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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

12

13 CONFEDERATED TRIBES AND  
BANDS OF THE YAKAMA NATION,  
14 a federally-recognized Indian tribal  
government and as *parens patriae* on  
15 behalf of the Enrolled Members of the  
Confederated Tribes and Bands of the  
16 Yakama Nation;

17 Plaintiffs,

18 v.

19

NO. CV-11-3028-RMP

FIRST AMENDED COMPLAINT  
FOR DECLARATORY  
JUDGMENT, INJUNCTIVE  
RELIEF, MANDAMUS, AND  
*BIVENS* DAMAGES

1 ERIC H. HOLDER, JR., Attorney  
General of the United States; UNITED  
2 STATES DEPARTMENT OF JUSTICE;  
ROBERT S. MUELLER III, Director of  
3 the Federal Bureau of Investigation;  
FEDERAL BUREAU OF  
4 INVESTIGATION; UNITED STATES  
OF AMERICA; FBI SPECIAL AGENT  
5 MATTHEW A. BULLWINKEL; JOHN  
DOE FEDERAL AGENT  
6 GOODPASTURE; JOHN DOE FBI  
AGENTS 1-100; COUNTY OF  
7 YAKIMA,  
8 Defendants.

9  
10 Plaintiff the Confederated Tribes and Bands of the Yakama Nation,  
11 signatory to the 1855 Treaty With The Yakama, 12 Stat. 951 (“Yakama  
12 Nation” or “Nation”), alleges as follows:

### 13 I. INTRODUCTION

14 1. The Nation, both as a federally-recognized Indian tribal  
15 government and as *parens patriae* on behalf of the Enrolled Members of the  
16 Confederated Tribes and Bands of the Yakama Nation, seeks a declaratory  
17 judgment that Defendants’ recent, ongoing, and imminent future entry onto the  
18 Yakama Nation for non-emergency purposes – without notification to or  
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1 consultation with the Nation – violates the Treaty With The Yakama, 12 Stat.  
2 951; federal consultation laws; and Defendants’ own regulations.

3 2. Early in the morning of February 16, 2011, Defendants, acting  
4 through scores of federal agents, with agents of the County of Yakima in tow,  
5 invaded the Yakama Nation, guns drawn, with no prior notice to the sovereign  
6 on whose land they were intruding. Defendants violated the Treaty With The  
7 Yakama and other federal laws, by doing so.

8 3. Defendants implicitly admitted their obligation to notify or consult  
9 with the Nation by text-messaging an employee of the Nation and warning him  
10 about the invasion. But they failed to do so until after the incursion had  
11 commenced – indeed until after scores of federal officers from across the  
12 United States had descended onto the Yakama Indian Reservation. Text  
13 messaging an employee is not the government-to-government consultation and  
14 notification required under federal law.

15 4. Not until it was too late did Defendants attempt to satisfy their  
16 legal obligations. Even then, such attempts were wholly inadequate under the  
17 Treaty and the federal laws described herein. No emergency prevented  
18 notification.

1           5.     Absent notification to the Nation, or an emergency that might  
2 prevent advance notification, Defendants' invasion violated the Treaty With  
3 The Yakama and other federal laws. Defendants have refused to agree to  
4 provide notification to the Nation under these circumstances going forward.

5           6.     Because the Nation's Treaty rights, territorial integrity and  
6 members can be secure only with a declaration of rights, and injunctive relief  
7 as prayed for herein, the Nation respectfully requests an injunction preventing  
8 future illegal invasions and requiring consultation and notification for entries  
9 onto the Nation's land; along with a writ of mandamus ordering Defendants to  
10 comply with Treaty, trust, and legal obligations by (1) notifying the Nation and  
11 the local Bureau of Indian Affairs ("BIA") Superintendent of any entry onto  
12 Reservation property so that Tribal and federal officer safety can be ensured by  
13 Tribal police and (2) immediately carrying out their obligations to develop and  
14 implement meaningful consultation policies with the Nation.

15           7.     The Nation, as *parens patriae* only, also seeks compensatory and  
16 punitive damages against only those federal officials, in their individual  
17 capacity, who have violated the constitutional and Treaty rights of every  
18 enrolled member of the Yakama Nation.

1 **II. JURISDICTION**

2 8. The District Court has jurisdiction over this action pursuant to 28  
3 U.S.C. § 1331 and § 1362. The Nation, a federally-recognized Indian tribal  
4 government, asserts claims arising under the 1855 Treaty With the Yakama, 12  
5 Stat. 951; the U.S. Constitution; and other laws of the United States, including  
6 Defendants' own regulations, and federal common law.

