

1 Gabriel S. Galanda, WSBA #30331  
Anthony S. Broadman, WSBA #39508  
2 Galanda Broadman PLLC  
11320 Roosevelt Way NE  
3 P.O. Box 15146  
Seattle, WA 98115  
4 (206) 691-3631

Honorable Rosanna Malouf Peterson

5 Julio V.A. Carranza, WSBA #38211  
R. Joseph Sexton, WSBA # 38063  
6 Yakama Nation Office of Legal  
Counsel  
7 401 Fort Road/P.O. Box 151  
Toppenish, WA 98948  
8 (509) 865-7268

9 Attorneys for the Confederated Tribes  
and Bands of the Yakama Nation  
10  
11

12 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

13 CONFEDERATED TRIBES AND  
14 BANDS OF THE YAKAMA NATION,

15 Plaintiffs;

16 v.

17 Eric H. Holder, Jr.,; et al.,

18 Defendants.  
19

NO. CV-11-3028-RMP

MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF CONFEDERATED  
TRIBES AND BANDS OF THE  
YAKAMA NATION'S MOTION  
FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

1 Plaintiffs, the Confederated Tribes and Bands of the Yakama Nation  
2 (“Yakama Nation”), respectfully request that the Court enjoin Yakima County  
3 (“County”) from further entering Yakama Reservation trust lands to assert criminal  
4 jurisdiction over Yakama members. This narrow injunction is necessary to preserve  
5 Yakama sovereignty, Reservation law and order, and the territorial “permission”  
6 right guaranteed by Article II of the Treaty; all of which the County is regularly and  
7 increasingly violating. The County may enter Yakama Reservation trust land to  
8 arrest or detain Yakamas or to search Yakama homes only by complying with  
9 Yakama and federal laws.

## 10 I. FACTS

### 11 A. The Yakama Nation Treaty and Laws

12 In the Treaty With the Yakama, the United States of America expressly and  
13 unambiguously promised the Yakamas that “[no] white man, excepting those in the  
14 employment of the Indian Department, [shall] be permitted to reside upon the said  
15 reservation without permission of the tribe,” 12 Stat. 951, Art. II; and that the  
16 Yakamas could rely on “all [the Treaty’s] provisions being carried out strictly.”  
17 *U.S. v. Smiskin*, 487 F.3d 1260, 1265-66 (9th Cir. 2007). The United States  
18 promised the Yakamas that “**no white man could go [there] without [Tribal]**  
19 **consent. . . . I repeat again no white man could go there unless the red man**  
**consented to it.”** ISAAC INGALLS STEVENS, A TRUE COPY OF THE RECORD OF THE

1 OFFICIAL PROCEEDINGS AT THE COUNCIL IN THE WALLA WALLA VALLEY, 1855, at  
2 21 (Darrell Scott ed., 1985) (“Minutes”); *see also Cree v. Flores*, 157 F.3d 762 (9th  
3 Cir. 1998) (Treaty Minutes are accurate). He again repeated: **“Those tracts the  
4 white man cannot enter without the consent of the red man.”** Minutes, at 22.  
5 On those lands, the Yakamas were promised that they could “live in peace.” *Id.* at  
6 21, 29. The County has violated this binding law, repeatedly; and will do so again  
7 unless stopped by this Court.

8 Pursuant to Article II of the Treaty, the Yakama Nation has legislated the  
9 procedure for County officers to follow when entering Yakama Reservation trust  
10 land to execute state arrest or search warrants on Yakamas. *See* REV. YAKAMA  
11 CODE § 2011 *et seq.* (“Title 2011”). The codified procedure is simple. State  
12 officers must first be “permitted or invited” by the Yakama Tribal Council or  
13 Chairman. REV. YAKAMA CODE § 2011.01.02. The procedure is designed to allow  
14 Yakama Tribal Police to assist non-tribal police in on-Reservation law enforcement  
15 activities so that the Yakama Reservation does not serve as a haven for criminals.  
16 *See* Declaration of R. Joseph Sexton (“Sexton Decl.”), Ex. I, at 51 (“[T]he Yakama  
17 Nation has no desire to harbor criminals, of any kind.”)<sup>1</sup>; *see also Smiskin*, 487 F.3d  
18 at 1271 (“The Yakama Nation is a sovereign nation . . . not a rogue organization or

19 <sup>1</sup> Declarations referenced are those offered in support the Nation’s Motion for  
Temporary Restraining Order and Preliminary Injunction. *See* ECF Nos. 233-36.

