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12 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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 ERIC H. HOLDER, JR., Attorney

NO. CV-11-3028-RMP
COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF,
MANDAMUS, AND *BIVENS*
DAMAGES

1 General of the United States; UNITED
2 STATES DEPARTMENT OF JUSTICE;
3 ROBERT S. MUELLER III, Director of
4 the Federal Bureau of Investigation;
5 FEDERAL BUREAU OF
6 INVESTIGATION; UNITED STATES
7 OF AMERICA; JOHN DOE FBI
8 AGENTS 1-100,
9 Defendants.

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 Yakama Nation, both as a federally-recognized Indian tribal
15 government and as *parens patriae* on behalf of all 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 Indian Reservation for non-emergency purposes – without notification
19 to or consultation with the Nation – violates the Treaty With The Yakama, 12
Stat. 951; various federal consultation laws; and Defendants’ own regulations.

2. Early in the morning of February 16, 2011, Defendants, acting
through scores of federal agents believed to be from Mississippi, invaded the

1 Yakama Nation, guns drawn, having given no prior notice to the sovereign on
2 whose land they were intruding. Defendants violated the Treaty With The
3 Yakama and other federal laws, by doing so.

4 3. Defendants implicitly admitted their obligation to notify or consult
5 with the Nation by text-messaging an employee of the Nation and warning him
6 about the invasion. But they failed to do so until after the incursion had
7 commenced – indeed until after droves of federal officers from across the
8 United States had descended upon the Yakama Indian Reservation. Text
9 messaging a Yakama employee is not the government-to-government
10 consultation and notification required by federal law. No emergency prevented
11 tribal consultation or notification.

12 4. Absent advance notification to the Nation, or an emergency that
13 might prevent pre-notification, Defendants' invasion of the Yakama Indian
14 Reservation violated the Treaty With The Yakama and other federal laws.
15 Defendants have refused agreement to provide pre-notification to the Nation
16 under similar circumstances going forward.

17 5. Because the Yakama Nation's Treaty rights, territorial integrity
18 and members can be secure only with a declaration of rights, and injunctive
19 relief as prayed for herein, the Nation respectfully requests an injunction

1 recognized Indian tribal government, asserting claims arising under the 1855
2 Treaty With The Yakama, 12 Stat. 951; the U.S. Constitution; *Bivens v. Six*
3 *Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971);
4 and other laws of the United States; (b) 28 U.S.C. § 1361, in that the Nation
5 seeks mandamus to compel federal officers, federal employees, and federal
6 agencies to perform a duty owed to the Tribe; (c) 28 U.S.C. §§ 2201 and 2202,
7 in that the Nation seeks a declaratory judgment and other proper relief, and (d)
8 5 U.S.C. § 702, in that the Nation seeks relief for other than money damages
9 against agencies of the United States and its officers in their official capacities.

10 9. The Yakama Nation seeks an award of costs and fees, including
11 attorney's fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

12 10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b),
13 and (e) because a substantial part of the actions or omissions giving rise to the
14 claims occurred in this District. The Yakama Indian Reservation is located
15 geographically within the State of Washington.

16 III. PLAINTIFF

17 11. Plaintiff the Confederated Tribes and Bands of the Yakama
18 Nation is a federally recognized Indian tribal government as signatory to the
19 1855 Treaty With The Yakama, 12 Stat. 951.

1 12. The Yakama People have resided in and around the current
2 Yakama Indian Reservation since time immemorial. Under Article I of the
3 Treaty of 1855, the Yakama Nation ceded over 10 million of acres of its
4 aboriginal lands to the United States, comprising approximately one quarter of
5 the State of Washington.

6 13. The Yakama Nation complains as a tribal government and as
7 *parens patriae* for all enrolled members of the Confederated Tribes and Bands
8 of the Yakama Nation.

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

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

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

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

9 24. Defendants John Doe FBI Agents, in their individual capacity,
10 violated the Treaty rights of all enrolled members of the Yakama Nation by
11 entering the Yakama Indian Reservation in violation of the Treaty and other
12 federal law.

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

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

15 25. The Confederated Tribes and Bands of the Yakama Nation is a
16 federally-recognized Indian tribal government, whose Reservation was
17 established by the 1855 Treaty With The Yakama, 12 Stat. 951, Article II. The
18 Yakama Nation currently occupies, regulates and self-governs approximately
19 1.3 million acres of lands within the Yakama Indian Reservation.

