

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
MAY 06 2021

Mark C. McCartt, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,
Plaintiff,

☒ Mail ☐ No Cert Svc ☐ No Orig Sign
☐ C/J ☒ C/MJ ☐ C/Ret'd ☐ No Env
☐ No Cpys ☒ No Env/Cpys ☐ O/J ☐ O/MJ

v. Case No. 17-CR-108-CVE

MICHAEL DEAN BILLEY,
Defendant.

MOVANT'S REPLY TO GOVERNMENT'S RESPONSE
TO DEFENDANT'S MOTION
Pursuant to 28 U.S.C. §2255(f)(3) and (f)(4)

COMES NOW, Michael Dean Billey, hereinafter known as Defendant, filing in Pro Se Motion, respectfully moves this Honorable Court to Grant Defendant's 28 U.S.C. §2255(f)(3) and (f)(4) Motion basded on the facts herein in Reply to the Government's Response to his 28 U.S.C. §2255(f)(3) and (f)(4) Motion.

Pro Se Disclaimer

"When a litigant appears pro se, a district court must liberally construe the litigant's pleadings, over looking grammatical errors and confusion of legal theories, thereby holding the pro se litigant's pleadings to a less stringent standard than pleadings drafted by lawyers." Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

Argument and Authorities

Billey's §2255 Motion should be dismissed because it was filed more than a year after his conviction became final.

-Equitable Tolling:

The Government argues that Defendant's §2255 filing filed on March of 2021 is untimely because it was filed after the statute of limitation, therefore, the Motion should be dismissed.

The Defendant argues that the one year limitation period of 28 U.S.C.

§2255(f) has expired, and the district court lacks subject matter jurisdiction under the limitation period to a federal habeas corpus claim. See *Morales v. Jones*, 417 Fed. Appx. 746, 749 (10th Cir. 2011). But, "Inasmuch as the *McGirt* decision [*McGirt v. Oklahoma*, 140 S. Ct. 2452, 207 L. Ed.2d 985 (2020)] was rendered on July 9, 2020, however, it is arguable that the limitation period has not expired pursuant to 28 U.S.C. §2255(f)(3) or (f)(4). This court will not dismiss on that basis." *United States v. Barnes*, No. 18-063-RAW, (E.D. Okla. Oct. 19, 2020).

§2255(f)(3) states, "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or (f)(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence."

-The Court does not have subject matter jurisdiction:

The Government states that "*McGirt* does not apply to *Billey* because he was not charged by the State of Oklahoma with a major crime committed in Indian Country...." But the Government argues the face value of *McGirt* and not what *McGirt*'s argument truly covered for all Native American's of Eastern Oklahoma. *McGirt* by proving that the lands of Eastern Oklahoma were never disestablished, *McGirt* also proved that the Treaties that guaranteed those lands also remained in affect, unless exclusively and directly changed by Congress.

For clarification purposes in *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 432, 63 S. Ct. 672, 678, 87 L. Ed. 877 (1943) the Supreme Court under Indian §28; Treaties, §§12, 13-construction-looking beyond written words; "Treaties are construed more liberally than private agreements, and to ascertain their meaning it is permissible to look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties, and this is especially true in interpreting treaties and agreements with the Indians."; and

Indians §28-treaties with-construction. "While treaties with the Indians are to be construed, so far as possible, in the sense in which the Indians understood them, and in a spirit which generously recognizes the full obligation of the United States to protect the interests of a dependant people, they cannot be re-written or expanded by construction beyond their clear terms to remedy a claimed injustice or to acheive the asserted understanding of the parties."

As expressed in the Initial Motion the Treaty of 1834, "New Echota" in respect for the Cherokee Nation, specifically states that, "The United States promises to honor the Cherokee Nations new land, respect its political autonomy, grant Tribal Sovereignty, and protect its tribe from future trespasses." In the Treaty of 1830, "Dancing Rabbit Creek" in respect for the Choctaw Nation states; "The Nation headed west of the Mississippi River with lands in Indian Country retain its autonomy to regulate itself and remain a Tribal Sovereign Nation as defined by the United States."

The United States defined Tribal Sovereignty in the 1830's as:

Tribal Sovereignty in the United States is the concept of the inherent authority of indigenous tribes to govern themselves within the borders of the United States. To be independent Nation's without suffering the decisions and laws of the United States Government, nor the States or Territories their lands lie in.

