

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

APR 24 2019

FOR THE DISTRICT OF NEW MEXICO

MITCHELL F. ELFERS

IN RE: PROPOSED INDIAN COUNTRY)
COLLATERAL FORFEITURE SCHEDULE FOR)
MISDEMEANOR VIOLATIONS COMMITTED)
IN THE DISTRICT OF NEW MEXICO.)

Misc. No.:

19 MR 454 WJ

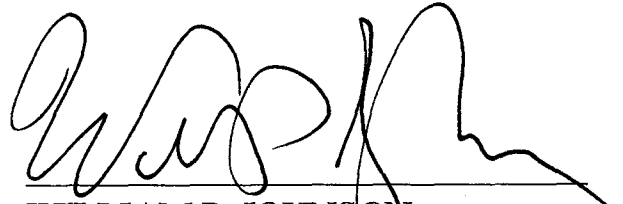
ORDER

THIS MATTER comes before the Court on written motion of the United States to adopt the Indian Country Collateral Forfeiture Schedule for Misdemeanor Violations Committed in New Mexico, a copy of which is attached to the United States' motion (the "Indian Country Collateral Forfeiture Schedule"). *See* Fed. R. Crim. P. 58(d)(1); D.N.M.LR-Cr 58.1(a)(2). The Court having reviewed the motion and being fully advised in the premises, finds the motion is well-taken and shall be granted.

THIS COURT FINDS that the Indian Country Collateral Forfeiture Schedule is granted and adopted.

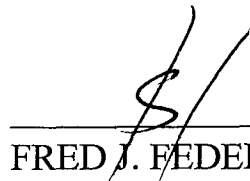
THIS COURT ORDERS that agents and officers of the Bureau of Indian Affairs and any tribal law enforcement agency participating in the CVB Program shall apply the amount authorized in the Indian Country Collateral Forfeiture Schedule to a United States District Court Violation Notice when a law enforcement officer elects to apply a collateral forfeiture amount.

THIS COURT FURTHER ORDERS that the collateral forfeitures authorized will remain in effect until this Court may subsequently modify them upon motion of the United States.



WILLIAM P. JOHNSON
Chief United States District Judge

Respectfully submitted,



FRED J. FEDERICI
First Assistant United States Attorney
(505) 346-7274

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UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT APR 24 2019

FOR THE DISTRICT OF NEW MEXICO
MITCHELL R. ELFERS
CLERK

IN RE: PROPOSED INDIAN COUNTRY)
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**UNITED STATES' MOTION TO ADOPT PROPOSED
INDIAN COUNTRY COLLATERAL FORFEITURE SCHEDULE**

The United States respectfully moves this Court to adopt the proposed Indian Country Collateral Forfeiture Schedule, attached hereto as Government's Exhibit 1, which authorizes qualified agents and officers of the Bureau of Indian Affairs (the "BIA") and several tribal law enforcement agencies in New Mexico to issue citations for violations of certain misdemeanor statutes in the District of New Mexico. As grounds for this motion, the United States provides the following justification:

1. **Background:**

a. The Administrative Office of the United States Courts maintains the Central Violations Bureau (CVB), which acts as a national clearinghouse for all district court violation notices (citations). These citations are charging documents issued by federal law enforcement officers for Class A-C misdemeanor statutory and regulatory violations. In the interests of economy,

courts may establish and “accept a fixed-sum payment in lieu of the defendant’s appearance and end the case” commenced by the issuance of a citation. Fed. R. Crim. P. 58(d)(1).

b. The fixed sum payment is known as a “collateral forfeiture,” which is the amount of money paid to the CVB in lieu of further criminal proceedings. The payment of a collateral forfeiture is not a fine and payment is not an admission of guilt. *See* D.N.M.LR-Cr. 58.1(a)(4). A defendant who has the option to pay a collateral forfeiture may forego that right and proceed to trial. Some offenses do not have a collateral forfeiture approved and, for those offenses, a defendant is required to appear for petty arraignment before a magistrate judge as a “mandatory appearance.” These mandatory appearances are appropriate for a defendant charged with a misdemeanor offense for which the government continues to have a concern (1) for the safety or welfare of the community or victim; (2) if the defendant is a recidivist; or (3) if the defendant is facing a mandatory minimum period of imprisonment for the offense.