1 26. In 1855 the Yakamas signed a Treaty ceding about 10 million
2 acres – 90 percent of their aboriginal land – in exchange for the rights
3 guaranteed by the United States.

4 27. The Yakama Nation understandably assigns a special
5 significance to each part of the Treaty at the time of signing and continues to
6 view the Treaty as a sacred document today.

7 28. Defendants promised that the Yakama Nation’s Reservation
8 would “be set apart and, so far as necessary, surveyed and marked out, for the
9 exclusive use and benefit of said confederated tribes and bands of Indians, as
10 an Indian reservation; nor shall any white man, excepting those in the
11 employment of the Indian Department, be permitted to reside upon the said
12 reservation without permission of the tribe and the superintendent and agent.”
13 12 Stat. 951, Art. II.

14 29. The Yakama Nation, unlike other tribal governments, has the
15 express and specialized right to withhold permission for entry upon the
16 reservation. The Nation’s Treaty includes the express limitation, “excepting
17 those in the employment of the Indian Department” – today’s Bureau of Indian
18 Affairs (BIA). 12 Stat. 951, Art. II.

19

1 30. The Treaty does not reference any other department or agency of
2 the federal government, which per the canon of construction *expressio unius*
3 operates to disallow entry upon the Yakama Indian Reservation by any agency
4 other than the BIA absent the Nation's permission.

5 31. The United States promised the Yakamas that they could rely on
6 all of the Treaty's provisions being carried out strictly.

7 32. The United States and Isaac Stevens, negotiating on behalf of the
8 United States, considered the Yakamas to be of great importance as they
9 occupied strategically important territory between Walla Walla and the Puget
10 Sound.

11 33. The Yakama Treaty exclusion right, which is not generalized but
12 express, was explained to the Yakamas as follows:

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

15 Gen. Palmer said: Certainly.

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

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

1 Treaty Minutes, 99.

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

19

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

5 36. As is clear from the Treaty Minutes, the Nation retained – expressly
6 – the right to at least be involved in federal law enforcement activities on its
7 lands. It is the duty of the Nation itself to punish an offender, and it is to the
8 “chiefs” that the federal government must look to for both making decisions
9 regarding law enforcement and punishing offenders.

10 37. Since 1977, the Yakama Nation has had on its books a Uniform
11 Extradition Act, codified at Title 5 of the Revised Yakama Nation Law and
12 Order Codes, which governs “the arrest and deliverance to the executive
13 authority of any State, Tribe or the United States any person charged with a
14 crime in that jurisdiction” and is found on the Yakama Indian Reservation.
15 Section 5.01.01.

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

17 38. On February 15, 2011, at 10:25 a.m., the FBI obtained a warrant
18 from the District Court, *ex parte*, to search a premises located on the Yakama
19 Indian Reservation.

1 39. Upon information and belief, the several federal agents who
2 invaded the Nation with guns drawn, are based in Mississippi, meaning that the
3 invasion was planned for several days, and possibly weeks ahead of its
4 occurrence.

5 40. The Nation is aware of no emergency, or emergent set of
6 circumstances that brought the FBI to its Reservation.

7 41. It was not until the following day, February 16, 2011, at
8 approximately 6 a.m., when an FBI agent text-messaged Kelly Rosenow,
9 Yakama Nation Public Safety Commissioner, stating: “Kelly-it’s Jen FBI.
10 About to do a large search on the reservation and wanted you to hear about it
11 from us 1st. Call me asap for details 509-xxx-xxxx.”

12 42. Mr. Rosenow called the agent, who did not answer. At 6:20 a.m.
13 Mr. Rosenow and the agent spoke, but by that time, the FBI had already
14 invaded the Yakama Indian Reservation and executed the warrant.

15 43. Critically, the Nation was not notified, consulted, or conferred
16 with before the FBI came on to the Yakama Indian Reservation. Nor did the
17 FBI in any way honor the Nation’s Uniform Extradition Act or the protocols
18 set forth therein.

19

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

8 45. Through conversations on February 17, 2011, between Chairman
9 Smiskin and Agent Harrill, it was learned that the FBI is researching its
10 consultation obligation, but that Agent Harrill is not aware of any obligation to
11 pre-notify, consult, or otherwise contact the Yakama Nation ahead of such
12 entry.

