  
    Petitioner,                         )  
  )  
    v.                                     )  
  )  
SHERIFF, SKIP HORNECKER, AND     )  
THE ATTORNEY GENERAL OF THE     )  
STATE OF WYOMING,                 )  
    Respondents.                     )

Civil No.: 06-CV-0082-B

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**BRIEF IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT  
ON PETITION FOR RELIEF PURSUANT TO 28 U.S.C. 2254  
TO VACATE, OR SET ASIDE CONVICTION AND SENTENCE**

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**COMES NOW**, Petitioner, *pro se*, and hereby respectfully submits this brief in support of Petitioner's Motion for Summary Judgment pursuant to *Federal Rule of Civil Procedure 56, et seq.* on Petition for Relief Pursuant to 28 U.S.C. 2254 To Vacate, or Set Aside Conviction and Sentence, filed contemporaneously herewith. Petitioner's legal arguments are set forth in this supporting brief. "FRCP 56 applies with equal force in context of *habeas corpus* cases." Clark v. Johnson (2000, CA5 Tex) 202 F.3d 760, cert den (2000) 531 US 831, 148 L Ed 2d 46, 121 S Ct 84. "Complainant of *pro se* litigant, against whom motion for summary judgement is filed, must be liberally construed in determining whether motion addresses all legal issues raised by plaintiff." Jones v. Evans (1982, ND Ga) 554 F Supp 769. See also Boggs v. Santos (2004 DC Or) 334 F Supp 2d 1244. "Summary Judgement is appropriate in *habeas corpus* proceedings."

## INTRODUCTION

Mr. Yellowbear is an enrolled member of the Northern Arapaho Tribe (See Exhibit "A"), one of two tribes residing on the Wind River Indian Reservation. In July of 2004, the State of Wyoming charged Mr. Yellowbear with felony murder, arising out of the death of his young daughter at 900 Forest Drive, in Riverton, Wyoming. The State of Wyoming sought the death penalty in its case and prosecution of Mr. Yellowbear. In November 2005, before Mr. Yellowbear's state court trial, he challenged the subject matter and personal jurisdiction of the State of Wyoming on the ground that the alleged crime took place on the Wind River Indian Reservation "Indian Country" and that the Federal Court had exclusive jurisdiction of the alleged crime. The state trial court denied Mr. Yellowbear's jurisdiction motion on January 31, 2006. Mr. Yellowbear then filed a petition for a *Writ of Review and Stay of the Trial Court Proceedings* in the Wyoming Supreme Court. On February 28, 2006, the Wyoming Supreme Court summarily denied both of Mr. Yellowbear's requests. On March, 09, 2006, Mr. Yellowbear, filed an *Emergency Motion For Declaratory Judgment* in the Shoshone And Shoshone Tribal Court, Mr. Yellowbear sought an Order from the Tribal Court declaring that the state trial court was without jurisdiction to hear the case: Case No. 05-11, State of Wyoming v. Andrew J. Yellowbear, Jr. On March 16, 2006, the tribal Court held a hearing on Mr. Yellowbear's Motion, it granted the motion ruling that "The State of Wyoming is without criminal jurisdiction in the City of Riverton, Wyoming over Indians, Specifically Andrew John Yellowbear, Jr. an enrolled member of the Northern Arapaho Tribe. The Tribal Court later on March, 29, 2006, voided and rescinded its Court Order granting extradition of Mr. Yellowbear, off of the Wind River Indian Reservation. On March 27, 2006, shortly after the commencement of his state court trial, Mr. Yellowbear filed a petition under 28 U.S.C. 2241, for a *Writ of Habeas Corpus* with the United States District Court for the District of Wyoming, alleging that the state court lacked

subject matter jurisdiction to try him for a crime allegedly committed in Riverton, Wyoming, because the alleged crime occurred in “Indian Country.” This Court (Brimmer, J.) ordered that the petition be served upon the respondents, and provide the respondents 20 days to respond. On April 1, 2006, before the respondents filed any papers, Mr. Yellowbear was convicted of all counts filed against him and his trial proceeded to the death penalty phase. On June 1, 2006, Mr. Yellowbear was sentenced to life imprisonment in the state court proceeding. On June 9, 2006, this Court (Brimmer, J.) denied Mr. Yellowbear’s petition, ruling that “[a]ll the conditions required for Younger abstention are present in Mr. Yellowbear’s case.” In denying the subsequent motions for reconsideration, this Court stated:

“The substantive issue presented in Mr. Yellowbear’s §2241 Petition is an important one and one that this Court looks forward to reviewing again at an appropriate time. Now, however, this Court simply lacks jurisdiction to consider the merits of his claim.”

