

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

1. KIALEGEE TRIBAL TOWN and )  
2. RED CREEK HOLDINGS, LLC )  
 )  
 Plaintiffs, )

vs. )

No. 17-CV-478 \_\_CVE\_\_FHM

1. KEVIN DELLINGER, )  
Attorney General of )  
the Muscogee (Creek) Nation, )  
2. ROBERT HAWKINS, )  
Chief of Police of )  
the Muscogee Creek Lighthouse, )  
3. DANIEL WIND III, )  
Deputy Chief of Police of )  
the Muscogee Creek Lighthouse, )  
4. JOEY COMSTOCK, )  
Captain of Investigation of )  
the Muscogee Creek Lighthouse, )  
5. JOHN LINDSEY, )  
Lead Investigator of )  
the Muscogee Creek Lighthouse, )  
6. MUSCOGEE CREEK LIGHTHORSE )  
OFFICER IDENTIFIED AS LAYN 147, )  
7. JOHN DOE OFFICERS OF )  
THE MUSCOGEE CREEK )  
LIGHTHORSE )  
 )  
 Defendants. )

**COMPLAINT**

Plaintiffs Kialegee Tribal Town (“Kialegee”) and Red Creek Holdings LLC (“Red Creek”) state the following for their Complaint against Kevin Dellinger, Attorney General of the Muscogee (Creek) Nation (“MCN”); Robert Hawkins, Chief of Police of the Muscogee Creek Lighthouse; Daniel Wind III, Deputy Chief of Police of the Muscogee Creek Lighthouse; Joey Comstock, Captain of Investigation of the Muscogee Creek Lighthouse; John Lindsey, Lead

Investigator of the Muscogee Creek Lighthouse; Muscogee Creek Lighthouse Officer Identified as Layn 147; and additional John Doe officers of the Muscogee Creek Lighthouse to be identified through discovery:

**PARTIES**

1. Kialegee is an Indian Tribe that is federally recognized under the Oklahoma Indian Welfare Act of June 26, 1936, 49 Stat. 1967 (“OIWA”).

2. Red Creek is a Florida limited liability company that owns the Embers Grill, located on land owned by Kialegee member Bim Stephen Bruner. Red Creek has a revenue sharing agreement with Kialegee regarding the Embers Grill.

3. Sued in his personal and official capacity, Kevin Dellinger is the Attorney General of the MCN.

4. Sued in his personal and official capacity, Robert Hawkins is the Chief of Police of the MCN Lighthouse.

5. Sued in his personal and official capacity, Daniel Wind III is the Deputy Chief of Police of the MCN Lighthouse.

6. Sued in his personal and official capacity, Joey Comstock is Captain of Investigation of the MCN Lighthouse.

7. Sued in his personal and official capacity, John Lindsey is the Lead Investigator of the MCN Lighthouse.

8. Sued in his personal and official capacity, MCN Lighthouse Officer identified as Layn 147 is a MCN Lighthouse officer involved in the August 16, 2017 raid on Kialegee member property that is the subject of this action.

9. Plaintiffs anticipate joining additional officers of the MCN Lighthouse who were

involved in an August 16, 2017 raid of Kialegee member property. These officers, who will also be sued in their personal and official capacity, are provisionally referred to as “the John Doe officers.”

### JURISDICTION

10. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1362, and 1367 because this action is brought by a federally-recognized Indian Tribe with a governing body recognized by the Secretary of the Interior and presents questions arising under federal law, and all other claims are so related to the claims in this action within the original jurisdiction of the Court, that they form part of the same case or controversy under Article 3 of the United States Constitution.

11. The federal law implicated in this action is the Indian Gaming Regulatory Act of October 17, 1988, 25 U.S.C. § 2701, *et seq.* (“IGRA”).

12. IGRA provides a comprehensive system to regulate gambling activities on Indian lands. *See id.* §§ 2701-2721.

13. IGRA states that “Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity.” *Id.* at § 2701(5).

14. IGRA gives the states, and the tribe that seeks to establish gaming, the power to determine whether gaming is permissible through state-tribal gaming compacts. *See New Mexico v. Dep’t of the Interior*, No. 1:14-CV-00695-JAP, 2014 WL 10298036, at \*14 (D. N.M. Oct. 17, 2014), *aff’d sub nom. New Mexico v. Dep’t of Interior*, 854 F.3d 1207 (10th Cir. 2017).

