

J.J. Sandlin WSBA #7392  
SANDLIN LAW FIRM, P.S.  
P.O. Box 228  
Zillah, WA 98953  
(509) 829-3111/594-8702  
Fax (888) 875-7712  
Email: Sandlinlaw@lawyer.com  
Attorney appearing for Defendant Shane Olney

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
  
PLAINTIFF;  
  
VS.  
  
SHANE SCOTT OLNEY,  
  
DEFENDANT.

)  
)  
) NO. 13-cr-2094-TOR-19  
)  
) DEFENDANT SHANE OLNEY’S REPLY  
) MEMORANDUM RE. MOTION TO  
) DISMISS OR DEFER TO YAKAMA  
) TRIBAL COURT JURISDICTION  
)  
)  
)  
)  
)  
)

1.1 An “unlawful” animal fighting venture must impact interstate commerce, and there is no evidence Shane Olney is engaged in interstate commerce when he raises Yakama Nation chickens of Yakama Nation sovereign territory, by an enrolled member of the Yakama Nation, and these strictly Yakama Nation chickens are fighting on Yakama Nation treaty soils.

DEFENSE REPLY MEMORANDUM - 1

SANDLIN LAW FIRM, P.S.  
P.O. Box 228  
Zillah, Washington 98953  
(509) 829-3111/fax: (888) 875-7712  
[Sandlinlaw@lawver.com](mailto:Sandlinlaw@lawver.com)

1 reservation lands. The prohibition of 18 U.S.C. §2156(a)(1) applies to interstate commerce  
 2 fighting chickens, not Yakama Nation fighting chickens. Mr. Olney has not knowingly  
 3 “sponsored” or “exhibited” any interstate chicken in a chicken fighting venture, and there is no  
 4 evidence to refute this fact. Counts 3, 8, 10, 13, 16, 18, 22, and 24 should be dismissed on these  
 5 grounds, also.  
 6

7 1.2 There is no fair warning to Mr. Olney of the applicability of all federal crimes of  
 8 nationwide applicability.  
 9

10 Mr. Olney has not been on notice that the Major Crimes Act and the General Crimes Act  
 11 have been abrogated in favor of general crime laws that apply to all Yakama enrollees, and he  
 12 should not be prosecuted for violation of federal laws of nationwide applicability, *as applied* to a  
 13 Yakama Nation enrollee. If Congress specifically designates major crimes as being enforceable  
 14 against Yakama Nation citizens, then how does Mr. Olney have notice that along with these  
 15 specifically identified crimes applicable to his conduct, that he is also subject to every crime of  
 16 nationwide applicability, even if they are not major crimes? This makes no sense, and does not  
 17 give Mr. Olney fair warning of the crimes for which the federal government can prosecute him,  
 18 since he is a sovereign citizen of the Yakama Nation, subject to Yakama Tribal Court  
 19 jurisdiction.  
 20

21  
 22 1.3 The government’s assertion of federal laws of nationwide applicability that are not major  
 23 crimes or specifically identified crimes of the General Crimes Act is a violation of the Fifth and  
 24 Fourteenth Amendments, *as applied* to Shane Olney.  
 25  
 26

1 The Fifth and Fourteenth Amendments to the U.S. Constitution ensure that persons  
 2 similarly situated as to the legitimate purposes of a law receive equal treatment. *State v.*  
 3 *Manussier*, 129 Wn.2d 652, 672, 921 P.2d 473 (1996); *State v. Coria*, 120 Wn.2d 156, 169, 839  
 4 P.2d 890 (1992). Strict scrutiny applies when the statutory classification at issue involves a  
 5 suspect or semi-suspect class or threatens a fundamental right. Here, Shane Olney enjoys a  
 6 Yakama Nation fundamental right to raise Yakama Nation fighting chickens, for fighting on  
 7 Yakama Nation sovereign territory. He also is exercising his aboriginal rights when he engages  
 8 in gaming, while on Yakama Nation sovereign lands. These actions are not major crimes, and  
 9 strict scrutiny of the federal statutes *as applied* to Shane Olney defeats the government's  
 10 assertion of federal jurisdiction to prosecute Mr. Olney. Further, Mr. Olney is in a suspect class;  
 11 namely, those aboriginal persons entitled to protection by federally recognized treaty rights.  
 12 Congress has recognized this suspect class, and that is why the Major Crimes Act and General  
 13 Crimes Act were established: to limit federal jurisdiction over crimes committed by members of  
 14 the suspect class of enrolled persons of the Yakama Nation and other Indian nations, who are  
 15 protected by treaty rights<sup>1</sup>. This is the reasonable analysis of the application of the Major Crimes  
 16 Act and General Crimes Act as distinguished from federal laws of nationwide applicability.