Suffering the decisions and laws of the United States means that, any and all laws that the Untied States has established that are in direct contradiction to tribes to self-govern themselves, within the borders of the United States, is an unlawful act and in violation of the Treaties signed and established between the United States Government and the Members of the Cherokee and Choctaw Nation's, through their respected Treaties.

Therefore, no statute created to give the United States or its court's jurisdiction over any Member of the Five Nations of Eastern Oklahoma is val-

id and thus, establishing that this Court does not have jurisdiction over any Defendant.

A treaty, by its very definition, "is essentially a contract between two sovereign nations," not between individuals. *Herrera v. Wyoming*, 587 U.S. ___, 139 S. Ct. 1686, 1699, 203 L. Ed.2d 846 (2019) (citing *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 675, 99 S. Ct. 3055, 61 L. Ed.2d 823 (1979)). But according to Black's Law Dictionary a Sovereign Nation is, "A political community whose members are bound together by the tie of common subjection to some central authority, whose commands those members must obey." (ed. 2004). Black defines sovereign people or sovereign members as, "The political body consisting of the collective number of citizens and qualified electors-who possess the powers of sovereignty and exercise them through their chosen representatives." (ed. 2014). *United States v. Mazurie*, 419 U.S. 544, 557, 95 S. Ct. 710, 42 L. Ed. 2d 706 (1975) (Indian tribes retain "attributes of sovereignty over both their members and their territory").

When we say Tribal Sovereignty Black defines Indian Tribe as, "A group, band, nation, or other organized group of indigenous American people of indigenous American people, including any Alaskan native village, that is recognized as eligible for the special programs and services provided by the United States Government because of Indian status (42 USCA §9601(36)); esp., any such group having a federally recognized governing body that carries out substantial governmental duties and powers over an area [known as Indian Reservations]." (ed. 2004). Also see Title 18 Chapter 23-Indian Reservations.

Indian Reservations defined by Black is, "An area that the federal government has designated for use by an American Indian tribe, where the tribe generally settles and establishes a tribal government." (ed. 2004).

In *McGirt* the Supreme Court declared Eastern Oklahoma as Indian Country. Black defines Indian Country as, "The land within the borders of all Indian

Reservations, the land occupied by an Indian community, and any land held by trust by the United States but beneficially owned by an Indian or tribe." (ed. 2004).

Ownership as defined by Black, "Implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable." (ed. 2004).

McGirt "made it abundantly clear that even a single individual Native American and enrolled Member of a federally recognized Indian tribe can assert his treaty rights and the aboriginal land title rights of his people."

In McGirt, the plaintiff did not assert or seek to enforce tribal treaty rights. This is where McGirt failed his people, but Defendant in this case picks up where McGirt left off and does assert his tribal treaty rights.

In 1934, federal policy toward Indian lands turned 180 degrees. Congress passed the Indian Reorganization Act of 1934, ch. 570, 48 stnt. 984, not only to stem the loss of Indian land holdings brought on by allotment but also to give tribes the opportunity to re-establish their government and land holdings. "The intent and purpose of the [Act] was to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 152, 93 S. Ct. 1267, 36 L. Ed.2d 114 (1973), quoting H.R. Rep. No. 1804, at 6 (1934). The 1934 Act brought an end to allotment, indefinitely extending the trust period on all remaining trust patents. §§1-2. The Act allowed tribes to organize and adopt constitutions with a congressional sanction of self-government. §16. We will not "lightly assume that Congress in fact intends to undermine Indian self-government," *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 790, 139 L. Ed.2d 773 (1998). "[T]raditional notions of Indian sovereignty and the congressional goal of Indian self-government including its overriding goal of encour-

raging tribal self-sufficiency and economic development." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987).

The Federal Enclave Act extends federal enclave laws, ie., "laws where the situs of the offense is an element of the crime," *United States v. Begay*, 42 F.3d 486, 498 (9th Cir. 1994), to Indian country. 18 U.S.C. §1152. However, the Enclave Act further provides that Enclave laws "shall not extend [inter alia] to offenses committed by one Indian against the person or property of another Indian." *id.* In *Ex Parte Crow Dog*, the Supreme Court ruled that this intra-Indian exception precluded a district court from exercising subject matter jurisdiction over a murder case in which the Indian defendant had been charged under a federal enclave law, 109 U.S. 506, 562, 3 S. Ct. 396, 400, 27 L. Ed. 1030 (1883). In an attempt to allay the public concern aroused by *Crow Dog*, Congress enacted the Major Crimes Act, 18 U.S.C. §1153, which excludes enumerated crimes from the Enclave Act's intra-Indian exception. *Keeble v. United States*, 412 U.S. 205, 209, 93 S. Ct. 1993, 1996, 36 L. Ed.2d 844 (1973).