Mr. Yellowbear then sought a Certificate of Appealability from the United States Court of Appeals for the Tenth Circuit. On January 26, 2007, that Court entered an order issuing a Certificate of Appealability, ruling that “[P]etitioner has made the requisite showing;” ie., “a substantial showing of a denial of a Constitutional Right.” After a hearing, the Tenth Circuit reversed and remanded ruling that “because this claim has now been resolved in the state court, the comity considerations which are the basis of Younger abstention are no longer applicable.” That court further found “the issue of whether the state court properly exercised jurisdiction over Mr. Yellowbear is an important Federal Constitutional question which Mr. Yellowbear has diligently endeavored to bring before the Federal Court. Absence of jurisdiction in the convicting court is indeed a basis for Federal *Habeas Corpus* relief cognizable under the *due process clause*.” The Tenth Circuit then reversed and remanded this matter to this Court “to permit the District Court to

provide Mr. Yellowbear the opportunity to re-characterize his §2241 action as a §2254 Petition if he so chooses, and to conduct further proceedings if Mr. Yellowbear decides to go forward with the petition as re-characterized.” Mr. Yellowbear has indeed re-characterized his petition as a §2254 Action when on July 11, 2008, he filed a Petition for Relief Pursuant to §2254 To Vacate, Or Set Aside Conviction And Sentence.”

### **SUMMARY JUDGEMENT STANDARD**

Pursuant to *Federal Rules of Civil Procedure R 56*, Summary judgement is available if, “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law.” “*Rule 56* applies with equal force to *habeas corpus* petitions, such that non moving party has duty to respond to summary judgement motion or risk finding of no genuine issue of material fact.” *Maynard v. Dixon* (1991, CA4 NC) 943 F2d 407, 20 FR Serv 3d 1938, cert den (1992) 502 US 1110, 117 L Ed 2d 450, 112 S Ct 1211. Requirement of *Rule 56(c)* that party, against whom motion of summary judgement is made, show sufficient facts to withstand such motion is equally applicable to pleadings of *pro se* litigants although pleadings of such litigants are entitled to liberal construction.” *King v. Cuyler* (1982, ED Pa) 541 F Supp 1230. The Petitioner’s jurisdictional claim has been exhausted in the state courts of Wyoming and is properly before this Court to determine whether or not the Federal Court has exclusive criminal jurisdiction over alleged offenses committed in “Indian Country;” ie., in Riverton, Wyoming, and allegedly perpetrated by Northern Arapaho and Eastern Shoshone Tribal members who were alleged to have committed them. Under the Supremacy Clause, United States Supreme Court Rulings, Laws, Statutes, and Treaties, the right to prosecute Indians for alleged criminal acts in “Indian Country” rests exclusively with the United States. “Motion for summary judgement is proper procedure to be

used in *habeas corpus* case.” *Petition of McShane* (1964, ND Miss) 235 F Supp 262, 9 FR Serv 2d 81A.22, Case2.

### **DISCUSSION AND ARGUMENT**

Plaintiff restates and incorporates by reference all of the allegations otherwise set forth in this motion for summary judgement.

The alleged crime occurred in “Indian Country” at 900 Forest Drive, Riverton, Wyoming. The State of Wyoming Courts erroneously denied Mr. Yellowbear’s arguments that the alleged crime occurred in “Indian Country” and that the state courts thus lacked jurisdiction over the matter. The United States Supreme Court, as well as the United State Court of Appeals for the Tenth Circuit, uniformly recognize that a state has NO INTEREST in prosecuting Indians for crimes that occur in “Indian Country.” *United States v. John*, 437 U.S. 634 (1978); *Keeble v. United States*, 412 U.S. 205, 209-12 (1973); *United States v. Kagama*, 118 U.S. 375, 83 (1886); *Sycuan Band of Mission Indians v. Roach*, 54 F.3d 535, 541 (9<sup>th</sup> Cir. 1994); *Fort Belknap Indian Community of the Fort Belknap Indian Reservation v. Mazurek*, 43 F.3d 428, 432 (9<sup>th</sup> Cir. 1994); *Seneca-Cayuga Tribe of Oklahoma v. Thompson*, 874 F.2d 709, 711 (10<sup>th</sup> Cir. 1989)(noting that states have no interest in forcing state laws in “Indian Country”).

