

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**APPEAL NO. 14-13843**

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**COLLEY BILLIE, as Chairman of the  
MICCOSUKEE TRIBE OF INDIANS OF FLORIDA,**

**Appellant,**

**v.**

**UNITED STATES OF AMERICA**

**Appellee.**

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**APPELLANT CHAIRMAN COLLEY BILLIE'S REPLY BRIEF**

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## **ARGUMENT**

Chairman Colley Billie is at the forefront of a battle being waged by the federal government against the Miccosukee Tribe of Indians of Florida. Chairman Billie is being cornered by the Internal Revenue Service (hereinafter, "IRS") and forced by the district court to violate the laws of the people who elected him in the first place, in effect forcing him to act outside of his constitutional authority. The IRS issued a summons to Colley Billie as chairman of the Miccosukee Tribe, for tribal documents in conducting an examination regarding distributions disbursed to tribal members for their general welfare. As is required by the federally approved Miccosukee Tribe's Constitution and its laws, the General Council must provide authorization before the Chairman has the authority to request the compilation and produce any documents belonging to the Miccosukee Tribe and its members. The General Council denied the authorization and in fact passed a Resolution prohibiting Chairman Billie to produce the summoned documents. The district court's order enforcing the summons against Chairman Colley Billie must be vacated because is an intra-tribal dispute requiring interpretation of tribal laws, and it is contrary to law.

**I. THE TRIBAL GENERAL WELFARE EXCLUSION ACT OF 2014  
COMMANDS SUSPENSION OF ALL AUDITS AND  
EXAMINATIONS OF INDIAN TRIBAL GOVERNMENTS**

The recent enactment of the Tribal General Welfare Exclusion Act requires the reversal of the district court's order compelling Chairman Colley Billie to comply with the summons because a summons is an investigative tool to aid the IRS in its examinations. On September 26, 2014, the Tribal General Welfare Exclusion Act of 2014 (hereinafter, "the Act") was passed and provides that,

The Secretary of the Treasury **shall** suspend all audits and examinations of Indian tribal governments and members of Indian tribes (or any spouse or dependent of such a member), to the extent such an audit or examination relates to the exclusion of a payment or benefit from an Indian tribal government under the general welfare exclusion...

Tribal General Welfare Exclusion Act of 2014, Pub. L. No. 113-168, § 4, 128 Stat. 1883, 1885 (2014). It is clear that the suspensions of the audits and examinations are not optional, and the suspensions may only be waived at the Tribe's option. Because the Miccosukee Tribe has not exercise its option to waive suspensions, the IRS should have halted any attempts to continue with its examination efforts. It did not. Instead, it is currently seeking to hold the Chairman of the Miccosukee Tribe in contempt of court using the threat of imprisonment and sanctions as a sword in the district court. The Miccosukee Tribe is requesting this Honorable Court uphold the statutory right to suspend all audits and examinations of the Tribe and its Members. The statute applies retroactively to "taxable years for which the period

of limitation on refund or credit under section 6511 of the Internal Revenue Code of 1986 has not expired...” Tribal General Welfare Exclusion Act of 2014, Pub. L. No. 113-168, § 2(d), 128 Stat. 1883, 1884 (2014). By the IRS’s own admission, the examination that is being conducted of the Miccosukee Tribe is for payments to members of the Tribe, payments which the Tribe has consistently maintained are for general welfare purposes. Appellee Br. at 18. This places the Miccosukee Tribe squarely within the purview of the Act.

The IRS further contends that “the Tribe’s argument asserting that enforcing the summons violates the congressional policy of protecting tribal self-determination has no merit.” Appellee Br. at 24. This is a gross misrepresentation of the current state of the law. The clear Congressional intent behind the Act, as evidenced by the record, is to “end unwarranted intrusions” by the IRS into tribal self-government. 160 Cong.Rec. H7599-02, 7600 (2014). The Act calls for deference to Indian Tribal Governments. Meanwhile, the IRS’s focus, contrary to the congressionally stated purpose, is to limit the powers of self-governance that Indian Tribes, such as the Miccosukee Tribe, possess. Appellee Br. at 23.

It is clear that the Act precludes the enforcement of the summons against Chairman Colley Billie and any further attempt to enforce the summons by the IRS would constitute bad faith and a violation of the Act. To obtain enforcement of a summons, the United States must establish that the summons is issued for a

legitimate purpose. *United States v. Morse*, 532 F. 3d 1130, 1132 (11th Cir. 2008). While, the summons *may* have been issued for a legitimate purpose, that purpose is no longer legitimate because the Act amends the IRS code to the extent that it deals with general welfare payments made by tribes to its members, which it accomplishes by mandating the suspension of all audits and examinations. Therefore, the Miccosukee Tribe and Chairman Colley Billie request that this Honorable Court reverse the district court's order enforcing summons as it is in direct violation of the examination suspension requirement of the Tribal General Welfare Exclusion Act of 2014.

## **II. THE PETITION TO ENFORCE THE IRS SUMMONS PRESENTS AN INTRA-TRIBAL DISPUTE OVER WHICH THE DISTRICT COURT LACKED JURISDICTION**

The district court's Order Enforcing the IRS Summons is clearly erroneous because the IRS summons presents an intra tribal dispute over which the district court did not have jurisdiction. It requires the interpretation and written and unwritten Miccosukee Law and Customs. An intra tribal dispute is that which involves a matter of tribal self governance and relates to the control of internal relations. *Montana v. United States*, 450 U.S. 544, 564 (1981). "Jurisdiction to resolve internal tribal disputes and to interpret tribal constitutions and laws lies with the Indian tribes and not the district courts." *In re Sac & Fox Tribe of Mississippi Iowa/Meskwaki*, 340 F.3d 749, 763 (8th Cir.2003). The district court

made a determination regarding internal tribal relations when it ordered that Chairman Colley Billie comply with the summons. The Miccosukee General Council is a democratic legislative body. Through its democratic processes, the Miccosukee General Council ordered the Chairman, an elected official, not to compile and produce the requested records. Failure to perform his duties, such as disobeying a resolution of the General Council, will make the Chairman subject to removal from office. Miccosukee Tribe Const. Art. III, §. 4. If this Court does not reverse the district court's order, and the Chairman is forced to compile and produce documents he has no legal or actual possession of, under the threat of imprisonment, it will force the removal from office of the Chairman of the Miccosukee Tribe.

In essence, the district court determined that Chairman Colley Billie had the possession, control and ability to compile and produce the summoned documents, regardless of the General Council resolution prohibiting this action. Chairman Colley Billie's possession, control and ability to comply with the summons, in light of the General Council resolution prohibiting compliance, is an intra-tribal dispute which can only be decided by the Miccosukee Tribe. Therefore, the district court exercised jurisdiction over a dispute it had no jurisdiction over and its order must be reversed and vacated.



**CONCLUSION**

WHEREFORE, this Honorable Court should VACATE the district court's order for lack of jurisdiction, or in the alternative reverse the Order due to clear error.

Respectfully submitted this 25th day of November, 2014.

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**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains no more than 7,000 words excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

/s/ Bernardo Roman III  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 25, 2014, I electronically served the foregoing document to all counsel of record for the parties.

Respectfully Submitted,

s/Bernardo Roman III  
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**SERVICE LIST**

*Colley Billie v. United States of America*

Appeal No. 14-13843

United States Court of Appeals for the Eleventh Circuit

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