---

21  
 22 <sup>1</sup> Defendant Shane Olney is not abandoning his claim that the Treaty of 1855 negotiated by Isaac  
 23 Stevens is invalid; he reserves his right to challenge the treaty as being unenforceable, for failure  
 24 of consideration: the federal government did not pay the Yakama Nation adequate consideration  
 25 for entering any treaty agreement. There was no "right of conquest" that drove the Yakama  
 26 Nation to surrender its sovereign rights; there was no payment of \$200,000.00, as promised by  
 the federal government. The Treaty of 1855 should be a nullity, which causes this case to be  
 insignificant compared to the horrendous injuries suffered by the Yakama Nation as a result of  
 the United States' wrongful misappropriation of 11.2 million acres of Yakama Nation sovereign

1.4 Limiting the application of the Major Crimes Act to those crimes where situs is an element of the crime is outdated and not in accordance with 21<sup>st</sup> century technology.

The Ninth Circuit has determined federal criminal laws of nationwide applicability apply to Indians in Indian Country, because such laws are not dependent upon the situs of the crime in the statutory elements. *United States v. Begay*, 42 F.3d 486 (9<sup>th</sup> Cir. 1994).<sup>2</sup> It is time to re-examine this “federal enclave” nature of the Major Crimes Act. It confuses Yakama Nation citizens, when they realize only certain major crimes subject them to federal criminal prosecution, and that otherwise their own sovereign nation’s tribal court shall address their misconduct between Yakama Nation citizens, involving Yakama Nation customs and privileges, and involving Yakama Nation chickens. In today’s Internet environment it is unrealistic to

---

territory. The pollution of the Hanford Reservation for over 60,000 years is but one example of the injuries that have damaged the Yakama Nation’s sovereign territory.

<sup>2</sup> “As we indicated in *United States v. Top Sky*, Sec. 1153, the Major Crimes Act, deals only with the application of federal enclave law to Indians and has no bearing on federal laws of nationwide applicability that make actions criminal wherever committed. 547 F.2d 483, 484 (9<sup>th</sup> Cir.1976) (Bald Eagle Protection Act, a law of general applicability throughout the United States, applies to Indians even though conduct the Act proscribes is not an enumerated offense under Sec. 1153); see also *Superintendent v. Commissioner*, 295 U.S. 418, 55 S.Ct. 820, 79 L.Ed. 1517 (1935) (applicability of federal income tax laws); *United States v. Sohappay*, 770 F.2d 816, 820 (9<sup>th</sup> Cir.1985) (applicability of Lacey Act), cert. denied, 477 U.S. 906, 106 S.Ct. 3278, 91 L.Ed.2d 568 (1986); *United States v. Farris*, 624 F.2d 890, 893-94 (9<sup>th</sup> Cir.1980) (applicability of RICO statute).

Similarly, Sec. 1152 relates “only to federal enclave law--law in which the situs of the offense is an element of the crime.” *United States v. Strong*, 778 F.2d at 1396. Section 1152 does not apply to violations of laws of nationwide applicability that constitute federal crimes regardless of where committed. *Acunia v. United States*, 404 F.2d 140, 141 n. 1 (9<sup>th</sup> Cir.1968).” *United States v. Begay*, at 499.

