

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 19-342(2) (ECT/LIB)

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHALAINA STAR STATELY,

Defendant.

**GOVERNMENT'S RESPONSE  
TO DEFENDANT'S  
OBJECTIONS TO THE  
REPORT AND  
RECOMMENDATION OF THE  
MAGISTRATE JUDGE**

The United States of America, by and through its attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Gina L. Allery, Special Assistant United States Attorney, hereby submits its response to Defendant's Objections to the Report and Recommendation of the Magistrate Judge Dated January 11, 2021. [Dkt. No. 144.] For the reasons set forth below, the government respectfully request that the Court adopt the findings and legal conclusions of the Report and Recommendation and deny the defendant's Motion to Suppress [Dkt. No. 43].

**I. Background**

A motions hearing in the above-entitled matter was held before United States Magistrate Judge Leo I. Brisbois on October 30, 2020. On January 11, 2021, Magistrate Judge Brisbois issued a Report and Recommendation [Dkt. No. 142] in which the court recommended that the defendant's Motion to Suppress be denied. The defendant filed a timely objection to the Report and Recommendation's factual findings and legal conclusions with respect to the defendant's plea of guilty in the Red Lake Tribal Court on tribal charges stemming from the same incident as the federal charges in this case.

## II. Argument

### A. **The Report and Recommendation Correctly Found that the Sixth Amendment right to counsel does not apply to tribal court proceedings.**

First, as the Report and Recommendation recognized, in United States v. Bryant, the Supreme Court plainly stated that the Sixth Amendment does not apply to tribal court proceedings. Dkt. No. 142 at 23; United States v. Bryant, 136 S. Ct. 1954, 1962 (2016) (citations omitted). “The Bill of Rights, including the Sixth Amendment right to counsel, therefore, does not apply in tribal-court proceedings.” United States v. Bryant at 1962 (citations omitted). “Therefore, the use of those convictions in a federal prosecution does not violate a defendant’s right to due process.” Id. at 1966.

### B. **Because the Sixth Amendment does not apply to tribal court proceedings, the defendant’s argument regarding the application of Padilla v. Kentucky is misplaced.**

In her objection to the Report and Recommendation the defendant cites the Supreme Court’s holding in Padilla v. Kentucky, 559 U.S. 356 (2010), to argue that the Report and Recommendation should have recognized a tribal court guilty plea as a unique circumstance. As discussed above, the Sixth Amendment does not apply to tribal court proceedings, so Padilla v. Kentucky is inapplicable. See also U.S. v. Gillette, 2018 WL 3151642, at \*6-7 (D.S.D. Jan. 29, 2018).

However, even if Padilla did apply, the Report and Recommendation was correct in finding that advice about collateral consequences does not violate the Sixth Amendment under the circumstances present here. [Dkt. No. 142 n. 6.] The Sixth Amendment only requires that the defendant be informed of the direct, but not the

collateral, consequences of a guilty plea. U.S. v. Williams, 104 F.3d 213, 216 (8th Cir. 1997). As the Eighth Circuit explained in Williams, “in order to satisfy constitutional requirements, a defendant must be ‘fully aware of the direct consequences’ of his plea. Use of the plea in a subsequent federal proceeding is not a direct consequence.” Id. (internal citations omitted). Padilla, and later U.S. v. Chaidez, 568 U.S. 342 (2013), only established that a direct certain consequence, deportation, requires that notice must be made to satisfy the dictates of the Sixth Amendment. But courts have not gone beyond deportation in expanding the categories of collateral consequences nor eliminated the distinction between collateral and direct consequences and unlike deportation, the defendant’s guilty plea in this case did not automatically trigger a federal charge. Even after Padilla, the defendant’s guilty plea is a collateral consequence that is not under the Sixth Amendment’s right to counsel.

### **III. Conclusion**

For the foregoing reasons, the government respectfully requests that the Court adopt the findings and legal conclusions of the Report and Recommendation and deny the defendant’s motion to suppress her guilty plea in Red Lake Tribal Court.

Dated: February 8, 2021

Respectfully Submitted,

ERICA H. MacDONALD  
United States Attorney

*s/Gina L. Allery*

BY: GINA L. ALLERY  
Special Assistant U.S. Attorney  
D.C. Bar No. 485903