

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

|   |   |                               |
|---|---|-------------------------------|
| <b>STATE OF TEXAS,</b>  | § |                               |
|   | § |                               |
| <b>Plaintiff,</b>   | § |                               |
|   | § | <b>No. 03:17-CV-00179 PRM</b> |
| <b>v.</b>   | § |                               |
|   | § |                               |
| <b>YSLETA DEL SUR PUEBLO, THE TRIBAL<br/>COUNCIL, AND THE TRIBAL GOVERNOR<br/>CARLOS HISA or his SUCCESSOR,</b> | § |                               |
|   | § |                               |
| <b>Defendants.</b>  | § |                               |
|   | § |                               |

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**PUEBLO DEFENDANTS’ FED. R. CIV. P. 72 OBJECTIONS**

Defendants Ysleta del Sur Pueblo, the Tribal Council, and Tribal Governor Carlos Hisa (“Pueblo Defendants”) fully support the recommendation entered by Magistrate Judge Leon Schydlower, and specifically his recommendation that the Plaintiff’s motion for preliminary injunction be denied. The Pueblo Defendants agree with the legal conclusion reached by Judge Schydlower that this Court cannot consider this matter as it has no power to enjoin alleged criminal activity. ECF No. 64. However, although they do not alter Judge Schydlower’s analysis or recommendation, the Pueblo Defendants believe that certain discussions included by Judge Schydlower in his recommendation are not completely accurate. Following his signature on his recommendations, Judge Schydlower notes that, “Failure to file timely objections may preclude Appellate review of factual findings or legal conclusions, except for plain error,” citing *Ortiz v. City of San Antonio Fire Dep’t*, 806 F.3D 822, 825 (5th Cir. 2015). (ECF. No. 64 at 10.) To preserve any objections it has pursuant to the decision in *Ortiz*, the Pueblo Defendants provide the following.

(1) The recommendation adopts the term “slot machines” to refer to the machines challenged by Plaintiff in its motion for preliminary injunction. But as one court has noted, “slot machines ‘have historically been treated as contraband’ [and] . . . ‘this Court has consistently referred to slot machines as contraband.’” *Fine v. St. Paul Fire & Marine Ins. Co.*, 567 F. Supp. 1252, 1256 (E.D. La. 1983) (citation omitted). Moreover, machines identified as “slot machines” generally incorporate their own individual random number generator or a similar element of chance. *United States v. Korpan*, 354 U.S. 271, 271-72 (1957) (“‘so-called ‘slot’ machines . . . operate . . . by application of the element of chance”). The machines challenged by Plaintiff in its motion for preliminary injunction are not slot machines. The only element of chance is the chance inherent in permitted live bingo calls. They are, instead, card minders. *See* ECF No. 64 at 2 (“The Pueblo contends they are electronic ‘bingo card minders,’ not slot machines”). Card minders are devices used by a player to monitor bingo cards and which “(i) provides a means for the player to input or monitor called bingo numbers; (ii) compares the numbers entered or received against the numbers on the bingo cards stored in the memory of the device or loaded or otherwise enabled for play on the device, and (iii) identifies any winning bingo pattern(s) and prize levels.” 16 Tex. Admin. Code § 402.321 (2).

(2) The recommendation includes the following statement: “Texas state courts retain criminal jurisdiction over Texas gaming crimes that non-Tribal members commit. The practical effect of the foregoing is that Texas courts have the same criminal and civil jurisdiction over matters on the reservation as they do off . . . .” ECF No. 64 at 5. That is not an accurate statement of the law. The Restoration Act incorporates concepts of what is commonly referred to as P.L. 280. Any criminal or civil jurisdiction that Texas might have is limited by the restrictions on that jurisdiction under P.L. 280 and cases interpreting that Public Law. *See*

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §6.04[3]: "Public Law 280;" at 537-578 (Nell Jessup Newton ed., 2012)

### CONCLUSION

The Pueblo Defendants respectfully request that this Court accept and adopt the January 29, 2018 Report and Recommendation of the Magistrate Judge on the State of Texas's Motion for a Preliminary Injunction (ECF No. 64) except as otherwise noted herein.

February 12, 2018

Respectfully Submitted,

/s/ Randolph H. Barnhouse

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification to the following:

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