

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

EDUARDO HOLGUIN

Plaintiff,

v.

YSLETA DEL SUR PUEBLO, *et al.*

Defendants.

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EP-21-CV-00067-DB

**PLAINTIFF’S SURREPLY TO DEFENDANTS’ RESPONSE TO PLAINTIFF’S  
MOTION TO DISMISS**

TO THE HONORABLE JUDGE BRIONES:

COMES NOW, Plaintiff Eduardo Holguin (“Mr. Holguin”) to file his Sur-Reply to Defendants’ Motion to Dismiss (ECF 4) and respectfully shows the Court as follows:

**INTRODUCTION**

1. The Defendants have doubled down on discrediting Plaintiff rather than meaningfully addressing the legal realities of their off-reservation conduct. *See* Exhibit A: Census Burea Map. According to the Defendants, so long as enforcement of tribal law over non-members is performed while wearing a tribal uniform, then their behavior (irrespective of its legality) is cloaked with full immunity. What becomes readily apparent from the Defendants’ collage of non-binding cases and factual misrepresentations, is that the Defendants will argue just about anything to escape liability.

2. By way of example, prior to this lawsuit, the Defendants have used the federal courts to vindicate their own rights and demanded Equal Protection under the United States Constitution. *Texas v. Ysleta Del Sur Pueblo et. al.*, 367 F. Supp. 3d 596, (W.D. Tex. 2019). Now, the Defendants cast aside the very document they claimed protected them from unlawful government intrusion, thus rendering it inapplicable to the non-member Plaintiff driving on a Texas roadway. ECF No.

15 pp. 2 ¶ 3 (claiming Plaintiff has the burden of showing why the Texas and United States Constitutions protect non-members on Texas roadways).

3. Defendants' inconsistent statements and legal positions aside, the fact remains that the Defendants sovereignty is both created and necessarily constrained by the same Congressional act. *See* PL 100–89, 101 Stat 666 (1987); YSLETA DEL SUR PUEBLO AND ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS RESTORATION ACT (“Restoration Act”). The Defendants yet to address where they derive the authority to operate a police force enforcing tribal traffic laws on Texas public roads *or* summon non-tribal members into their court system *or* demand payment and/or community service *or* order the immediate arrest of Plaintiff and seizure of his property.

4. Despite the Defendants attempts to have this Court renegotiate the deal they made with Congress and the State of Texas, there is no civil or criminal jurisdiction over non-member citizens. This is precisely why the Defendants have not and cannot demonstrate from where their invented authority originates (i.e., the authority to prosecute non-members citizens driving on Texas roads).

5. Therefore, it comes as no surprise why the Defendants are intent on having this dispute revolve around a google map, rather than applicable law or the glaring inconsistencies within its own submissions to the Court. *See*, ECF No. 15 pp. 6-8 ¶¶10-13 (arguing that Plaintiff must prove he is not a member of the tribe); *Compare with*, ECF No. 4-2 pp. 3 (Defendants' evidence unequivocally establishing Defendants' knowledge and affirmation that Plaintiff was not a tribal member).

## ARGUMENTS

**THE DEFENDANTS CANNOT ASSERT SOVEREIGNTY FOR UNAUTHORIZED ACTIVITIES BECAUSE CONGRESS DID NOT RECOGNIZE NOR PERMIT THE DEFENDANTS' EXERCISE OF CIVIL JURISDICTION AGAINST NON-MEMBER CITIZENS ON TEXAS ROADWAYS.**

6. In the absence of Congressionally recognized authority, the Defendants cannot claim to be cloaked by sovereign immunity where their sovereignty does not exist. Throughout this proceeding, the Defendants have extended the concept of sovereignty beyond Congress's explicitly defined boundaries. *See* PL 100–89, 101 Stat 666 (1987); YSLETA DEL SUR PUEBLO AND ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS RESTORATION ACT (“Restoration Act”). It is well settled that “Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56–57 (1978) (emphasis added); *United States v. Kagama*, 118 U.S. 375, 379–381, 383–384 (1886); *Cherokee Nation v. Hitchcock*, 187 U.S. 294, 305–307, 23 S.Ct. 115, 119, 47 L.Ed. 183 (1902). Thus, the Restoration Act prescribes where the Defendants' authority begins and more importantly where it ends. *United States v. Lara*, 541 U.S. 193, 194 (2004) (holding that the Indian Commerce and Treaty Clauses, grants Congress a “**plenary and exclusive**” power to legislate in respect to Indian tribes).

