UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 24-302 (PJS/LIB)

UNITED STATES OF AMERICA, Plaintiff, v. MASON ALEXANDER BULLHEAD, Defendant.	)	**DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS STATEMENTS**

INTRODUCTION

Mr. Bullhead's pretrial motions included a Motion to Suppress Statements from two separate dates relating to statements attributed to him while being processed into detention on May 13, 2024, and later during an interrogation session on May 15, 2024. (ECF 35). On May 29, 2025, this Court held a Motion Hearing where Mr. Bullhead confirmed the remaining dispositive issues before the Court are those raised in the Motion to Suppress the two custodial statements. The Court heard testimony from Special Agent Bradley Klag and Mr. Bullhead, and received 5 Exhibits. This Memorandum is filed in support of the Defendant's Motion to suppress the May 13 and 15, 2024 statements.[1]

[1] As outlined below, the record and testimony establish that the post-arrest statements attributed to Mr. Bullhead on May 13, 2024, fall within the scope of the booking exception to un-Mirandized custodial interrogation.

FACTS

On May 13, 2024, Mr. Bullhead was arrested by Red Lake PD Officer Jonathan Richards and transported to the Red Lake Detention Center. It appears that the arrest was pursuant to two Red Lake tribal warrants, the more recent of which was issued on May 9, based on a tribal complaint dated May 7, that arose from an incident on May 4. Motion Hearing Transcript ("MH Tr."), ECF 50 at 18; Tribal Court Records, Attachment 1. Mr. Bullhead was booked into custody and held at the detention center following his arrest. MH Tr. at 19. While being processed into the detention center, Officer Richards asked Mr. Bullhead if he had any mental health conditions. *Id.* Mr. Bullhead responded by saying "I lose control sometimes." *Id.* The interaction was not recorded.

Mr. Bullhead remained in tribal custody continuously until his release to treatment in January 2025. Two days after his arrest, on May 15, 2024, Special Agent (SA) Bradley Klag and Red Lake Criminal Investigator (CI) Ron Leyba arrived at the jail to interview Mr. Bullhead, beginning at 10:20 a.m. *Id.* at 21. Before being brought to the interrogation room, a Red Lake Corrections Officer informed Mr. Bullhead that individuals were there to see him. *Id*., at 50. Mr. Bullhead correctly inferred that the people were law enforcement officers who were there to question him. *Id.* at 50, 51. Mr. Bullhead told the corrections officer that he did not want to speak with anybody. *Id.* at 51. The Corrections Officer responded that he had no choice, that he had to. MH Tr. at 52, 64.

Despite his refusal, Mr. Bullhead was handcuffed and shackled and escorted to an interrogation room where CI Leyba and SA Klag were waiting. *Id* at 51, 59. Mr.

Bullhead was placed at the table with the two investigators, and, without any discussion of his earlier refusal, CI Leyba firsts asked Mr. Bullhead, "Nervous?" Then, following a brief exchange, CI Leyba asked the following question and made the following promise:

> "Are you gonna behave? Okay, if you behave and the stuff like that the- things are gonna go good here, okay."
>
> *Exhibit D-3, FBI Transcribed Interview 5/15/24* at 3.

The promise, framed as a conditional warning, set the tone for the encounter. The implication was clear: cooperation would be rewarded, and noncompliance could carry consequences. Mr. Bullhead, still in handcuffs and facing two investigators alone in custody, found himself in a pressured and disorienting environment.

Shortly thereafter, SA Klag read Mr. Bullhead his *Miranda* rights and presented a written waiver. MH Tr. at 6. Mr. Bullhead was asked to read a portion of the waiver aloud and sign the form, which he did. *Id*. Mr. Bullhead then proceeded to answer questions for more than an hour, ultimately making multiple incriminating statements, including a full confession. *Id*. at 58. He remained handcuffed throughout the lengthy interrogation. *Id*. at 23, 59.

At the suppression hearing, Mr. Bullhead testified that he refused to speak with law enforcement, telling detention staff he did not want to speak to anybody. *Id*. at 50. The jailer responded that Mr. Bullhead had to, that he had no choice, after which he was handcuffed and brought into the interrogation room. *Id*. at 52, 64. The questioning began with the promise quoted above.

