

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

CURTIS TEMPLE,

Case No. \_\_\_\_\_

Plaintiff,

v.

JEREMEY LANGDEAU, and  
SHAWN RICHARDS, Individually,  
and  
UNKNOWN DEFENDANTS, TO BE  
BE NAMED AFTER DISCOVERY,  
Defendants.

MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING  
ORDER

Plaintiff has filed an action in this Court seeking a restraining order prohibiting the Defendants from force selling his cattle and his daughter's cattle on July 1, 2021, as the Defendants have threatened to do.

The Court may issue a temporary restraining order when it appears from the facts shown that immediate and irreparable injury will result to the Plaintiff Curtis Temple and his daughter Tarah Temple unless a temporary restraining order is entered. Fed. R. Civ. P. 65 (b).

In this case the facts show that immediate and irreparable injury will result to the Plaintiff Curtis Temple and his daughter Tarah Temple unless a temporary restraining order is entered.

To issue a preliminary injunction, the well-known Dataphase factors, set forth below, must be applied.

- (1) The probability that movant will succeed on the merits of the claim;
- (2) The threat of irreparable harm to the movant;
- (3) The balance between the harm to the movant if injunctive relief is not granted, and the injury that will result to the defendants if such relief is granted; and
- (4) The public interest involved.

*Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F2d 109, 114 (8<sup>th</sup> Cir. 1981); *Yankton Sioux Tribe v. Kempthorse*, 441 F.Supp. 2d 774 (D.S.D. 2006). No single factor is dispositive—rather, all of the factors must be considered to determine whether, on balance, they weigh in favor of granting an injunction. *Calvin Klein Cosmetics Corp. V. Lenox Labs., Inc.*, 815 F2d 500, 503 (8<sup>th</sup> Cir. 1987).

The Eighth Circuit has held that “the two most critical factors for a district court to consider in determining whether to grant a preliminary injunction are: (1) the probability that plaintiff movant will succeed on the merits, and (2) whether the plaintiff will suffer irreparable harm if an injunction is not granted.” *Chicago Stadium Corp. v. Scallen*, 530 F2d 204, 206 (8<sup>th</sup> Cir. 1976). The moving party need only show the possibility of irreparable harm, not that the harm has occurred. See *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953).

“The purpose of an injunction is to prevent future violations...and, of course, it can be utilized even without a showing of past wrongs.” *Baker Elec.*

*Coop, Inc. v. Chaske*, 28 F3d 1466, 1472-1473 (8<sup>th</sup> Cir. 1994). A district court may presume irreparable harm from a finding of probable success on the merits. *Calvin Klein*, 815 F2d 505.

1. Restraint of Impoundment and Sale.

This Court has held that a violation of due process rights constitutes irreparable injury. The invasion of the Temples' due process rights is sufficient to warrant a preliminary injunction. "A plaintiff is required to make only a prima facie showing that there has been an invasion of its rights and that a preliminary injunction is essential to the assertion and preservation of those rights." *Livestock Mktg. Ass'n. v. U.S. Dep't. of Agriculture*, 132 F.Supp. 2d 817, 824 (D.S.D. 2001).

In this case, the Defendants have taken the cattle of Curtis Temple and his daughter Tarah Temple by force, without a Court Order, and rounded them up, and impounded them, and arranged an auction for July 1, 2015, in order to intentionally hurt the Temples by imposing a forced sale of their cattle and determination of damages and penalties, all without any Court determination, hearing, jury trial, appeal, or any semblance of due process of law. Plaintiff and his daughter have been denied their due process of law rights.

Defendants believe and act like they are above the law. Defendants believe they are the Judge and Jury and have the power to threaten and run rough shod over normal hard working citizens trying to make a living raising cattle and horses and raise their family on the Pine Ridge Indian Reservation. The cattle are the property of Curtis Temple and his daughter Tarah Temple.

This is how the Temple family makes a living. The Defendants have let it be known they are taking action on their own without a Court Order to break the Temple family by taking away their cattle that is their source of income.

2. Denial of Due Process of Law

The property of Curtis and his daughter Tarah cannot “be taken away without the procedural due process required by the Fourteenth Amendment to the Constitution of the United States.” *Bell v. Burson*, 402 U.S. 535, 539 (1971). See *Oklahoma Gin Co. v. Oklahoma*, 252 U.S. 339 (1920) (a denial of the right to equal protection of the law is occasioned by statutes, which directly or indirectly limit the right of litigants to access to the courts, as where the legislature, in an effort to prevent an inquiry into the validity of a particular statute encumbers a challenge); *U.S. v. One Parcel of Real Property in Burleigh County, North Dakota*, 48 F3d 289 (8<sup>th</sup> Cir. 1995) As in the present Temple case, the lack of a pre-seizure hearing before forfeitures constitutes violation of due process and required dismissal. *State v. Miller*, 248 NW2d 377 (SD 1976). Forfeiture statutes are unconstitutional if they contain no provision for notice and a Court hearing. Notice and hearing provisions must be included in the statutes.

