

**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 MICCOSUKEE TRIBE OF INDIANS OF FLORIDA'S  
INITIAL BRIEF**

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**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

As Petitioner, the Miccosukee Tribe of Indians of Florida submit this list, which includes the names of the trial judge and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the present case, pursuant to the Eleventh Circuit Rules 26.1-1 thru 26.1-3:

The Judge that has an interest in this appeal is the Honorable Cecilia Altonaga.

The parties to this appeal are:

Chairman Colley Billie

Miccosukee Tribe of Indians of Florida

Department of Justice

United States of America

The following persons have an interest in this appeal or in related pending litigation:

Altonaga, The Honorable Cecilia

Billie, Colley

Department of Justice

Farrior, William

Ferrer, Wifredo

Furnas, James

Internal Revenue Service

Kearns, Michael

Keneally, Kathryn

Miccosukee Tribe of Indians of Florida

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Furthermore, Appellant understands the continuing obligation to notify the Court immediately of any additions, deletions, corrections or other changes that should be made to its certificate.

Respectfully submitted this 6th day of October, 2014.

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**STATEMENT REGARDING ORAL ARGUMENT**

Appellant, the Miccosukee Tribe of Indians of Florida ("the Tribe") respectfully request oral arguments because it may assist the Court in the adjudication of the highly important issue of first impression presented in this case.

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**JURISDICTIONAL STATEMENT**

This Court has jurisdiction of this appeal pursuant to 28 U.S.C. § 1291 because this is an appeal of a final order that disposes of all parties' claims. On August 13, 2014 the District Court entered an order enforcing an Internal Revenue Service (hereinafter "IRS") summons to Colley Billie as Chairman of the Miccosukee Tribe of Indians of Florida. (D.E. No. 26). The IRS invoked the district court's jurisdiction over the suit under 26 U.S.C. §§7402(b) and 7604(a) and 28 U.S.C. §§ 1340 and 1345. The Tribe filed a Motion to Stay pending appeal before the district court on August 26, 2014. (D.E. No. 31). On August 26, 2014 the Miccosukee Tribe filed its Notice of Appeal. (D.E. No. 27). On September 24, 2014, the district court denied the Tribe's Motion to Stay ending appeal. (D.E. No. 34).



**STATEMENT OF THE ISSUES PRESENTED**

1. Whether the enforcement of a summons issued to an elected official of an Indian Tribe, as to documents pertaining to the Indian Tribe, is an intra-tribal dispute requiring the interpretation of tribal law which should be heard in Tribal Court.

2. Whether the district court may force an elected official of a sovereign Indian nation to act contrary to the Constitution of the Indian Nation and violate a mandate of its legislative body.

## **STATEMENT OF THE CASE**

This is an appeal from a final order enforcing an IRS summons against Colley Billie, Chairman of the Miccosukee Tribe. (D.E. No. 26).

### **COURSE OF PROCEEDINGS AND DISPOSITION**

On May 18, 2012, Revenue Agent James Furnas served upon Colley Billie an administrative summons requesting documents of the Miccosukee Tribe for an examination of tax years 2006 through 2010. On July 18, 2012, the Tribe filed a petition to quash the summons issued to Colley Billie. *Miccosukee Tribe of Indians of Florida v United States*, Case No. 12-mc-22638-UU (S.D. Fla., July 18, 2012), Doc. 1. On February 11, 2013, the United States District Court Southern District of Florida issued an order granting the U.S. Government's Motion to Deny the Petition to Quash. *Id.*, Doc. 31.

On March 12, 2014, the IRS filed its Petition to Enforce Summons to Colley Billie. (D.E. No. 1). On July 21, 2014, the Tribe filed its Response in Opposition to the Petition to Enforce Summons. (D.E. No. 19). In its response the Tribe argued that the district court lacked subject matter jurisdiction over the enforcement of the summons because it involves matters of tribal self governance and requires interpretation of tribal law and that the Chairman, as an elected tribal official, does

not possess and control the records requested unless the Miccosukee General Council approves such release. (D.E. No. 19).

On July 28, 2014, the Department of Justice (hereinafter, “DOJ”) filed its Reply in Support of the Petition to Enforce IRS Summons. (D.E. No. 21). In its Reply DOJ argued that the Tribe could not revoke the Chairman’s authority to release tribal records. *See id.*

On August 11, 2014, the district court heard arguments on the Petition to Enforce Summons and ultimately decided to enforce the summons. The district court entered an order enforcing an Internal Revenue Service summons to Colley Billie as Chairman of the Miccosukee Tribe of Indians of Florida on August 13, 2014. (D.E. No. 26). On August 26, 2014 the Miccosukee Tribe filed its Notice of Appeal. (D.E. No. 27).