13 46. Chairman Smiskin reiterated Yakama's objection to federal
14 agents' entry on the Nation's lands without notification, and stated that the
15 Nation would never harbor criminals, but that it must and always will protect
16 the Treaty With The Yakama.

17 47. Chairman Smiskin explicitly sought assurances that the FBI would
18 not reenter the Reservation without first notifying the Nation, which were
19 refused.

1 48. Neither the FBI nor the DOJ, nor any of their agents, are “in the
2 employment of the Indian Department.”

3 **VI. CAUSES OF ACTION**

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

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

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

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

18 52. Defendants invaded the Nation without notifying or consulting the
19 Nation.

1 53. Defendants cannot identify an emergency to which they were
2 responding.

3 54. Defendants were aware that they would enter upon the
4 Reservation for at least 24 hours before they entered upon the Reservation.

5 55. Defendants have no rational reason for not complying with their
6 notification obligation; indeed, Defendants actually warned a non-elected-
7 official employee of the Nation before entering onto the Reservation – by text
8 message.

9 56. Defendants have refused to agree to notify the Nation in the
10 future, despite express requests for such an agreement.

11 57. Federal agents in 1855 explained to the Yakamas that the Treaty
12 installed Yakama “Chiefs” as the primary arbiters of law enforcement
13 regarding Yakamas on the Reservation.

14 58. Under the Treaty, “wrongs” are to be submitted to “the chief or his
15 council or to the agent.” And it is they who will make a “decision.” At the
16 very least, the Treaty contemplates Tribal involvement when any of “your
17 people do wrong.”

18

19

1 59. Under the doctrine of *pacta sunt servanda*, Defendants were
2 required to conduct themselves in good faith toward the Nation by virtue of the
3 Treaty With The Yakama.

4 60. This obligation of good faith is the baseline standard of conduct
5 for Defendants, who also owe the Yakama Nation a duty of good faith pursuant
6 to their trust responsibility.

7 61. By planning the operation for days ahead of the invasion without
8 notification to the Yakama Nation, and otherwise entering the Nation's lands
9 without notification, Defendants have violated their Treaty and trust
10 obligations of good faith.

11 62. In failing to notify the Yakama Nation, or otherwise consult
12 regarding entry, Defendants violated the Treaty requirement to consult or
13 notify regarding entry based on the Nation's exclusion powers and the No-
14 Depredations clause. In addition, Defendants acted arbitrarily and were and
15 are "otherwise not in accordance with law," particularly common law, in
16 violation of the Administrative Procedure Act, including 5 U.S.C. § 706(2)(a).

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

18 63. Plaintiff Yakama Nation hereby incorporates all prior allegations
19 by reference.

1 64. “[T]he United States has a trust responsibility to Indian tribes,
2 which guides and limits the Federal Government in dealings with Indian
3 tribes.” 1995 DOJ Policy on Indian Sovereignty and Government-to-
4 Government Relations with Indian Tribes, II.

5 65. Pursuant to the United States’ trust obligation to the Yakama
6 Nation, Defendants were required to meaningfully consult with the Yakama
7 Nation prior to taking any action that affected the Treaty or Treaty lands or
8 territory.

9 66. Defendants did not meaningfully consult with the Yakama Nation,
10 in violation of their Trust obligation to do so, as found in the Treaty With The
11 Yakama, Presidential Order 13175, and several federal and agency-specific
12 regulations.

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

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

17 68. Plaintiff Yakama Nation hereby incorporates all prior allegations
18 by reference.

19

1 69. 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 70. 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 71. Federal agencies must respect Indian sovereignty. *Id.*

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

11 73. 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**
14 **DOJ Consultation Regulations and Directives**

15 74. Plaintiff Yakama Nation hereby incorporates all prior allegations
16 by reference.

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

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

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

9 77. OTJ is obligated to “[e]nsure that the Department and its
10 components work with Indian Tribes on a government-to-government basis.”
11 28 CFR § 0.134(c)(4).

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

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

17 80. DOJ’s own internal policies require it to “engage with tribal
18 nations on a government-to-government basis.” 2010 Department Of Justice
19

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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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.

18 89. A DOJ-BIA Memorandum of Understanding requires the DOJ to
19 notify the BIA when it “receives information indicating a violation of law

1 falling within the investigative jurisdiction of the other agency,” MOU
2 Between BIA and FBI, IV(6).