Loss of constitutional rights or freedoms constitutes an immediate and irreparable harm. The Court may issue a temporary restraining order when it clearly appears from facts that immediate and irreparable injury will result to the moving party if the relief is not granted. Fed. R. Civ. P. 65 (b). As stated above, to issue a preliminary injunction the well-known Dataphase factors, set



forth below, must be applied.

- (1) The probability that movant will succeed on the merits of the claim;
- (2) The threat of irreparable harm to the movant;
- (3) The balance between the harm to the movant if injunctive relief is denied, and the injury that will result if such relief is granted; and
- (4) The public interest.

See *Elrod v. Burns*, 417 U.S. 347, 373 (1976); *Walker v. Wegner*, 477 F.Supp. 648 (D.S.D. 1979) (D.S.D. 1979), aff'd. 624 F2d 60 (8<sup>th</sup> Cir. 1980). The irreparable harm the Temples face, the loss of their constitutional rights, cannot be adequately addressed by other legal remedies. See *Gelco Corp. v. Coniston Partners*, 811 F2d 414, 418 (8<sup>th</sup> Cir. 1987). This irreparable harm to the Temples' due process rights warrants a temporary restraining order and preliminary injunction in this case.

### 3. Exclusive Jurisdiction in Federal Court for Recovery of Penalties and Forfeitures

There are judicial procedures available to extract fines and penalties under due process standards wholly lacking in the regulations relied upon by the Defendants in this case. 25 USC 179 provides for a remedy in Federal Court for trespass damages. 25 USC 201 is mandatory: "All penalties which accrue under Title 28 of the Revised Statutes shall be sued for and recovered in an action in the nature of an action for debt, in the name of the United States, before any court having jurisdiction of the same... ." And even more specific and more mandatory is 25 USC 1355 (a): "The District Courts shall have

original jurisdiction, exclusive of the courts of the State, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress... ." U.S. ex rel. *Chase v. Wald*, 557 F2d 157 (8<sup>th</sup> Cir. 1977) (1355 gives federal courts exclusive jurisdiction of all actions brought to recover penalties imposed by federal law). See *Connolly v. U.S.*, 149 F2d 666 (9<sup>th</sup> Cir. 1945) Where this section (25 USC 201) provides a remedy for collection of a penalty, such remedy must be followed in form. The United States must follow its own procedures in District Court with attendant due process rights to recover any penalties or forfeitures as Plaintiff is attempting to do in this case.

#### 4. Excessive Penalties

The imposition of severe or excessive penalties violates due process under the Fifth Amendment. *Life & Casualty Insurance Company v. Barefield*, 291 U.S. 575 (1934). Whether a penalty is reasonable or excessive is determined in light of the particular circumstances of the case. *Muncie Novelty Co. v. Department of Revenue*, 720 NE2d 779 (Ind .Tax Ct. 1999). The power to impose a punishment or a penalty for acts of disobedience may not be used until there has been ample opportunity to test in Court the validity of such punishment or penalties. *Wadley Southern Ry. Co. v. Georgia*, 235 U.S. 651 (1915).

Here, the Defendants are attempting to take away by force all of the Temples' cattle, impound them, and force sell them, and take all of the cattle proceeds money, all to punish the Temples and enforce upon them a very

harsh excessive penalties. The Defendants are attempting to punish the Temples by taking away their cattle, and break them in the family cattle business, and belittle them with the loss of their cattle, and break their cattle business. Defendants are attempting to impose on the Temples a huge financial penalty by forceful gathering and selling of thousands of dollars of the Temples' cattle. The Defendants actions against the Temples is in violation of due process of law.

Here in this case, this is especially true because there has been no opportunity for the Temples' to have a Court hearing on the truth of the indictment against them, no opportunity to question the facts concerning the value of the cattle, or the reasonable cost of the feed and care of the cattle, and no right of an appeal prior to the time that the penalty is collected.

#### CONCLUSION

For the above reasons a temporary restraining order should be issued in this case: (i) Preventing the Defendants from force selling the Temples' cattle at an auction sale on July 1, (ii) Requiring the Defendants for forthwith return all of the Temples' cattle to them at the Defendants' cost, and (iii) Preventing any further action by the Defendants against the Temples or their cattle until the proceedings on the merits in this Court are completed resolving the issues surrounding the right to the range units at issue.

Respectfully submitted.

Dated this 28<sup>th</sup> day of June, 2021.

/s/ James P. Hurley  
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