7 9. This Court has jurisdiction under federal law, including under the  
8 following: (a) 28 U.S.C. §§ 1331 and 1362, this being an action by a federally-  
9 recognized Indian tribal government, asserting claims arising under the 1855  
10 Treaty With the Yakama, 12 Stat. 951; the U.S. Constitution; *Bivens v. Six*  
11 *Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971);  
12 and other laws of the United States; (b) 28 U.S.C. § 1361, in that the Nation  
13 seeks mandamus to compel federal officers, federal employees, and federal  
14 agencies to perform a duty owed to the Tribe; (c) 28 U.S.C. §§ 2201 and 2202,  
15 in that the Nation seeks a declaratory judgment and other proper relief, and (d)  
16 5 U.S.C. § 702, in that the Nation seeks relief for other than money damages  
17 against agencies of the United States and its officers in their official capacities.



1 Article I of the Treaty of 1855, the Yakama Nation ceded over 10 millions of  
2 acres of its aboriginal lands to the United States, comprising approximately one  
3 quarter of the state of Washington.

4 14. The Yakama Nation complains as a tribal government and as  
5 *parens patriae* for the enrolled members of the Confederated Tribes and Bands  
6 of the Yakama Nation.

7 15. As a matter of sovereignty, and its interests as a sovereign, the  
8 Yakama Nation will protect its Treaty from violations by the United States, its  
9 agency, and agents; the Nation will protect its members' Treaty rights; the  
10 Nation will protect and enforce Treaty boundaries and rights guaranteed in  
11 1855 to it by the United States; the Nation will protect, enforce, and assert  
12 those rights guaranteed to it as a matter of inherent sovereignty, including those  
13 recognized through applicable federal laws.

14 16. Against John Doe Federal Bureau of Investigation Agents in their  
15 personal capacity only, the Yakama Nation, as *parens patriae* only, seeks  
16 compensatory and punitive damages on behalf of its members for the violation  
17 of the Treaty With The Yakama pursuant to *Bivens*, 403 U.S. 388 (1971).

1 17. Plaintiff reserves the right, with leave of the Court, to further  
2 amend this complaint to include Federal Torts Claims Act claims for trespass,  
3 outrage, and other torts following the exhaustion of FTCA administrative  
4 remedies.

5 **IV. DEFENDANTS**

6 18. Defendant Eric H. Holder, Jr., is the Attorney General of the  
7 United States of America and is sued in his official capacity.

8 19. Defendant United States Department of Justice is an agency of the  
9 United States of America. Defendants Holder and the United States  
10 Department of Justice are referred to hereafter as “DOJ.”

11 20. Defendant Robert S. Mueller, III, is the Director of the Federal  
12 Bureau of Investigation, and is sued in his official capacity.

13 21. Defendant Federal Bureau of Investigation is an instrumentality of  
14 the DOJ. Defendants Mueller and the Federal Bureau of Investigation are  
15 referred to herein as “FBI.”

16 22. Defendants United States of America, acting through the DOJ and  
17 FBI (“United States”) have violated the Treaty With The Yakama and other  
18 federal laws.



1           23. The foregoing Defendants (“Defendants”), sued in their official  
2 capacity are agents or agencies of the federal government, that can be named as  
3 defendants and against whom mandamus, a declaratory judgment, and  
4 injunctive relief may be entered, pursuant to 28 U.S.C. §§ 1346(a)(2), 1361,  
5 2201, and 2202 and Fed. R. Civ. P. 57 and 65(a).

6           24. Defendants Federal Bureau of Investigation Special Agent  
7 Matthew A. Bullwinkel, John Doe Federal Agent Goodpasture, and John Doe  
8 FBI Agents (collectively “John Doe FBI Agents”) violated the Treaty rights of  
9 all enrolled members of the Yakama Nation, in their individual capacity, by  
10 knowingly and intentionally entering the Yakama Indian Reservation in  
11 violation of the Treaty and other federal law.

12           25. Defendant County of Yakima (“county”) is a county government  
13 organized under the laws of the state of Washington, with no authority to enter  
14 trust lands on the Yakama Indian Reservation.

15                           **V. ALLEGATIONS COMMON TO ALL CLAIMS**

16           **A. 1855 Treaty With The Yakama, 12 Stat. 951**

17           26. The Confederated Tribes and Bands of the Yakama Nation is a  
18 federally-recognized Indian tribal government, whose Reservation was  
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1 established by the 1855 Treaty With The Yakama, 12 Stat. 951, Article II. The  
2 Yakama Nation currently occupies, regulates and self-governs approximately  
3 1.3 million acres of lands within the Yakama Indian Reservation.