After being told that he had no choice, that he had to go to the interrogation, and that things would go better for him if he did, Mr. Bullhead felt he had "no choice but to speak." *Id*. at 54. Mr. Bullhead's decision to waive his rights did not stem from free and voluntary deliberation, but rather from a belief that resistance was futile and that the outcome would be better if he did what the agents wanted. The combination of ignoring his invocation of his right to silence, placing him in handcuffs before the questioning, and CI Leyba's promise overcame his resistance and compelled his cooperation.

ANALYSIS

Mr. Bullhead gave a confession to Law Enforcement on May 15, 2025, and it should be suppressed for three reasons: because it was made after he invoked his right to silence, because it was involuntary, and because Mr. Bullhead was represented by counsel who was not included in the interview.

I. The May 15, 2024, Statement Should Be Suppressed Because Mr. Bullhead Invoked His Right to Remain Silent and that Invocation Was Not Honored.

A. Legal Standard

The Fifth and Fourteenth Amendments protect a person's right against self-incrimination. The core of this right is "the requirement that the State which proposes to convict and punish an individual produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips." *Culombe v. Connecticut*, 367 U.S. 568, 582 (1961). Custodial interrogations "contain inherently compelling pressures which work to undermine the individual's will to resist

and to compel him to speak where he does not otherwise do so freely." *Miranda v. Arizona*, 384 U.S. 436, 467 (1966). If an individual indicates in any manner, at any time prior to or during questioning, that he does not wish to be interrogated, the police may not question him. *Id*. 436, 444-45, 474. Without this right to cut off questioning, the setting of in-custody interrogation operates to overcome free choice in producing a statement after the privilege has been invoked. *Michigan v. Mosley*, 423 U.S. 96, 100-101 (1975) ("The critical safeguard is that a suspect must be 'scrupulously honored' in his right to cut off questioning"). The admissibility of statements obtained after the person in custody has decided to remain silent under *Miranda* depends on whether this right to cut off questioning was "scrupulously honored." *Id.* 103.

Miranda holds that "[i]f the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." *Miranda*, 394 U.S. at 473-74. However, although invocation need not take any particular form, they must invoke their right to silence clearly and unambiguously. *Berghuis v. Thompkins*, 560 U.S. 370, 375-382 (2010). ("Because Thompkins neither said 'he wanted to remain silent' nor said 'he did not want to talk with the police,' the Court concludes, he did not clearly invoke his right to silence." *Id*. 375).

The government may not use statements elicited through interrogation unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. *Id.*, 444-45. If a person's rights are not effectively protected, the resulting statements are inadmissible. *Miranda*, 493.

B. Mr. Bullhead Clearly Invoked His Right to Remain Silent

The Fifth Amendment guarantees that an individual subject to custodial interrogation has the right to remain silent. *Id*. Once that right is invoked, all questioning must cease. *Mosley*, 100.

Here, before the interrogation began, a corrections officer informed Mr. Bullhead that "people" were there to see him. Correctly understanding that the people were law enforcement officers there to question him, Mr. Bullhead immediately and unequivocally responded that he did not want to talk to anyone. MH Tr. at 50–51. Under the circumstances, his statement closely mirrors the example in *Berghuis*, in which the Court acknowledged that a statement such as "I do not want to talk with police" constitutes a clear invocation of the right to silence.

C. Law Enforcement Initiated the Interrogation, not Mr. Bullhead

There is no dispute that the interview was initiated by law enforcement. Mr. Bullhead did not request to speak with agents. Instead, he was brought in against his declared wishes and subjected to questioning without a break, a delay, or any intervening event. The interrogation was entirely initiated by law enforcement, and thus *Miranda* protections were fully triggered.

D. The Government Failed to Scrupulously Honor the Invocation

Far from ceasing any and all efforts to question Mr. Bullhead, the corrections officer told Mr. Bullhead that he had to, that he had no choice, and brought him, still handcuffed, into an interrogation room where the two agents were waiting. Within moments, Mr. Bullhead was asked to waive the very rights he had just invoked. This

sequence of events directly contravenes *Mosley*, which requires that law enforcement scrupulously honor the right to cut off questioning. Ignoring his invocation and engaging Mr. Bullhead immediately after his invocation violates the core protections guaranteed by *Miranda* and rendered any subsequent waiver involuntary and invalid. *Miranda*, 394 U.S. at 476.

