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ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA, Plaintiff, vs. JAMES KIRBY KING, Defendant.	CR 23-98-GF-BMM RESPONSE TO DEFENDANT'S MOTION TO DISMISS COUNTS 1- 20 FOR FAILURE TO EXHAUST TRIBAL REMEDIES
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The United States of America responds to the Defendant's Motion Dismiss Counts 1-20 for Failure to Exhaust Tribal Remedies ("Motion"), requesting that this Court deny the frivolous Motion.

ARGUMENT

A federal grand jury charged defendant James Kirby King with twenty-five counts of various sexual assault, child molestation, child exploitation and human trafficking crimes. (Doc. 31). The defendant requests that this Court dismiss the first twenty counts of the Superseding Indictment, baselessly arguing that the federal government lacks jurisdiction to prosecute any crime on the Fort Belknap Indian Reservation unless and until the Fort Belknap Tribal Court first adjudicates the federal charges. Defendant’s Brief in Support of Motion,¹ pp. 1-2 and 5-7. The defendant argues the federal government not only lacks jurisdiction to prosecute major crimes, but also contends that it has no authority to even *investigate* such crimes. *Id.* at p. 7. No legal authority exists in support of these claims. As set forth below, this Court should reject the defendant’s frivolous arguments because Congress and the courts have recognized the federal government’s authority to investigate and prosecute crimes committed by Indians against both Indians and non-Indians in Indian Country for nearly 140 years.

I. Legal Framework

It is well-established that “Congress’s power to legislate with respect to the Indian tribes [is] ‘plenary and exclusive,’ “superseding both tribal and state

¹ The defendant mischaracterizes various “facts” in his Motion, which the government disputes. Because these allegations are ultimately irrelevant, however, the government does not address the specific disputes in this response.

authority.” *Haaland v. Brackeen*, 599 U.S. 255, 272-273 (2023) (citing *United States v. Lara*, 541 U.S. 193, 200 (2004); *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998); *Washington v. Confederated Bands and Tribes of Yakima Nation*, 439 U.S. 463, 470 (1979); *Winton v. Amos*, 255 U.S. 373, 391 (1921); *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565 (1903); *Stephens v. Cherokee Nation*, 174 U.S. 445, 478 (1899); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978); and *Dick v. United States*, 208 U.S. 340, 353 (1908)). Congress’s broad authority derives from the United States Constitution, as well as the federal government’s trust responsibility to the tribes. *Id.* at 273-275. Consistent with this authority, the United States Supreme Court has consistently upheld “Congress’s ability to legislate across a wide range of areas, including criminal law, domestic violence, employment, property, tax, and trade.” *Id.* at 275 (citations omitted).

Indeed, Congress first empowered the federal government to prosecute major crimes that Indians committed against other Indians and non-Indians in Indian Country when it enacted the Major Crimes Act of 1885. Act of Mar. 3, 1885, c. 341, § 9, 23 Stat. 385 (currently set forth in 18 U.S.C. §§ 1153 and 3242). Courts have recognized the federal government’s authority to investigate and prosecute these crimes for more than 100 years. *United States v. Kagama*, 118 U.S. 375 (1886). This authority does not infringe on tribal sovereignty, as tribes retain the concurrent authority to prosecute Indians who commit crimes in Indian Country,

independent of whether the federal government also charges the same defendant for the same crime. *Lara*, 541 U.S. at 210; *United States v. Enas*, 255 F.3d 662, 667 (9th Cir. 2001); *see also* 25 U.S.C. §§ 1301-1304. Similar to the Major Crimes Act, Congress exercised its plenary power to empower the federal government to investigate and prosecute child pornography, sex trafficking and sex offender crimes wherever they occur, including Indian Country. *See, e.g.*, 18 U.S.C. §§ 2251, 2252A, 1591, and 2260A.

I. This Court should reject defendant’s misstatement of the law, as there exists no requirement for the federal government to exhaust tribal remedies before charging Indians with a federal crime.