The Federal Government has exercised sole jurisdiction over “Indian Country” since 1885. As a reaction to the case of *Ex Parte Crow Dog*, 109 U. S. 556 (1883), where the United States Supreme Court held that the Federal Courts had no jurisdiction over murder in “Indian Country,” Congress passed the Indian Crimes Act, which provided the Federal Government with jurisdiction over crimes within “Indian Country” in certain circumstances. *See Keeble*, 412 U. S. at 209-12.

While a state may have an interest in seeing that the Federal Government adequately prosecutes the crime of murder, it has no legitimate interest impinging on the Federal Government’s



exclusive prosecutorial jurisdiction over Indians for certain crimes that occur in “Indian Country.” *Sycuan Band of Indian Mission Indians*, 54 F.3d at 541; *Fort Belknap Indian Community of the Fort Belknap Indian Reservation*, 43 F.3d at 432; *Seneca-Cayuga Tribe of Oklahoma*, 874 F.2d at 711.

### **THE SHOSHONE AND ARAPAHO TRIBAL COURT DECLARATIONS**

On March 9, 2006, while awaiting trial the Petitioner, filed an ‘Emergency Motion Declaratory For Judgment’ in the Shoshone and Arapaho Tribal Court “IN THE MATTER OF: ANDREW JOHN YELLOWBEAR, JR.,” this Court has exclusive jurisdiction over both civil and alleged criminal actions arising and or occurring within the exterior boundaries of the Wind River Indian Reservation, in Wyoming. In his Emergency Motion the Petitioner asked the Tribal Court to “Issue an order declaring that the Fifth Judicial District is without jurisdiction to try me in *Case No. 05-11, State of Wyoming v. Andrew John Yellowbear, Jr.*” The Honorable David B. Park, District Judge, and Timothy C. Gist, Deputy Fremont and County Prosecuting Attorney, were served with and given notice of Mr. Yellowbear’s Emergency Motion filed in the Tribal Court. On March 16, 2006, the Tribal Court held a hearing on Mr. Yellowbear’s, Emergency Motion “IN THE MATTER OF: ANDREW JOHN YELLOWBEAR, JR., Case No.: CV-MISC-06-0001.” (See Exhibit “B”) Present at the hearing were, Andrew John Yellowbear, JR., Pro se by way telephone. and Berthinia Crocker, Attorney for the Northern Arapaho Tribe. Not present although notified were, Ed Newell, Fremont County and Prosecuting Attorney, the Honorable David B. Park, District Court Judge, Fifth Judicial District State of Wyoming, Timothy C. Gist, Deputy Fremont County Attorney, and Shoshone Business Council. After hearing arguments on the matter and there being NO arguments presented to the Tribal Court opposing Mr. Yellowbear’s Emergency Motion For Declaratory Judgment, the Tribal Court granted the Motion (See Exhibit “C”) and Ordered, Adjudged and Decreed that:

“ 1) The Motion for Declaratory Judgment be and is hereby granted.”

“ 2) The State of Wyoming is without criminal jurisdiction in the city of Riverton, Wyoming over Indians, specifically Andrew John Yellowbear, Jr. an enrolled member of the Northern Arapaho Tribe.”

The Tribal Court later Ordered on March 21, 2006, (See Exhibit “D”) under the same circumstances:

“1) The Order of Extradition dated July 2004 be considered void.”

“2) The said Order be rescinded effective July 2004.”