c. A defendant who is required to make a mandatory appearance may still be subject to payment of a maximum penalty for commission of the offense. That penalty is reflected along with the mandatory appearance requirement. Reference to this maximum penalty amount does not obviate the requirement that the defendant make a mandatory appearance. Rather, it simply

informs the defendant and the Court that in addition to the mandatory appearance requirement the defendant is also subject to the maximum penalty reflected for that offense.

d. The BIA and tribal law enforcement authorities in the District of New Mexico seek to address the increasing commission of misdemeanor offenses within their jurisdictions by participating in the CVB Program.

e. In this connection, adoption of the attached, proposed collateral forfeiture schedule is requested by these law enforcement authorities through the instant motion of the United States. The Chief United States District Judge has the authority to adopt a collateral forfeiture schedule. *See* D.N.M.LR-Cr 58.1(a)(2). The amount requested as the collateral forfeiture may not be greater than the amount permitted by law. *See* 18 U.S.C. § 3571. The United States has assessed the requested amounts to ensure amounts for similar offenses are consistent across agencies that enforce similar crimes. If this motion were approved, federal and tribal law enforcement officers may not increase or decrease the amount of money for an applicable offense from that which has been authorized in the proposed collateral forfeiture schedule.

2. **Authority.** Qualified agents and officers of the BIA and certain tribal law enforcement agencies in New Mexico are authorized to investigate and enforce federal criminal laws, including felony and misdemeanor offenses. As reflected in

the attached, proposed schedule, the general categories of misdemeanor offenses these agencies seek to enforce include simple assaults, low-dollar embezzlement and theft crimes, NAGPRA offenses, destruction/damage to government and tribal property, failure to report child abuse, archaeological and wildlife offenses, criminal trespass, and simple possession of controlled substances. Steps will be taken to register these law enforcement agencies with the CVB for assignments of CVB locator codes which will enable the agencies to issue misdemeanor citations and have them processed through the CVB clearinghouse.

3. **Request.** The United States respectfully moves this Court to approve the proposed collateral forfeiture schedule attached as Government's Exhibit 1, which will permit defendants who are issued citations for alleged violations of misdemeanor law the option to pay a Court-approved collateral forfeiture in lieu of further criminal proceedings. This is the first request made for adoption of an Indian County collateral forfeiture schedule for misdemeanor violations committed in the District of New Mexico and will enable authorized agents and officers of the BIA and other participating tribal law enforcement agencies in New Mexico to enforce these criminal laws in their jurisdictions.

4. **Point of Contact.** Should this motion be approved the Indian Country Crimes Supervisory Assistant United States Attorney, Kyle T. Nayback, will serve as the general point of contact for the United States Attorney's Office

with regard to all matters involving the Indian Country CVB program. SAUSA
Nayback may be reached at (505) 224-1401.

Respectfully submitted,

JOHN C. ANDERSON
United States Attorney



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INDIAN COUNTRY COLLATERAL
FORFEITURE SCHEDULE FOR
MISDEMEANOR VIOLATIONS COMMITTED
IN THE DISTRICT OF NEW MEXICO
- MARCH 2019 -