1 menace to civil order.”).

2 The procedure the County must follow is not onerous. Permission can be  
3 granted via a phone call to the Tribal Chairman, as has recently occurred with  
4 federal agents permitted entry upon Yakama trust lands. Declaration of Tribal  
5 Council Chairman Harry Smiskin (“Smiskin Decl.”), at ¶¶ 4-6. Yakama law also  
6 contemplates that the County may enter into a memorandum of understanding  
7 (MOU) with the Nation that would operate as blanket permission for County law  
8 enforcement entry, with conditions like required coordination with Yakama Tribal  
9 Police. *See* Sexton Decl., Ex. A, at 10. The Nation has offered to negotiate an  
10 MOU with the County and its Sheriff, but they have not responded. Sexton Decl.,  
11 Ex. A at 8; Ex. B, at 20.

12 If lives are at risk, permission is not even required; the Yakama Nation has  
13 legislated an exception to the permission requirement in exigent circumstances.  
14 Sexton Decl. Ex. A, at 13; REV. YAKAMA CODE § 2011.01.09. The County has  
15 possessed Title 2011 since at least June of 2011, but has expressly disregarded that  
16 Yakama law. *See* Sexton Decl., Exs. A, B, C, E, G, I.

17 **B. The County’s Violations Of Tribal And Federal Law.**

18 On at least five occasions in the last year, Yakima County Sheriff’s Deputies  
19 have violated Yakama laws in asserting state authority over Yakama Reservation  
trust lands to arrest or seize the property of enrolled Yakama members. The

1 County's regular refusal to comply with REV. YAKAMA CODE § 2011.01.02  
2 culminated in recent days with armed County personnel invading a Yakama Elder  
3 housing project, violating Yakama and federal law in the process. *See* REV.  
4 YAKAMA CODE § 2011.01.02; 12 Stat. 951, Art. II.

5 As the Court is aware, on February 16, 2011, at 6:00 a.m., a County deputy  
6 entered Yakama Reservation trust lands before dawn while participating in a federal  
7 raid and the service of a search warrant upon enrolled Yakama members. ECF No.  
8 55 at 16. Thereafter, the County announced its legal position that:

9 We also have the authority to arrest even enrolled [Yakama] persons on  
10 trust land if the crime we are investigating or warrant (arrest or search)  
11 we are serving stems from a situation in which we have arrest authority.  
12 Sexton Decl., Ex. C, at 23. (emphasis in original). The Nation respectfully  
13 disagreed with the County's stated jurisdictional position, and asked Yakima  
14 County and its Sheriff to work toward resolving the disagreement out of court:

14 It has come to our attention that the Yakima County Sheriff's Office  
15 holds certain opinions regarding its jurisdiction on Yakama lands. The  
16 Yakama Nation believes that these opinions are incorrect. . . . Rather  
17 than add to the issues before the Court in *Yakama v. Holder*, we invite  
18 you both and your legal counsel to provide us with any information you  
19 believe might be relevant in justifying your positions regarding the  
20 Sherriff's Office authority on the Reservation. I hope that . . . you and  
21 your lawyers will sit with the Nation and its lawyers and attempt to  
22 resolve it outside of the courtroom.  
23 Sexton Decl., Ex. A, at 7-8. Neither the County nor its elected Sheriff bothered to  
24 respond to the Yakama Nation's letter or overture. Smiskin Decl., at ¶ 8.

