

IN THE DISTRICT COURT OF THE CHEROKEE NATION

FILED

CHEROKEE NATION,)
)
 Plaintiff,)
)
 vs.)
)
 CHAD RAYLEE DANDERSON,)
)
 Defendant.)
)
)
)

2023 AUG -1 PM 1:03

Case No. CF-22-2538
CM-22-1445
CM-22-1443
CM-22-1251

CHEROKEE NATION
DISTRICT COURT
JUSTI MONCOOYEA
COURT CLERK

RESPONSE TO DEFENDANT'S MOTION TO DISMISS

COMES NOW, Cherokee Nation, through Assistant Attorney General Catina R. Drywater, and responds to Defendant’s Motion to Dismiss as follows:

1. As to ¶ 1 of Defendant’s Motion, the Nation agrees Defendant is not currently a member of a federally recognized tribe because he voluntarily relinquished his citizenship as a Cherokee Nation tribal member on April 5, 2023. See Order of Relinquishment attached hereto as Exhibit 1.
2. As to ¶ 2 of the Defendant’s Motion, the Nation denies it lacks subject matter jurisdiction over the Defendant as the alleged crimes were committed prior to April 5th, 2023 when Defendant was a member of the Cherokee Nation, and even without membership, he still qualifies as an “Indian” for purposes of criminal jurisdiction as established by Federal Indian Law and the long line of jurisprudence regarding the definition of an “Indian” in Indian Country.

A. Procedural History

On May 5, 2022, Defendant was charged by information in CM-22-1251 alleging one count of Violation of Protective Order with a date of offense of April 22, 2022. *Exhibit 2*. On May 24 2022, Defendant was charged by information in CM-22-1443 alleging one count of

Violation of Protective Order with a date of offense as April 26, 2022. *Exhibit 3*. Additionally, on May 24 2022, Defendant was charged by information in CM-22-1445 alleging one count of Violation of Protective Order with a date of offense as April 28, 2022. *Exhibit 4*. On September 6, 2022, Defendant was charged by information in CF-22-2538 alleging one count of Stalking and an additional count of Violation of Protective Order with dates of offense ranging from April 13, 2022 through August 24, 2022. *Exhibit 5*. After several continuances and delays in his criminal proceedings, Defendant filed his request to relinquish his tribal citizenship with the Cherokee Nation. *Exhibit 6*.

B. Who is an "Indian"

According to Cherokee Nation Code, 21 CNCA § 2101 (19), "Indian" includes:

- a. Any person who is a citizen of the Cherokee Nation;
- b. Any person who is a citizen or member of any other federally recognized Indian tribe, including Alaska Native entities;
- c. Any person who is eligible to become a member of any federally recognized Indian tribe; and
- d. Any person who would be considered an "Indian" for the purposes of federal criminal prosecution under 18 U.S.C. § 1152 and/or 18 U.S.C. § 1153.

Even though Defendant has relinquished his tribal citizenship with the Cherokee Nation, he is still considered **eligible** for enrollment as a member as his relinquishment is voluntary and therefore, under Cherokee Nation Law, he is still an "Indian" for purposes of criminal prosecution.

Additionally, who is an "Indian" is a question long settled by the United States' federal Indian Policies and a long line of Federal jurisprudence. Someone is an "Indian" for the purposes of criminal jurisdiction if that person "(1) has some Indian blood; and (2) is recognized as an Indian by a tribe or by the federal government." *United States v. Prentiss*, 273 F.3d 1277 (10th Cir. 2001); *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012).

The first part of the test can be shown by a Certificate of Degree of Indian Blood (CDIB) issued by the U.S. Bureau of Indian Affairs. In order to satisfy the second requirement, the defendant or victim must be affiliated with a Tribe that is recognized by the federal government or can also be recognized politically as an Indian for specific purposes by the United States government.¹ The Defendant's membership or affiliation with a Tribe is relevant primarily at the time of the offense. *United States v. Zepeda*, 792 F.3d 1103, 1113 (9th Cir. 2015); *State v. Perank*, 858 P.2d 927, 932 (Utah 1992). Otherwise, a defendant could choose which sovereign has jurisdiction by simply obtaining (or renouncing) tribal membership. *Goforth*, 1982 OK CR 48, ¶ 7, 644 P.2d at 116 ("Absent such recognition, we cannot hold that the appellant is an Indian under federal law, since such a determination at this point would allow the appellant to assert Indian heritage only when necessary to evade a state criminal action.").