Taken together, the Enclave Act and the Major Crimes Act creates a two-part inquiry for determining whether a federal court has subject matter jurisdiction over an enclave law case: first, the court must decide whether the case falls within the intra-Indian exception; and second, if it does, the court must decide whether the Major Crimes Act operates to take the case back out of the exception. See *Negonsott v. Samuels*, 507 U.S. 99, 102, 113 S. Ct. 1119, 1121, 122 L. Ed.2d 457 (1993) (explaining how the two statutes work together).

Both statutes deal exclusively with federal enclave laws, but enclave laws are not at issue in this case (in initial filing §1153 applied to Defendant was misplaced and should not be used). Every circuit to consider the issue has held that the Enclave Act and Major Crime Act do not control sub-

ject matter jurisdiction in non-enclave law cases. See, e.g., *United States v. Yannott*, 42 F.3d 999, 1004 (6th Cir. 1994); *United States v. Wadena*, 152 F.3d 831, 841 (8th Cir. 1998); *United States v. Begay*, 42 F.3d 486, 498 (9th Cir. 1994). See also Richard W. Garnett, "Once More into the Maze: *United States v. Lopez*, Trial Self Determination, and Federal Conspiracy Jurisdiction in Indian Country," 72 N.D. L. Rev. 433, 458 (1996) ("The circuit courts agree that the [Enclave Act's] exceptions for intra-Indian crimes...apply only to federal enclave laws, and they agree that the Major Crimes Act merely abrogates the [Enclave Act's] intra-Indian exception for the enumerated crimes.").

The general proposition that "statutes written in terms applying to all persons including members of Indian tribes as well." *United States v. Funmaker*, 10 F.3d 1327, 1330 (7th Cir. 1993) (citing *FPC v. Tuscarora Indian Nation*, 362 U.S. 99, 116 S. Ct. 543, 553, 4 L. Ed.2d 584 (1960)). See also *United States v. Wheeler*, 435 U.S. 313, 331 n. 30, 98 S. Ct. 1079, 1090 n. 30, 55 L. Ed.2d 303 (1978) ("Federal jurisdiction...extends...to crimes over which there is federal jurisdiction regardless of whether an Indian is involved.") However, because of the "unique status of Indians as 'a separate people' with their own political institutions," *United States v. Antelope*, 430 U.S. 641, 646, 97 S. Ct. 1395, 1399, 51 L. Ed.2d 701 (1977), we do not apply laws of genral applicability "when the application of a statute would affect Indian or tribal rights recognized by treaty or statute, or would affect rights essentailly to self-governance of intramural matters [unless] the law specifically...evinces Congressional intent to interfere with those rights," *Funmaker*, 10 F.3d at 1330-31.

It is well established that Indians have a right to self-government that "includes the right to prescribe laws applicable to tribe members and to enforce those laws by criminal sanctions," *United States v. Wheeler*, 435 U.S. at 322, 98 S. Ct. at 1085 (internal citations omitted). If we set aside the Treaties of New Echota and Dancing Rabbit Creek, and thier agreements

that the Cherokee and Choctaw respectfully, are not subject to the "suffering of decisions and laws of the United States Government, nor the States or Territories their lands lie in," and allow the statute that allows Indians to prescribe laws and enforce them within the tribe to tribal members, (25 U.S.C. §1302) we find this statute allows the following:

§1302. Constitutional rights

(a) In general. No Indian tribe in exercising powers of self-government shall-

(7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(D) impose a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000. A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who-

(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

(2) is being prosecuted for an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

§1301. Definitions

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

(3) "Indian court" means any Indian tribal court or court of Indian offense; and

(4) "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under 18 U.S.C. §1153, if that person were to commit an offense listed in that section in Indian Country to which that section applies.

In fact, as stated in the initial Motion, the Defendant would not even have been arrested for this action if left to the jurisdiction of the tribe, because (1) Defendant is not subject to taxes on material items under the laws of the Cherokee Nation unless they are tobacco, alcohol, fuel purchases, and motor vehicle registrations; and (2) Specific firearms that require registration in the National Firearms Registration and Transfer Record are not required under the jurisdiction of the tribe or for lands that are geographically located in "Indian Country". Even if these laws applied to the Cherokee Nation Defendant would qualify under 25 U.S.C. §1302(7)(D), where the Defendant would receive no more than 9 years of imprisonment for multiple offenses (taxes and registration).