4 27. In 1855 the Yakamas signed a Treaty ceding about 10 million  
5 acres – 90 percent of their aboriginal land – in exchange for the reservation of  
6 certain rights guaranteed by the United States in the Treaty With The Yakama.

7 28. The Yakama Nation understandably assigns a special significance  
8 to each part of the Treaty at the time of signing and continues to view the  
9 Treaty as a sacred document today.

10 29. The Yakama Nation possesses all the powers of any sovereign  
11 state; the legislative power of defendant United States cannot affect the internal  
12 sovereignty of the Yakama Nation unless expressly stated otherwise by an act  
13 of Congress.

14 30. The Yakama Nation reserved and retains the full powers of  
15 internal sovereignty, including all those rights not specifically conveyed.

16 31. The Yakama Nation need not show that defendant United States  
17 granted it the consultation right, but only that such right was reserved and  
18 guaranteed.

1           32. Defendants promised that the Nation’s Reservation would “be set  
2 apart and, so far as necessary, surveyed and marked out, for the exclusive use  
3 and benefit of said confederated tribes and bands of Indians, as an Indian  
4 reservation; nor shall any white man, excepting those in the employment of the  
5 Indian Department, be permitted to reside upon the said reservation without  
6 permission of the tribe and the superintendent and agent.” 12 Stat. 951, Art. II.

7           33. The Nation, unlike other tribes, has the express and specialized  
8 right to withhold permission for entry upon the reservation. The Nation’s  
9 Treaty includes the express limitation, “excepting those in the employment of  
10 the Indian Department.” 12 Stat. 951, Art. II.

11           34. The Treaty does not reference any other department of the federal  
12 government or type of federal office, but importantly does mention one  
13 department of the federal government.

14           35. The United States promised the Yakamas that they could rely on  
15 all of the Treaty’s provisions being carried out strictly.

16           36. The United States and Isaac Stevens, negotiating on behalf of the  
17 United States, considered the Yakamas to be of great importance as they  
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1 occupied strategically important territory between Walla Walla and the Puget  
2 Sound.

3 37. The Yakama Treaty exclusion right, which is not generalized but  
4 express, was explained to the Yakamas as follows:

5 Looking Glass: Will the agent be there that long to keep the whites from  
6 pushing into our country?

7 Gen. Palmer said: Certainly.

8 Looking Glass: Will you mark the piece of country that I have marked  
9 and say the agent shall keep the whites out?

10 Gen. Palmer: No one will be permitted to go there but the agent and the  
11 persons employed, without your consent.

12 Treaty Minutes, 99.

13 38. Article VIII of the Treaty With The Yakama provides: “The  
14 aforesaid confederated tribes and bands of Indians acknowledge their  
15 dependence upon the Government of the United States, and promise to be  
16 friendly with all citizens thereof, and pledge themselves to commit no  
17 depredations upon the property of such citizens. And should any one or more  
18 of them violate this pledge, and the fact be satisfactorily proved before the  
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1 agent, the property taken shall be returned, or in default thereof, or if injured or  
2 destroyed, compensation may be made by the Government out of the annuities.  
3 Nor will they make war upon any other tribe, except in self-defense, but will  
4 submit all matters of difference between them and other Indians to the  
5 Government of the United States or its agent for decision, and abide thereby.  
6 And if any of the said Indians commit depredations on any other Indians within  
7 the Territory of Washington or Oregon, the same rule shall prevail as that  
8 provided in this article in case of depredations against citizens. And the said  
9 confederated tribes and bands of Indians agree not to shelter or conceal  
10 offenders against the laws of the United States, but to deliver them up to the  
11 authorities for trial.”

12       39. This clause was explained as requiring that when Yakamas “do  
13 wrong” it is the duty of the Yakama “chiefs to punish the offender”; that  
14 “wrongs” are to be submitted to “the chief or his council or to the agent.” And  
15 it is they who will make a “decision.” Treaty Minutes, 106-107.

16       40. As is clear from the Treaty Minutes, the Nation retained –  
17 expressly – the right to at least be involved in law enforcement activities on its  
18 lands. It is the duty of the Nation itself to punish an offender, and it is to the  
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1 'chiefs' that the federal government looked to for both making decisions  
2 regarding law enforcement and punishing offenders.