15. Kialegee has entered into a gaming compact with the State of Oklahoma, as

contemplated by IGRA, but Defendants have intervened with force and threats of violence to undermine the compacting process established by Congress.

16. To the extent Defendants claim Plaintiffs have violated state laws, 18 U.S.C. § 1166(d) gives the federal government “exclusive jurisdiction” to prosecute.

17. IGRA provides no basis for enforcement of its provisions by members of a tribe against members of the same or another tribe.

18. Nevertheless, Defendant Kevin Dellinger cited IGRA in a letter to Mr. Bruner dated June 6, 2017, claiming Plaintiffs had no right to engage in gambling activities on the Bruner allotment.

19. On the basis of Dellinger’s opinion, Defendants raided Plaintiffs’ property, ejecting Plaintiffs’ employees at gunpoint and confiscating Plaintiffs’ equipment.

20. Defendants now also claim the building on the Bruner allotment has code violations, implying the building could be demolished. Until recently, no “code violations” were ever mentioned.

21. IGRA does not provide immunity to individual tribal officers who act in their personal or official capacity. *Lewis v. Clarke*, 137 S. Ct. 1285, 1291, 197 L. Ed. 2d 631 (2017); *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278, 1288 (11th Cir. 2015).

#### VENUE

22. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiffs’ claim occurred here, and a substantial part of the property that is the subject of the action is situated in this district.

## FACTUAL BACKGROUND

23. Plaintiffs are currently constructing a restaurant known as the Embers Grill—also known as the Red Creek Dance Hall and Restaurant—on an Indian allotment within the Creek Reservation. The land is located within the city limits of Broken Arrow, Oklahoma. The allotment is owned by Bim Stephen Bruner, an enrolled member of Kialegee. The restaurant is not yet open to the public.

24. Kialegee is one of three Creek tribal towns in Oklahoma recognized under OIWA, a federal statute.

25. Kialegee’s right to engage in gaming on member property is an issue pending before the DC District Court. The captioned case seeks to restore the status quo until Kialegee’s right to begin gaming is determined. Plaintiffs are not requesting any determination from this Court as to their right to engage in gaming.

26. Defendant Kevin Dellinger as Attorney General of the MCN claims Plaintiffs cannot authorize and oversee gaming activities on the Bruner allotment.

27. On June 6, 2017, Defendant Dellinger sent a letter to Mr. Bruner claiming that, under IGRA, gaming activities on the Bruner allotment would be illegal unless the MCN authorized such activity.

28. On June 21, 2017, Mr. Hoening of the National Indian Gaming Commission (“NIGC”) wrote a letter to Jeremiah Hobia, the Kialegee Tribal Town King, stating the NIGC would consider any new information and further arguments offered to prove Kialegee’s jurisdiction over the Bruner allotment.

29. Penny J. Coleman, attorney for Kialegee, responded to Defendant Dellinger’s letter on August 2, 2017, refuting Dellinger’s position. The Coleman letter explained why

Kialegee has jurisdiction over the property and its steps to cooperate with the NIGC to ensure recognition of that right.

30. Plaintiffs have not been gaming at the location and will not begin gaming until authorized by the NIGC.

31. In retaliation of Kialegee pursuing a gaming license with the NIGC, the MCN Lighthouse raided the Embers Grill at 6:30 PM on August 16, 2017, threatening deadly force in spite of no resistance from Plaintiffs' employees.

32. When the Defendants forced their way onto the property, they were driving unmarked cars and did not wear badges. When asked who they were, some of the Defendants falsely identified themselves as federal agents.

33. The Lighthouse Defendants forced Plaintiffs' employees to the ground at gunpoint and told them they would be shot if they moved.

34. John Parsons, the CEO of Red Creek and a former military police officer, was at the Embers Grill when the raid began. One of the Defendants told Mr. Parsons to put his hands in the air, at gunpoint. Even after Mr. Parsons complied, the Defendant held an AR-15 to his head, saying, "If you move, I'll f---ing kill you." The safety was off the gun and the gunman was visibly trembling. Mr. Parsons never made any effort to resist Defendants.

35. The Lighthouse Defendants photographed Plaintiffs' employees, searched them, and forced them to provide Defendants with their personal information, all without explaining the grounds for the raid or the source of Defendants' supposed authority.

36. Mr. Parsons and Plaintiffs' employees repeatedly asked to see the warrant that was the alleged basis for the raid. Defendants waived a paper in the air in response but would not let anyone read it.