The Government also argues that this Court has jurisdiction pursuant to 18 U.S.C. §3231. "The party [United States Government] seeking to include the jurisdiction of a federal court must demonstrate that the case is within the court's jurisdiction." *United States v. Bustillos*, 31 F.3d 931, 933 (10th Cir. 1994). "The facts supporting jurisdiction must be affirmatively alleged, and if challenged, the burden is on the party [United States Government] claiming that the court has subject matter jurisdiction." *Id.* Accordingly, in a criminal prosecution the United States must prove the crime falls under 18 U.S.C. §1152 or §1153, the United States has the burden to prove by a preponderance of the evidence that the land on which the crime [in accordance with §1153 provisions] is alleged to have occurred is Indian Country under 18 U.S.C. §1151. See *Bastillos*, 31 F.3d at 993. Once the district court has made the jurisdiction determination that "a particular tract of land or geographic area is Indian Country," *United States v. Roberts*, 185 F.3d at 1139 (10th Cir. 1999), the United States then has the burden to prove beyond a reasonable doubt that the alleged crime [in accordance with §1153 provisions] occurred on that particular tract of land or geographic area, see *United States v. Frant*, 901 F.2d 846, 849 (10th Cir. 1990). While determining

congressional intent is a matter of statutory construction, when statutory construction turns on an historical record [such as treaties], it involves a mixed question of law and fact. *Osage Nation v. Irby*, 597 F.3d 1122 (10th Cir. 2010).

According to Title 18 Chapter 23-Indian Reservations, Title 18 U.S.C. §1152 states; "This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing an offense in the Indian Country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively."

As stated herein, Congress created 18 U.S.C. §1153 to allay public concern aroused by Crow Dog. §1153 enumerates 13 crimes which specifically are punishable by United States if committed by Indian against Indian and this explicit legislation can only overcome the Treaty of 1834, "New Echota" and Treaty of 1836, "Dancing Rabbit Creek", only if Congress would of modified or disestablished these treaties, which McGirt proved that Congress never disestablished the land in Eastern Oklahoma covering the 5 major tribes, and throughout the history of these two treaties Congress has never modified them, especially giving the two Nations, (Cherokee and Choctaw) Tribal Sovereignty as defined herein.

Title 18 Chapter 23 also states that Title 18 U.S.C. §3231, gives jurisdiction to the United States District Court only if the offense falls under 18 U.S.C. §1152 or §1153.

In *United States v. Consolidated Wounded Knee Cases*, 389 F. Supp. 235; (D. Neb. and W.D. South Dakota Jan. 17, 1975) (The court found that Native American tribes did not have complete sovereignty, they had no external sovereignty, and had only as much internal sovereignty as had not been relinquished by them by treaty or explicitly taken by Congress. The court concluded

that the treaty did not cover Native Americans who committed crimes on the reservation because when Congress granted citizenship to all Native Americans, the jurisdiction over any crimes they might commit was transferred to the courts of the United States.)

This ruling is not true. McGirt proved that the lands of Eastern Oklahoma still remain to the 5 major tribes of Eastern Oklahoma and remain "Indian Country". By establishing that Congress has never disestablished the lands of Eastern Oklahoma one must turn to the Treaties signed by the 5 major tribes to see if Congress ever modified those Treaties. In regards to the Treaty of 1834 "New Echota" in reference to the Cherokee Nation and the Treaty of 1830 "Dancing Rabbit Creek" in reference to the Choctaw Nation Congress has never modified these two Treaties since they were ratified by Congress in 1835 and 1831 respectfully. That established, the Treaty of 1830 "Dancing Rabbit Creek" specifically stated that the Choctaw who were willing to move west of the Mississippi River to lands designated in what is now known as Eastern Oklahoma, would be an "Independent Nation" and extended "Tribal Sovereignty" (see herein the United States' definition of Sovereignty). Those that remained East of the Mississippi River were extended United States citizenship. Since the Treaty of 1830 "Dancing Rabbit Creek" has never been modified and since McGirt proved the land of the Choctaw has never been disestablished than the Choctaw, including Defendant who is an active Member remain "Independent Nation" and are not United States Citizen's. Thus, not allowing the court's of the United States jurisdiction to prosecute them for crimes committed on their lands. The same goes for the Cherokee and their Treaty of 1834 "New Echota", because Congress never modified their treaty and in their treaty the United States stated that they too were an "Independent Nation" and extended "Tribal Sovereignty". Just because the United States granted United States citizenship to all Native American's does not automatically modify any Native American Treaties, nor does it mean that Native American's have to accept the citizenship, but if they do under the