25 Then, in October 2011, Yakima County Sheriff's Deputies were involved in a

1 shooting near the White Swan High School on Reservation trust land. Sexton  
2 Decl., Ex. B. On December 6, 2011, the Nation wrote to the County:

3 The Yakima County Sheriff's Office, FBI agents, and a BIA agent  
4 jointly participated in law enforcement activity that resulted in a  
5 shooting near a school last month on the Reservation. Your officers did  
6 so without bothering to notify or involve Yakama Nation authorities or  
7 officers. . . . Each of your agencies violated the Treaty With The  
8 Yakama, 12 Stat. 951 (1859), among various other federal laws, and  
9 RYC Title 2011. . . . [R]ather than add to the issues before the U.S.  
10 District Court in *Yakama v. Holder*, we invite you to explain exactly  
11 what happened in White Swan last week and that you provide us any  
12 non-privileged incident reports or other information on a government-  
13 to-government basis.

14 *Id.* at 19-20. Again, the County and its Sheriff did not bother to respond to the  
15 Yakama Nation's inquiry or overture. Smiskin Decl., at ¶ 9.

16 Meanwhile, on August 29, 2011, County Sheriff's Deputies entered Yakama  
17 trust lands and attempted to illegally remove a young Yakama child from a  
18 Yakama home. Declaration of Tribal Police Officer Chad Sholtys ("Sholtys  
19 Decl."), at ¶ 9. The County's Deputies had entered Yakama lands to seize the  
20 Yakama child. *County* lawyers told them they lacked authority to do so. *Id.* The  
21 Deputies knew they were on Yakama trust lands, improperly asserting state  
22 jurisdiction and process over Yakamas. *See* video referenced at Sholtys Decl., ¶ 6,  
23 at 1:28, 1:46.

24 In recent weeks, it has become routine for the County to illegally enter  
25 Yakama Reservation trust lands to impose jurisdiction and process over enrolled

1 Yakamas without complying with Yakama law and procedure. On February 18,  
2 2012, County Sheriff's Deputies entered the Wanity Park housing facility for  
3 Tribal Elders, on Reservation trust land, searching for an incapacitated Yakama  
4 Elder, Jesse Sampson, on a non-exigent out-of-state warrant. Declaration of Tribal  
5 Police Captain James Shike ("Shike Decl."), Ex. A. Once again, the County  
6 Deputies made no effort to comply with Title 2011 or the Treaty of 1855. *See*  
7 *Sexton Decl.*, Ex. D. When they arrived on February 18, Mr. Sampson was not  
8 home; he was hospitalized. *Shike Decl.*, Ex. A. So the Deputies returned to  
9 Wanity Park a week later, on February 27, this time at nearly midnight. *Id.*, Ex. B.  
10 After disturbing several Tribal Elders during their haphazard search, they arrested  
11 Mr. Sampson. *Id.*; *Sexton Decl.*, Ex. D;

12 The Yakima County Sheriff's Office takes an increasingly arbitrary approach  
13 to entering Yakama Reservation trust lands and asserting jurisdiction over  
14 Yakamas. Sometimes, County Deputies do nothing before entering. In other  
15 instances, County Deputies (perhaps other County Deputies) "contact Tribal PD to  
16 make them aware" of their impending but illegal entry. *Sexton Decl.*, Ex. E., at 38.  
17 While the latter procedure does not satisfy the requirements of Yakama law, it is  
18 less likely to result in violence than the County's recent approach. In any event, the  
19 recent Wanity Park incidents represent the County's increasingly hostile approach  
toward Yakama sovereignty.

1           **C.    U.S. Attorney Ormsby’s Instigation and the County’s Reliance**  
2           **Upon His Incorrect Advice.**

3           While the County ignores the Nation’s repeated written requests to meet and  
4 discuss differences, on February 2, 2012, its Sheriff’s Office met with Mr. Ormsby.<sup>2</sup>  
5 *Id.* at 34. Ironically, even though Mr. Ormsby refuses to confer with the Nation on  
6 a government-to-government level regarding Yakama laws and Treaty rights  
7 concerning *federal* entry on Yakama Reservation trust lands, he is actively – and  
8 arbitrarily, capriciously, and unlawfully – giving incorrect legal advice to the  
9 *County* regarding the exact same topic. *See* Sexton Decl., Ex. D.

