

1 MICHAEL C. ORMSBY  
United States Attorney  
2 Eastern District of Washington  
BENJAMIN D. SEAL  
3 Assistant United States Attorney  
402 E. Yakima Avenue, Suite 210  
4 Yakima, Washington 98901  
(509) 454-4425

5  
6 IN THE UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 SHANE SCOTT OLNEY (19),

12 Defendant.  
13  
14  
15  
16

CR-13-2094-TOR-19

GOVERNMENT'S RESPONSE  
TO MOTION TO DISMISS

17 COMES NOW the Plaintiff, United States of America, by and through the  
18 United States Attorney for the Eastern District of Washington, MICHAEL C.  
19 ORMSBY and Assistant United States Attorney, BENJAMIN D. SEAL, and hereby  
20 files its Response to Defendant Shane Scott Olney's Motion to Dismiss:  
21  
22

23 The Indictment in this case charges Defendant with the following crimes:  
24 Count 1 charges conducting an illegal gambling business in violation of 18 U.S.C. §  
25 1955; Count 2 charges conspiracy to violate the Animal Welfare Act in violation of  
26  
27

28 GOVERNMENT'S RESPONSE  
TO MOTION TO DISMISS

1 18 U.S.C. § 371; and Counts 3, 8, 10, 13, 16, 18, 22, and 24 charge unlawful animal  
2 fighting venture in violation of 7 U.S.C. § 2156(a)(1).

3 Defendant's motion asks the Court to dismiss these charges because  
4 jurisdiction for them is not provided by the Major Crimes Act, 18 U.S.C. § 1153, or  
5 the General Crimes Act, 18 U.S.C. § 1152. Defendant's motion fails to consider  
6 that the above charges involve laws of nationwide applicability, and therefore §§  
7 1152 and 1153 do not apply. Jurisdiction for the charges in this case exists  
8 independent of §§ 1152 and 1153, and therefore Defendant's motion should be  
9 denied.  
10  
11

### 12 **I. FACTUAL SUMMARY**

13  
14 Beginning in February, 2012, multiple law enforcement agencies began a joint  
15 investigation into cockfighting, using a confidential source ("CS"). Cockfighting is  
16 illegal, and usually involves a "derby," where a series of fights are arranged between  
17 two roosters equipped with a knife or gaff attached to the legs. The fights usually  
18 occur in a pit or ring, surrounded by spectators. The fight ends when one rooster is  
19 dead or fails to fight. The owner or sponsor of each rooster pays a fee to enter his or  
20 her rooster into the derby, and spectators are charged a fee to enter the premises. Bets  
21 are placed on which rooster will win each fight.  
22  
23  
24  
25  
26  
27  
28

1 The CS in this case attended no less than 36 cockfighting derbies in both  
2 Washington and Oregon. The CS was usually equipped with an audio/video recording  
3 device, and successfully recorded many individuals engaged in illegal cockfighting.  
4

5 Ten of these derbies were hosted by Defendant Olney at his property located at  
6 9190 Marion Drain Road in Toppenish, Washington. Video footage of the derbies  
7 shows Defendant participating in the cockfighting, such as by placing roosters into the  
8 ring to fight.  
9

## 10 II. ARGUMENT AND AUTHORITIES

### 11 **Laws of nationwide applicability apply to Indians in Indian country.**

12 The Ninth Circuit has frequently stated that federal criminal laws of nationwide  
13 applicability apply to Indians within Indian country just as they apply elsewhere. *See,*  
14 *e.g., United States v. Anderson*, 391 F.3d 1083, 1086 (9th Cir. 2004); *United States v.*  
15 *Begay*, 42 F.3d 486, 499 (9th Cir. 1994).  
16  
17

18 Laws of nationwide applicability are laws that “make actions criminal wherever  
19 committed.” *Begay*, 42 F.3d at 498. Enclave laws, by contrast, are laws in which the  
20 situs of the offense is an element of the crime—places such as military bases, national  
21 parks, federal buildings, and the like. *Anderson*, 391 F.3d at 1086.  
22

23 “[Section] 1152 does not apply to violations of laws of nationwide applicability,  
24 nor does § 1153 have any bearing on federal laws of nationwide applicability.”  
25 *Anderson*, 391 F.3d at 1086; *Begay*, 42 F.3d at 498.  
26  
27

1 **The Ninth Circuit has already held that the charge in Count 2, the general**  
2 **conspiracy statute, applies to Indians in Indian country.**

3 In *United States v. Begay*, the defendants were Indians who were convicted of  
4 conspiracy to commit assault and kidnapping in violation of the general conspiracy  
5 statute, 18 U.S.C. § 371. *See* 42 F.3d at 497. The defendants argued that the district  
6 court lacked subject matter jurisdiction because federal jurisdiction over criminal  
7 matters that occur between Indians in Indian country extends only to those crimes  
8 enumerated in the Major Crimes Act. *Id.* at 497-98.

9  
10 The Ninth Circuit rejected this argument, holding that sections 1152 and 1153  
11 have “no bearing on federal laws of nationwide applicability that make actions  
12 criminal wherever committed.” *Id.* at 498. The court further held that because situs of  
13 the conspiracy is not an element of the offense, section 371 is a criminal statute of  
14 nationwide applicability, and therefore applies equally to everyone everywhere within  
15 the United States, including Indians in Indian country. *Id.* at 499-500; *Anderson*, 391  
16 F.3d at 1087.

17  
18 **All other charges in the Indictment involve laws of nationwide applicability.**

19  
20 Similarly, the laws prohibiting conducting an illegal gambling business and  
21 unlawful animal fighting ventures do not include situs as an element or exclude  
22 Indians from their application. *See* 18 U.S.C. § 1955; 7 U.S.C. § 2156(a)(1). Both  
23 laws are therefore laws of nationwide applicability, and apply to Defendant Olney in  
24 this case. *See United States v. Gachot*, 512 F.3d 1252 (10th Cir. 2008) (affirming  
25  
26  
27

1 Indian defendant's conviction for operating an illegal gambling business, because  
2 section 1955 is a nationally applicable federal criminal statute).

3  
4 **III. CONCLUSION**

5 All of the charges in this case involve laws of nationwide applicability, so that  
6 jurisdiction exists independent of sections 1152 and 1153. Defendant's motion to  
7 dismiss should be denied.  
8  
9

10 DATED this 17<sup>th</sup> day of August, 2015.

11 Respectfully submitted,

12  
13 MICHAEL C. ORMSBY  
14 United States Attorney

15 s/Benjamin D. Seal  
16 Benjamin D. Seal  
17 Assistant United States Attorney  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1 I hereby certify that on August 17, 2015, I electronically filed the foregoing  
2 with the Clerk of the Court using the CM/ECF System which will send notification of  
3 such filing to the following Mr. J. Jarrette Sandlin, attorney for Defendant.  
4

5  
6 s/ Benjamin D. Seal  
7 Benjamin D. Seal  
8 Assistant United States Attorney  
9 United States Attorney's Office  
10 402 E. Yakima Ave., Suite 210  
11 Yakima, WA 98901  
12 (509) 454-4425  
13 (509) 249-3297 (fax)  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27