E. The Agents' Collective Knowledge

It does not appear that either SA Klag or CI Leyba were told that Mr. Bullhead did not want to talk to them, but that even if he had been told of this SA Klag testified that he would have persisted in an attempted interrogation. MH Tr. at 41, 47.

Fundamentally, the fact that they themselves were not told that Mr. Bullhead invoked his right to silence should not and does not matter, and not just because SA Klag would have ignored the invocation to the jailer: The government cannot circumvent core constitutional protections by limiting or siloing knowledge. When law enforcement officers operate together in a coordinated investigation, the collective knowledge of the team is attributed to each individual officer. The Eighth Circuit has applied this "collective knowledge" doctrine to uphold actions taken by one officer based on information known to another, so long as "some degree of communication exists between them." *United States v. Gillette*, 245 F.3d 1032, 1034 (8th Cir. 2001); *United States v. Gonzales*, 220 F.3d 922, 925 (8th Cir. 2000).

Here, Mr. Bullhead's invocation of his right to remain silent was made directly to a Red Lake Detention Center Corrections Officer. That Officer was the same individual who handcuffed Mr. Bullhead and delivered him to the interrogation room where SA

Klag and CI Leyba were waiting, and who remained in the room. MH Tr. at 37-38. There is no dispute that this Corrections Officer was working in concert with law enforcement to facilitate the interview. For example, the *Gillette* Court emphasized that "officers functioning as a search team" are treated as having shared knowledge. *Id*. at 1034. The requirement of "some degree of communication" is met not only by express verbal communication, but also by coordinated action. *See United States v. O'Connell*, 841 F.2d 1408, 1419 (8th Cir. 1988) (upholding collective knowledge where officers "acted together in close coordination"). The transporting officer here was not an independent actor; he was an essential conduit between the custodial facility and the investigators, delivering Mr. Bullhead to a pre-arranged interrogation with federal and tribal law enforcement agents.

Permitting the government to claim ignorance on the part of the interrogating officers, when the defendant's invocation had just been made to detention staff moments before the interrogation, would undermine the very foundation of *Miranda*. Officers cannot avoid constitutional limits by intentionally—or conveniently—failing to communicate critical rights-related information.

Because the interviewing officers were part of the same investigation, relied on the same custody system, and received Mr. Bullhead directly from the officer who heard him invoke his rights, the government cannot claim that their siloed ignorance excuses their collective failure to scrupulously honor his unambiguously invoked rights. The knowledge of Mr. Bullhead's invocation must be imputed to them, and the interrogation that followed was in clear violation of *Miranda*, *Mosley*, and the Fifth Amendment.

F. Lack of Diligence by a Particular Officer Does Not Excuse Reinterrogation

If a person invokes their right to counsel, it is not significant whether an individual officer was aware of this invocation. *See, e.g., Arizona v. Roberson*, 486 U.S. 675, 687 (1988). The right to silence should receive the same protection. In a custodial interrogation, the Supreme Court has focused on the state of mind of the suspect rather than the police. *Id*. (referring to *Edwards v. Arizona*, 451 U.S. 477 (1981)). As such, the Court has placed the onus on the government to determine if an invocation of a person's Fifth Amendment rights as already taken place ("Custodial interrogation must be conducted pursuant to established procedures, and those procedures in turn must enable an officer who proposes to initiate an interrogation to determine whether the suspect has previously requested counsel.") *Roberson*, 687. The Court held that "[t]he police department's failure to honor that request cannot be justified by the lack of diligence of a particular officer." *Id.*

Here, Mr. Bullhead clearly invoked his right to remain silent by informing the jailer that he did not want to speak to anybody. He was then immediately taken into an interrogation room and subjected to a custodial interrogation. While current case law has addressed this issue in the Fifth Amendment context of invoking the right to counsel, refusing to extend the same protections to the right to remain silent would lead to indefensible results where, if the right to silence but not counsel was invoked, it would be permissible to simply swap out officers and try again.