10           Confirming that Mr. Ormsby has advised the County about entry upon  
11 Yakama Reservation trust lands, Mr. Ormsby emailed the Yakama Nation Office of  
12 Legal Counsel on February 29, 2012, copying the County Sheriff:

13           state law enforcement have jurisdiction do [sic] conduct operations on  
14 the Yakama Nation Reservation. In that regard, the Yakama Nation  
15 does not have the right to enforce its Yakama Nation Law and Order  
16 Code 2011.01.01 *et seq.*, to limit law enforcement access.

17           Sexton Decl., Ex. F. Mr. Ormsby, as fully discussed below, is patently wrong on  
18 the law. But of more concern, his interference has caused the County to increase its  
19 illegal entries into Yakama lands in recent weeks; and the collusion between Mr.  
Ormsby and the County to violate Yakama law and Treaty rights has now resulted

---

20           <sup>2</sup> The Yakama Nation has noted elsewhere the inappropriateness of Mr. Ormsby’s  
continued involvement in this matter. *See* ECF No. 208 at 7-10.



1 in the Yakama Nation having to ask the Court to put a stop to the County's  
2 behavior.

3 On March 5, 2012, the Nation once again wrote the County, copying Mr.  
4 Ormsby, asking the County to advise the Nation if it would agree to stop illegally  
5 asserting jurisdiction on Reservation trust lands. Smiskin Decl., ¶ 12; Sexton Decl.,  
6 Ex. I, 3. Echoing prior overtures to the County, the Nation wrote:

7 Notwithstanding everything that is said above, please know this:  
8 Yakama County has a standing invitation to meet with the Yakama  
9 Nation Tribal Council to consult about the various issues pertaining to  
10 arrest authority over enrolled Yakama members on Yakama  
11 Reservation lands. We remain willing to allow County law  
12 enforcement to enter upon the Yakama Reservation for law  
13 enforcement purposes, so long as Yakama protocols and procedures  
14 are followed. These issues can and should be worked out between our  
15 governments.

16 Smiskin Decl., ¶ 12. The County did not respond. *Id.*

17 In sum, unless this Court now intervenes, the County will continue to enter  
18 Yakama Reservation trust lands to assert state jurisdiction and process over Yakama  
19 members – violating codified Yakama law, tribal procedures, and the Treaty of  
20 1855.

## 21 II. AUTHORITY

22 If plaintiffs demonstrate a strong likelihood of success on the merits, they  
23 need only make a minimal showing of harm to justify a preliminary injunction. *See*  
24 *Idaho Sporting Congress v. Alexander*, 222 F.3d 562, 565 (9th Cir. 2000); *Kootenai*

1 *Tribe v. Veneman*, 313 F.3d 1094, 1124 (9th Cir. 2002). The less the likelihood of  
2 success on the merits, the more plaintiffs must show that “the balance of hardships  
3 tips decidedly in their favor.” *Id.*

4 Here, as demonstrated below, Yakima County has *per se* violated Yakama  
5 codified Yakama law and procedure, federal common law, and Article II of the  
6 Yakama Treaty on numerous occasions, including during its latest incursion on  
7 February 27, 2012. The showing of harm below justifies a Temporary Restraining  
8 Order (“TRO”).

9 **A. The Nation Will Suffer Irreparable Harm Absent Injunctive Relief.**

10 The threatened violation of the Yakama Nation’s sovereignty, as guaranteed  
11 by the Yakama Treaty and other federal law, is a threat of tangible, irreparable harm  
12 if the injunction is not granted. *See Muckleshoot Indian Tribe v. Hall*, 698 F.Supp.  
13 1504, 1516 (W.D. Wash. 1988).

14 “[T]he concept of tribal sovereignty is one of the most fundamental policy  
15 considerations underlying all of the federal Indian law.” *Miccosukee Tribe of*  
16 *Indians of Fla. v. U.S.*, No. 00-3453, 2000 WL 35623105 at \*10 (S.D. Fla. Dec. 15,  
17 2000). Indeed, U.S. District Courts faced with this exact set of circumstance have  
18 found that “a real and imminent threat to the Tribe’s federally protected rights”  
19 exists where “the tribe had a procedure in place that was disregarded or violated by  
state authorities.” *Id.* at \*10, \*6.