## **STATEMENT OF FACTS**

The Miccosukee Tribe is a sovereign nation and federally recognized Indian tribe exercising powers of self-governance under a Tribal Constitution approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 461 *et. seq.* The Miccosukee Business Council is the executive branch and the General Council is the legislative branch. The General Council is composed of all members that are 18 years and older. The Miccosukee Tribe’s Constitution (D.E. 24 at Ex. 1) delineates the duties of each of its officers. The

Chairman's powers are limited by the constraints of the Constitution. The Constitution provides that the Chairman "shall not act on matters binding the tribe until either the General Council or the Business Council has deliberated and enacted appropriate resolution." Constitution of the Miccosukee Tribe of Indians of Florida, Article II § 1(b) (D.E. 24 at Ex. 1). Additionally, the Chairman "shall see that all resolutions and ordinances of both the General Council and the Business Council are carried into effect." *Id.* at § 1(c). The Chairman does not cast a vote at General Council or Business Council except in the case of a tie in the latter. *Id.* at § 1(g).

The Chairman of the Miccosukee Tribe is elected by the General Council. Colley Billie was elected Chairman in December of 2009 and is serving his second consecutive term. As a result of the IRS summons which was served on Chairman Colley Billie, the Business Council had to seek approval from the General Council to provide any tribal records. On June 12, 2014, the Miccosukee General Council passed Resolution MGC-02-14. (D.E. 19 at Ex. 1). This Resolution denied the request of the Miccosukee Business Council to provide documents and information responsive to the IRS summons to Chairman Colley Billie.

## **STANDARD OF REVIEW**

A district court order granting enforcement of an IRS summons is reviewed under the clearly erroneous standard. *United States v. Morse*, 532 F. 3d 1130, 1131 (11th Cir. 2008).

## **SUMMARY OF THE ARGUMENT**

The district court's order enforcing the IRS summons as to Colley Billie, the Chairman of the Miccosukee Tribe, constitutes clear error. Firstly, this is an intra-tribal dispute over which the district court did not have jurisdiction because the laws of the Miccosukee Tribe must be interpreted in order to determine whether the summons can be enforced against Chairman Colley Billie.

Secondly, the federal government, as well as the federal courts of the United States, have emphasized the importance of tribal self-government. Therefore, if the order of a district court expressly contradicts a Tribal Constitution and a Tribal Resolution voted upon by the individual tribal members, this would be an outright violation of Congress's intent to protect and maintain the Miccosukee Tribe's right to self-govern. Courts cannot ignore the delicate balance established between the federal and tribal governments.

The order enforcing the IRS summons is clearly erroneous because the district court lacked jurisdiction over this intra-tribal dispute and improperly abrogated tribal sovereignty. Therefore, this Order must be reversed.

## **I. 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). Courts have found the following to be intra-tribal disputes: issues regarding tribal membership and membership requirements (*Martinez v. Southern Ute Tribe of Southern Ute Reservation*, 249 F.2d 915 (10th Cir. 1957), *Prairie Band of Pottawatomie Tribe of Indians v. Udall*, 355 F.2d 364 (10th Cir. 1966), *Wopsock v. Natchees*, 279 Fed. Appx. 679, 2008 WL 2152435 (10th Cir. May 23, 2008); issues regarding an internal controversy among Indians over tribal government (*Motah v. United States*, 402 F.2d 1 (10th Cir. 1968)); issues regarding the right to vote in tribal elections (*Harjo v. Kepple*, 420 F.Supp. 1110, 1117 (D.C. Dist. 1976); issues regarding which tribal council is rightly in place under the tribal constitution (*Sac and Fox Tribe of the Mississippi in Iowa v. Bear*, 258 F.Supp.2d 938 (N.D. Ia. 2003); election disputes between competing tribal councils over