7. Section 104 of the Restoration Act, carefully lays out tribal authority and specifically authorizes the tribe to enter “contracts, grant agreements, and other arrangements with any Federal department or agency,” and permits the tribe to “administer or operate any program or activity **under or in connection** with any such [Federal] contract, agreement, or arrangement.” PL 100–89 § 104, 101 Stat 666 § 104 (1987) (emphasis added). The Restoration Act does not confer civil or criminal jurisdiction over non-member citizens driving on Texas roadways. Instead, the

Restoration Act confers civil and criminal jurisdiction in the other direction permitting Texas to exercise full criminal and civil jurisdiction on the reservation. 25 U.S.C §§ 1321, 1322.

8. Absent Congressional direction, the Defendants cannot artificially cloak themselves with sovereignty for conduct which falls well outside the scope of their Congressionally recognized authority. A simple side-by-side comparison of the Defendants' Congressional authority (Section 104 of the Restoration Act) with the authority recognized for the Alabama-Coushatta Tribe (Section 204 of the Restoration Act) clearly demonstrates that these Defendants' have exceeded their Congressionally defined boundaries. The Defendants have no recognized Constitution or bylaws and are not permitted to extend their sovereignty off-reservation. Furthermore, it is well-settled that irrespective of reservation boundaries, a tribe cannot extend its civil authority over non-member citizens outside two narrow exceptions. *Montana v. United States*, 450 U.S. 544, 565 (1981). Neither exception applies in this case which explains why these Defendants desperately cling to the legal fiction of their (limitless) sovereign immunity.

9. The Defendants' sovereignty cannot be artificially extended, by judicial means, to sanitize conduct which was never authorized in the first place. Without any language in the Restoration Act or a governmental agreement recognizing the Defendants authority to assert civil jurisdiction over non-members, the claim of sovereign immunity cannot be extended beyond its Congressionally defined boundaries.

10. This interpretation is further supported by both Congressional and tribal consent to the civil and criminal jurisdiction of State of Texas for disputes occurring within the reservation. Obviously, this clear jurisdictional grant would extend to the Defendant's off-reservation conduct as well. The Restoration Act allowed the tribe to enter into contracts and apply for grants. Congress did not allow them to use a police force and (constitution-less) court system to extort payments from non-

members backed by the threat of immediate arrest and seizure of the non-member Plaintiff's person and property.

11. Adopting the Defendants' interpretation of the statute, in light of their legal position before this Court, would lead to an effective waiver of the protections provided by both the Texas and United States Constitutions for all non-member citizens travelling on a Texas roadway maintained by their tax dollars. Without even reaching a geographical analysis<sup>1</sup>, no section of the Restoration Act can be read to include civil jurisdiction over non-members and the Defendants introduction of a google map merely spotlights the legal inadequacy of their position.

12. Obviously, Congress cannot waive constitutional rights for citizens and subject them to the rule of a constitution-*less* sovereign. The Defendants' interpretation would effectively render the Restoration Act unconstitutional and therefore cannot be interpreted to mean what they claim it means. It almost universally accepted that any act of Congress must be read and interpreted to fit neatly within the confines of its constitutional authority and any unconstitutional interpretation or application of the statute must be disregarded. This is precisely the situation here and the Defendants' legal position is meritless.