II. The May 15, 2024, Statement Should Be Suppressed Because Mr. Bullhead's Statement Was Involuntary.

Even when a defendant does not invoke their right to silence or counsel, statements given involuntarily, while in custody, are inadmissible.

a. Legal Standard

The Fifth Amendment prohibits the use of involuntary confessions obtained through coercive police conduct that overcomes a defendant's will. *Miranda,* 527. Courts determine voluntariness under the totality of the circumstances, examining both police conduct and the defendant's characteristics to assess whether the defendant's will was overborne. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Culombe*, 602. A confession is involuntary if it was "extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertion of any improper influence." *Bram v. United States*, 168 U.S. 532, 542–43 (1897).

Involuntary confessions are not admissible for any purpose at trial, including for impeachment purposes, because they are irrebuttably presumed to be unreliable. *Mincey v. Arizona*, 437 U.S. 385, 397-98 (1978). The government bears the burden of proving voluntariness by a preponderance of the evidence once coercion is raised. *Lego v. Twomey*, 404 U.S. 477 (1972). Involuntary statements must be suppressed entirely, including for impeachment purposes, and any derivative evidence excluded under the fruit of the poisonous tree doctrine. *Mincey; Wong Sun v. United States*, 371 U.S. 471 (1963).

b. The Totality of the Circumstances Demonstrate Coercion

Here, several interlocking circumstances produced a coercive environment. Mr. Bullhead was in custody, was restrained in handcuffs, and was transported to the interrogation room immediately after telling a corrections officer he did not want to speak with anyone and after being told that he had to and that he had no choice. Once inside the room, he was confronted by two investigators, including CI Leyba—an officer with whom he testified he had a strained and tense history, who promised a favorable outcome. MH Tr. at 60-61.

These circumstances, taken together, are not merely uncomfortable—they are explicitly and implicitly coercive. They undermined Mr. Bullhead's ability to freely exercise his will, setting the stage for an involuntary statement that cannot be admitted under long-established constitutional standards. But these are not the only coercive circumstances that were present.

c. *Mr. Bullhead's Invocation of Silence Was Ignored*

In addition to the Fifth Amendment issue addressed above, the fact that Mr. Bullhead clearly expressed that he did not want to speak is also important to the voluntariness assessment. When that expression is disregarded, it contributes to the coerciveness of the setting and communicates to Mr. Bullhead that he does not get to make a choice.

d. Law Enforcement's Opening Remarks Undermined Voluntariness

Upon entering the interrogation room, Mr. Bullhead was immediately met with a conditional warning and promise from CI Leyba:

> Are you gonna behave? Okay, if you behave and the stuff like that—the things are gonna go good here, okay. (FBI Interview Tr. at 3.)

This statement indicated that Mr. Bullhead's treatment would depend on his compliance. Rather than providing neutral assurance of his rights or the voluntary nature of the conversation, or that the prosecutor would be informed of his cooperation, the comment communicated that "good" outcomes would follow from Mr. Bullhead's compliance. In the context of this custodial interrogation, where Mr. Bullhead had just expressed that he did not want to talk, was told that he had to, was physically restrained, and already felt he had no choice, this statement functioned as an explicit promise and an implicit threat. It was coercive. It signaled that speaking would lead to positive consequences, overcoming his resistance and rendering his compliance involuntary.

e. The Coercion Was Reinforced by an Express Denial of Choice

Mr. Bullhead testified that after he told the officer he didn't want to speak with anyone, he was told he didn't have a choice. MH Tr. at 54. And the actions matched the words when Mr. Bullhead was brought to the interrogation room, reinforcing he did not have a choice.

f. Promise of a Benefit

CI Leyba's promise, made in the presence of SA Klag and not contradicted by him, establishes involuntariness and adds to the coercive totality of the circumstances. *See Arizona v. Fulminante*, 499 U.S. 279, 285 (1991); *United States v. Long*, 852 F.2d 975, 978 (7th Cir. 1988) ("[L]eading the defendant to believe that he or she will receive lenient treatment when this is quite unlikely is improper, whereas, making a promise to

bring the defendant's cooperation to the attention of the prosecutor or to seek leniency [from the court], without more, typically is not."); *Sprosty v. Buchler*, 79 F.3d 635, 646 (7th Cir. 1996) (an "empty prosecutorial promise" about the benefit of a defendant's confession impairs the defendant's "rational choice ... by distorting the alternatives among which [the defendant] is being asked to choose.").