The defendant erroneously argues the federal government must somehow exhaust tribal remedies before charging an Indian defendant with a crime committed in Indian Country. Defendant’s Brief in Support of Motion, pp. 1-2, 5-7. No such requirement exists. The tribal remedies exhaustion doctrine only applies to “**civil** disputes between Indians and non-Indians that arise on an Indian reservation.” *E.g. Nat’l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 854 (1985) (emphasis added). Although the defendant cites this and related cases in his supporting brief, he conveniently omits that such holdings explicitly limit their application to civil cases. Defendant’s Brief in Support of Motion, p. 5. As the United States is not a non-Indian plaintiff in a civil matter, the tribal remedies exhaustion doctrine is entirely inapposite to this case. Further, as stated above, both

the tribes and federal government possess concurrent jurisdiction to investigate and prosecute Indian defendants who commit major crimes in Indian Country. *Lara*, 541 U.S. at 210; *Enas*, 255 F.3d at 667. Consequently, this Court should reject the defendant's misrepresentation of the law.

II. This Court should deny the defendant's Motion because the United States properly charged the defendant with sexual abuse and incest crimes (Counts 1, 2, 4-12, and 15-18), consistent with its jurisdiction pursuant to the Major Crimes Act.

A federal grand jury charged the defendant with three counts of aggravated sexual abuse of a child (Counts 1, 7 and 9), four counts of incest (Counts 2, 6, 8 and 10), two counts of aggravated sexual abuse by rendering unconscious and drugging victim (Counts 4 and 17), two counts of sexual abuse (Counts 5 and 18), one count of attempted aggravated sexual abuse by rendering unconscious and drugging victim (Count 11), one count of attempted sexual abuse (Count 12), one count of sexual abuse of a minor (Count 15), and one count of aggravated sexual abuse (Count 16). (Doc. 31). The Major Crimes Act outlines various federal crimes involving Indian defendants in Indian Country, including felony sexual abuse and incest. 18 U.S.C. § 1153(a); *see* Mont. Code Ann. § 45-5-507. Felony sexual abuse crimes include, but are not limited to: aggravated sexual abuse; aggravated sexual abuse of a child; aggravated sexual abuse by drugging or rendering the victim unconscious; sexual abuse; sexual abuse of a minor; and any attempt to commit any of the aforementioned crimes. 18 U.S.C. §§ 2241(a), (b) and (c), 2242(1), (2), and

2243(a). Each of the crimes charged in Counts 1, 2, 4-12, and 15-18 are specifically enumerated and authorized by the Major Crimes Act. Consequently, this Court should deny the defendant's Motion because the United States properly exercised its jurisdiction.

III. This Court should deny the defendant's Motion because the United States properly charged the defendant with child pornography crimes (Counts 3, 13, 14, 19 and 20), consistent with its jurisdiction pursuant to 18 U.S.C. §§ 2251 and 2252A.

A federal grand jury charged the defendant with three counts of sexual exploitation of children (Counts 3, 13 and 14), one count of attempted possession with the intent to sell child pornography in Indian country (Count 19) and one count of possession of child pornography in Indian country (Count 20). (Doc. 31). Congress empowered the federal government to prosecute child pornography crimes both in and outside of Indian Country. 18 U.S.C. §§ 2251 and 2252A(a)(4)(A) and (a)(5)(A). Because each of the crimes charged in Counts 3, 13, 14, 19 and 20 are specifically authorized by statute and no requirement exists to exhaust tribal remedies prior to federal investigation or prosecution, the United States properly exercised its jurisdiction in charging these matters. Accordingly, this Court should deny the defendant's Motion.

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CONCLUSION

Because the defendant's arguments have no basis in law or fact, the United States respectfully requests this Court deny the defendant's frivolous Motion.

DATED this 5th day of July, 2024.

JESSE A. LASLOVICH
United States Attorney

/s/ Amanda L. Myers
AMANDA L. MYERS
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Local Rule CR 47.2(c). The brief contains 1,275 words, excluding the caption and the certificate of compliance.

/s/ Amanda L. Myers
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