U.S. v. Peshlakai, 2023 WL 4235671 (D.N.M., June 28, 2023).

- **Holding**: Federal statute prohibiting felons from possession of firearms did not violate treaty right of Navajo Nation enrolled member to hunt and protect livestock.
- **Summary**: Peshlakai, an enrolled member of the Navajo Nation, was arrested by the Navajo Police Department after assaulting his wife and kidnapping his children. Before being booked or charged by the Nation, he was taken into custody by an FBI agent, and charged with possessing a firearm after being previously convicted of a felony.

  Peshlakai argued that the felon-in-possession statue did not extend to the Navajo Nation because the 1868 Treaty between the United States and Navajo Nation guaranteed him a right to possess a firearm for hunting and protecting livestock. The district court found Peshlakai's argument to be precluded by the holding in *United States v. Fox*, 573 F.3d 1050, 1055 (10th Cir. 2009), where the defendant "made almost the same arguments as Mr. Peshlakai." The court rejected Peaslakai's argument that *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), superseded *Fox* by prohibiting courts from considering "practical outcomes" when interpreting treaties. While *Fox* had discussed practical outcomes, it rested primarily on the plain language of the 1868 Treaty, concluding that "both signatories to the Treaty envisioned that members of the Navajo Nation committing crimes would lose certain rights under the treaty."

  The court also rejected Peshlakai's argument that the FBI agent who arrested him violated the Navajo Nation's federal-detainer statute, enacted pursuant to the Navajo Nation's right under the 1868 Treaty to establish procedures that the U.S. must follow before obtaining custody of an Indian. The Nation's federal-detainer statute provides that "An Indian, whether adult or juvenile, who is detained by the Navajo Department of Corrections and who is the subject of a federal detainer request, shall be released by the Department of Corrections to the federal government pursuant to the federal detainer statute." The court found the statute inapplicable, because another provision in the statute limited its operation to Indians "in Navajo Nation custody," and the meaning of "custody" required the creation of a file with the Navajo Police Department "signal[ing] that the Indian is in tribal custody under the statute." Peshlakai failed to meet his burden of "showing that the NPD officers arrested him for a violation of Navajo law." And, in contrast to the Nation's stature governing extradition to states and other tribes, the federal detainer statute neither prohibited federal officers from arresting and removing an Indian who violated federal law, nor did it require federal officers to request that the Navajo Nation make the arrest for them.

  Relevant (2023) Deskbook Section: 4:3, 4:21