

No. 24-2128

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IN THE  
**United States Court of Appeals**  
FOR THE TENTH CIRCUIT

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**UNITED STATES OF AMERICA,**  
*Plaintiff-Appellee*  
*v.*  
**JOEL RUIZ,**  
*Defendant-Appellant*

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On Appeal from the United States District Court  
for the District of New Mexico  
D.C. No. 22-CR-365 (The Hon. David Herrera Urias)

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**UNITED STATES' REPLY TO RUIZ'S RESPONSE TO THE  
PETITION FOR REHEARING EN BANC**

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April 2026

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## REPLY

### **I. *Prentiss* misallocated the burden of proving non-Indian status.**

Ruiz’s opposition to reconsidering *Prentiss* opens with a protest that “[t]he government relies entirely on arguments the Court considered—and rejected—when it decided *Prentiss* en banc twenty-five years ago.” Resp. 1; *see also id.* at 3. But while the government’s core arguments may not have changed, the landscape has. At the time of *Prentiss*, this Court lacked the benefit of the Supreme Court’s recent reminder that statutory exceptions “ordinarily constitute affirmative defenses that are entirely the responsibility of the party raising them,” *Cunningham v. Cornell Univ.*, 604 U.S. 693, 701 (2025) (cleaned up)—or its admonition that exceptions to that rule are “narrow,” *id.* at 707. Nor did *Prentiss* have before it the Fifth Circuit’s sound analysis in *United States v. Haggerty*, 997 F.3d 292, 298–302 (5th Cir. 2021), or the views of the Eighth Circuit in *United States v. Webster*, 797 F.3d 531, 536–37 (8th Cir. 2015). And it had not, of course, witnessed the injustices that would be wrought by the rule it adopted. *Prentiss* was wrong on the day it was decided, and that error and its consequences have only become clearer in the quarter century since.

Turning to Ruiz’s defense of *Prentiss*, he is mistaken to suggest that “the diversity of status between the defendant and victim” must be an element of the crime because it is the “jurisdictional hook.” Resp. 2; *see also*

*id.* at 6, 7. While both substantive and jurisdictional elements must be proven beyond a reasonable doubt, *Torres v. Lynch*, 578 U.S. 452, 467 (2016), the authority that Ruiz himself cites establishes that “the jurisdictional element” is what “connects the law to one of Congress’s enumerated powers,” *id.* That power here is based on the crime’s commission in Indian Country, not the parties’ identities.<sup>1</sup> No one disputes that the United States must prove beyond a reasonable doubt that the offense occurred “in the Indian Country.” That is § 1152’s jurisdictional element. Under settled principles of statutory construction, the carve-outs in the second clause are not additional jurisdictional elements awkwardly separated from the other elements; they are affirmative defenses.

Contrary to Ruiz’s contention (Resp. 4–5), applying this “longstanding convention”<sup>2</sup> to § 1152 would not detract from tribal sovereignty. Ruiz evidently fears that recognizing Indian status as an affirmative defense would lead to a rash of federal prosecutions of intra-Indian crime under § 1152. But there is no reason to think that any defendant with a colorable

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<sup>1</sup> If Congress desired, it could extend federal jurisdiction in Indian Country to intra-Indian offenses under § 1152, just as it has done in the Major Crimes Act, 18 U.S.C. § 1153. *See* Resp. 5 (acknowledging this); *United States v. Cowboy*, 694 F.2d 1228, 1235 (10th Cir. 1982) (“Congress can, of course, extend federal court jurisdiction to cover [intratribal] offenses”).

<sup>2</sup> *Meacham v. Knolls Atomic Power Lab’y*, 554 U.S. 84, 91 (2008).

claim to Indian status would fail to assert it. The statute's exceptions will be given effect even if the defendant must invoke them. Overruling *Prentiss* thus poses no risk of "strip[ping] tribes of [the] sovereignty that the General Crimes Act expressly respected." Resp. 5. Tribal sovereignty is not enhanced by handicapping the government's ability to prosecute non-Indians members for victimizing tribal members.

Next, Ruiz attempts to squeeze the language of § 1152's second clause into the rule of *United States v. Cook*, 84 U.S. 168, 173 (1872) (Resp. 5–6), which applies when a statutory exception is so intertwined with the offense's definition that its "ingredients" "cannot be accurately and clearly described if the exception is omitted." This rule, however, applies only "narrowly," *Cunningham*, 604 U.S. at 707, "such as when an exception to a criminal offense is contained within the same sentence of the provision defining the offense," *id.* That is not the case here because § 1152 sets forth the general rule (that federal enclave laws extend to Indian Country) in one coherent paragraph before delineating the exceptions to that rule in a second paragraph. Ruiz's argument to the contrary depends on his flawed belief, previously discussed, that diversity of Indian status is "key to the exercise of federal jurisdiction." Resp. 7. It also suffers from the circularity of concluding "that because the intra-Indian exception is an essential element of the offense, the offense cannot be described if the exception is omitted." *Haggerty*,

997 F.3d at 300; *see also Prentiss*, 256 F.3d at 988 (Baldock, J., dissenting) (observing that such reasoning “simply begs the question of what ‘ingredients’ constitute the offense”).

