No. 18-7033

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL CASEY JACKSON — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

PETITION FOR A RE-HEARING

Petitioner prays that this Honorable Court construed his pleadings liberally in light of Haines v. Kerner, 404 U.S. 519, 520-21 (1972)("Holding that PRO SE litigants are held to lesser standard of review than lawyer who are formely trained in the Law, and are entitled to liberal construction of their pleadings.")

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), and 43 U.S.C. § 868.

ARGUMENT

Petitioner contents that the government lacks jurisdiction over his case because the land of which the alleged offense took place is on land that was sold or disposed of by Congress, before the Treaty of 1855 was negotiated by the Chippewa and the United States of America.

On November 23, 2010, the District Court approved a settlement that declared the entire Isabella Reservation to be "[I]ndian Country." Even the land that was sold or set aside prior to the Treaty of 1855. See Saginaw Chippewa Indian Tribe v. Jennifer Granholm, 690 F.Supp. 2d 622 (February 4th, 2010)("As much as 40,000 acress of land in the six Townships and Saginaw Bay Reserve had been sold or set aside before the 1855 Reservation, and thus was unavailable for allotment to the Chippewas. Nearly 7,000 acres had been sold, and additional 14,000 acres in the Isabella township and much of the land in the bay was "swaplands" subject to the Claims by the state of Michigan under the Swanpland Act of 1850. Portion of the remaining land were reserved for school and canals and thus unavailable for allotment.

In numerous cases the Supreme Court has ruled in varying language that it would consider the question of a federal court's jurisdiction of the subject matter, whether on its own or that of the court's below, even though that question was not, or not properly raised by the parties.

It was held in the United States v. Corrick, (1936) 298 U.S. 435, 80 L.Ed. 1263, 56 S. Ct. 829, Reh. Denied 298 U.S. 692, 80 L.Ed 1410, 56 S. Ct. 951, invoking an appeal by defendant from a decree of a United States District Court awarding, an interlocutory injuction against plaintiffs prosecution for violatin of a federal statute, the court pointed out that the appellants did not raised the question of jurisdiction at the hearing below, but that the lack of jurisdiction of a federal court touching the subject matter of the litigation can not be waived by the parties, and the District Court should, therefore, have declined sua sponta to proceed in the case.

The Court went on to state that if the record discloses that the lower court was without jurisdiction, the Supreme Court would notice the defect, although the parties made no contention concerning it, and that althought the District Court lacks jurisdiction, the Supreme Court has jurisdiction on appeal, not of the merits, but merely for the purpose of correcting the error of the lower court. Also, see McGrath v. Kristensen (1950), 340 U.S. 162, 95 L. Ed 2d. 173, 71 S. Ct. 224, an issue as to whether a proceeding involved a justiciable question within the judicial power of the Federal Courts under Article III of the Federal Constitution may be raised at any time.[1]

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[1] In Kontrict v. Ryan (2004) 540 U.S. 443, 157 L.Ed 2d 867, 124 S. Ct. 906, Supreme Court noted that litigant generally may raise federal court's lack of subject matter jurisdiction at any time in same civil action, even initially at highest appellate instance.

The State of Michigan was admitted in to the Union on June 23, 1836, that being the day Congress granted school lands to the State of Michigan and became obligatory on the United States on July 25, 1836. This being the day Michigan passed the Act of Acceptance. When a grant is made to a state "it is for certain sections of land out of the public domain." The fact that this court has declared that grants of land to the states, like these here involved, transferred exclusive ownership and control over these lands to the state.

It is therefore an unatterable condition of the admission and obligatory on the United States, that Section (16) in every township of the public lands in the state, which had not been sold or otherwise disposed of, should be granted to the State for the use of common-schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituing only a pledge of a grant in the future, or as operating to transfer the title to the State upon her acceptance of the prosposi-tions as soon as the sections could be identified by the public surveys.

In either case, the lands which might be embraced within those section were appropriated to the state. They were withdrawn from any other disposition, and set apart from the public domain. So that no subsequent law authorizing a sale of it could be construed to embrace them. The grant of the school to the state irrevocably pledged this land to the state, and placed it beyond the power of Congress or the President to divert it to other purposes. The title to the school lands (grants) became vested in the state when the survey was made in the field and the survey was prior to any withdraw of the lands. Please see Article IV of the Treaty of 1855 where it clearly shows that the land had already been surveyed out.