which council is authorized to govern tribe and casino (*Sac and Fox Tribe of Mississippi in Iowa, Election Bd. v. Bureau of Indian Affairs*, 439 F. 3d 832 (8th Cir. 2006); issues regarding the appointment of a tribal official under tribal law (*Kaw Nation ex rel. McCauley v. Lujan*, 378 F.3d 1139 (10th Cir. 2004); dispute between tribal members and members of the tribal council over who controls the financial assets of the tribe (*Wade v. Blue*, 369 F.3d 407 (4th Cir. 2004); issues regarding the validity of a tribal resolution under tribal law (*Potts v. Bruce*, 533 F.2d 527 (10th Cir. 1976); criteria to determine if someone is of Indian blood (*Groundhog v. Keeler*, 442 F.2d 674 (10th Cir. 1971). Although no case has decided the issue presented herein, forcing a tribal officer to release tribal records in contradiction to tribal law, such as the Miccosukee General Council Resolution MGC 02-14, is an intra tribal dispute because it affects matters of self governance and requires interpretation of tribal law. This issue must therefore be adjudicated in tribal court.

## **II. The District Court's Order Is Clearly Erroneous Because It Violates Congress's Policy On Protecting Tribal Self-Determination**

The present dispute is a matter of first impression because an elected official of an Indian Tribe is being ordered to directly violate Tribal laws, therefore there is no existing case law precisely on this issue. Still, the district court's order is clearly erroneous because it is in contradiction to Congress's longstanding "policy of furthering Indian self-government." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 62, 98 S.Ct. 1670, 1679 (1978). The unique social, cultural, political and economic circumstances of the Miccosukee Tribe must be taken into consideration by the

Court. The district court's Order overrides Tribal law and demonstrates a complete disregard for the political structure of the Miccosukee Tribe.

The district court's Order nullifies the laws of the Miccosukee Tribe by overreaching and attempting to confer upon Chairman Colley Billie rights which he does not have under the Tribal Constitution. Chairman Colley Billie was elected through the procedure established by the Miccosukee Constitution and his powers are limited by those which were conferred upon him. Ultimately, if the district court's order is allowed to stand, the relationship between the federal government and Indian Tribes as a whole will be set back by centuries. The district court's Order redefines the role of a tribal elected official and overrides the power of the governing documents of the Miccosukee Tribe.

If the International Court of Justice, which was established by the United Nations, forced the President of the United States to produce financial documents of United States' citizens, there would be an outcry. If the International Court of Justice forced the President of the United States to violate the Constitution, the people would not stand for it. It is not the proper course of action for a district court to accomplish the goals of the IRS through coercion and political manipulation of an Indian Tribe and its Chairman. The internal consequences to the Miccosukee Tribe of having its Chairman forced to violate the Tribal Constitution and a Tribal Ordinance are immeasurable. The very individual



charged with upholding the laws of the Miccosukee Tribe is now being pinned against his own people who elected him to protect them. Chairman Colley Billie cannot and should not be ordered to produce documents of the Miccosukee Tribe when doing so is contrary to the law of their land. The district court's Order is clearly erroneous and its consequences politically charged.

### **III. Chairman Colley Billie Does Not Have The Ability To Comply With The District Court's Order**

The district court has ordered Chairman Colley Billie to produce records which he is presently unable to produce. Chairman Colley Billie cannot comply with the Summons because he has no possession and control of the records requested. "Because a proceeding to enforce an IRS summons is an adversary proceeding in which the Defendant may contest the summons 'on any appropriate ground,'" *United States v. Rylander*, 460 U.S. 752, 757 (1983), "[l]ack of possession or control of records is surely such a ground." *Id.* Tribal records can only be released by written authorization of the general council, which was denied by the Miccosukee General Council, the Tribe's legislative body on June 12, 2014. The documents requested by the IRS are not the personal documents of Chairman Colley Billie. Therefore, if the General Council of the Miccosukee Tribe does not authorize Chairman Colley Billie to access and produce those documents, then he has no present ability to comply with the district court's order. The district court's order is unlawful because it forces an action upon Chairman Colley Billie that is against the law of the Miccosukee Tribe.

**CONCLUSION**

For the foregoing reasons, this Court should reverse the district court's order, and find that the Order is clearly erroneous as the district court had no jurisdiction over an intra-tribal dispute, the Order violates the federal government's policy of supporting tribal self-determination and because Chairman Colley Billie does not have possession and control over the documents requested.

Respectfully submitted this 6th day of October, 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 14,000 words excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

/s/ Bernardo Roman III  
Bernardo Roman III, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 6, 2014, I electronically served the foregoing document to all counsel of record for the parties.

Respectfully Submitted,

s/Bernardo Roman III  
Bernardo Roman III, Esq.

**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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