The Shoshone and Arapaho Tribal Court Declarations concretely indicate that not only was Mr. Yellowbear’s extradition off of the Wind River Indian Reservation illegal and considered void, but that “The ‘State of Wyoming’ is without criminal jurisdiction in the City of Riverton, Wyoming, over Indians, specifically Andrew John Yellow bear, Jr. an enrolled member of the Northern Arapaho Tribe.” The state of Wyoming had a chance to argue its contention that Riverton, Wyoming, is not on the reservation in the Tribal Court, but it did not even bother to show up for any of the hearings for which it was notified. This is a prime example of how the state of Wyoming exudes its totalitarian governmental stance over the tribes of the Wind River Indian Reservation, in the sense that it demands that tribal members avail themselves to the relative safety of its state court system, but, will not even show any respect to the Tribal Court and its lawful jurisdiction. The state has intentionally chosen completely ignore all guiding federal precedence and law concerning the resolution of federal Indian law questions, and would have this Court take the same unlawful stance. The petitioner prays that this Court not allow itself to be lead so far astray in its consideration and determination of whether or not Riverton, Wyoming, is in “Indian Country” as defined at *18 U.S.C. § 1151*. The preceding Tribal Court Rulings are well documented in the state trial court proceeding,

subsequent State of Wyoming Supreme Court case, and this Federal *Habeas Corpus* Action.

### **THE FEDERAL COURT CASES**

The Federal Courts of Wyoming have addressed the question of whether Riverton is within “Indian Country” in both criminal and civil cases. see:

In *Farmers Insurance Exchange v. Allison Sage, Jr., Shoshone and Arapaho Tribal Court*, Fed. Dist. Ct. No 02-CV-94-J, Judge Johnson entertained a claim of lack of jurisdiction in tribal court. Following a long line of Federal Precedent, Judge Johnson found in favor of exhaustion of Tribal Court remedies to redress injuries sustained in an accident involving two enrolled members of the Northern Arapaho Tribe on the Wind River Reservation near Ehtete and involving a police purchased in Riverton. See also *Dry Creek Lodge, Inc. v. Arapahoe and Shoshone Tribes*, 623 F.2d 682, 683 (10<sup>th</sup> Cir. 1980)(the Tenth Circuit has also recognized that Riverton is within the boundaries of the Wind River Reservation);and *Clark v. Boysen*, 39 F.2d 800, 814 (10<sup>th</sup> Cir.), cert denied 282 U.S. 869 (1930) In his order, Judge Johnson stated “Sage had purchased his policy from the William Rouse Agency in Riverton, Wyoming, which lies within the exterior boundaries of the Wind River Reservation.” See February 10, 2003, Order Denying Plaintiffs Motion For Judgement on the Pleadings, Denying Defendant Sage’s Motion to Dismiss and Granting Shoshone and Arapaho Tribal Court’s Motion to Dismiss.

In the criminal context, this Court has also addressed the question of whether Riverton was [and still is] within “Indian Country.” *United States v. Jenkins*, Fed Dist. Ct. Wyo. 99-CR-105-B. Ruling from the bench, this Court found, among other things, “[I]t is my belief that the Wind River Indian Reservation, exterior boundaries encompass the point on which this arrest occurred. I think that the majority of the City of Riverton is within the boundaries of that reservation. I think that Sargent Warren had every right to make the arrest where he did regardless of whether he crossed the



bridge or not.” The site of the stop and arrest was on South Federal Boulevard, also State Highway 789, about three hundred feet north of the bridge over the Wind River.

This Court’s ruling in the Jenkins, case establishes that “the majority of the City of Riverton is within the boundaries of the Wind River Reservation,” and that the issue of whether the alleged crime is within the boundaries of the reservation is both a legal and fact intensive issue. The state has not and probably will not attempt to dispute the District Court’s rulings cited above concerning its determinations that Riverton, Wyoming, -is- within the exterior boundaries of the Wind River Indian Reservation. Instead, the state will most likely try and persuade this Court to look past them as the rulings are not favorable to its contention that the city of Riverton, Wyoming, is not within the boundaries of the *W.R.I.R.* The Petitioner pray’s the Court will give the Federal Court rulings the respect and consideration they deserve.

### **THE STATE COURT CASES**

Generally, state court rulings regarding the scope of “Indian Country” are entitled to little or no deference, but here the Supreme Court of Wyoming its self has ruled that Riverton, WY, is in “Indian Country.” The state cites a series of state court cases to support the proposition that the site of the crime alleged against Mr. Yellowbear, Riverton, WY, is not within “Indian Country.” It specifically cites Merill v. Bishop, 237 P.2d 186 (Wyo.1951) for the proposition that no Indian Reservation any longer exists (as to the locus of the alleged crime.) Its successor, Merrill v. Bishop, 287 P.2d 520 (Wyo. 1955), and “abandonment” of Indian water rights appertaining to the Wind River Indian Reservation, has been considered and rejected in the case In re Right to use Water in Big Horn River, 753 P.2d 76 (Wyo. 1988). This ruling, as well, postdates the other two cases cited by the State, Blackburn v. State, 357 P.2d (Wyo. 1960), and State v. Moss, 471 P.2d 333 (Wyo. 1970). So even if the state were to continue its contention that this Court should give deference to the above

stated state court cases, those cases were emphatically rejected by the Supreme Court of Wyoming, in the Big Horn I ruling.