PENGAD 800-681-6888
GOVERNMENT
EXHIBIT
1

Federal Violations	Code Section(s)	Collateral Forfeiture
Unauthorized excavation, removal, damage, alteration or defacement of any archaeological resource located on public land, or tribal land without a permit (item with a value less than \$500 – first offense)	16 U.S.C. § 470ee(a)	Mandatory Appearance NMT 1-year imprisonment NMT \$1,000 and \$50 per item
Trafficking in archaeological resources by selling, purchasing or offering for sale, purchase or exchange any archaeological resource when it was excavated or removed from public land, tribal land, or an Indian allotment without legal authorization or in violation of a federal law, regulation, rule, ordinance, or permit (item with a value less than \$500 – first offense)	16 U.S.C. § 470ee(b)	Mandatory Appearance NMT 1-year imprisonment NMT \$1,000 and \$50 per item
Taking, possessing transporting, or sale of fish, wildlife, or plants.	16 U.S.C. § 3372(a)	Mandatory Appearance NMT \$10,000 per violation
Simple assault upon, resisting, or impeding a federal law enforcement officer (without use of weapon or bodily injury)	18 U.S.C. § 111(a)	Mandatory Appearance NMT 6-month imprisonment NMT \$5,000
Assault by striking, beating or wounding (Indian victim)	18 U.S.C. § 113(a)(4)	Mandatory Appearance NMT 6-month imprisonment NMT \$5,000
Simple assault (Indian victim)	18 U.S.C. § 113(a)(5)	Mandatory Appearance NMT 3-month imprisonment NMT \$5,000
Simple assault with an Indian victim less than 16 yrs. old	18 U.S.C. § 113(a)(5)	Mandatory Appearance NMT 6-month imprisonment NMT \$5,000
Embezzlement of U.S money/property - \$1000 or less	18 U.S.C. § 641	Mandatory Appearance NMT \$500
Theft of personal property (of an Indian) - \$1,000 or less	18 U.S.C. § 661	Mandatory Appearance NMT \$500
Buying, concealing, or receiving stolen personal property (of an Indian) - \$1,000 or less	18 U.S.C. § 662	\$500
Consuming or possession of alcohol by Indian - first offense	18 U.S.C. § 1156	\$250
Embezzlement/theft from Indian tribal organization - \$1,000 or less	18 U.S.C. § 1163	Mandatory Appearance NMT \$500

Federal Violations	Code Section(s)	Collateral Forfeiture
Destruction/removal of Indian Country boundary or warning signs, and of hunting/fishing/trapping signs.	18 U.S.C. § 1164	\$250
Hunting, trapping, or fishing without lawful authority or permission on tribal land or on Indian allotment	18 U.S.C. § 1165	\$250
Theft from gaming establishment on Indian land - \$1000 or less	18 U.S.C. § 1167	\$1,000
Failure to report known or reasonably suspected child abuse in Indian Country to local law enforcement or child protective services agency	18 U.S.C. § 1169(a)	Mandatory Appearance NMT \$500
Inhibiting another from reporting child abuse in Indian Country	18 U.S.C. § 1169(b)	Mandatory Appearance NMT \$500
Illegal trafficking in Native American human remains	18 U.S.C. § 1170(a)	Mandatory Appearance NMT 3-month imprisonment NMT \$500
Illegal trafficking in Native American cultural items obtained in violation of NAGPRA	18 U.S.C. § 1170(b)	Mandatory Appearance NMT 3-month imprisonment NMT \$500
Willful injury to U.S government property - \$1000 or less	18 U.S.C. § 1361	\$250
Assault on a process server	18 U.S.C. § 1501	Mandatory Appearance NMT 6-month imprisonment NMT \$5,000
Unlawful cutting, injuring or destruction of trees on tribal land or Indian allotment	18 U.S.C. § 1853	\$250
Leaving fire unattended on tribal land or on Indian allotment	18 U.S.C. § 1856	\$250
Possession of controlled substances - marijuana for personal use	21 U.S.C. § 844a	\$250
Possession of controlled substances – other than marijuana	21 U.S.C. § 844a	Mandatory Appearance NMT \$500