In a prosecution under the [Indian Major Crimes Act], the government must prove that the defendant was an Indian at the time of the offense with which the defendant is charged. If the relevant time for determining Indian status were earlier or later, a defendant could not "predict with certainty" the consequences of his crime at the time he commits it. *Apprendi v. New Jersey*, 530 U.S. 466, 478, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). Moreover, the government could never be sure that its jurisdiction, although proper at the time of the crime, would not later vanish because an astute defendant managed to disassociate himself from his tribe. This would, for both the defendant and the government, undermine the "notice function" we expect

¹ See *United States v. Antelope*, 430 U.S. 641, 646 n.7 (1977) ("members of tribes whose official status has been terminated by congressional enactment are no longer subject, by virtue of their status, to federal criminal jurisdiction under the Major Crimes Act"); *State v. Daniels*, 16 P.3d 650, 654 (Wash. Ct. App. 2001); see also *State v. Sebastian*, 701 A.2d 13, 24 n. 28 (Conn. 1997) ("most recent federal cases consider whether the tribe to which a defendant or victim claims membership or affiliation has been acknowledged by the federal government").

criminal laws to serve. *United States v. Francisco*, 536 F.2d 1293, 1296 (9th Cir.1976).
United States v. Zepeda, 792 F.3d 1103, 1113 (9th Cir. 2015).

Here, the Defendant is absolutely attempting to avoid prosecution in the Cherokee Nation by relinquishing his citizenship and now claiming he is not an "Indian" for purposes of criminal jurisdiction. First, he was enrolled at the time of the alleged crimes. Secondly, tribal membership is not dispositive of the federal government defining an individual as "Indian." See *United States v. Rogers*, 45 U. S. 567. In *Rogers*, the Defendant was adopted into the tribe but was racially white. The Court found he was NOT an Indian for purposes of criminal jurisdiction because some degree of Indian blood was required for this finding. Thus, the two-part test was developed. Conversely, see *Santa Clara Pueblo v. Martinez*, 436 U.S. 49. In *Santa Clara*, children born to a full blood Santa Clara Pueblo mother and a full blood Navajo father, were NOT allowed membership in either tribe but were still considered to be American Indians bringing a cause of action under the Indian Civil Rights Act.

CONCLUSION

For the above reasons, and the authority cited above, the Nation respectfully requests this Court deny the Defendant's Motion to Dismiss, and for any other relief the Court deems proper.

Respectfully submitted this 1st day of August, 2023.

By:



Catina R. Drywater, CNEA # 864
Cherokee Nation
Assistant Attorney General
PO Box 1533
Tahlequah OK 74465-1533
918.453.5667

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the above and foregoing response was emailed on this 1st day of August, 2023 to the following:

Kendra Blocker
Attorney for Defendant
kendra@callpalmer.com


Catina R. Drywater

IN THE DISTRICT COURT OF THE CHEROKEE NATION

In re the relinquishment of citizenship)
of: Chad Raylee Danderson,)
A Tribal Citizen.)

Case No. CY23-180

FILED
2023 APR -5 AM 10:30
CHEROKEE NATION
DISTRICT COURT
KINGSTON, TENNESSEE
KIMBERLY MONROE
CLERK

ORDER OF RELINQUISHMENT

Now, on this 5th day of April, 2023, the above captioned and numbered case comes on for Initial Hearing on the relinquishment of citizenship of Chad Raylee Danderson, a tribal citizen.