1 Here, Yakima County not only persistently disregards and violates codified  
2 Yakama law, procedure, and the Treaty of 1855 in asserting its process over  
3 Yakamas, but it maintains that its authority to do so is boundless. *See* Sexton Decl.,  
4 Ex. C (the County stating its position that it has “the authority to arrest even  
5 enrolled persons on trust land if the crime we are investigating or warrant (arrest or  
6 search) we are serving stems from a situation in which we have arrest authority.”)  
7 (emphasis in original); *see also id.* at Ex. F.

8 Only in recent days has the Nation come to fully appreciate the extent of  
9 Yakima County’s intentional disregard for Title 2011 and its intent to continually  
10 enter Reservation trust lands and assert state authority over Yakamas without  
11 complying with that Tribal procedure. Smiskin Decl., ¶ 11. On March 5, the  
12 Yakama Tribal Council Chairman asked the County to tell the Nation if it would  
13 agree to stop illegally entering Yakama Reservation trust lands. *Id.*, ¶ 12; Sexton  
14 Decl., Ex. I. The County has, as with all prior communications from the Nation  
15 concerning this matter, not bothered to respond. *Id.* This, together with  
16 information that the Nation received in response to its Public Records Act requests  
17 this week, revealed the extent to which the County intends to return to Yakama  
18 Reservation trust lands without complying with Title 2011. Smiskin Decl., ¶ 12.  
19 Unless this Court issues a TRO there is “a real and imminent threat” that “the

1 Tribe's federally protected rights" will be irreparably harmed. *Muckleshoot Indian*  
2 *Tribe*, 698 F.Supp. at 1516; *see also Miccosukee Tribe*, 2000 WL 35623105 at \*10.

3 **B. The Nation Is Likely To Prevail On The Merits.**

4 Whether under the federal common law or the plain language of Article II to  
5 the Treaty, the Yakama Nation will likely prevail on the following claims.

6 1. Yakima County is illegally entering Yakama Reservation trust  
7 lands and asserting jurisdiction over Yakama members.

8 States and their counties lack criminal jurisdiction over Indians within Indian  
9 reservations except where authorized by Congress. *McClanahan v. State Tax*  
10 *Commission of Arizona*, 411 U.S. 164, 171 (1973); *Indian Community of Fort*  
11 *Belknap Indian Reservation v. Mazurek*, 43 F.3d 428, 432 (9th Cir. 1994).  
12 Congress has in no way authorized the County to assert criminal (or civil  
13 regulatory) jurisdiction over enrolled Yakama members on Reservation trust lands.

14 To be clear, Pub. L. No. 83-280, 67 Stat. 588 ("Public Law 280") does "not  
15 apply to Indians when on their tribal lands or allotted lands within an established  
16 Indian reservation . . . ." WASH. REV. CODE § 37.12.010.

17 In *Williams v. Lee*, the U.S. Supreme Court held that a state's attempt to  
18 import state authority and process on reservation trust lands must be determined in  
19 light of whether such exercise would "infringe on the right of reservation Indians to  
make their own laws and be ruled by them." 358 U.S. 217, 220 (1959). In applying  
this test, numerous courts have held that although a state may have jurisdiction over

1 an Indian defendant relative to a crime committed in that state’s jurisdiction, *see*  
2 *Kake v. Egan*, 369 U.S. 60, 75 (1962), **when that defendant is situated on Indian**  
3 **Reservation trust land a “state officer’s . . . authority [is] necessarily is limited**  
4 **by tribal sovereignty” – meaning the officer’s authority extends only “so long**  
5 **as the investigation does not infringe on tribal sovereignty by circumventing or**  
6 **contravening a governing tribal procedure.”** *State v. Harrison*, 238 P.3d 869,  
7 876, 880 (N.M. 2010) (citing *Williams*, 358 U.S. at 220) (emphasis added).