State Violations Assimilated Under Federal Authority (18 U.S.C. §§ 1152, 7 & 13)	Code Section(s)	Collateral Forfeiture
Assault against a household member (Indian victim/non-Indian defendant)	N.M.S.A. § 30-3-12 (18 U.S.C. §§ 1152, 7 & 13)	Mandatory Appearance NMT 6-month imprisonment NMT \$5,000
Criminal damage to property of household member; deprivation of property of household member	N.M.S.A. § 30-3-18 (18 U.S.C. §§ 1152, 7 & 13)	Mandatory Appearance NMT 3-month imprisonment NMT \$5,000
Negligent use of a deadly weapon	N.M.S.A. § 30-7-4 (18 U.S.C. §§ 1152, 7 & 13)	\$500
Interference with communications	N.M.S.A. § 30-12-1 (18 U.S.C. §§ 1152, 7 & 13)	Mandatory Appearance NMT \$500
Criminal trespass	N.M.S.A. § 30-14-1 (18 U.S.C. §§ 1152, 7 & 13)	\$500
Criminal damage to property	N.M.S.A. § 30-15-1 (18 U.S.C. §§ 1152, 7 & 13)	Mandatory Appearance NMT \$500
Disorderly conduct Engaging in fighting, threatening, or violent behavior Offensive or abusive utterance, gesture, or display, etc. Making unreasonable noise	N.M.S.A. § 30-20-1 (18 U.S.C. §§ 1152, 7 & 13)	\$300 \$150 \$100
Use of telephone to terrify, intimidate, threaten, harass, annoy or offend	N.M.S.A. § 30-20-12 (18 U.S.C. §§ 1152, 7 & 13)	Mandatory Appearance NMT \$500
Failing to obey applicable traffic regulations while operating a bicycle	N.M.S.A. § 66-3-701 (18 U.S.C. §§ 1152, 7 & 13)	\$50
Failure to comply with a traffic control device, parking or moving (i.e. stop sign)	N.M.S.A. § 66-7-104 (18 U.S.C. §§ 1152, 7 & 13)	\$75
Failure to report motor vehicle accident resulting in property damage, personal injury, or death	N.M.S.A. § 66-7-206 (18 U.S.C. §§ 1152, 7 & 13)	\$200

State Violations Assimilated Under Federal Authority (18 U.S.C. §§ 1152, 7 & 13)	Code Section(s)	Collateral Forfeiture
Speed limits – established speed limits for specific roads	N.M.S.A. § 66-7-301 (18 U.S.C. §§ 1152, 7 & 13)	\$70 (NMT 19 miles over speed limit) \$140 (20 miles & greater over speed limit)
Operating a vehicle so slowly as to interfere with normal flow of traffic	N.M.S.A. § 66-7-305 (18 U.S.C. §§ 1152, 7 & 13)	\$75
Failure to yield to pedestrians	N.M.S.A. § 66-7-334 (18 U.S.C. §§ 1152, 7 & 13)	\$50
Stopping or parking a vehicle in prohibited areas	N.M.S.A. § 66-7-351 (18 U.S.C. §§ 1152, 7 & 13)	\$75
Failure to use safety belts - child passenger restraint	N.M.S.A. § 66-7-369 (18 U.S.C. §§ 1152, 7 & 13)	\$100
Failure to use safety belts	N.M.S.A. § 66-7-372 (18 U.S.C. §§ 1152, 7 & 13)	\$75
Operating a motor vehicle while under the influence of alcohol/drugs, or any combination thereof; refusal by an operator to submit to a test for blood alcohol/drug content (proof of refusal may be admissible in judicial proceedings)	N.M.S.A. § 66-8-102 (18 U.S.C. §§ 1152, 7 & 13)	Mandatory Appearance
Failing to maintain necessary control of vehicle (reckless driving)	N.M.S.A. § 66-8-113 (18 U.S.C. §§ 1152, 7 & 13)	\$500
Unsafe operation – operating a motor vehicle without due care (careless driving)	N.M.S.A. § 66-8-114 (18 U.S.C. §§ 1152, 7 & 13)	\$250
Open container of alcoholic beverage – carrying/storing a bottle, can, etc. containing an alcoholic beverage that is open, has been opened, whose seal is broken, or the contents of which have been partially removed (see also CFR 2.35)	N.M.S.A. § 66-8-138 (18 U.S.C. §§ 1152, 7 & 13)	\$150