3 **B. February 16, 2011 Invasion by the FBI, DOJ and County**

4 41. On February 15, 2011, at 10:25 a.m., the FBI obtained a warrant  
5 from the District Court, *ex parte*, to search a premises located on the Yakama  
6 Indian Reservation.

7 42. Upon information and belief, one or more of the agents who  
8 invaded the Nation are based in Tupelo, Mississippi, meaning that the invasion  
9 was planned for several days, and possibly weeks ahead of its occurrence.

10 43. The Nation is aware of no emergency, or emergent set of  
11 circumstances that brought the FBI to its Reservation.

12 44. The next day, at approximately 6 a.m. an FBI agent text-messaged  
13 Kelly Rosenow, Yakama Nation Public Safety Commissioner, stating: "Kelly-  
14 it's Jen FBI. About to do a large search on the reservation and wanted you to  
15 hear about it from us 1st. Call me asap for details 509-xxx-xxxx."

16 45. Mr. Rosenow called the agent, who did not answer. At 6:20 a.m.  
17 Mr. Rosenow and the agent spoke, but by that time, the FBI had already  
18 executed the warrant upon invasion of the Yakama Indian Reservation.

1           46. Critically, the Nation was not notified, consulted, or conferred  
2 with before the FBI came on to the Yakama Indian Reservation. Nor did the  
3 FBI notify the BIA Superintendent for the Yakama Agency, Guy Robbins,  
4 before entering upon Yakama lands.

5           47. The Yakima County Sheriff's Office, though, was notified of the  
6 impending federal invasion of Yakama lands and its agents assisted the FBI  
7 with execution of the warrant by entering upon the Yakama Indian Reservation  
8 – even though the county lacks any authority to enter the Reservation for such  
9 purpose without Tribal permission.

10           48. During the FBI's invasion of the Reservation, upon information  
11 and belief, at least one federal agent, a John Doe Goodpasture, stated twice that  
12 he knew the federal government's presence on the Reservation was "wrong."

13           49. Upon information and belief, FBI Special Agent Matthew A.  
14 Bullwinkel led the invasion on the Reservation.

15           50. Tribal Council Chairman Harry Smiskin wrote FBI Special Agent  
16 Frank M. Harrill on February 16, and emailed the DOJ Office of Tribal Justice,  
17 the U.S. Attorney General's Office, the Department of Interior Assistant  
18 Secretary of Indian Affairs Larry Echo-Hawk and FBI Agent Frank Harrill on  
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1 February 17, 2011, expressing the Yakama Nation's concern that it was not  
2 pre-notified or consulted with in regard to the FBI's invasion of Yakama lands.

3 51. Through conversations on February 17, 2011, between Chairman  
4 Smiskin and Agent Harrill, it was learned that the FBI is researching its  
5 consultation obligation, but that Agent Harrill is not aware of any obligation to  
6 pre-notify, consult, or otherwise contact the Yakama Nation ahead of such  
7 entry.

8 52. Chairman Smiskin reiterated Yakama's objection to federal  
9 agents' entry on the Nation's lands without notification, and stated that the  
10 Nation would never harbor criminals, but that it must and always will protect  
11 the Treaty With The Yakama.

12 53. Chairman Smiskin explicitly sought assurances that the FBI would  
13 not reenter the Reservation without first notifying the Nation, which were  
14 refused.

15 54. Neither the FBI nor the DOJ, nor any of their agents, are "in the  
16 employment of the Indian Department."  
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1 **VI. CAUSES OF ACTION**

2 **First Cause of Action: Breach of Treaty With The Yakama of 1855**

3 55. Plaintiff Yakama Nation hereby incorporates all prior allegations  
4 by reference.

5 56. Defendants’ acts and/or omissions violated and will imminently  
6 interfere with and violate rights guaranteed the Nation pursuant to the Yakama  
7 Treaty With The Yakama, 12 Stat. 951. In particular, Defendants have violated  
8 and will imminently interfere with and violate the Nation’s rights to a  
9 Reservation “set apart and, so far as necessary, surveyed and marked out, for  
10 the exclusive use and benefit of said confederated tribes and bands of Indians,  
11 as an Indian reservation; nor shall any white man, excepting those in the  
12 employment of the Indian Department, be permitted to reside upon the said  
13 reservation without permission of the tribe and the superintendent and agent.”  
14 12 Stat. 951, Art. II.

15 57. The Treaty With The Yakama requires, at least, notification  
16 regarding entry, consultation, and respect for physical Reservation boundaries.