8 In one Ninth Circuit case on point, *Arizona ex rel. Merrill v. Turtle*, the Ninth  
9 Circuit held that the State of Arizona lacked the authority to extradite an Indian  
10 defendant from Navajo Reservation trust lands because the Navajo Nation has  
11 “codified and does now exercise its extradition power. This power cannot now be  
12 assumed by or shared with the State of Arizona without ‘infring[ing] on the right of  
13 reservation Indians to make their own laws and be ruled by them.’” 413 F.2d 683,  
14 686 (9th Cir. 1969), *cert. denied*, 396 U.S. 1003 (1970) (quoting *Williams*, 358 U.S.  
15 at 220); *see also South Dakota v. Cummings*, 679 N.W.2d 484 (S.D. 2004); *Tracy v.*  
16 *Superior Court*, 168 Ariz. 23, 810 P.2d 1030 (Ariz. 1991); *Tracy v. Superior Court*  
17 *of Maricopa County*, 810 P.2d 1030, 1043 (Ariz. 1991) (“[C]ontrol of the  
18 extradition process is inherent in the tribal sovereignty . . . state may not arrest an  
19 Indian located on the . . . reservation, but rather must seek extradition through the  
[tribal] courts.”).

1 Thus, “the central inquiry” as it relates to the *Williams* infringement test, is  
2 “not simply whether the Tribe’s territorial boundaries were violated,” but “whether  
3 the tribe had a procedure in place that was disregarded or violated by state  
4 authorities.”<sup>3</sup> *Miccosukee Tribe*, 2000 WL 35623105 at \*6.

5 In *State v. Mathews*, 986 P.2d 323 (1999), for instance, the Idaho Supreme  
6 Court recognized the authority of a state officer to enter Nez Perce Reservation trust  
7 lands where the underlying offense was committed by an Indian outside of the  
8 reservation. That state action was allowed **but only because Nez Perce law did**  
9 **not provide a procedure for the on-reservation exercise of state warrants:**

10 **a determination of whether such an exercise of state authority**  
11 **infringes on tribal sovereignty turns on the existence of a**  
12 **governing tribal procedure.** [But] tribal sovereignty is not infringed  
13 when a state court issued search warrant is executed within Indian  
country where the state possesses jurisdiction over the underlying  
crime and where tribal law does not provide a procedure for executing  
the warrant within Indian country.

14 *Id.* at 336-37; *see also Miccosukee Tribe*, 2000 WL 35623105 at \*6 (same).

15 <sup>3</sup> The U.S. Supreme Court’s holding in *Nevada v. Hicks*, 533 U.S. 353 (2001),  
16 is **not** to the contrary. *See* COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 9.07  
17 (Nell Jessup Newton ed., 2005) (“*Hicks* [did] not disturb the general rule that state  
18 officers have no authority to investigate crime involving Indians occurring within  
19 Indian country.”) (citing cases).

1 Here, the Yakama Nation does have “a written, codified tribal procedure”  
2 that County officers must follow while exercising state jurisdiction over Yakama  
3 members on Yakama Reservation trust lands. Title 2011 explicitly bars the County  
4 from imposing state jurisdiction and process upon enrolled Yakamas, on Yakama  
5 trust lands, “except when expressly permitted or invited by the Yakama Tribal  
6 Council or Tribal Council Chairman.” REV. YAKAMA CODE § 2011.01.02. In  
7 practice, all that is required of the County is permission from the Yakama Tribal  
8 Council or its Chairman – which could be accomplished by a quick telephone call  
9 to him. Smiskin Decl., at ¶¶ 4-6. Indeed, this procedure is *much* simpler than even  
10 that required by Washington’s extradition statute. *See* WASH. REV. CODE § 10.88,  
11 *et seq.*

12 Although the County indicates that the Yakama Nation does not have the  
13 authority to enforce Title 2011 on Yakama Reservation trust lands, *see* Sexton  
14 Decl., Exs. F, H, this position is erroneous. It is undisputed that “[t]ribes have the  
15 authority to expel or remove any individuals within the boundaries of the  
16 reservation.” CARRIE E. GARROW & SARAH DEER, TRIBAL CRIMINAL LAW AND  
17 PROCEDURE 101 (2004); *see also* *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130,  
18 185 (1982); *Quechan Tribe of Indians v. Rowe*, 531 F.2d 408, 410 (9th Cir. 1976).  
19 This sovereign authority “necessarily includes the lesser authority to set conditions  
on . . . entry through regulations.” *Water Wheel Camp Recreational Area, Inc. v.*

1 *LaRance*, 642 F.3d 802, 811 (9th Cir. 2011); *see also Babbitt Ford, Inc. v. Navajo*  
2 *Indian Tribe*, 710 F.2d 587, 592 (9th Cir. 1983).