37. Mr. Parsons was detained in one of Defendants' vehicles for approximately 20 minutes.

38. One of Plaintiffs' employees, Christopher Bullis, sent a letter to the Bureau of Indian Affairs on August 18, 2017, describing how Defendants verbally abused and threatened Bullis and other employees during the raid.

39. When Mr. Bullis asked what would happen if the employees did not comply with Defendants' demands, the Defendant identified as Layn 147 stated, "I will f----ing detain you as long as I want until I feel I've identified you, and that could be as long as I care to keep you."

40. After forcing Mr. Bullis and other employees out of the building, the Lighthouse Defendants searched Mr. Bullis's vehicle.

41. Soon after the incident, Mr. Bullis was admitted to Saint Francis Hospital for treatment of a panic attack caused by Defendants' abuse and threats.

42. The Lighthouse Defendants arrested Mr. Bruner and forced him to post bond. Defendants have also issued a warrant for the arrest of the Kialegee Tribal Town Chief.

43. The Lighthouse Defendants seized gaming machines and other related equipment, as well as all laptops at the Bruner property, claiming the equipment was proof Plaintiffs are currently engaged in "illegal" gambling operations.

44. No gambling equipment had been installed at the time of the raid, as Plaintiffs are awaiting a final ruling from the NIGC or a decision from the DC District Court.

45. Defendants remain on the Bruner allotment and are preventing Plaintiffs and their employees from accessing and maintaining the Embers Grill.

46. Defendants refuse to restore any of the equipment confiscated from the Bruner

allotment, including laptops containing personal employee information and trade secrets.

47. Defendants' violent intimidation of the Plaintiffs is a clear attempt to create an illegal monopoly over Indian gaming in the area and to shield the River Spirit Casino, operated by the MCN, from legal competition.

48. In the United States District Court for the District of Columbia (the "DC District Court"), Kialegee has filed suit seeking declaratory judgment that it is entitled to full treaty-guaranteed rights as a successor to the historic Creek Confederacy. In that court, Kialegee also seeks an injunction against various federal agency officials to prevent them from interfering with Kialegee's treaty-guaranteed rights.

49. The DC District Court does not have personal jurisdiction over the individual Defendants in this case, and the issues in this action are not before the DC District Court.

50. The issues in this case involve Defendants' lack of authority to interpret and enforce IGRA, especially through trespass, threats of violence, and confiscation of property.

51. Plaintiffs request a permanent injunction, a preliminary injunction, and a temporary restraining order maintaining the status quo of the property before the August 16, 2017 raid. All seized property must be returned, and the restaurant be allowed to operate. Defendants should be prohibited from "self-help" eviction of Plaintiffs from the property, and from destroying the building. The failure to grant this relief will result in irreparable injury to Plaintiffs by the permanent loss and destruction of their property. Plaintiffs are not asking for permission to conduct gaming activity on the property, pending resolution of those issues before the NIGC and the DC District Court. Rather, Plaintiffs seek return of their property and the right to operate their restaurant pending such resolution, free of violence and intimidation.

52. To obtain a preliminary injunction, a movant must show: "(1) it will suffer



irreparable injury unless the temporary relief issues; (2) the threatened injury to the movant outweighs whatever damage the temporary relief may cause the opposing party; (3) the temporary relief would not be adverse to the public interest; and (4) there is a substantial likelihood that the movant will eventually prevail on the merits.” *Id.* (citing *City of Chanute v. Kansas Gas and Elec. Co.*, 754 F.2d 310, 313 (10th Cir. 1985)).

53. “When the first three elements are met, the Tenth Circuit has modified the fourth element so that ‘it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.’” *Id.* (citing *City of Chanute*, 754 F.2d at 314; *Walmer v. U.S. Dept. of Defense*, 52 F.3d 851, 854 (10th Cir.), cert. denied, 516 U.S. 974, 116 S. Ct. 474, 133 L.Ed.2d 403 (1995)).

54. An injunction is necessary to maintain the status quo. Defendants’ pre-NIGC action without IGRA authority has caused considerable turmoil and disruption of the status quo, including a raid on the Bruner allotment and arrest of the property owner.

55. An injunction will simply restore the situation to its status quo before Defendants’ interference. Plaintiffs will operate a restaurant on the Bruner allotment, and gaming operations will begin only if it is determined that Kialegee has jurisdiction to oversee gaming on the Bruner allotment.

56. Plaintiffs will suffer irreparable injury unless an injunction issues. Defendants are occupying the Bruner allotment and have seized equipment from the site through violence and intimidation. There is also an implied threat to destroy the building for alleged “building code violations.”