17 58. The Treaty With The Yakama requires, at least, notification  
18 regarding entry and consultation with both the “superintendent and agent.”  
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1           59. Defendants invaded the Nation without notifying or consulting the  
2 Nation.

3           60. Defendants invaded the Nation without notifying or consulting  
4 with the “superintendent and agent.”

5           61. Defendants cannot identify an emergency to which they were  
6 responding.

7           62. Defendants were aware that they would enter upon the  
8 Reservation for at least 24 hours before they entered upon the Reservation.

9           63. Defendants have no rational reason for not complying with their  
10 notification obligation; indeed, Defendants actually warned a non-elected-  
11 official employee of the Nation before entering onto the Reservation – by text  
12 message.

13           64. Defendants have refused to agree to notify the Nation in the  
14 future, despite express requests for such an agreement.

15           65. Federal agents in 1855 explained to the Yakamas that the Treaty  
16 installed Yakama “Chiefs” as the primary arbiters of law enforcement  
17 regarding Yakamas on the Reservation.

1           66. Under the Treaty, “wrongs” are to be submitted to “the chief or his  
2 council or to the agent.” And it is they who will make a “decision.” At the  
3 very least, the Treaty contemplates Tribal involvement when any of “your  
4 people do wrong.”

5           67. Under the doctrine of *pacta sunt servanda*, Defendants were  
6 required to conduct themselves in good faith toward the Nation by virtue of the  
7 Treaty With The Yakama.

8           68. This obligation of good faith is the baseline standard of conduct  
9 for Defendants, who also owe the Nation a duty of good faith pursuant to their  
10 trust responsibility.

11           69. By planning the operation for days ahead of the invasion without  
12 notification to the Nation, and otherwise entering the Nation’s lands without  
13 notification, Defendants have violated their Treaty and trust obligations of  
14 good faith.

15           70. In failing to notify the Nation, or otherwise consult regarding  
16 entry, Defendants violated the Treaty requirement to consult or notify  
17 regarding entry based on the Nation’s exclusion powers and the No-  
18 Depredations clause.

1 71. Defendants acted arbitrarily and were and are “otherwise not in  
2 accordance with law,” particularly common law, in violation of the  
3 Administrative Procedure Act, including 5 U.S.C. § 706(2)(a).

4 **Second Cause of Action: Breach of Fiduciary Duty**

5 72. Plaintiff Yakama Nation hereby incorporates all prior allegations  
6 by reference.

7 73. Under Article VIII of the Treaty With The Yakama, the Yakama  
8 Treaty Signers “acknowledge[d] their dependence upon the government of the  
9 United States[.]” 12 Stat. 951.

10 74. Pursuant to Article VIII, Defendants owe a fiduciary duty to the  
11 Nation.

12 75. “[T]he United States has a trust responsibility to Indian tribes,  
13 which guides and limits the Federal Government in dealings with Indian  
14 tribes.” 1995 DOJ Policy on Indian Sovereignty and Government-to-  
15 Government Relations with Indian Tribes, II.

16 76. Pursuant to the United States’ trust obligations to the Yakama  
17 Nation, Defendants were required to meaningfully consult with the Yakama  
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1 Nation prior to taking any action that affected the Treaty or Treaty lands or  
2 territory.

3 77. Pursuant to the United States' trust obligations to the Yakama  
4 Nation, Defendants were required to not breach the Treaty with the Yakama.

5 78. Defendants did not meaningfully consult with the Yakama Nation,  
6 in violation of their Trust obligation to do so, as found in the Treaty With The  
7 Yakama, Presidential Order 13175, and several federal and agency-specific  
8 regulations.

9 79. Defendants did not convey information to the BIA regarding their  
10 entry on the Yakama Indian Reservation, as required under the Treaty With  
11 The Yakama, thereby breaching their trust obligations to the Yakama Nation.

12 80. By breaching the Treaty With The Yakama and failing to  
13 meaningfully consult with the Yakama Nation, Defendants have breached, are  
14 breaching, and will imminently breach their fiduciary duty to the Yakama  
15 Nation.

16 **Third Cause of Action: Violation of Executive Order 13175**

17 81. The Nation hereby incorporates all prior allegations by reference.  
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1 82. By failing to meaningfully consult with the Yakama Nation,  
2 Defendants' acts and/or omissions violate and will imminently violate United  
3 States Presidential Executive Order 13175.

4 83. Among other obligations in Executive Order 13175, federal  
5 agencies must honor tribal treaty rights in implementing any policy that has  
6 tribal implications. Sec. 3(a).