3 In fact, the propriety of a tribal procedure similar to that of Title 2011 was  
4 recently tested in *Saginaw Chippewa Indian Tribe of Michigan v. Granholm*, No.  
5 05-10296, 2010 WL 5185114 (E.D. Mich. Dec. 17, 2010), *aff'd*, 2011 WL 1884196  
6 (May 18, 2011). At issue in *Granholm* was a tribal procedure mandating that “State  
7 Officers may not enter [Reservation trust land] for law enforcement purposes  
8 except: (1) to respond to a 911 dispatch call or other emergency; (2) when in Fresh  
9 Pursuit; or (3) upon the request of or with the prior authorization of the Tribal  
10 Police.” *Id.* at ECF No. 271-5 (Nov. 9, 2010). Much like Title 2011, an exception  
11 exists that does “not prevent: . . . a State Officer . . . from continuing Fresh Pursuit  
12 of a suspect into” reservation trust lands, so long as the state officer, “as soon as  
13 practicable, ensure[s] that the Tribal Police are notified of the officer’s entry into  
14 the [tribal land] for law-enforcement purposes.” *Id.*

15 The state’s Attorney General, however, objected “to any limitations on the  
16 ability of state police officers to enter” Reservation trust land “for law enforcement  
17 purposes.” *Granholm*, 2011 WL 1884196, at \*3. The U.S. District Court  
18 disagreed. In analyzing the propriety of this procedure, the court held that the  
19 procedure was “consistent with *Hicks* and the interests of the public” as it:

did not limit the authority of the state police to enforce state law  
within [Reservation trust lands]. Rather, it simply require[d] that the



1 state police officers follow certain procedures before entering [those  
2 lands]. The state police will still be able to execute state-issued search  
3 warrants within the [those lands] after obtaining authorization from  
the Tribal Police. In the event of an emergency, however, pre-  
authorization is not required.

4 *Id.* Here, should Yakima County challenge the propriety of Title 2011 on response,  
5 this Court should find likewise: codified Yakama law simply requires the County to  
6 follow a clear procedure for entering Reservation trust lands to assert jurisdiction  
7 over Yakamas.<sup>4</sup> A TRO should issue to restrain Yakama County from continuing  
8 to violate the law.

9 2. Yakama County is violating The Treaty With The Yakama.

10 The Yakama Treaty provides this Court an independent basis to enjoin the  
11 County from entering Yakama Reservation trust lands for the purpose of asserting  
12 state authority over Yakama members without complying with Yakama law and  
13 procedure. The Treaty expressly requires that the Yakama Reservation:

14 <sup>4</sup> Yakima County will attempt to defend this Motion and Mr. Ormsby's opinions  
15 using Justice Scalia's "majority" opinion in *Hicks*, which concerned the civil  
16 jurisdiction of tribal courts over federal civil rights claims by tribal members  
17 against state officers. Six of Justice Scalia's colleagues refused to sign the section  
18 discussing state power in Indian Country, which has widely been rejected as *dicta*  
19 and which, in any the case, is inapplicable to the facts of this case. *See generally*  
*supra*, at n.3.

1 be set apart and, so far as necessary, surveyed and marked out, for the  
 2 exclusive use and benefit of said confederated tribes and bands of  
 3 Indians, as an Indian reservation[. No] white man, excepting those in  
 the employment of the Indian Department, [shall] be permitted to  
 reside upon the said reservation *without permission of the tribe* . . . .

4 12 Stat. 951, Art. II (emphasis added). Yakama Indians’ understanding of Article II  
 5 in 1855 was clear; U.S. negotiators promised that “no white man could go [there]  
 6 without [Tribal] consent. . . . I repeat again no white man could go there unless the  
 7 red man consented to it.” Minutes, at 21; *see also id.* at 22 (“Those tracts the white  
 8 man cannot enter without the consent of the red man.”).

