

**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.

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**DEFENDANT’S REPLY ON HIS MOTION TO DISMISS**

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COMES NOW the defendant, MERLE DENEZPI, by his undersigned attorney and replies to the Government’s response to Defendant’s motion to dismiss because of “double jeopardy”. As grounds, the undersigned states the following:

**Uncontested Facts:**

1. The Ute Mountain Ute Tribe is a Sovereign and is a separate sovereign from the United States.

**Legal Argument:**

1. The government cited *Tillett v. Lujan*, 931 F. 2d 635, 640 (10<sup>th</sup> Cir. 1991) as the binding circuit authority establishing CFR courts to exercise tribal power. The *Tillett* case actually establishes the right for the Kiowa tribal sovereign to use CFR courts over all Civil cases between the tribe and others. *Tillett* is not legal authority for

the CFR courts to exercise separate criminal jurisdiction for the Kiowa Tribe.

2. The Government states in its *Response* (See ECF #30, pg.3) that: “*Application of the separate sovereign doctrine “turns on whether the two entities draw their authority to punish the offender from distinct sources of power.” Heath v. Alabama, 474 U.S. 82, 88 (1985)*” The *Heath* case involved two distinct Sovereign States, namely Alabama and Georgia. This is the precise focus of Defendant Denezpi’s argument in his Motion to dismiss on “double jeopardy” grounds. The Ute Mountain Ute Tribe is a separate sovereign to the United States, but in the specific prosecution in the CFR Court of Indian Offenses involving Defendant Denezpi, the Defendant is being prosecuted by the USA and **not by** the Ute Mountain Ute Tribe. The pleadings, the process, and the prosecution support this argument. It is the unique circumstances of the CFR Court and its prosecution in Towaoc, Colorado, that inadequately separates the Federal Government from the Ute Mountain Ute Tribal Court. If the CFR Court clearly prosecuted Defendant Denezpi in its Court as the Ute Mountain Ute sovereign, i.e. styling the case as the *People of the Ute Mountain Ute Tribe v Denezpi*, then “double jeopardy” would not apply. See Exhibit “A” attached hereto which represent prior legal forms utilized by Ute Mountain Ute tribal court which identify their separate sovereignty as Ute Mountain Ute.<sup>1</sup> However, in this case and in the prosecution of Defendant Denezpi in the CFR court, the entire tribal proceeding is a Federal prosecution of Denezpi for the same acts that the Government has indicted him for in the instant Federal case. See Exhibit “A” to ECF #29.

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<sup>1</sup> Ute Mountain Tribe, Colorado, New Mexico and Utah - Tribal Codes, Law and Order Code, Chapter 10 - Legal Forms; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; Towaoc, CO : Ute Mountain Ute Tribal Council, 1988; Classification: 008627/1988. Obtained from the National Indian Law Library by request. [https://narf.org/nill/tribes/ute\\_mtn\\_ute.html](https://narf.org/nill/tribes/ute_mtn_ute.html).

3. The Ute Mountain Ute Tribe has the congressional authority to utilize the CFR Court in Towaoc in prosecuting criminal misdemeanors on its reservation, but as an independent sovereign, it must punish the offenders as the Ute Mountain Ute Tribe in the CFR Court proceeding. Here, Defendant Denezpi has been prosecuted by the United States of America within the CFR Court as exemplified by the very pleadings, and the Federal arm of the U.S. Government is prosecuting Defendant Denezpi again in the instant Federal case. The Ute Mountain Ute Tribe must either establish its own non-CFR court, or clearly enunciate in its prosecution of offenders in its CFR courts that the Ute Mountain Ute sovereign is prosecuting said offenders separately from the United States of America. The judicial process and prosecution must be distinct and separate so that offenders are protected by their rights under the United States Constitution.

4. The U.S. Supreme Court states in *Heath*, “*In applying the dual sovereignty doctrine, then, the crucial determination is whether the two entities that seek successively to prosecute a defendant for the same conduct can be termed separate sovereigns. This determination turns on whether the two entities draw their authority to punish the offender from distinct sources of power.*” Citing *United States v. Wheeler*, 435 U.S. 313, 320, 98 S.Ct. 1079, 1084, 55 L.Ed.2d 303 (1978). In the instant case, the sovereign Ute Mountain Ute Tribe is not distinguished, and a reasonable interpretation of the pleadings and CFR process, is that the USA is prosecuting Denezpi within the Court of Indian Offenses, a court established by the Bureau of Indian Affairs. Although the Ute Mountain Ute Tribe may have had inherent sovereignty to prosecute, they have allowed and or consented by their actions and process to a Federal prosecution against Defendant Denezpi within the CFR Court as opposed to an

independent prosecution by the Ute Mountain Ute Tribe. This may have occurred unintentionally, but the current developed forms and process subject Defendant Denezpi to “double jeopardy” because the Federal Government is the prosecutor in the CFR Court and in the instant case.

**WHEREFORE**, the undersigned has replied and again requests this Honorable Court to dismiss the Federal Charges against Defendant Denezpi on “double jeopardy” grounds.

Respectfully submitted at Durango, Colorado, this 18<sup>th</sup> day of January 2019.

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### CERTIFICATE OF SERVICE

I hereby certify that on January 18, 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  
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/s/ Kathleen Costello  
Kathleen Costello, Legal Asst.  
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