Having heard all parties and reviewed the relinquishment form, the Court FINDS as follows:

1. That notice was given to the citizen by the court clerk by:
 - In person delivery on the date of filing OR First-class mail
2. That notice was mailed to the Cherokee Nation Office of the Attorney General:
 - Yes No
3. That the filed relinquishment form was issued by the Registrar to the citizen and the Registrar entered thereon the name of the citizen, the citizen's registry number, the sponsor's name (if any) and the date of issuance of the form.
 - Yes No If no, explain why the form is deficient _____
4. That the filed relinquishment form was completed and signed before a notary public.
 - Yes No
5. *If the tribal citizen is a minor*, that the tribal citizen is a minor and the sponsor was placed under oath, and the Court or Nation's attorney inquired of the sponsor and finds as follows:
 - a. That the tribal citizen is a minor and the sponsor satisfies the requirement of 11 CNCA: § 3(O) and the sponsor is also the minor child's biological parent or adoptive parent.
 - Yes No
 - b. That the minor citizen is currently the subject of a deprived child, juvenile delinquency, adoption or other proceeding involving the custody of the minor citizen:
 - Yes No

Exhibit 1

c. That any person with parental or custodial rights to the child disputes the relinquishment or who, if unaware of the relinquishment proceeding, would likely dispute the relinquishment if he or she were aware of the relinquishment:

Yes No

6. That the tribal citizen or sponsor was placed under oath, and the Court or Nation's attorney inquired as to whether the tribal citizen or sponsor is aware that by relinquishing tribal citizenship, all benefits and privileges to which the citizen is entitled as a consequence of being a citizen will be forfeited upon the effective date of relinquishment of citizenship:

Yes No

7. That the tribal citizen or sponsor was placed under oath, and the Court or Nation's attorney inquired as to whether the tribal citizen or sponsor is aware that a person whose citizenship is being relinquished that is eighteen (18) years of age or older or will be of such age by the time the relinquishment form will be submitted to the Registrar, that said person will not be eligible to re-enroll as a tribal citizen for a period of five (5) years following the effective date of the relinquishment.

Yes No

IT IS THEREFORE THE ORDER OF THE COURT that the tribal citizen or sponsor is:

Authorized to submit the relinquishment form to the Registrar

Not authorized to submit the relinquishment form to the Registrar based on the following findings:


1. The tribal citizen is a minor and the person acting as a sponsor does not meet the qualifications to be a sponsor.
2. The tribal citizen is a minor and is the subject of a deprived child, juvenile delinquency, adoption or other custodial proceedings pending in any court.
3. The tribal citizen is a minor and another person with parental or custodial rights with regard to the minor disputes the relinquishment, or if such person is unaware of the relinquishment request, he or she would likely dispute the relinquishment if he or she were aware of the relinquishment.

4. The tribal citizen or sponsor indicated that they were not aware of the consequences of relinquishment and requests of the Court additional time in order to reconsider the decision to relinquish.

The case is hereby dismissed without prejudice.

The case is hereby continued to _____ day, _____, 20____, at _____.

IT IS SO ORDERED.



Cherokee Nation District Court Judge

CERTIFICATE OF MAILING

The foregoing Order of Relinquishment was mailed to the following on this 5th day of April, 2023.

Chad Raylee Danderson
209 E. Falletti Ave.
Claremore, Ok 74017

Office of the Attorney General
Cherokee Nation
P.O. Box 948
Tahlequah, OK 74465



District Court Clerk

IN THE DISTRICT COURT OF THE CHEROKEE NATION
CRIMINAL DIVISION

FILED

CHEROKEE NATION,
Plaintiff,
vs.
CHAD RAYLEE DANDERSON
DOB: 09/01/1987

Case No. CM-22-1251 2022 MAY -5 PM 1:22

CHEROKEE NATION
DISTRICT COURT
KRISTI MONCOOYEA
COURT CLERK

Defendant.

INFORMATION

COUNT 1: VIOLATION OF PROTECTIVE ORDER - 22 CNCA § 60.6

IN THE NAME AND BY THE AUTHORITY OF THE CHEROKEE NATION:


I, Sara Hill, Attorney General of the Cherokee Nation, upon oath and affirmation of office, give information that in the Cherokee Nation and within Indian Country as defined by 18 U.S.C. section 1151 and the laws of the Cherokee Nation, anterior to the presentment thereof, Chad Raylee Danderson did commit the following crime(s):

COUNT 1:

That CHAD RAYLEE DANDERSON did, on or about April 22, 2022, commit the crime of **Violation of Protective Order**, by willfully waiting outside of Safenet Services while Megan McClain attended an appointment there and using a stolen key fob to open her trunk multiple times to intimidate and harass her, in violation of protective order issued by the District Court in Rogers County, in PO-22-50 that was personally served on the defendant on February 18, 2022.