**TEXAS DOES NOT AUTHORIZE THE DEFENDANTS TO OPERATE A POLICE FORCE ON TEXAS ROADWAYS AND DID NOT VEST THEM WITH "ALL POWER, PRIVILEGES, AND IMMUNITIES OF PEACE OFFICERS."**

13. The State of Texas has not extended the "power, privileges, and immunities of peace officers" to the Defendants. Instructive in this regard, is the statute where the State of Texas

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<sup>1</sup> In their Reply, the Defendants requested this Court take judicial notice of a Google Map. The 2021 Federal Census Bureau map was provided to the Defendants, prior to filing their Reply, and they opted not to mention nor provide this official source to the Court. Therefore, Plaintiff requests that the Court take judicial notice of the Federal Census Bureau and its relevant pages. These pages are attached and incorporated into this motion as "Exhibit A". For an online version of Exhibit A: Federal Census Bureau Map, please see the following link: [https://www2.census.gov/geo/pvs/bas/bas21maps/aia/r4755\\_ysleta\\_del\\_sur/BAS21R49902994755.pdf](https://www2.census.gov/geo/pvs/bas/bas21maps/aia/r4755_ysleta_del_sur/BAS21R49902994755.pdf) (last visited May 23, 2021)

recognizes two other tribes' police departments and extends powers, privileges, and immunities to their peace officers. *See* Tex. Code Crim. Proc. Art. 2.126.

14. Finally, the Defendants can point to no Texas law which permits their police force to operate on Texas roadways. This stands diametrically opposed to the two other Texas tribes whose peace officers were recognized and commission by the State of Texas. *See* Tex. Code Crim. Proc. Art. 2.126. Article 2.126 of the Texas Code of Criminal Procedure specifically authorizes the tribal councils of the Alabama-Coushatta Tribe of Texas and the tribal council of the Kickapoo Traditional Tribe of Texas to employ and commission peace officers. *Id.* Outside the boundaries of the tribe's reservation, the same peace officers are vested with *all power, privileges, and immunities of peace officers*. *Id.* No similar law exists for the Defendants in this case. In the absence of a similar statute, the state immunities extended to peace officers would not be extended to the Defendants. Therefore, the Defendants cannot claim they derive sovereignty or any immunity by way of state action.

**THE DEFENDANTS NEWLY RAISED ASSERTION THAT PLAINTIFF MUST PROVE HE IS A NON-MEMBER DIRECTLY CONFLICTS WITH ITS OWN EVIDENCE.**

15. The Defendants newly invented argument that the Plaintiff's membership status is in question and that he must prove that he is a non-member is meritless. The Defendants own exhibits directly contradict this invented factual dispute. ECF No. 4-2 pp. 3. This court does not need to look further than the top of the tribal case summary document which answers "NO" when asked whether Plaintiff is "Tribal." The Defendants cannot show that Plaintiff is a tribal member and Plaintiff should not have to prove the nonexistence of a fact. This is particularly true when the documents submitted to this Court are supposed to represent what the Defendants say they represent. Finally, if the Defendants could prove Plaintiff was "Tribal", then they would have

already produced the registered tribal roll listing Plaintiff as a member of the tribe. Consequently, the Defendants' argument is meritless on this issue as well.

### **CONCLUSION**

16. Without Congressional authority, governmental agreement, and/or any Texas statute recognizing the Defendants authority to police or adjudicate civil claims against non-members, the Defendants cannot be cloaked with sovereign immunity. The Defendants chose to bring a civil lawsuit against the Plaintiff, as a pretended sovereign, and now seek to shield themselves from liability behind the veil of sovereign immunity. By engaging in unauthorized conduct and exceeding the scope of their Congressional mandate, the Defendants waived their right to be immunized from this lawsuit. As a consequence of their disregard for Congressional boundaries, their immunity cannot be artificially extended to encompass activities where their sovereignty does not exist and is not recognized. Therefore, their Motion to Dismiss must be DENIED.