### **THE 1905 ACT OF CONGRESS**

*The Act of March 3, 1905, ("1905 Act")* did not change the Reservations status of lands opened to possible non-Indian settlement. The 1905 Act simply opened the reservation to facilitate sales to non-Indian settlers while the tribes retained a beneficial interest in the lands. Importantly, the United States in *Article IX of the 1905 Act* specifically agreed to continue to act as trustee for the tribe with respect to lands covered by the *Act*. "[I]f a surplus land act 'simply offered non-Indians the opportunity to purchase land within established reservation boundaries,'" then the entire opened area remains "Indian Country." *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343, quoting *Solem v. Bartlett*, 465 U.S. at 470. The wording of the *1905 Act* in comparison to the *1872 and 1897 Treaty Amendments*, and the contemporaneous treatment of the area, minimal settlement of the area, and continued assertion of jurisdiction by the Tribes and the United States all support the conclusion that the *1905 Act* did not change the reservation status of the lands covered by the *Act*. The Petitioner points out the following U.S. Supreme Court Case which is remarkably similar to the matter at and question at hand, See *Seymore v. Superintendent of Washington State Penitentiary*, (Cite as: 368 U.S. 351, 82 S. Ct. 424).

- [2] Question of whether place where a crime committed by an un-emancipated member of an Indian Tribe was part of an Indian Reservation and therefore "Indian Country" within statute defining "Indian Country" for purposes of exclusive jurisdiction, depended upon interpretation and application of Federal Law, *18 U.S.C.A. 1151, 1153*.
- [5] A burglary offense committed on land within limits of an Indian Reservation was committed within "Indian Country" within exclusive jurisdiction statute, even if the particular parcel of land upon which the offense was committed was held under a patent in Fee by a non-Indian, *18 U.S.C.A. 1151, 1153*.
- [7] Fact that land on which an attempted burglary was committed by an Indian was

located within a town laid out by the Federal Government, within limits of an Indian Reservation, and that such town-site plot was filed for record in county of a state, did not mean that such territory was not "Indian Country," within statute defining "Indian Country" for purposes of exclusive jurisdiction, *18 U.S.C.A. 1151, 1153*.

- [8] When Congress has once established an Indian Reservation, all tracts included within it remain a part of that reservation until separated there from by Congress.
  
- [6] The state urges that we interpret the words "notwithstanding the issuance of any patent" to mean only notwithstanding any patent to an Indian. But the state does not suggest, nor can we find, any adequate justification for such an interpretation. Quite the contrary, it seems to us that the strongest argument against the exclusion of patented lands from an Indian Reservation applies with equal force to patents issued to non-Indians and Indians alike. For that argument rests upon the fact that were the existence or non-existence of an Indian Reservation, and therefore the existence or non-existence of federal jurisdiction, depends upon the ownership of particular parcels of land law enforcement officers operating in the area will find it necessary to search tract books in order to determine whether criminal jurisdiction over each particular offense even though committed within the reservation is the state or Federal Government. Such an impractical pattern of checkerboard jurisdiction was avoided by the plain language of §1151 and we see no justification for adopting an unwarranted construction of that language where the result would be merely to recreate confusion Congress specifically sought to avoid.

Objection to the possibility of such an administratively unworkable distribution of criminal jurisdiction has been voiced by the solicitor of the *Department of Interior*, *611 D.298, 304*. And see *U.S. v. Frank Blackspottedhorse*, *8 Cir.*, *282 F. 349, 353..354*.