FURTHER, the defendant and/or victim qualify as an Indian as defined in 25 U.S.C. section 1301, being a member of the Cherokee Nation, a federally recognized tribe, and the defendant did, within the Cherokee Nation and on Indian Country on the dates aforesaid, commit the above crime(s), contrary to the Cherokee Nation statutes cited above, and against the peace and dignity of the Cherokee Nation.

SARA HILL
ATTORNEY GENERAL

By: 
Catina R. Drywater, #CNBA0864
Assistant Attorney General

WITNESSES ENDORSED FOR THE CHEROKEE NATION

J. Epperson	Claremore Police Department 201 W. First St.	Claremore, OK 74017
Allison LaFever	Safenet Services 1219 W. Dupont St	Claremore, OK 74017
Megan Brianna McClain		Claremore, OK

Exhibit 2

IN THE DISTRICT COURT OF THE CHEROKEE NATION
CRIMINAL DIVISION

FILED

CHEROKEE NATION,
Plaintiff,
vs.
CHAD RAYLEE DANDERSON
DOB: 09/01/1987

Case No. CM-22- 1443 2022 MAY 24 AM 8:34

CHEROKEE NATION
DISTRICT COURT
KRISTI MCCOYEA
COURT CLERK

Defendant. INFORMATION

COUNT 1: VIOLATION OF PROTECTIVE ORDER - 22 CNCA § 60.6

IN THE NAME AND BY THE AUTHORITY OF THE CHEROKEE NATION:

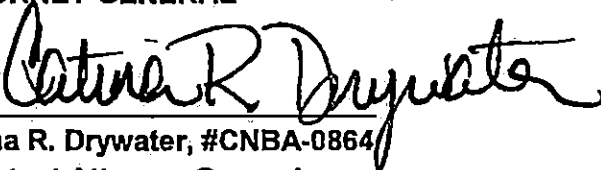
I, Sara Hill, Attorney General of the Cherokee Nation, upon oath and affirmation of office, give information that in the Cherokee Nation and within Indian Country as defined by 18 U.S.C. section 1151 and the laws of the Cherokee Nation, anterior to the presentment thereof, **Chad Raylee Danderson** did commit the following crime(s):

COUNT 1:

That **CHAD RAYLEE DANDERSON** did, on or about April 26, 2022, commit the crime of **Violation of Protective Order**, by willfully waiting in the parking lot of Safenet while Megan McClain attended an appointment there, in violation of a protective order issued by the District Court in Rogers County, in PO-22-50 that was personally served on the defendant on February 18, 2022.

FURTHER, the defendant and/or victim qualify as an Indian as defined in 25 U.S.C. section 1301, being a member of the Cherokee Nation, a federally recognized tribe, and the defendant did, within the Cherokee Nation and on Indian Country on the dates aforesaid, commit the above crime(s), contrary to the Cherokee Nation statutes cited above, and against the peace and dignity of the Cherokee Nation.

SARA HILL
ATTORNEY GENERAL

By: 
Catina R. Drywater, #CNBA-0864
Assistant Attorney General

WITNESSES ENDORSED FOR THE CHEROKEE NATION

Megan Brianna McClain		Claremore, OK
Cherokee Nation Registration Representative	PO Box 1533	Tahlequah, OK 74465
Off. Matt Rice	Claremore Police Department 200 W. First St.	Claremore, OK 74017

Exhibit 3

IN THE DISTRICT COURT OF THE CHEROKEE NATION
CRIMINAL DIVISION

FILED

CHEROKEE NATION,
Plaintiff,

vs.
CHAD RAYLEE DANDERSON
DOB: 09/01/1987

Case No. CM-22- 1445 2022 MAY 24 AM 8:35

CHEROKEE NATION
DISTRICT COURT
KRISTI MCNECOYEA
CLERK

Defendant.