The United States and the Chippewa Indians entered into a series of treaties in the late 17 hundreds and the early to mid 18 hundreds and the last being the treaty of 1864. (The second treaty was negotiated near Saginaw that ceded much of the Chippewa's land in central and eastern Michigan, including a portion of Isabella County to the United States. Treaty with the Chippewa U.S. Chippewa, Sept. 24, 1819, 7 Stat. 203. In 1836, a third Treaty ceded the remainder of the Northwest lower peninsula, including the rest of Isabella County, and a substantial portion of the eastern upper peninsula to the United States. Treaty with the Ottawa, etc., Mar. 28, 1836, 7 Stat. 491.

Finally, in 1837 and 1838, "The Saganaw [sic] tribe of Chippewa Nation [2010 U.S. Dist. LEXIS 6] agreed to ceded the remainder of their lands in the lower Peninsula, and remove from the state of Michigan, as soon as a proper location can be obtained." Treaty with the Chippewa, pmbl. & art. 6, U.S. Chippewa Jan. 14, 1837, 7 Stat. 528; see also Treaty with the Chippewa U.S. Chippewa, Dec. 20, 1837, 7 Stat. 547; Treaty with the Chippewa, U.S.-- Chippewa, Jan. 23, 1837 Stat. 565. By the time the 1855 Treaty [2010 U.S. Dist. LEXIS 7] was negotiated in Detroit, the Saginaw, Swan Creek, and Black River Chippewa had largely relinquished the right to live in southern and central Michigan and agreed to move west of the Mississippi River. Many Chippewas, however, resisted the government's effort to move them westward and continued to live near the Saginaw bay in Central Michigan. See Anderson Rep. at 4-5 B nn. 6-9; Saginaw Chippewa Tribe v. Granholm, 690 F. Supp. 2d 622 (U.S. Dist. 6th Cir. 2010).

In Article I, Clause 1, of the Treaty with the Chippewa of Saginaw in 1855. It states the United States will withdraw from from sale for the benefit of said Indians, as herein provided, all the unsold public lands within the

state of Michigan, embraced in the following description, to viz first, six adjoining townships of land in the county of Isabella. This language points to the unsold public lands in the six townships. It does not state all of the land in the six townships. Because Congress was well aware of the fact that it could not dispose of land that was already grante[d] to the state. If Congress could not grant this land to the Indians in 1855, how can the District Court grant this land to the reservation in 2010 155 years later?

The Supreme Court has held that Congress possess plenary power over Indian affairs, Congress has never authorized the District Court to add land to any Indian Reservation. Congress did enact 25 U.S.C. § 81 and 5105, 5108, and 5110, which authorizes the Secretary of the Interior to add land to an Indian Reservation or make any agreement with Indian Tribes. The Constitution nor the Congress has ever given the District Court the right or authority to alter any treaty with an Indian Tribe. In Clause 4, of Article I, it states under the same rules and regulations in every respect, as are provided by the agreement concluded on the 31st day of July, A.D. 1855 with the Ottawa and Chippewa of Michigan. Article I, Clause 2 of that treaty states. It is also agreed that any lands within the aforesaid tracts now occupaied by actual settlers, or by persons entitled to pre-emption thereon shall be exempt from the provisions of this Article.[2]

The withdraw of land in the Treaty of 1855 describes and is confined to unsold public lands. Lands are, not public unless they are subject to sale or other disposal under the general land laws. They are not subject to sale and

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[2]PREEMPTION: (1) The right to buy before others, (2) The purchase of something under this right. (3) An earlier seizure or appropriation. (4) The occupation of public land so as to establish a preemptive title. See Black's Law Dictionary.

disposal under such laws if, at the date of the grant, they are burdened with and Indian right of occupancy nor are they public lands, as the term is understood, until surveyed into townships and designated by sections.

The State being prior in right, and the subsequent survey perfected and completed its title as against subsequent promises of the government to the Indians, these lands were public lands and section sixteen was subject to the state school land grant. See Cooper v. Roberts, 18th of How., 173, 15 L. Ed. 338 held that the words "section" and "townships" have reference to the laws regarding public surveys, and the obligation of the government is the same as if those laws had made part of the grant. The government cannot resume its grant, which is a contract executed. When the state of Michigan was admitted into the Union, and held, after full consideration, that by it the state aquired such an interest in every section sixteen that her title became perfect so soon as the section in any township was designated by the survey. "We agree," said the Court.