- [7] the second alternative contention pressed by the State of Washington rests upon the fact that the land in which the burglary occurred is located within the governmental town site of Omak, a town laid out by the Federal Government pursuant to authority granted in §11 of the *1906 Act*. The state contends that when this authorized town site plot was filed for record in Okanogan County, all the lands encompassed within the town site were thereby dedicated to the public interest and, since this dedication to the public is inconsistent with any reservation for the Indians, all these lands became subject to the exercise of criminal jurisdiction by the Courts of Washington. This contention is nothing more than a variation of the state's first alternative contention for it simply attempts to make a special case for excluding from a reservation lands owned by towns as opposed to lands owned by individual non-Indians. The argument which leads us to reject the state's first alternative contention, though present only with somewhat less force here, are nonetheless entirely adequate to require the same answer to this contention. Moreover, the state can point to no language in §1151's definition of "Indian Country" which lends the slightest support to the idea that by creating a town site within an Indian Reservation, the Federal Government lessens the scope of its responsibility for the Indians living on that reservation.

“It is well established that Congress must use such explicit statutory language in order to abrogate rights.” Big Horn Adjudication, 753 P.2d 76, 93 (Wyo.1988)(holding 1905 Act did not contain language specific to abrogate Treaty Water Rights).

### **SUMMARY OF ARGUMENT**

Mr. Yellowbear has exhausted his Federal Claim in the state courts as instructed by this Court. The Respondents can point to no real material fact[s] which contradict that the Wind River Indian Reservation’s boundaries do not remain today as they did prior to the *1905 Act of Congress*. Thus, the “Indian Country” land status in the *1905 Act* area, including the City of Riverton was not terminated. The *1905 Act of Congress*, did not reduce or diminish the exterior boundaries of the Wind River Indian Reservation it merely allowed non-Indians to come on and reside within the limits of the reservation. **The United States District Court for the District of Wyoming, and The United States Court of Appeals for the Tenth Circuit, have both indicated through rulings that Riverton, Wyoming, lies within the exterior boundaries of the Wind River Indian Reservation.** The Supreme Court of Wyoming, in the Big Horn I ruling emphatically determined that as a result of the *1905 Act of Congress*, the Wind River Indian Reservation’s boundaries were not reduced, thus, the lands within the boundaries were entitled to certain water right’s. The Federal Court’s are and have been the only proper venue to interpret and apply the Treaties of the United States, and Act’s of Congress negotiated between the United States and Indian Tribes. This power is found under the Supremacy Clause, and under Articles of the U.S. Constitution. The reasoning behind this exclusive jurisdiction doctrine has been the Federal Court’s recognition of the states totalitarian stance they have taken when dealing with Indian Tribes and their issues. The Petitioner, himself has endured this treatment in his state court trial but, nevertheless, he proceeded knowing full well that because of this racial bias he would not and did not receive a fair trial in the state court’s. Mr.



Yellowbear's, conviction is illegal under the United States Constitution, Law's, Treaties, and Statutes and cannot stand. "Summary judgement may be granted in an action for *writ of habeas corpus* if the requirements of *Rule 56* are otherwise satisfied." *Youngbear v. Brewer* (1976, ND Iowa) 415 F Supp 807, *affd* (1977, CA8 Iowa) 549 F2d 74. In light of the substantial federal evidence provided here by the petitioner, he moves this Court for a summary judgement, as a matter of law.

**PRAYER FOR RELIEF**

WHEREFORE, the Petitioner prays that this honorable Court will:

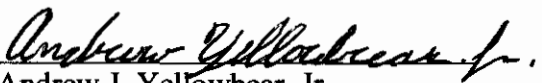
A) Declare that his conviction and subsequent Life With Out Parole sentence arising out of the state court trial which lacked personal and subject matter jurisdiction violates the Constitution, Law's, Statutes, and Treaties of the United States, and thus cannot stand.

B) Grant him a summary judgment order in his favor indicating that the state of Wyoming lack's both subject and personal jurisdiction over any alleged crimes committed by Northern Arapaho and Eastern Shoshone Tribal members in Riverton, WY, as that area is still within "Indian Country" as defined by statute at 18 U.S.C. 1151.

C) Order the immediate release of the Petitioner Mr. Yellowbear, from the Wyoming State Penitentiary in Rawlins, Wyoming.

D) Grant him any other relief the Court deems just and proper under the circumstances.

Respectfully submitted this 10 day of January, 2009.

  
Andrew J. Yellowbear, Jr.,  
Petitioner, pro se,  
Wyoming State Penitentiary  
P.O. Box 400  
Rawlins, WY 82301



**“EXHIBIT A”**

**Norther Arapaho Enrollment Department Certificate of Enrollment For  
Andrew J. Yellowbear, Jr.,**

**Northern Arapahoe Enrollment Department**

P.O. Box 8266  
Ethete, WY 82520  
307-332-2499

Date August 8, 2006.