Here, the promise must also be weighed in the context of the other coercive circumstances. A suspect's will may be overborne if the promise is accompanied by other coercive practices and circumstances. *See United States v. Guerrero*, 847 F.2d 1363, 1366 n.2 (9th Cir. 1988). Viewed together, the handcuffs and shackles, being told he had no choice but to speak to law enforcement and bringing him to a room with two officers waiting for him after he tried to refuse to speak, and the promise of a benefit overcame Mr. Bullhead's stated desire to remain silent and rendered his statements involuntary and inadmissible.

III. Mr. Bullhead's Statement to Law Enforcement on May 15, 2024, Should Be Suppressed because he was Represented by Counsel.

A. Background

1. The Red Lake Nation Tribal Court Public Defender

The Red Lake Nation tribal court provides indigent criminal defendants with representation by tribal public defenders in tribal court, just as the courts in the surrounding state and federal district do. Dwight Stately, Jr. and Donna Morrison are tribal public defenders. The tribal public defenders are approved by the sovereign tribe to provide representation of indigent criminal defendants in tribal court. The Tribal Public

Defender Office is in the same building as the Red Lake tribal court and the Red Lake detention center.

2. The Red Lake tribal court proceedings

Mr. Bullhead was arrested on May 13 and appeared the next day in Red Lake tribal court on the tribal assault charges, which mirrored and stemmed from the same incident that underlies the charges in the federal indictment. (Attachment 1 at 1-2.) Mr. Bullhead received the services of the Red Lake Tribal Public Defender. Red Lake Tribal Public Defender Donna Morrison represented Mr. Bullhead at the May 14 hearing. Together with her colleague Dwight Stately, Jr. the attached tribal court records reflect that his court-appointed counsel were involved at each and every stage of the tribal proceedings, from the May 14 appearance, continuously through an arraignment on June 6, court-ordered disclosures on June 21 and July 1, scheduling proceedings on July 3, sentencing on August 9, motions for his release to treatment on December 12 and January 15, 2025, a release hearing on January 16, and a final hearing that closed the file, crediting him for time served and treatment. (Attachment 1.)

3. The FBI's Interrogation of Mr. Bullhead on May 15, 2025

As outlined above, Mr. Bullhead was questioned by FBI Special Agent Klag and Red Lake Police Criminal Investigator Leyba, on May 15, 2024, six days after the tribal complaint, two days after his arrest, and one day after his appearance on the tribal charges and the appointment of tribal defense counsel. MH Tr. at 20, 34, Attachment 1 at 1-2. Agent Klag testified that he was aware of the incident and the May 13 arrest, and that he made no effort to contact defense counsel or even to learn of the appointment of

counsel, even though the public defender is officed in the same building as the detention center where the interrogation took place. MH Tr. at 16, 18-20, 37. 43-45.

The agents made no effort to contact the Public Defenders prior to interviewing Mr. Bullhead.

B. Mr. Bullhead's May 15, 2024, Statement to Law Enforcement Should Be Suppressed Because It Was obtained in Violation of his Fifth and Sixth Amendment Rights.

Mr. Bullhead's May 15, 2024, statement to law enforcement should be suppressed because law enforcement violated his Fifth and Sixth Amendment rights by interviewing him in a custodial setting at the Red Lake Tribal detention center. First, law enforcement violated Mr. Bullhead's Sixth Amendment right to counsel by not contacting his tribal public defenders, by not providing him with the opportunity to speak with them prior to the interview, and by not obtaining a valid Sixth Amendment waiver of counsel. Second, law enforcement violated Mr. Bullhead's Fifth Amendment right against self-incrimination by not giving him the information necessary to validly waive the protections afforded by *Miranda*. Specifically, law enforcement failed to explain to Mr. Bullhead that, because the interview would include a discussion of facts supporting his tribal charges, he had the right to speak to, and have defense counsel present.

The constitutional violations in this case are particularly troubling because law enforcement would likely have protected Mr. Bullhead's constitutional rights if he was not indigent and had the financial resources to hire a private licensed attorney, or if his prior charge was pending in Minnesota state court rather than tribal court. In other words, law enforcement did not afford Mr. Bullhead the required constitutional

protections due to his indigency and his membership with the Red Lake tribe. This unequal treatment further establishes that law enforcement violated Mr. Bullhead's constitutional rights. As such, the May 15 statement should be suppressed.