1 suggest certain laws only apply to “situs” when in actuality the fundamental rights of this  
 2 Yakama Nation citizen are at issue.

3 1.5 This action should be deferred to the Yakama Tribal Court, even if dismissal is not the  
 4 Court’s intention.

5  
 6 This Court has previously sought direction from the Washington State Supreme Court,  
 7 through certification of questions that shall assist the district court in resolving issues where  
 8 concurrent jurisdiction exists, or where the nature of the action suggests the issues would be  
 9 better resolved with input from the parallel jurisdiction of the state courts. Likewise, the Tribal  
 10 Court for the Yakama Nation is available for certification of questions regarding concurrent  
 11 jurisdiction, exclusive jurisdiction, and the sovereignty of Yakama Nation citizens’ status in  
 12 Indian Country. Shane Olney urges this Honorable Court to certify the questions raised in his  
 13 challenges to subject matter jurisdiction and personal jurisdiction involving his status as a citizen  
 14 of the Yakama Nation. The Yakama Nation Tribal Court is the better alternative for resolution of  
 15 these pending charges.  
 16  
 17

## 18 II. CONCLUSION

19  
 20 The United States seeks felony prosecution of Defendant Shane Olney, an enrolled member  
 21 of the Yakama Nation, for actions that do not constitute a “major crime” nor are specifically  
 22 identified in the General Crimes Act, by simply ignoring the specific exclusions to sovereign  
 23 immunity of this defendant’s status as an enrolled member of the Yakama Nation, asserting that  
 24 all federal crimes equally apply to this defendant. But recent policy changes (i.e., emphasis on  
 25 retrocession) affecting political analysis of Yakama treaty rights suggest this Court should refuse  
 26

27 DEFENSE REPLY MEMORANDUM - 5  
 28

SANDLIN LAW FIRM, P.S.

P.O. Box 228  
 Zillah, Washington 98953  
 (509) 829-3111/fax: (888) 875-7712  
[Sandlinlaw@lawyer.com](mailto:Sandlinlaw@lawyer.com)

1 to exercise its jurisdiction in favor of the Yakama Tribal Court, which is aptly prepared to  
 2 address the actions of Defendant Shane Olney. Mr. Olney respectfully requests this Honorable  
 3 Court to grant the defendant's motion to dismiss this action, or, alternatively, to decline  
 4 jurisdiction and refer this action to the Yakama Tribal Court for disposition. If those are not  
 5 desirable options for this Court, then Mr. Olney respectfully requests this Court to certify  
 6 questions to the Yakama Tribal Court to assist this Court in reaching a fair and just resolution of  
 7 these pending charges.  
 8

9 Respectfully submitted this 31<sup>st</sup> day of August, 2015.  
 10

11 SANDLIN LAW FIRM, P.S.

12 s/ J.J. Sandlin

13 J.J. SANDLIN, WSBA 792, for DEFENDANT SHANE OLNEY

14 P.O. Box 228

15 Zillah, WA 9895

16 Tel. (509) 829-3111/594-8702

17 Fax: (888) 875-7712

18 Sandlinlaw@lawyer.com

#### 19 CERTIFICATE OF SERVICE

20 I declare that on this date I electronically filed the document to which this is attached with the  
 21 Clerk of the Court using the CM/ECF process who will notify the following person by email  
 22 together with all other counsel of record as listed on the Docket Record:

23 Benjamin Seal, Benjamin.seal@usdoj.gov

24 DATED: August 31, 2015

25 s/J.J. Sandlin

26 J.J. Sandlin, WSBA #7392

27 P.O. Box 228

28 Zillah, WA 98953

(509) 829-3111

Sandlinlaw@lawyer.com

SANDLIN LAW FIRM, P.S.

P.O. Box 228

Zillah, Washington 98953

(509) 829-3111/fax: (888) 875-7712

[Sandlinlaw@lawyer.com](mailto:Sandlinlaw@lawyer.com)