INFORMATION

COUNT 1: VIOLATION OF PROTECTIVE ORDER - 22 CNCA § 60.6

IN THE NAME AND BY THE AUTHORITY OF THE CHEROKEE NATION:

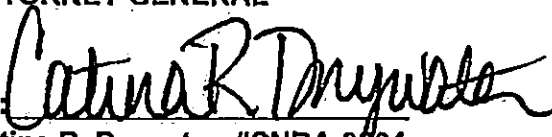
I, Sara Hill, Attorney General of the Cherokee Nation, upon oath and affirmation of office, give information that in the Cherokee Nation and within Indian Country as defined by 18 U.S.C. section 1151 and the laws of the Cherokee Nation, anterior to the presentment thereof, **Chad Raylee Danderson** did commit the following crime(s):

COUNT 1:

That **CHAD RAYLEE DANDERSON** did, on or about April 28, 2022, commit the crime of **Violation of Protective Order**, by willfully posting a video of Megan McClain on Tik Tok which exposed her nude body and face, in violation of protective order issued by the District Court in Rogers County, in PO-22-50 that was personally served on the defendant on February 18, 2022.

FURTHER, the defendant and/or victim qualify as an Indian as defined in 25 U.S.C. section 1301, being a member of the Cherokee Nation, a federally recognized tribe, and the defendant did, within the Cherokee Nation and on Indian Country on the dates aforesaid, commit the above crime(s), contrary to the Cherokee Nation statutes cited above, and against the peace and dignity of the Cherokee Nation.

SARA HILL
ATTORNEY GENERAL

By: 
Catina R. Drywater, #CNBA-0864
Assistant Attorney General

WITNESSES ENDORSED FOR THE CHEROKEE NATION

Megan Brianna McClain

Claremore, OK

Cherokee Nation Registration Representative PO Box 1533

Tahlequah, OK 74465

Off. Matt Rice

Claremore Police Department
200 W. First St.

Claremore, OK 74017

Exhibit 4

IN THE DISTRICT COURT OF THE CHEROKEE NATION
CRIMINAL DIVISION

CHEROKEE NATION,
Plaintiff,

vs.
CHAD RAYLEE DANDERSON
DOB: 09/01/1987

Case No. CF-22- 2538

Defendant.

INFORMATION

2022 SEP -6 PM 12:59

FILED

DISTRICT COURT
CHEROKEE NATION

- COUNT 1: STALKING - F - 21 CNCA § 1134
- COUNT 2: VIOLATION OF PROTECTIVE ORDER - M - 22 CNCA § 60.6

IN THE NAME AND BY THE AUTHORITY OF THE CHEROKEE NATION:

I, Sara Hill, Attorney General of the Cherokee Nation, upon oath and affirmation of office, give information that in the Cherokee Nation and within Indian Country as defined by 18 U.S.C. section 1151 and the laws of the Cherokee Nation, anterior to the presentment thereof, **Chad Raylee Danderson** did commit the following crime(s):

COUNT 1:

That **CHAD RAYLEE DANDERSON**, between April 13, 2022 and August 24, 2022, did commit the crime of **Stalking**, a Felony, by unlawfully and willfully, maliciously and repeatedly, following and/or harassing, one Megan Brianna McClain giving reason to cause said Megan Brianna McClain to feel terrorized, frightened, intimidated, threatened, harassed or molested, while a Protective Order PO-22-50, dated February 11, 2022 was in effect against said defendant.

COUNT 2:

That **CHAD RAYLEE DANDERSON** did, on or about August 24, 2022, commit the crime of **Violation of Protective Order**, by willfully seeing the victim parked in her car and then deliberately driving into the lot where she was located, driving around her car and intentionally making eye contact with her so she would see him, in violation of protective order issued by the District Court in Rogers County, in PO-22-50 that was personally served on the defendant on February 18, 2022.

FURTHER, the defendant and/or victim qualify as an Indian as defined in 25 U.S.C. section 1301, being a member of the Cherokee Nation, a federally recognized tribe, and the defendant did, within the Cherokee Nation and on Indian Country on the dates aforesaid, commit the above crime(s), contrary to the Cherokee Nation statutes cited above, and against the peace and dignity of the Cherokee Nation.