1. *Law enforcement's May 15 interrogation violated Mr. Bullhead's Sixth Amendment right to counsel*

The Supreme Court has long held that the Sixth Amendment attaches "at or after the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991) (internal quotations omitted). "The purpose of the Sixth Amendment counsel guarantee—and hence the purpose of invoking it—is to 'protec[t] the unaided layman at critical confrontations' with his 'expert adversary,' the government, after 'the adverse positions of government and defendant have solidified' with respect to a particular alleged crime." *Id.* at 177-78 (quoting *U.S. v. Gouveia*, 467 U.S. 180, 189 (1984)).

The question presented in this case is whether Mr. Bullhead's Sixth Amendment right to counsel attached when the Red Lake Public Defender's Office was appointed to represent him as his public defender on the tribal charges prior to law enforcement questioning him.

The controlling Eighth Circuit precedent on this issue is *United States v. Bird*, 287 F.3d 709 (8th Cir. 2002). In *Bird*, the defendant was charged with rape in the Rosebud Sioux Tribal Court. *Id.* at 711. The tribal court appointed a licensed attorney to represent the defendant in tribal court. *Id.* Without contacting the defendant's appointed

counsel, an FBI agent and tribal investigator interviewed the accused about the same alleged incident as part of its investigation into possible federal charges. *Id.* at 711.

The defendant in *Bird* moved the district court to suppress the statements provided during the interview because the interview violated his Sixth Amendment right to counsel. *Id.* at 712. The district court agreed and suppressed the defendant's statement after finding that the federal and tribal charges were identical, federal and tribal authorities were working in tandem, and federal authorities knew counsel had been appointed at the time of the tribal charge. *Id.* The court concluded that "Red Bird's Sixth Amendment right to counsel attached when he was arraigned on the rape charges in tribal court and that the subsequent interview violated Red Bird's Sixth Amendment right to counsel." *Id.* The district court suppressed the defendant's statement. *Id.*

The Government appealed and the Eighth Circuit affirmed. The Eighth Circuit acknowledged that the Sixth Amendment does not apply directly to tribes but does "apply to the conduct of federal officials." *Id.* at 713. As such, although a defendant in tribal court does not have the Sixth Amendment right to counsel, when the FBI is interviewing an individual related to possible federal charges, the individual is afforded the protections of the United States Constitution. *Id.* ("'The line of authority ... exempting Indian tribes from Constitutional provisions addressed specifically to State or Federal Governments ... does not relieve State and Federal Governments of their obligations to individual Indians under these provisions.'" (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 n.7 (1978)).

The Eighth Circuit agreed with the district court's analysis and concluded that the Sixth Amendment right to counsel attached at the time of the tribal charge and therefore the FBI's interview of the accused violated that right. *Bird*, 287 F.3d at 714-15. Because the Sixth Amendment right attached at the time of the tribal charge, any questioning by federal authorities violated the Sixth Amendment. *Id.* at 716.

This case is nearly identical to *Bird*. Mr. Bullhead was represented by a tribal public defender in tribal court and the FBI coordinated with the tribal authorities in the investigation and interview of Mr. Bullhead at the tribal detention center. And, importantly, the interview conducted by federal law enforcement focused on the same incident that supported the assault charge in tribal court and the agents were aware of the charge in tribal court.

While it is certainly true that the tribal public defender in *Bird* was a licensed attorney, and that the Red Lake defenders are not, allowing this difference to produce a different outcome offends both the interface with a sovereign entity and the Sixth Amendment. It should not deprive Mr. Bullhead of Sixth Amendment protections in this case. Mason Bullhead — as an indigent criminal defendant and member of the Red Lake Tribe — did not have the option of having a licensed attorney represent him under court appointment in tribal court. Instead, he requested, was appointed, and was assisted by the only public defender that the Tribe made available to him. Because the tribal Public Defender was the only option Mr. Bullhead had for court-appointed representation in tribal court, and Ms. Morrison and Mr. Stately represented him in tribal court as would

any licensed attorney, and Mr. Bullhead should not have been questioned by federal law enforcement without his presence.