57. The seized equipment includes laptops with trade secret and other confidential

business information, as well as private personnel files related to Plaintiffs' employees.

58. Defendants are preventing Plaintiffs and their employees from entering and maintaining the Bruner allotment.

59. Permanent, continued trespass constitutes irreparable injury under Oklahoma law.

60. Defendants' actions and statements have generated a public controversy whereby Plaintiffs have been falsely represented as engaged or about to engage in illegal gambling operations.

61. An injunction is necessary to restore the Bruner allotment and confiscated personal property to their rightful owners.

62. The threatened injury to Plaintiffs outweighs whatever damage the temporary relief may cause the Defendants. No "illegal gaming" was taking place on the Bruner allotment when the facilities were raided by the Defendants.

63. Plaintiffs were not allowing gaming to occur and are not seeking from this Court an injunction to allow gaming. Plaintiffs were not attempting to permit gaming without a determination from the NIGC that Kialegee has jurisdiction to conduct gaming on the site. From this Court, Plaintiffs seek only a determination that Defendants are prohibited from illegally interpreting and enforcing IGRA.

64. The requested temporary relief would not be adverse to the public interest.

65. Actions such as the Defendants' raid on the Bruner allotment are against the public interest, as they are a unilateral, illegal attempt to enforce Defendants' interpretation of federal law through violence.

66. The public has a substantial interest in issues regarding IGRA—a federal law—

being resolved by the federal courts and federal agencies—not through intimidation by tribal agents.

67. Plaintiffs have raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.

68. Disputes over Kialegee’s jurisdiction and ability to engage in gaming activities are to be determined by the NIGC. IGRA makes no provision for enforcement by tribal officers such as the Defendants, let alone enforcement through the threat of deadly force.

69. At approximately 10:00 A.M. on August 24, 2017, Plaintiffs’ attorney contacted Defendant Kevin Dellinger, Attorney General of the Muscogee (Creek) Nation, by phone and gave notice of the filing of this Complaint.

WHEREFORE, Plaintiffs request an injunction requiring that Defendants vacate the Bruner allotment, cease preventing Plaintiffs from entering the property, and cease violent threats and intimidation. The injunction should state that Plaintiffs are free to operate the Embers Grill restaurant and that Plaintiffs are free to seek approval for gaming. In addition, an injunction should require Defendants to return all personal property confiscated from the Bruner allotment. Plaintiffs’ *do not* ask this Court to permit it to engage in gaming, and Plaintiffs will not engage in gaming until authorized.

Respectfully Submitted,



Paula J. Quillin, OBA #7368  
Joseph R. Farris, OBA #2835  
Emily D. Pearson, OBA #31602  
FRANDEN | FARRIS | QUILLIN  
GOODNIGHT + ROBERTS  
William Center Tower II  
Two West 2nd Street, Suite 900  
Tulsa, Oklahoma 74103  
Tel: 918/583-7129  
Fax: 918/584-3814

**CERTIFICATE OF SERVICE**

I certify that on the 24<sup>th</sup> day of August, 2017, a true and correct copy of the above and foregoing was mailed, properly addressed and postage fully prepaid to:

Kevin Dellinger  
Office of Attorney General  
P.O. Box 580  
Okmulgee, OK 74447

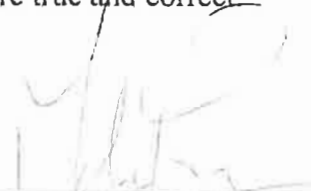
The Muscogee (Creek) Nation  
Lighthouse Tribal Police  
1008 E. Eufaula  
Okmulgee OK 74447



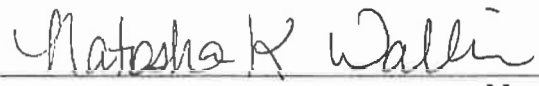
VERIFICATION

STATE OF OKLAHOMA )  
 )  
COUNTY OF TULSA ) ss

I, John Parsons, having been sworn and upon my oath verify that I have read the foregoing document; I am familiar with the contents and believe to the best of my information, knowledge and belief that the matters stated therein are true and correct

  
\_\_\_\_\_  
John Parsons

Subscribed and sworn to before me on this 23<sup>rd</sup> day of August, 2017.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

**NATASHA K. WALLIN**  
NOTARY PUBLIC - STATE OF OKLAHOMA  
MY COMMISSION EXPIRES 08/07/2021  
COMMISSION # 17007231