TO WHOM IT MAY CONCERN:

This is to certify that the records of this office show that

<u>Andrew</u>	<u>John</u>	<u>Yellowbear, Jr</u>
First Name	Middle Name	Last Name

Is of 23/32 total degree Indian blood and 23/32 degree

Northern Arapaho blood, as shown on the Northern Arapaho

Tribal Rolls, Identification Number: 281-U011280.

Date of Birth: September 5, 1974.



Helen F. Brown, Enrollment Technician  
Northern Arapaho Enrollment Department

**SEAL**

**“Exhibit B”**

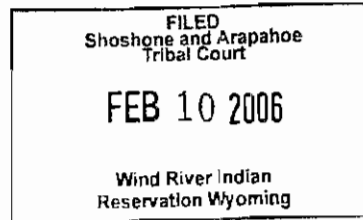
**Emergency Motion For Declaratory Judgment  
Filed In The  
Shoshone And Arapaho Tribal Court**

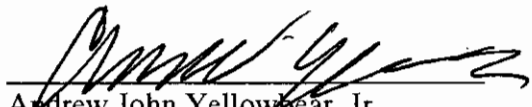
FILED  
Shoshone and Arapahoe  
Tribal Court  
FEB 10 2006  
Wind River Indian  
Reservation Wyoming

## FORT WASHAKIE, WYOMING

EMERGENCY  
MOTION FOR DECLARATORY  
JUDGMENT

Dated this 09 day of March, 2006.



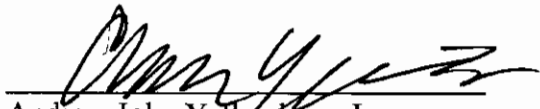
  
Andrew John Yellowbear, Jr.  
Hot Springs County Jail  
417 Arapahoe  
Thermopolis, WY 82443

**CERTIFICATE OF SERVICE**

I certify that I personally served the following with a copy of the foregoing on the 09  
day of March, 2006.

The Honorable David B. Park  
District Judge  
Thermopolis, WY

Timothy Gist  
Deputy County Attorney  
Thermopolis, WY

  
Andrew John Yellowbear, Jr.



**“Exhibit C”**

**Shoshone And arapaho Tribal Court Order Granting  
Emergency Motion For Declaratory Judgment**

Mar. 21. 2006 11:53AM S&amp;A TRIBAL COURT

No. 7933 P. 2/3

SHOSHONE AND ARAPAHOE TRIBAL COURT

SHOSHONE AND ARAPAHOE TRIBES

WIND RIVER INDIAN RESERVATION

FORT WASHAKIE, WYOMING

FILED  
Shoshone and Arapahoe  
Tribal Court

MAR 16 2006

Wind River Indian  
Reservation Wyoming

IN THE MATTER OF: ) Case No.: CV-MISC-06-0001

ANDREW JOHN YELLOWBEAR, JR., ) DECLARATORY JUDGMENT

Debtor. )

The Shoshone and Arapahoe Tribal Court held a hearing at 4:00 pm March 16, 2006.

Present: Andrew John Yellowbear, Jr. and Berthenia Crocker, Attorney for the Northern Arapahoe Tribe.

Not Present Although Notified: Ed Newell, Fremont County Attorney, The Honorable Dave B. <sup>Park</sup> ~~Back~~, District Court Judge, Fifth Judicial District State of Wyoming, Timothy Gist, Deputy County Attorney, Hot Springs County and Shoshone Business Council.

After hearing arguments the Court makes the following findings and conclusions upon which to base its order.

The Court finds that all parties were notified and that there were no arguments presented opposing the Motion for Declaratory Judgment.

Based upon the above findings it is concluded that the Motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:

1) The Motion for Declaratory Judgment be and is hereby granted.

Mar. 21. 2006 11:53AM

S&amp;A TRIBAL COURT

No. 7933 P. 3/3

1 2) The State of Wyoming is without criminal jurisdiction in the City of  
2 Riverton, Wyoming over Indians, specially Andrew John Yellowbear,  
3 Jr. <sup>aka</sup> enrolled member of the Northern Arapahoe Tribe.