In sum, Mr. Bullhead's indigency and a lack of opportunity to be represented by a licensed attorney in tribal court should not exempt him from the Sixth Amendment's protections. To suggest otherwise undermines the protections the Tribe affords to its members, and the Sixth Amendment itself. This Court should therefore find that the Sixth Amendment protections attached at the time the tribal Public Defender was appointed to represent Mr. Bullhead in tribal court.

Additionally, this Court should conclude that subsequent custodial interview conducted by law enforcement violated his Sixth Amendment right to counsel because neither Ms. Morrison nor Mr. Stately was present during the interview, because Mr. Bullhead was not provided information about his right to their presence, and because law enforcement did not obtain a valid Sixth Amendment waiver from Mr. Bullhead before the interview. *See Montejo v. Louisiana*, 556 U.S. 778, 798 (2009) (concluding that while there is not a presumption that a *Miranda* waiver is invalid following the appointment of counsel, relief may be sought based on a claim that the "waiver was invalid because it was based on misrepresentations by police as to whether he had been appointed a lawyer[.]"); *Moran v. Burbine*, 475 U.S. 412, 428 (1986) ("It is clear, of course, that absent a valid waiver, the defendant has the right to the presence of an attorney during an interrogation occurring after the first formal charging proceeding, the point at which the Sixth Amendment right to counsel attaches."); *Massiah v. United States*, 377 U.S. 201, 206 (1964) (holding that "petitioner was denied the basic

protections of that guarantee when there was used against him at his trial evidence of his own incriminating words, which federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel"). Mr. Bullhead's May 15, 2024, statement should therefore be suppressed. *See Massiah*, 377 U.S. at 207 ("Any statement about the charged crime that government agents deliberately elicit from a defendant without counsel present after the defendant has been indicted must be suppressed under the Sixth Amendment exclusionary rule.").

2. *Law enforcement also violated Mr. Bullhead's Fifth Amendment right against self-incrimination*

In addition to violating Mr. Bullhead's Sixth Amendment right to counsel, law enforcement also violated his Fifth Amendment right against self-incrimination.

The Fifth Amendment prohibits any person from being "compelled in any criminal case to be a witness against himself." U.S. Const. amend V. In *Miranda*, the Supreme Court concluded that procedural protections were necessary to prevent the violation of the Fifth Amendment right when suspects are in custody and are interrogated by police. *See Vega v. Tekoh*, 142 S.Ct. 2095 (2022) (discussing *Miranda*, 384 U.S. 436). Specifically, the Court required that a suspect understand the prophylactic measures in place to assist in protecting the Fifth Amendment right against self-incrimination, including having counsel present for questioning. *Miranda*, 384 U.S. at 479; *See Tekoh*, 142 S.Ct. 2095 (holding that *Miranda* rules, while constitutionally based, are prophylactic rules geared toward safeguarding the Fifth Amendment right against self-incrimination).

In this case, Mr. Bullhead's May 15, 2024, statement should be suppressed because the required *Miranda* waiver was invalid. First, a valid *Miranda* waiver was required because he was subjected to custodial interrogation. *See J.D.B. v. North Carolina*, 564 U.S. 261, 270 (2011) (reaffirming that *Miranda* warnings are required "only where there has been such a restriction on a person's freedom as to render him in custody." (internal quotations and citations omitted); *see also U.S. v. Soderman*, 983 F.3d 369, 376 (8th Cir. 2020) ("*Miranda* warnings are required only when a person is in custody, because they are intended to protect the individual against the coercive nature of custodial interrogation." (internal quotations and citations omitted)). There is no dispute that Mr. Bullhead was in custody and subject to custodial interrogation. MH Tr. at 19-20, 23; *see also Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) ("the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect"); *U.S. v. Griffin*, 922 F.2d 1343, 1347 (8th Cir. 1990) ("Custody occurs either upon formal arrest or *any other circumstances* where the suspect is deprived of his freedom of action in *any* significant way." (emphasis in original)). Mr. Bullhead was arrested on May 9th, was in custody at the tribal detention center, an FBI Special Agent and a Criminal Investigator with the Red Lake Police were present in the interview room when he was questioned, and Mr. Bullhead was not free to leave. *See J.D.B.*, 564 U.S. at 270 (concluding that whether someone is in custody is an objective inquiry where courts assess the circumstances surrounding the interrogation and whether a reasonable person

would have felt at liberty to end the interrogation and leave.) Indeed, Agent Klag admitted within his testimony that Mr. Bullhead was interviewed while in a custodial setting and was not free to leave. MH Tr. at 23.