Section sixteen (16)not having been mentioned in the treaty of 1855 and those sections having been previously granted to the state for the use of public schools, the treaty of 1855 would not have embraced these sections of land. The treaty must be read to exclude those land that were already disposed of by Congress. It will not be supposed that Congress intended to authorize a sale of land which it had already disposed of. The grants of the section to the state, as already stated, set them apart from the mass public property which could be subject to the sale or disposal by Congress or by the President.[3]

[3]The land in controversy was part of the Public Lands (unsold) that was subject to the states school-land grant. In fact, the Treaty only granted the unsold public lands in the 6 townships. Therefore, the land was exempt because the land was already appropriated to the state before the 1855 Treaty was negotiated, placing them in the exclusive ownership and control of the state.

Article I, Clause 6 of the Treaty (1855) and the provisions therein contained relative to the purchase and sale of land for school-houses, churches, and educational purposes, shall also apply to this agreement. In Yankton Souix the Supreme Court held that "a clause reserving section of each townships for schools and a prohibition on liquor with the ceded lands, upon ratification, the Congress added that 'the sixteenth and thirth-sixth section of each congressional township...shall be reserved for common-school purposes and to be subject to the laws of the state of South Dakota.'" 28 Stat. 319.

This school section clause parallels the enabling Act admitting South-Dakota to the Union, which grants the state section 16 and 36 in every township for the support of common schools, but expressly exempts reservation land "until the reservation shall have been extinguished and such lands restored to...the public domain." Act of Feb. 22, 1889, 25 Stat. 679. When considering a similar provision included in the Act ceding the Rosebud Sioux Reservation in South Dakota, the court discerned congressional intent to dismish the reservation, "thereby making the sections available for disposition, to the state of South Dakota for school sections." Rosebud, supra, at 601, 51 L.Ed. 2d 660, 97 S. Ct. 1361.

The states pre-existing right of possession was a valid claim from its grant of admittance into the Union in light of the general principle that Congress, in the act of making these donations or grants could not be supposed to exercise its liberality at the expense of pre-existing rights which though imperfect, were still meritorious, and had just claims to legislative protections. As the Court stated in DeCeau, however, "the natural inference would be that state law is to govern the manner in which the 16th and the 36th sections are to be employed for the common-school purposes, which "implies nothing about the presence or absence of state civil or criminal jurisdiction over the remainder of the ceded lands." 420 U.S. at 446, n.33, 43 L.Ed. 2d 300, 95 S. Ct. 1082.

The property where the alleged offense took place was 1309 West Pickard Street, Mt. Pleasant, MI 48858. See Government's response Brief Index of Exhibits where the United States Attorney's Office used mapquest to search for the cited address Exhibit 3. Petitioner is also providing the Isabella County TX DETAIL (Ex.4). It describes the legal description as parcel #17-0000-17-002017/Assessors Plat#1, Lots 104 & 105. Furthermore, in the attached Exhibits, there is a true copy of the original land patent issued by the state of Michigan, and certified on August 24, 2018, by one Mark Harvey, the state Archivist for the Archives of Michigan Exhibit #5.

This original document describes the land as being part of the East ½ of the North East ¼ township "14" North, Range "4" West Section "16" Parcel #17-000-17-604-002017. It was also stated in Saginaw Chippewa Indian tribe v. Granholm, 690 F.Supp. 2d 622, portions of the remaining land were reserved for school and canals and thus unavailable for allotment. As stated above the reserved school lands are/were public lands and subject to the state upon its admission into the Union.

That section sixteen in every township be granted to the state upon survey and sectioned out for the common-schools. This key information and the facts together with the enabling act of Michigan, and the surveying of Lands prior of 1855 and 1864's Treaties that this land is not within the "exclusive jurisdiction of the United States." Petitioner can not be guilty of a federal crime on land that was granted to the State of Michigan before the treaty with the Chippewa. May this Honorable Supreme Court Grant a Rehearing.

Respectfully Submitted,

/s/ Michael Jackson

Michael Jackson, PRO SE

Dated: May 6, 2019