### **REQUEST FOR RELIEF**

17. Accordingly, for these reasons, Plaintiff respectfully requests that the Defendants' Motion to Dismiss should be DENIED and for such other relief to which the Plaintiff may be justly entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I filed this document electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing on this 24th day of May, 2021:

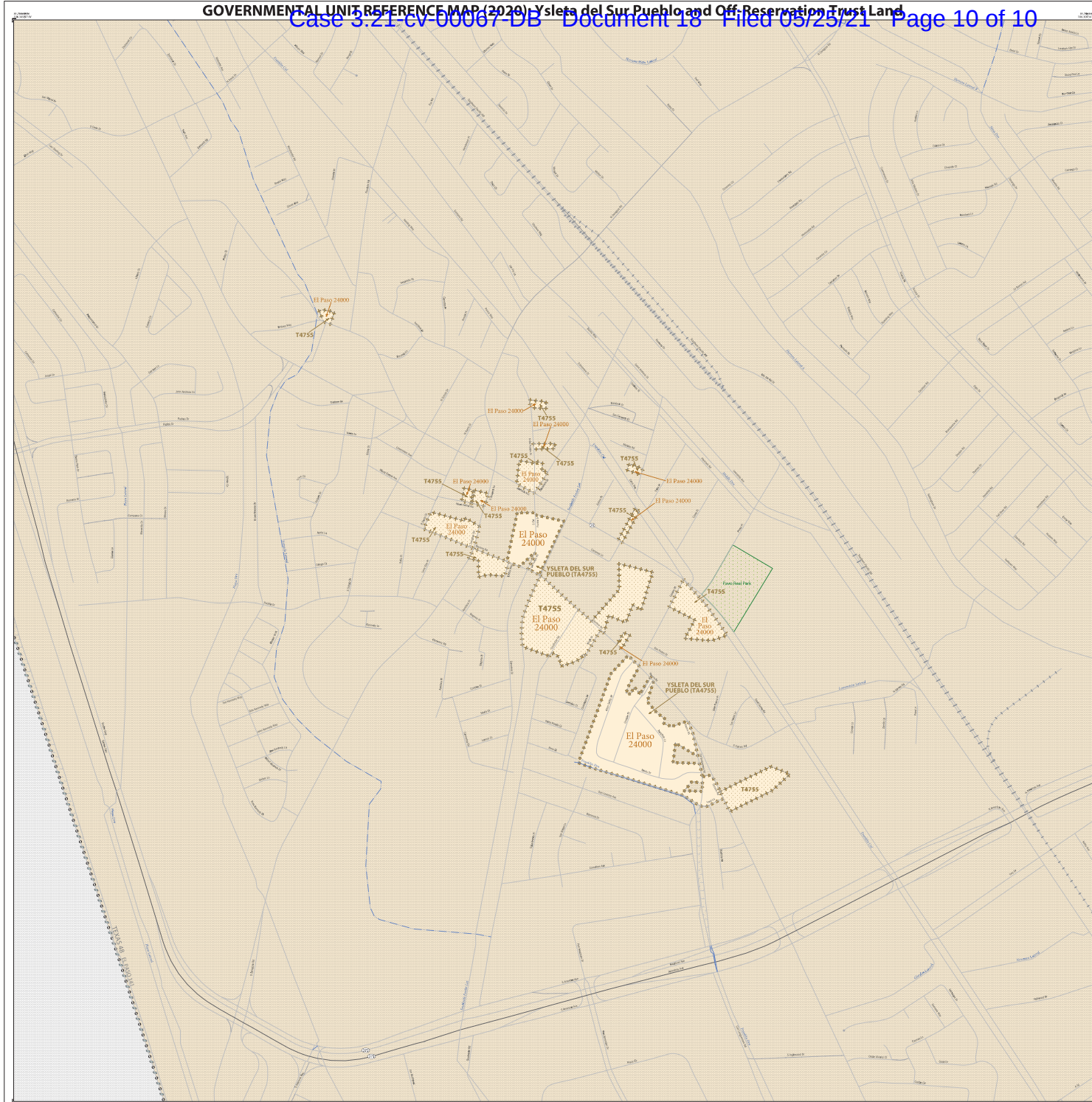
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*/s/ Adam Setra*  
**ADAM SETRA**