Second, law enforcement failed to obtain a valid *Miranda* waiver from Mr. Bullhead. A *Miranda* waiver is valid only to the extent it is voluntary, knowing, and intelligent. *Miranda*, 384 U.S. at 444. The Government bears the burden of proving that a waiver is valid. *See Colorado v. Connelly*, 479 U.S. 157, 168 (1986); *Tague v. Louisiana*, 444 U.S. 469, 470-71 (1980) (citations omitted); *Lego v. Twomey*, 404 U.S. 477, 489 (1972). A waiver is only valid if "made with full awareness, both of the nature of the right to be abandoned and consequences of the decision to abandon it[.]" *Moran v. Burbine*, 475 U.S. 412, 421 (1986). "[A]ny evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege." *Miranda*, 384 U.S. at 476.

Mr. Bullhead's purported *Miranda* waiver was invalid because the waiver was not made with the full understanding of the protections *Miranda* afforded to him and the consequences of a waiver. Specifically, Mr. Bullhead was not informed that his tribal defense counsel could be present during the interview and that the Government was seeking information related to his pending tribal charge where he was represented by that office. Indeed, the agents did not inform Mr. Bullhead that they could contact the tribal defense counsel and request that they be present during the interview. Moreover, Special Agent Klag testified that he was aware that Mr. Bullhead had been charged in tribal court with the same conduct, but did not look at the available tribal court records to see if

counsel had been appointed. He chose not to inquire or provide Mr. Bullhead with this information, which was necessary for him to validly waive the prophylactic measures put in place to protect his Fifth Amendment rights to silence and against self-incrimination. *See Miranda*, 384 U.S. at 421 ("any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege.").

In sum, law enforcement failed to provide Mr. Bullhead with all of the information necessary to protect his Fifth Amendment rights under *Miranda*. As such, his purported *Miranda* waiver was invalid, and his subsequent statement must be suppressed.

IV. Mr. Bullhead's Statement to Law Enforcement on May 13, 2024

There is no disagreement about the legal context of the questioning and statement attributed to Mr. Bullhead on May 13. He had been arrested earlier that day, and was in custody. Further, there is no evidence that the questioning about his mental health followed an advice of rights process alerting him to his right to remain silent, the consequences of speaking, and the right to counsel. Finally, he was questioned, and not in response to an interaction he initiated.

The issue is whether the question that produced his response falls within the scope of the booking exception. Not all questioning in booking procedures is exempt from constitutional protections. *Pennsylvania v. Muniz*, 496 U.S. 582, 602, n.14 (1990). Only questions related to "administrative concerns" are exempt, because these rarely elicit

incriminating responses. *See Muniz*, 496 U.S. at 601-02, *United States v. Sanchez*, 817 F.3d 38, 45 (1st Cir 2016). The status of questioning about mental health is less clear, but general, non-case specific questions about health and medical conditions have been found to fall within the scope of the booking exception. *See, e.g., United States v. Bishop*, 66 F.3d 569, 572 n.2 (3d Cir. 1995), *United States v. Linderman*, 2008 WL 199913 at * 3 (D. Minn. January 22, 2008).

Here, it appears that there was only one question, posed in the middle of a post-arrest intake process, with one answer and no follow-up. Although the question was not about weight, height, birthdate, or other identification, it is close enough to the administrative concerns of the detainee's health and safety to fall within the scope of the exception.

CONCLUSION

Law enforcement violated Mr. Bullhead's Fifth Amendment rights by failing to scrupulously honor his invocation of his right to remain silent by asking him to waive that same right just minutes later. Additionally, Mr. Bullhead's statements to law enforcement were involuntary, due to police coercion that elicited a confession, and were taken in violation of his Fifth and Sixth Amendment rights. For these reasons, we request that Mr. Bullhead's statements while in custody on May 15, 2024, be suppressed.

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Respectfully submitted,

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