United States Department of State regulation on dual citizenship (7 FM 1162) the United States accepts dual citizenship and here Native American's with treaties that establish them as "Independent Nations" have both Cherokee Nation and Choctaw Nation citizenship and United States citizenship. But even if a Native American accepts dual citizenship, and commits a crime on Cherokee or Choctaw land they are subject to the jurisdiction of that Nation, for in their Treaties the United States specifically stated that these two tribes in particular should not "suffer from the decisions or laws of the United States Government or the States or Territories their lands lie in." (See Treaty of 1834 "New Echota" and the Treaty of 1830 "Dancing Rabbit Creek", and the definition of Sovereignty according to the United States during the ratification of these two Treaties in 1835 and 1831 respectfully). Also under §1401-Nationals and citizens of the United States at birth states, "a person born in the United States to a member of an Indian, Eskimo, Alavtian, or other aboriginal tribe: Provided, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right [treaties] of such person to tribal or other property, (§1401(b)).

For arguments sake let's assume this Court does have subject matter jurisdiction over the Defendant. In this case we must then explore the charges themselves.

Title 26 is titled "Internal Revenue Code", therefore, firearms are not the subject matter here, taxes are. If firearms were the subject matter here the offense would be under Title 18 or Title 21 not Title 26. Since this case is a tax law case we must look at the general consensus on what the Internal Revenue Service does to those that fail to pay taxes.

According to Internal Revenue Code (IRC) §6321 provides for tax liens for failure to pay taxes. Under IRC §6702 provides a notice to tax payers that they have failed to pay taxes and are now liable for the amount due. The right to penalize, collect, and conduct a due process hearing are delegated to the secretary pursuant to 26 U.S.C. §7401 and §7701: The secretary

has the authority if any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property belonging to such person for the payment of such tax, the tax payer must be given 30 days notice before the day of the levy. 26 U.S.C. §6331.

Under 26 U.S.C. §6404, The secretary is authorized to abate the unpaid protion of the assessment of any tax or any liability in respect thereof, which-

(c) if the secretary determines under uniform rules prescribed by the secretary that the administation and collection costs involved would not warrant collection of the amount due.

In this case this Court must see that the collection of \$200 verses several thousands of dollars to incarcerate Defendant would clearly justify utilizing 26 U.S.C. §6404(c).

In addition to the tax due on a specified firearm, there is the registration of the firearm in the National Firearms Registration and Transfer Record. This action was established in the 1930's, for it was the only way the United States Government could apprehend gangster's of the time. Prohibition, gangster's, and Tommy Gun's are long gone and so should this law. As President Biden said during his campaign trail, "It is time to rid America of laws that have out lasted their time and need. For all the Government has done is turn these laws in ways to create mass incarceration and it is time to end mass incarceration in America."

In reality, there is no reason that when the Government discovers someone who may not be aware that they have a firearm that requires registration to give them 30 days to register the firearm, or to turn it over to law enforcement. In this case, Defendant truly believed that due to his various statueses in society (see initial Motion for list) he was not required to register any firearms nor pay any tax on them as well. See Rehaif v. United

States, 139 S. Ct. 2191, 204 L. Ed.2d 594, (2019).

Summarization

To summarize the Government's argument about this Court having subject matter jurisdiction and the actual action of this case the Defendant states:

(1) In *McGirt* he established that the lands of Eastern Oklahoma are Indian Country;

(2) Because *McGirt* established that the lands of Eastern Oklahoma are Indian Country than the 5 major tribes of that area are still protected by the respected Treaties they signed and are subject to any modifications that Congress may make to any of these Treaties directly;

(3) In regards to the Treaty of 1834 "New Echota" between the Cherokee Nation and the United States Government, ratified by Congress in 1835, there are no modifications made in regards to "Tribal Sovereignty" or "Independent Nation". Therefore, those two points remain in affect today;