Finally, Ruiz contends that overruling *Prentiss* would not resolve the circuit split because of *United States v. Torres*, 733 F.2d 449 (7th Cir. 1984). But Ruiz reads too much into *Torres*, which did not present the question of whether the intra-Indian exception to § 1152 is an affirmative defense. In *Torres*, the government alleged in the indictment and proved at trial that the defendant was Indian and the victim was not, *id.* at 458–59, but the victim’s status was not submitted to the jury. The defendant, who had not objected to the instructions, attempted to establish that this omission was plain error. *Id.* at 458. In holding that it was not, *Torres* stated that the government must prove that the defendant or victim is non-Indian, *id.* at 454, 457, but it does not appear from the face of the opinion that the government ever argued otherwise. When the parties assume that a condition is an essential element, a court’s conclusion that the government has met its presumed burden is dicta. *United States v. Smith*, 454 F. App’x 686, 694 (10th Cir. 2012).

## **II. *Prentiss*’s error causes miscarriages of justice.**

Ruiz next argues that the issue does not warrant en banc review because the government could do better in proving non-Indian status and because it still convicts many defendants under § 1152. Resp. 9–15. The first

point is substantially overstated, and the second is both incomplete and ignorant of the grave harm caused by every *Prentiss* reversal. But at any rate, the question should not be whether the government sometimes stumbles in attempting to carry a burden that Congress never meant for it to bear—or whether the government often manages to convict *other* non-Indian defendants notwithstanding *Prentiss*. The question is whether this Court should act to correct an error that deprives Indian victims of justice.

As to Ruiz’s first point, this case illustrates the challenges of proving non-Indian status. While Ruiz claims that “the record is rife with unexplored routes by which the government could have proven its case,” Resp. 11, upon examination, each of these “routes” turns out to be a dead end.<sup>3</sup> Ruiz is a first-generation Mexican immigrant who lived part-time in Dulce, New Mexico. 4R.35–37. To prove that he had no Indian ancestry, the government would need witnesses with detailed personal knowledge of his maternal *and* paternal heritage. Even assuming that such people exist (both his parents are deceased, 4R.35) and would be willing to cooperate with the prosecution, how are investigators to find them? They do not have Ruiz’s family tree, and he is hardly likely to sketch it for them.

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<sup>3</sup> The government notes that its efforts to develop evidence of non-Indian status are not always demonstrated in the records reviewed by this Court because appellate records are not developed for that purpose.

Ruiz suggests that the government could simply have asked “family members who testified” about his status. Resp. 11. For this proposition, he points to the testimony of Rosetta Cata. *Id.* Cata, to be clear, is married to the son of Ruiz’s wife’s sister. 5R.332–33. Ruiz is her aunt-in-law’s husband. She is such a distant relation that the English language lacks a word for it. She and Ruiz share no blood, and there is no reason to think she would have the sort of information about his heritage that would be found sufficient. *Cf. United States v. Diaz*, 679 F.3d 1183, 1187–88 (10th Cir. 2012) (evidence was sufficient where victim’s father had researched his child’s family genealogy “going back several hundred years” and found no Indian heritage).

Ruiz also says that the case agent could have testified as to Ruiz’s non-Indian status, Resp. 11, but he offers no reason to think that she had any knowledge not shared by the two investigators who did testify. And he suggests that the government could have introduced evidence that he was not enrolled with the tribe on whose reservation the crime occurred. *Id.* To be sure, the transcript does not show that anyone testified that Ruiz was not a Jicarilla Apache member (though both the prosecutor and court recalled testimony to that effect, 5R.484, 487), but even if it had, it is not certain that such evidence would have been enough, as this very case shows that tribal members sometimes live on the land of other tribes.

Lastly, Ruiz attempts to minimize *Prentiss*'s harms by pointing to sentencing data that show that the government has secured convictions under § 1152 in “plenty” of other cases. Resp. 14–15. Missing from sentencing data, of course, are any acquittals by juries or judges due to *Prentiss*. Other convictions, in any event, are cold comfort to the victim in *this* case, whose childhood was destroyed by Joel Ruiz. 4R.30–31 (PSR on victim impact). *This* victim at least took solace in knowing that Ruiz would “never get out of prison,” and that he would “never be able to do this again to anyone else.” *Id.* at 31. Without *Prentiss*'s mistake, she would still have that assurance. The Court should step in now to correct this injustice.

Respectfully submitted,

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**CERTIFICATE OF SERVICE AND DIGITAL SUBMISSION**

I HEREBY CERTIFY that the foregoing reply was filed with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system on April 16, 2026.

I ALSO CERTIFY that Violet N.D. Edelman, attorney for Defendant-Appellant Joel Ruiz, is a registered CM/ECF user, and that service will be accomplished by the appellate CM/ECF system.

*s/ C. Paige Messec*  
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