4 Dated this 16<sup>th</sup> day of March 2006.

5  
6   
7 JOHN ST. CLAIR, CHIEF  
8 JUDGE  
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**“Exhibit D”**

**Shoshone And Arapaho Tribal Court Order  
Voiding and Rescinding Andrew John Yellowbear’s Extradition Off Of The  
Wind River Indian Reservation**

Mar. 30. 2006 12:41PM S&amp;A TRIBAL COURT

No. 8153 P. 2/3

## SHOSHONE AND ARAPAHOE TRIBAL COURT

SHOSHONE AND ARAPAHOE TRIBES

WIND RIVER INDIAN RESERVATION

FORT WASHAKIE, WYOMING

FILED  
Shoshone and Arapahoe  
Tribal Court

MAR 29 2006

Wind River Indian  
Reservation Wyoming

IN THE MATTER OF: ) Case No.: CV-MISC-06-0001  
 )  
 ANDREW JOHN YELLOWBEAR, JR. , ) DECLARATORY JUDGMENT  
 )  
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The Shoshone and Arapahoe Tribal Court held a hearing at 4:00 pm March 29, 2006 on John Andrew Yellowbear, Jr. request for relief from on Order extraditing him from the Wind River Indian Reservation to the State of Wyoming July 2004.

Present: John Andrew Yellowbear, Jr., Pro Se by way of telephone.

Not Present: Although notified on March 21, 2006, Fremont County Sheriff's Office Department on behalf of the State of Wyoming.

Due to the fact the Fremont County Sheriff's Office did not respond to the Motion nor appear for the hearing that Court hereby finds that the request is not opposed.

As a result it is concluded that the Motion should be granted pursuant to Rule 29 (2) (e) Shoshone and Arapahoe Law of Order Code which applies to the trial and appellate courts in criminal matters to the extent no different rule is specified.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that:

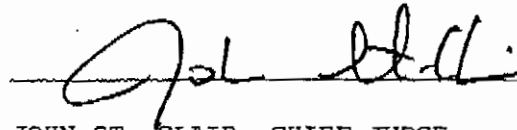
- 1) The Order of Extradition dated July 2004 be considered void.
- 2) The said order be rescinded effective July 2004.



Mar.30. 2006 12:42PM S&A TRIBAL COURT

No.8153 P. 3/3

1 Dated this 29<sup>th</sup> day of March 2006.

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JOHN ST. CLAIR, CHIEF JUDGE

**SHOSHONE AND ARAPAHOE TRIBAL COURT**

Shoshone and Arapahoe Tribes  
Wind River Indian Reservation  
Fort Washakie, Wyoming

IN REFERENCE TO:

**COURT ORDER**

Andrew John Yellowbear, Jr.

Warrant No. CR-2004-6441

**TO ANY LAW ENFORCEMENT OFFICER ON THE WIND RIVER INDIAN  
RESERVATION, WYOMING:**

This is authorization for you to pick up, transport or turn over the above named subject to the Sheriff and/or Deputy Sheriff for the county of Fremont, to either the Fremont County Sheriff's Department in Lander, or Riverton, Wyoming.

There is a Warrant and Complaint lodged against the above named subject for the charge of Felony Murder

(Copy of Warrant and Complaint attached); however if the above-named person requests a hearing he/she must be brought before the Shoshone and Arapahoe Tribal Court.

Dated this 07 <sup>RT</sup>~~th~~ day of July 19 2004

(Seal)

Richard J. Ferris, Jr.

Judge, Shoshone and Arapahoe Tribal Court  
Wind River Indian Reservation  
Fort Washakie, Wyoming

hereby request / waive my right to a hearing. (Circle or underline the appropriate word)

Defendant's Offer of Proof

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Signed: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing BRIEF IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT ON PETITION FOR RELIEF PURSUANT TO 28 U.S.C. 2254 TO VACATE, OR SET ASIDE CONVICTION AND SENTENCE, upon the hereinafter named person by depositing the same in the U.S. Mail, postage prepaid, this 10 day of January, 2009, addressed as follows:

DAVID L. DELICATH  
Senior Assistant Attorney General  
Office of the Attorney General; Criminal Division  
123 State Capitol Building  
Cheyenne, WY 82002

S/Andrew J. Yellowbear, Jr.  
Andrew J. Yellowbear, Jr.