7 84. Federal agencies must respect Indian sovereignty. *Id.*

8 85. By entering the Reservation in violation of the Treaty and failing  
9 to treat the Nation as a sovereign, the FBI and DOJ violated Executive Order  
10 13175.

11 86. Executive Order 13175 creates a right enforceable at equity. *Id.*,  
12 sec. 10.

13 **Fourth Cause of Action: Violation of Tribal Law and Order Act and DOJ**  
14 **Consultation Regulations and Directives**

15 87. The Nation hereby incorporates all prior allegations by reference.

16 88. The Tribal Law and Order Act (TLOA), requires the DOJ Office  
17 of Tribal Justice (OTJ) to: “[c]oordinate with each component of the  
18 Department to ensure that each component of the Department has an  
19 accountable process to ensure meaningful and timely consultation with Tribal

1 leaders in the development of regulatory policies and other actions that affect  
2 the trust responsibility of the United States to Indian Tribes, any Tribal treaty  
3 provision, the status of Indian Tribes as sovereign governments, or any other  
4 Tribal interest.” 28 CFR § 0.134(c)(7).

5 89. There was no “meaningful and timely consultation” with the  
6 Nation’s leaders regarding the invasion of the Reservation – a trust issue, a  
7 Treaty issue, and a sovereignty issue.

8 90. OTJ is obligated to “[e]nsure that the Department and its  
9 components work with Indian Tribes on a government-to-government basis.”  
10 28 CFR § 0.134(c)(4).

11 91. OTJ was required to “[e]nsure that the consultation process of  
12 each component of the Department is consistent with Executive Order 13175  
13 and with the Department's consultation policy.” 28 CFR § 0.134(c)(8).

14 92. The DOJ, through its OTJ, did none of these things, even though  
15 its own internal regulations required it to.

16 93. DOJ’s own internal policies require it to “engage with tribal  
17 nations on a government-to-government basis.” 2010 Department Of Justice  
18  
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1 Plan To Develop A Tribal Consultation and Coordination Policy Implementing  
2 Executive Order 13175, 1. DOJ has failed to follow its own published policies.

3 94. By failing to meaningfully consult with the Yakama Nation before  
4 entering its Reservation, Defendants' acts and/or omissions violated and will  
5 imminently violate DOJ and FBI regulations, including but not limited to the  
6 following:

7 95. The 1995 DOJ Policy on Indian Sovereignty and Government-to-  
8 Government Relations with Indian Tribes requires the FBI to "consult with  
9 tribal leaders in its decisions that relate to or affect the sovereignty, rights,  
10 resources or lands of Indian tribes. [The FBI] will conduct such consultation in  
11 light of its mission."

12 96. Although the policy disclaims that it is "not intended to create any  
13 right enforceable in any cause of action," it is an agency regulation with which  
14 such agency must comply.

15 97. President Obama's Memorandum on Tribal Consultation of 2009  
16 required the DOJ to submit to the Director of the Office of Management and  
17 Budget (OMB), by February 5, 2009, "a detailed plan of actions the agency  
18 will take to implement the policies and directives of Executive Order 13175."  
19



1 98. On January 27, 2010, DOJ issued a “plan of actions for  
2 developing a consultation and coordination policy (hereinafter, ‘consultation  
3 policy’)[.]” In other words, the DOJ issued a plan to create a consultation  
4 policy rather than a consultation policy.

5 99. Still, DOJ promised to develop the required consultation policy; it  
6 has not yet done so. As a result of this failure to timely develop the required  
7 consultation policy, DOJ has harmed, injured and severely prejudiced the  
8 Nation.

9 100. The Attorney General’s Guidelines For Domestic FBI Operations  
10 allow information to be disseminated to tribal governments and agencies, in  
11 advance of any FBI agent’s entry upon the Reservation. Guidelines,  
12 VI(B)(1)(b). The Guidelines require the FBI to share and disseminate  
13 information as required by “treaties” and “Executive Orders.” *Id.* VI(B)(2);

14 101. The failure of the FBI to share and disseminate information as  
15 allowed by internal regulations and required under the Treaty With The  
16 Yakama has harmed the Nation, violated its sovereignty, and violated the  
17 Treaty.

1           102. A DOJ-BIA Memorandum of Understanding requires the DOJ to  
2 notify the BIA when it “receives information indicating a violation of law  
3 falling within the investigative jurisdiction of the other agency,” MOU  
4 Between BIA and FBI, IV(6).

