

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 18-cr-00267-REB-JMC

UNITED STATES OF AMERICA,

Plaintiff,

v.

MERLE DENEZPI,

Defendant.

**MOTION TO DISMISS ON DOUBLE JEOPARDY GROUNDS**

COMES NOW the defendant, MERLE DENEZPI, by his undersigned attorney and moves this Honorable Court to dismiss the defendant's charges because of the double jeopardy clause of the U.S. Constitution, and for his basis states the following:

**FACTS AND STATUS:**

1. Defendant Merle Denezpi, an American Indian/Navajo, was charged by a Federal Grand Jury and indicted by the United States of America on June 7, 2018 for violations of 18 U.S.C. §§ 2241(a)(1) and (2) 1153(a) - Aggravated Sexual Abuse in Indian Country [DOC #1], for alleged sexual assault of another American Indian, Valeria Yellowhorse, within the exterior boundaries of the Ute Mountain Ute Indian Reservation in the State and District of Colorado on or about July 18, 2017.

2. On or about July 19, 2017, after investigation and interviews with the alleged

victim and Defendant Denezpi, the defendant was arrested, and then charged on July 20, 2017 in the Court of Indian Offenses of Ute Mountain Ute Agency (“CFR Court”) in Towaoc, Colorado for Assault & Battery (6 UMUC 2), Terroristic Threats (25 CFR 11.402), and False Imprisonment (25 CFR 11.404).

3. On December 6, 2017, at a Motions hearing in CFR Court, before the Chief Magistrate, Rachel Muhonen (Case number 2017-0000703-CR), Defendant Denezpi pled an Alford plea to the Assault & Battery charge; the other charges were dismissed with prejudice upon motion of the prosecutor. He was sentenced to serve 140 days in the Chief Ignacio Adult Detention Center, Towaoc, Colorado; and received credit for 140 days served pre-trial. A copy of the Register of Actions in CFR Court Case No. 2017-0000703-CR and select pleadings, including the Criminal Complaint, Arraignment Hearing Minute Order, 12/06/2017 Criminal Minute Order, and Sentencing Order are attached hereto as Exhibit “A”, and are hereby incorporated by reference herein.

### **Legal Argument:**

Merle Denezpi is an American Indian that allegedly committed a sexual assault offense on the Ute Mountain Ute Indian Reservation in Towaoc, Colorado on July 18, 2017. He was arrested and charged with Assault and Battery, Terroristic Threats, and False Imprisonment as a result of his conduct and actions with Valeria Yellowhorse, another Navajo Indian. These charges are a mixture of a single offense of Assault and Battery within the Mountain Ute Tribal Code and two charges, terroristic threats and kidnapping which are listed as offenses within the Code of Federal Regulations. Specifically, the Ute Mountain Ute Tribe and its Courts of Indian Offenses were established pursuant to 25 C.F.R. Section 11.100 (6). Merle pled guilty, but maintained his innocence via Alford plea, to Assault and Battery on Valeria Yellowhorse in the

United States of America In the Court of Indian Offenses in Indian Country, a CFR court on December 6, 2017. The pleadings, including the criminal complaint, the arraignment, minute orders, and the sentencing order all denote that the ***United States of America***, is the Plaintiff, versus the defendant Merle Denezpi. This naming of parties for pleadings in the CFR Court is the exact same styling as used in the U.S. District Court pleadings. Additionally, the same charges that were asserted in the CFR Court in Towaoc, Colorado, are essentially the same charges asserted in the Denezpi Indictment because they involve alleged sexual assault, threatened conduct that the victim would be subjected to death, serious bodily injury, and kidnapping. The Indictment when compared to the criminal complaint filed within the CFR Court, and in which defendant Denezpi pled by Alford Plea, include identical conduct thereby subjecting Denezpi to “Double Jeopardy” and violating his constitutional rights under the Fifth Amendment.

The undersigned recognizes the concept of dual sovereignty and that the Federal Government may prosecute an American Indian, subsequent to a Tribal prosecution of the same person for the same acts. See *United States v. Wheeler*, 435 U.S. 313, 318, 322-323, 98 S. Ct. 1079, 55 L.Ed. 2d 303. However, the Wheeler case did not involve a CFR Court, but rather, involved a clearly established Navajo Tribal Court created by the Navajo Tribal Council. *Id.* at 327. As a result, the Wheeler case seemingly left open the issue of the dual sovereignty double jeopardy exception in a situation involving a successive prosecution in a United States District Court after a prosecution in CFR Court. *Id.* at 327 n. 26.

The purpose of a CFR Court is to provide “adequate machinery for the administration of justice for Indian tribes in those areas of Indian country where tribes retain jurisdiction over Indians that is exclusive of State jurisdiction but where tribal

courts have not been established to exercise that jurisdiction. 25 C.F.R. § 11.102. The United States Department of the Interior Indian Affairs – a federal agency - operates a CFR Court for the Ute Mountain Ute Tribe, as the Tribe does not have its own tribal court. See <https://www.bia.gov/regional-offices/southwest/ute-mountain-ute-agency> (last visited January 2, 2019).

Defendant Denezpi respectfully submits that a CFR Court is clearly an arm of the Federal Government, and as a result is not encompassed in the “dual sovereignty” ruling articulated in Wheeler. Commentary in the Federal Registry itself confirms “Courts of Indian Offenses are Federal instrumentalities” and the “Courts of Indian Offenses are part of the Federal Government.” 58 Fed. Reg. 54, 406-7 (Oct. 21, 1993) (internal citation omitted). There is a comingling of the Federal CFR charges (terrorist threats, and kidnapping, with the tribal assault and battery charge), which adds more credence to the basis that the charges arise Federally and are not separate and charges emanating from the Ute Mountain Ute Sovereign. This pending proceeding and the previous CFR Court proceeding involve the same plaintiff and the same sovereign: the United States Government. A simple review of the case caption in both proceedings clearly demonstrate this. The plaintiff in each proceeding is indeed the United States of America. The defendant in each proceeding is Denezpi.

The Federal Government has already prosecuted defendant Denezpi, and this occurred in the CFR Court upon Denezpi’s plea and the issuance of the sentencing order on December 6, 2017. As a result, the successive prosecution by the Federal

Government in the above-referenced and styled case against defendant Denezpi is an impermissible and illegal violation of Denezpi's double jeopardy rights as envisioned in the Fifth Amendment to the United States Constitution.

**WHEREFORE**, the undersigned requests this Honorable Court to dismiss the Federal Charges against Defendant Denezpi on "double jeopardy" grounds.

Respectfully submitted and dated at Durango, Colorado this 6th day of January 2019.

/s/ Bobby Duthie  
Bobby Duthie  
Duthie Savastano Brungard, PLLC  
PO Box 219  
Durango, CO 81302  
P: 970-247-4545  
F: 970-247-4546  
bduthie@trialdurango.com

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

Jeffrey Graves, AUSA  
Email: Jeffrey.Graves@usdoj.gov

/s/ Kathleen Costello  
Kathleen Costello, Legal Asst.  
Duthie Savastano Brungard, PLLC