9 Yakima County must comply with the mandates of the Treaty with the  
 10 Yakama. *Skokomish Indian Tribe v. U.S.*, 410 F.3d 506 (9th Cir. 2005) (Indian  
 11 Treaties “provide rights of action for equitable relief against non-contracting  
 12 parties, [such as] state governmental entities and their officers . . . .”). The County  
 13 has repeatedly failed, or refused, to do so and must be enjoined.

#### 14 **C. The Balance Of Hardships And Public Interest Favor The Nation.**

##### 15 1. The Public Interest Requires Preliminary Injunction.

16 Here, the public’s interest weighs heavily in favor of preventing irreparable  
 17 cultural and political harm to the Yakama Nation until the Court can fully review  
 18 the merits. Any alleged impact of a TRO on individual criminal cases “is an  
 19 insufficient legal basis for the Court to upset the delicate balance of state-tribal  
 relations proscribed by federal law.” *Miccosukee Tribe*, 2000 WL 35623105, at  
 \*12. As noted by the District Court in *Miccosukee Tribe* in an extremely similar

1 matter: “This Court has no power to legislate, and it may not extend the State’s  
 2 jurisdiction where none presently exists. The Court can, as it has, only encourage  
 3 the parties to amicably resolve this troubling, potentially tragic, situation.” *Id.* at  
 4 \*12. The Court “point[ed] out the need for a workable, fair cooperative agreement  
 5 between the State and the . . . Tribe, so that both parties interests would be better  
 6 served in law-enforcement matters.” *Id.* Here, these very same interests weigh in  
 7 favor of granting the Yakama Nation’s requested TRO – especially as the County  
 8 has thus far refused each and every overture that the Nation has made towards a  
 9 workable, fair cooperative agreement for both governments.

## 10 2. The Interests Of Yakima County Counsel For Injunction.

11 The County will likely argue that a TRO would somehow allow the Nation to  
 12 harbor criminals. However, to paraphrase the Ninth Circuit, which rejected a  
 13 similar argument that the United States made in defense of Washington State law:  
 14 “The Yakama Nation does not and never has asserted that its members have a right  
 15 under its treaty to [engage in criminal activity]. For the government of [Yakima  
 16 County] to be suggesting otherwise is irresponsible.” *Smiskin*, 487 F.3d at 1271.

17 Further, as noted by the District Court in *Miccossukee Tribe*:

18 The State has other alternatives . . . such as service of subpoenas off the  
 [reservation], and entering into a cooperative agreements with the Tribe .  
 19 . . . [T]he Court must focus on the question presented by this case, which  
 is a narrow one: whether, in the absence of a cooperative agreement  
 between the State and the Tribe, tribal members are subject to process,  
 issued and served by state agents on the [Reservation]. . . . **The point is**



1 DATED this 9<sup>th</sup> day of March 2012.

2 s/Gabriel S. Galanda, WSBA# 30331  
3 Gabriel S. Galanda, WSBA# 30331  
4 Anthony S. Broadman, WSBA #39508  
5 Attorneys for Confederated Tribes and Bands  
6 of the Yakama Nation  
7 GALANDA BROADMAN, PLLC  
8 P.O. Box 15146  
9 Seattle, WA 98115  
10 (206) 691-3631 Fax: (206) 299-7690  
11 Email: gabe@galandabroadman.com  
12 Email: anthony@galandabroadman.com  
13  
14  
15  
16  
17  
18  
19

**CERTIFICATE OF SERVICE**

I, Gabriel S. Galanda, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 11320 Roosevelt Way NE, Seattle, WA 98125.

3. On March 9<sup>th</sup>, 2012, I filed the foregoing document, which will provide service to the following via ECF:

George Fearing

Gregory C Hesler

Kenneth W Harper

Lisa Beaton

Maureen Elizabeth Rudolph

Meriwether D Williams

Michael John Kapaun

Pamela Jean DeRusha

Quinn N Plant

Stephen John Hallstrom

William John Schroeder

William M Symmes

The foregoing statement is made under penalty of perjury and under the laws of the State of Washington and is true and correct.

Signed at Seattle, Washington, this 9<sup>th</sup> day of March 2012.

s/Gabriel S. Galanda