5           103. The failure of the DOJ to convey information indicating a  
6 violation of law falling within the investigative jurisdiction of the BIA has  
7 harmed the Nation, violated its sovereignty, and violated the Treaty With The  
8 Yakama.

9           104. The DOJ Memorandum For USAOs with Districts Containing  
10 Indian Country, requires every US Attorney’s Office (USAO) with Indian  
11 Country in its district to foster “consistent and effective communication” with  
12 tribes; engage in annual consultation with the tribes in their district; and  
13 develop an operational plan addressing public safety in Indian Country. USAO  
14 operational plans should contain “a plan to develop and foster an ongoing  
15 government-to-government relationship [and] a plan to improve  
16 communications with each tribe.” David W. Ogden Memorandum for US  
17 Attorneys with Districts Containing Indian Country of January 11, 2010.

1           105. The failure of the DOJ, acting through its USAO, to undertake  
2 each of these directives has harmed the Nation. The DOJ has not consistently  
3 or effectively communicated with the Nation, engaged in meaningful annual  
4 consultation with the Nation, developed an operational plan addressing public  
5 safety in consultation with the Nation; developed or fostered an ongoing  
6 government-to-government relationship with the Nation, nor planned to or  
7 actually improved communications with the Nation. Rather, the DOJ has  
8 entered the Nation's Reservation without one scintilla of respect for the Treaty  
9 With The Yakama.

10           106. Through each of these actions, DOJ and the FBI created a justified  
11 expectation that the Nation would receive a meaningful opportunity for  
12 consultation. No meaningful consultation or notification was even attempted,  
13 in violation of the foregoing regulations, the Administrative Procedure Act,  
14 federal Indian common law, and the Treaty With The Yakama.

15           **Fifth Cause of Action: Violation of Administrative Procedure Act**

16           107. The Nation hereby incorporates all prior allegations by reference.

17           108. The Nation and its members have been injured and continue to be  
18 injured by Defendants' illegal agency actions, including, but not limited to,  
19

1 their entry, decision to enter without consultation or notification, illegal future  
2 entry, decision to refuse to consult or provide notification in connection with  
3 such illegal future entry, refusal to consult, refusal to notify, refusal to consult  
4 regarding a procedure for consultation and notification, violation of Yakama  
5 sovereignty, violation of Treaty rights, and violation of other federal law  
6 protections.

7 109. Federal agency action taken without fully complying with a tribal  
8 consultation policy adopted by the agency is subject to judicial review under  
9 the APA.

10 110. An agency must comply with its own internal policies even if  
11 those are more rigorous than procedures required by the APA.

12 111. Where a federal agency has established a policy requiring prior  
13 consultation with a tribe, and therefore created a justified expectation that the  
14 tribe will receive a meaningful opportunity to express its views before policy is  
15 made, that opportunity must be given.

16 112. Defendants failed to fully comply with their tribal consultation  
17 policy and federal consultation policy in general.

1 113. Defendants' actions, as outlined in this complaint, are illegal,  
2 arbitrary, and capricious, and abuses of discretion, and agency actions for  
3 purposes the Administrative Procedures Act, 5 U.S.C. § 702.

4 **Sixth Cause of Action: Declaratory Judgment**

5 114. The Nation hereby incorporates all prior allegations by reference.

6 115. The foregoing and following allegations entitle the Nation to a  
7 declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202.

8 116. Defendants have violated the Treaty With The Yakama, along  
9 with its legal, trust, and statutory obligations to the Nation.

10 117. These violations entitle the Nation to a declaration that Defendants  
11 have violated the Treaty, federal laws, and regulations by failing to notify the  
12 Nation of its entry upon the Yakama Indian Reservation.

13 **Seventh Cause of Action: *Parens Patriae Bivens* Claim for Damages**

14 118. The Nation hereby incorporates all prior allegations by reference.

15 119. Defendants John Doe FBI Agents violated the Treaty With The  
16 Yakama in their personal capacity.

17 120. Against John Doe FBI Agents, the Nation, as *parens patriae*,  
18 seeks compensatory and punitive damages, in an amount to be shown at trial,  
19

1 on behalf of its members for the violation of the Treaty With The Yakama  
2 pursuant to *Bivens*, 403 U.S. 388.

3 121. John Doe FBI Agents entered the Yakama Indian Reservation  
4 under the color of federal law, were aware that neither they nor any other  
5 Defendant had consulted with, or notified the Nation of such entry, and that  
6 such notification or consultation was required.

7 122. Indeed, at least one of John Doe FBI Agents, John Doe  
8 Goodpasture, conceded that John Doe FBI Agents' presence on the Yakama  
9 Indian Reservation was wrong.