(4) In regards to the Treaty of 1830 "Dancing Rabbit Creek" between the Choctaw Nation and the United States Government, ratified by Congress in 1831, there are no modifications made in regards to "Tribal Sovereignty", "Independent Nation", or the fact that the Indians that moved west of the Mississippi River to the lands known today as Oklahoma were ever to be made United States citizens, but to remain "Independent" of all United States decisions and laws and those of the States and Territories their lands lied in. Therefore, these points still remain in affect today;

(5) As stated in *United States v. Smith*, No. 18-cr-3495-JCH, (D. New Mexico Agu. 27, 2020) (To resolve the question of criminal jurisdiction over Indian Pueblo lands...Congress passed an amendment to the PLA in 2005 that states:

(C) JURISDICTION OF THE UNITED STATES-The United States has jurisdiction over any offenses described in Chapter 53 of Title 18, United States Code, committed by or against an Indian as defined in Title 25, section 1301(4) or any Indian-owned entity, or that involves any Indian property or interest;

(6) The Government claims this Court has subject matter jurisdiction pursuant to 18 U.S.C. §3231. But both §3231 and Chapter 53 of Title 18 state the only offenses that the District Court has subject matter jurisdiction is under §1152 and §1153. The Government clearly states that Defendant does not have a Major Crime, so this disqualifies him for §1153 and because the two treaties in which Defendant is protected under gives Defendant "Tribal Sovereignty" and "Independent Nation" status. Therefore, Defendant is not subject to §1152, thus making §3231 invalid to Defendant;

(7) Because Defendant's sentence was under 9 years and was multiple counts, and was a fine under \$15,000, Defendant falls under §1302(7)(D) and should of been tried under the tribe for Congress extended self-governing to all Indian tribes (1302(2)), but also under the Treaties Defendant is protected under state; "Indian's have the authority to punish their own for crimes committed on their lands; and

(8) Because this is a tax crime and not a firearms case, according to Title 26 Internal Revenue Code there was several ways to collect the \$200 tax due and to have the firearm in question registered without incarcerating the Defendant and even according to Title 26 U.S.C. §6404(c) the collection of the \$200 tax did not warrant collection compared to the amount it cost to incarcerate Defendant. Tax dollars truly wasted in all this.

In two sperate circumstances the Government had the opportunity to argue the merits of this case. In both innccidents the Government spent the majorit of their arguement arguing Equitable Tolling factors. The Govern-ment has failed in their arguments to:

(1) Establish that this Court has jurisdiction over the Defendant;

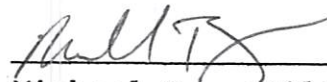
(2) Prove that McGirt does not apply to the Defendant and his claims to Tribal Sovereignty and the Constitutional Rights established by Treaties between his respective tribes and the United States Government;

(3) Prove that Defendant was subject to incarceration based on a fri-volous tax that no longer should apply to moden day citizen's, and leads to the never ending problem of mass incarceration. To show how a tax law is not unconstitutional both on its face and as applied and how it does not violate due process rights; and

(4) Prove that Defendant knew he was suppose to register the firearm he possessed and knew a tax was due on it.

Conclusion

Based on the foregoing and set forth in this Reply to the Government's Response pursuant to 28 U.S.C. §2255(f)(3) and (f)(4), respectfully reque-sts this Honorable Court to Grant this Motion and dismiss the charges and indictment on the merits of this Motion. So it is prayed on this 3rd Day of May in the year of 2021.

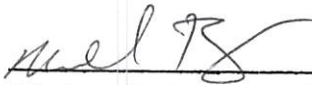


Michael Dean Billey
Reg. No. 15270-062

Certificate of Service

I, Michael Dean Billey, hereby certify that this is a true copy of the foregoing Reply to the Government's Response pursuant to 28 U.S.C. §2255(f)(3) and (f)(4). Everything in this Motion is a true statement to the best of my knowledge which is subject to perjury pursuant to 26 U.S.C. §1746. This Motion is deemed filed at the time delivered to prison authorities pursuant to *Houston v. Lack*, 487 U.S. 266, 273-76, 108 S. Ct. 2379, (1988), upon placing in a sealed first class pre-paid envelope addressed to the United States District Court for the Northern District of Oklahoma located at 333 West Fourth Street, Room 411, Tulsa, OK 74103-3819. This Motion was placed in the mail system located at FCI El Reno located at 4205 Highway 66 West, El Reno, OK 73036 on this 3rd Day of May in the year of our Lord 2021.

Respectfully Submitted,



Michael Dean Billey

Reg. No. 15270-062

Federal Correctional Institution

P.O. Box 1500

El Reno, OK 73036

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MS

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