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

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

16 92. The failure of the DOJ, acting through its USAO, to undertake
17 each of these directives has harmed the Nation. The DOJ has not consistently
18 or effectively communicated with the Nation, engaged in meaningful annual
19 consultation with the Nation, developed an operational plan addressing public

1 safety in consultation with the Nation; developed or fostered an ongoing
2 government-to-government relationship with the Nation, nor planned to or
3 actually improved communications with the Nation. Rather, the DOJ has
4 entered the Nation's Reservation without one scintilla of respect for the Treaty
5 With The Yakama.

6 93. Through each of these actions, DOJ and the FBI created a justified
7 expectation that the Nation would receive a meaningful opportunity for
8 consultation. No meaningful consultation or notification was even attempted
9 by Defendants, in violation of the foregoing regulations, the Administrative
10 Procedure Act, federal Indian common law, and the Treaty With The Yakama.

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

12 94. Plaintiff Yakama Nation hereby incorporates all prior allegations
13 by reference.

14 95. The Yakama Nation and its members have been injured and
15 continue to be injured by Defendants' illegal entry, illegal future entry, and
16 violation of Yakama sovereignty, Treaty rights, and federal law protections.

17 96. Defendants' actions, as outlined in this complaint, are illegal,
18 arbitrary, capricious and abuses of discretion, and agency action for purposes
19 the Administrative Procedures Act, 5 U.S.C. § 702.

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

2 97. Plaintiff Yakama Nation hereby incorporates all prior allegations
3 by reference.

4 98. The foregoing and following allegations entitle the Yakama
5 Nation to a declaratory judgment pursuant to 28 U.S.C. § 2201 and 2202.

6 99. Defendants have violated the Treaty With The Yakama, along
7 with its legal, trust, and statutory obligations to the Nation.

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

11 **Seventh Cause of Action: *Parents Patriae Bivens* Claim for Damages**

12 101. Plaintiff Yakama Nation hereby incorporates all prior allegations
13 by reference.

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

16 103. Against John Doe FBI Agents, the Yakama Nation, as *parents*
17 *patriae*, seeks compensatory and punitive damages, in an amount to be shown
18 at trial, on behalf of its enrolled members for the violation of the Treaty With
19 The Yakama pursuant to *Bivens*, 403 U.S. 388.

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

5 105. John Doe FBI Agents deprived the entire membership of the
6 Yakama Nation of its rights under the Treaty With The Yakama, and therefore
7 the Constitution, by knowingly and intentionally committing those Treaty,
8 trust, and federal law violations alleged in this complaint.

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

10 106. Plaintiff Yakama Nation hereby incorporates all prior allegations
11 by reference.

12 107. Defendants have breached those obligations and duties alleged in
13 this complaint.

14 108. The Yakama Treaty of 1855, other federal law, and Defendants'
15 trust obligation to the Yakama Nation impose a non-discretionary obligation on
16 Defendants to notify the Nation before entering onto the Yakama Indian
17 Reservation under these facts.

18 109. Defendants' actions have harmed, injured, and severely prejudiced
19 the Yakama Nation, directly harming the sovereignty of the Nation and the

1 rights of its members to a Reservation as described in the Treaty With The
2 Yakama.

3 110. Accordingly, the Yakama Nation is entitled to a writ of mandamus
4 pursuant to 28 U.S.C. § 1361 to compel Defendants immediately to comply
5 with their obligations, both to provide notification and implement a legally
6 adequate plan for consultation.

7 **VII. RELIEF**

8 Plaintiff Yakama Nation respectfully requests that this Court:

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

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

18 C. A writ of mandamus, pursuant to 28 U.S.C. § 1361, directing
19 Defendants to comply with their obligations under the Treaty, statute, law, and

1 federal trust obligations by (1) notifying the Yakama Nation of any entry onto
2 Reservation property so that Tribal and federal officer safety can be ensured by
3 Tribal police and (2) immediately carrying out their obligations to develop and
4 implement meaningful consultation policies with the Nation.

5 D. Compensatory and punitive damages against those federal
6 officials, in their individual capacity, who have violated the constitutional and
7 Treaty rights of every enrolled member of the Yakama Nation.

8 E. Other appropriate injunctive or equitable relief necessary to
9 provide complete relief to the Yakama Nation and its enrolled members.

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

11 DATED this 8th day of March 2011.

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s/Gabriel S. Galanda
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