10 123. John Doe FBI Agents knowingly and intentionally deprived the  
11 entire membership of the Yakama Nation of its rights under the Treaty With  
12 The Yakama, and therefore the Constitution, by knowingly and intentionally  
13 committing those Treaty, trust, and federal law violations alleged in this  
14 complaint.

15 **Eighth Cause of Action: Writ of Mandamus Under 28 U.S.C. § 1361**

16 124. The Nation hereby incorporates all prior allegations by reference.

17 125. Defendants have breached those obligations and duties alleged in  
18 this complaint.

1 126. The Treaty, federal law, and Defendants' trust obligation to the  
2 Nation impose a non-discretionary obligation on Defendants to notify the  
3 Nation before entering onto the Yakama Indian Reservation under these facts.

4 127. Defendants' actions have harmed, injured, and severely prejudiced  
5 the Nation, directly harming the sovereignty of the Nation and the rights of its  
6 members to a Reservation as described in the Treaty With The Yakama.

7 128. Accordingly, the Nation is entitled to a writ of mandamus  
8 pursuant to 28 U.S.C. § 1361 to compel Defendants immediately to comply  
9 with their obligations, both to provide notification and implement a legally  
10 adequate plan for consultation.

11 **Ninth Cause of Action: Breach of the Treaty With The Yakama Against**  
12 **the County of Yakima**

13 129. The Treaty With The Yakama is the supreme law of the land.

14 130. The county entered the Yakama Indian Reservation for purposes  
15 unrelated to compulsory school attendance; public assistance; domestic  
16 relations; mental illness; juvenile delinquency; adoption proceedings;  
17 dependent children; and operation of motor vehicles upon the public streets,  
18 alleys, roads and highways.  
19

1 131. The county lacks any authority to enter the Yakama Indian  
2 Reservation for the purposes for which it entered on February 16, 2011, absent  
3 Tribal permission.

4 132. By entering the Yakama Indian Reservation without the Nation's  
5 permission, the county violated the Treaty With The Yakama, acted ultra vires,  
6 and violated federal law.

7 **VII. RELIEF**

8 The Confederated Tribes and Bands of the Yakama Nation respectfully  
9 requests that this Court:

10 A. A declaratory judgment, pursuant to 28 U.S.C. § 2201, that  
11 Defendants have violated and are violating the Yakama Nation's Treaty,  
12 statutory, legal, fiduciary, and trust obligations to the Nation by entering onto  
13 Yakama lands without notification and consultation regarding the same.

14 B. An injunction, pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2202,  
15 and the Court's equitable authority ordering Defendants to comply with the  
16 Yakama Nation's Treaty rights, and the United States' statutory, legal,  
17 fiduciary and trust obligations, by notifying the Nation of any entry onto  
18 Reservation lands and consulting regarding the same.



1 C. A declaratory judgment and injunction against the county,  
2 declaring that the county has violated the Yakama Nation's Treaty and federal  
3 law and prohibiting the county from future violations of the same.

4 D. A writ of mandamus, pursuant to 28 U.S.C. § 1361, directing  
5 Defendants to comply with their obligations under the Treaty, statute, law, and  
6 federal trust obligations by (1) notifying the Yakama Nation of any entry onto  
7 Reservation property so that Tribal and federal officer safety can be ensured by  
8 Tribal police and (2) immediately carrying out their obligations to develop and  
9 implement meaningful consultation policies with the Nation.

10 E. Compensatory and punitive damages against those federal  
11 officials, in their individual capacity, who have violated the constitutional and  
12 Treaty rights of every enrolled member of the Yakama Nation.

13 F. Other appropriate injunctive or equitable relief necessary to  
14 provide complete relief to the Yakama Nation and its members.

15 G. Costs and fees, including attorney's fees, under 28 U.S.C. § 2412.

16 //

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18 //

1 DATED this 30th day of March 2011.

2 s/Gabriel S. Galanda  
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4 Anthony S. Broadman, WSBA #39508  
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CERTIFICATE OF SERVICE

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I, Gabriel S. Galanda, say:

1. I am now, and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of 18 years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

2. On March 29, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, pursuant to which the following will be served:

Pamela De Rusha  
United States Attorney's Office  
E-mail: [Pamela.derusha@usdoj.gov](mailto:Pamela.derusha@usdoj.gov)

DATED this 30th day of March 2011.

s/Gabriel S. Galanda  
Gabriel S. Galanda  
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