SARA HILL
ATTORNEY GENERAL

By: Catrina R Drywater
Catina R. Drywater, #CNBA-0864
Assistant Attorney General

Exhibit 5

WITNESSES ENDORSED FOR THE CHEROKEE NATION

Off. J. Epperson	Claremore Police Department 201 W. First St.	Claremore, OK 74017
Mckayla Grimsley	Planet Fitness 215 N. Lynn Riggs Blvd	Claremore, OK 74017
V Hershberger	Claremore Police Department 200 W. First St.	Claremore, 74017
Megan Brianna McClain	13501 E 390 Rd	Claremore, OK 74017
Cherokee Nation Registration Representative	PO Box 1533	Tahlequah, OK 74465
Officer Rhames	Claremore Police Department 200 W. First St.	Claremore, OK 74017



GWYD D3P
CHEROKEE NATION®

Tribal Registration

Frankie Hargis
Tribal Registrar

Derrick Vann
Associate Tribal Registrar

TRIBAL RELINQUISHMENT

This form is issued to the following tribal citizen:

Chad Raylee Danderson

C0125175

Name of citizen

Registry number

02/21/2022

Sponsor name

Date of issuance of the form

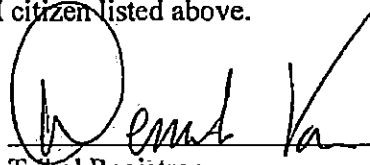
CHEROKEE NATION
DISTRICT COURT
KRISTI MONCODYEA
COURT CLERK

2023 MAR -8 AM 11:45

FILED

CV-23-180

This form is not transferrable and is valid only for the tribal citizen listed above.


Tribal Registrar

Adults: Must sign form in "INK" and provide a copy of identification

Minors: Only person who qualifies as a "Sponsor" may submit a form on behalf of a minor

I, Chad Raylee Danderson, an adult and/or minor person, do hereby knowingly, freely and voluntarily relinquish my citizenship in the Cherokee Nation for the following reasons: I was enrolled as a child and don't want to be in the tribe

09-01-1987
Date of Birth

Returned Card (Yes or No)

209 E Falletti Ave Claremore OK 74017
Mailing Address City State Zip

NOTICE: THE RELINQUISHMENT OF YOUR TRIBAL CITIZENSHIP HAS SERIOUS CONSEQUENCES

AD I, THE UNDERSIGNED, UNDERSTAND THAT ANY PERSON 18 YEARS OF AGE OR OLDER WHO RELINQUISHES HIS OR HER TRIBAL CITIZENSHIP DOES THEREBY ALSO WAIVE THE RIGHT TO RE-ENROLL AS A CITIZEN OF CHEROKEE NATION FOR A PERIOD OF FIVE (5) YEARS FOLLOWING THE EFFECTIVE DATE OF THE CITIZENSHIP RELINQUISHMENT.

(over)

Exhibit 6

AD I UNDERSTAND THAT BY RELINQUISHING MY TRIBAL CITIZENSHIP I WILL LOSE ALL BENEFITS THAT I MAY BE ENTITLED TO BY VIRTUE OF MY STATUS AS A CITIZEN OF CHEROKEE NATION.

AD I UNDERSTAND THAT THIS RELINQUISHMENT OF TRIBAL CITIZENSHIP WILL BECOME EFFECTIVE 60 DAYS AFTER THE DATE ON WHICH THIS RELINQUISHMENT FORM IS RECEIVED BY THE REGISTRAR UNLESS, BEFORE THE END OF THAT 60 DAY PERIOD, I DELIVER TO THE REGISTRAR A WRITTEN REQUEST TO REVOKE OR WITHDRAW THIS RELINQUISHMENT FORM.

Chad D...
Signature of Person Relinquishing

Signature of Sponsor (For Minor)

NOTARY PUBLIC

The tribal citizen or sponsor shall complete and sign the tribal citizenship relinquishment form before a notary public.

Subscribed and sworn to before me this 6 day of March 2023

Patricia A. Downing
Notary



9-2-2026
My Commission Expires

(DO NOT WRITE BELOW THIS LINE. FOR ADMINISTRATIVE PURPOSES ONLY)

Court Order received from the Cherokee Nation District Court authorizing the relinquishment form to be submitted to the Registrar: Yes No

Date Received

Relinquishment Effective: _____
(Month) (Day) (Year)

Signature: _____