# EXHIBIT A

Federal Census Bureau  
Map of the Ysleta del  
Sur Pueblo



**LEGEND**

SYMBOL DESCRIPTION	SYMBOL	LABEL STYLE
Federal American Indian Reservation	*****	LANSER RESERVATION (TA 1880)
Off-Reservation Trust Land	*****	T1880
American Indian Tribal Subdivision	*****	SHOKTO (620)
Alaska Native Regional Corporation (ANRC)	V V V V V	NANA ANRC 52120
State (or statistically equivalent entity)	####	NEW YORK 36
County (or statistically equivalent entity)	####	ERIE 029
Consolidated City	●●●●●	MILFORD 47500
Incorporated Place <sup>1</sup>	●●●●●	Davis 18100
Census Designated Place (CDP) <sup>2</sup>	●●●●●	Civilian 16560

DESCRIPTION	SYMBOL	DESCRIPTION	SYMBOL
Interstate	—	Water Body	—
U.S. Highway	—	Vegetation	—
State Highway	—	Transportation	—
Other Road	—	Other	—
City Street	—	College or University	—
Geographic Center	—	Military	—
OWB Trail, Stems, etc. (Public or Party)	—	Prison or Detention Center	—
Artery	—	Cemetery	—
Highway	—	Clubhouse	—
Other	—	Other	—
Property Line or National Boundary	—	National Park or Forest	—
Parishal/Trusts	—	Other Park	—
Interdistrict Stream	—	Check Subject Area	—
Mountain Peak or Hill	—	Land Area	—

<sup>1</sup> Where state and county boundaries coincide, the map shows only the state boundary. Where Federal American Indian reservation and American Indian tribal subdivisions boundaries coincide, the map shows only the American Indian reservation boundary. Entity names are followed by either their FIPS code or census code parentheses indicate a census code.

<sup>2</sup> Incorporated place name color corresponds to the incorporated place (IE) color.

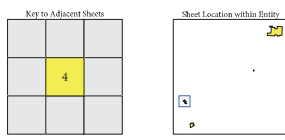
<sup>3</sup> The CDP boundaries represent statistical entities only and are not to be updated through the BAS.

Due to space limitations, some road names, along with other features and geographic names on the map, may not be shown.

The Census Bureau uses primary and alternate road names, but only primary road names are used to label the roads on these maps.

**OFF-RESERVATION TRUST LAND NAMES**  
 T4755 Ysleta del Sur

**SUBJECT AREA RELATED COUNTIES ON MAP SHEET**  
 5811 El Paso



Sheet 4 of 5 PARENT sheets  
 Total Sheets: 6 (index 1: Parent 5; Inset 0)

ENTITY TYPE: American Indian Area  
 AREA NAME: Ysleta del Sur Pueblo and Off-Reservation Trust Land (4755)  
 TRIBE NAME: Ysleta del Sur Pueblo (5299)

INSEE OR PARENT SHEET # 004  
 INSET SHEET # 000000

3300 FATHOM MAP (NAD83)

U.S. DEPARTMENT OF COMMERCE U.S. Census Bureau

All legal boundaries and names are as reported through the 2020 boundary and information survey (BAS) and boundary validation program (BVP). The boundaries shown on this map are the Census Bureau's best estimate and should not be used for legal purposes. The Census Bureau's best estimate does not constitute a representation of ownership, authority, or right of ownership or entitlement.

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 Data Source: U.S. Census Bureau's MAF/TIGER database (T4755), November 2020  
 Created by Geographic Division, December 11, 2020

Project: Albert East Area Caddo  
 Date: 04/13/21  
 Project Lead: GREG  
 In Charge: Patrick D. Smith  
 Contact: (504) 875-1111  
 Website: https://www.census.gov/programs-surveys/bas.html  
 File: 4755-01-01-2020  
 Date: 04/13/21  
 File: 4755-01-01-2020



**Boundary and Annexation Survey (BAS) ID: 49902994755**  
**BAS Submission Deadline: March 1, 2021**

PDF versions of the BAS maps are available at [www.census.gov/programs-surveys/bas/geographics.html](https://www.census.gov/programs-surveys/bas/geographics.html)

For more information, or to request additional maps, please email [geo.bas@censo.gov](mailto:geo.bas@censo.gov), call 1-800-972-5811, or visit [www.census.gov/programs-surveys/bas.html](https://www.census.gov/programs-surveys/bas.html).

