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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES AND BANDS )  
OF THE YAKAMA NATION, ) NO. CV-11-3028-RMP  
)  
Plaintiffs, )  
) DEFENDANT YAKIMA COUNTY'S  
v. ) RESPONSE TO PLAINTIFFS'  
) MOTION FOR TEMPORARY  
ERIC H. HOLDER, JR., Attorney Gene-) RESTRAINING ORDER AND  
ral of the United States; et al., ) PRELIMINARY INJUNCTION  
)  
Defendants. )

**I. Introduction**

Since at least the late 1970s, the Yakima County Sheriff's Office has engaged in law enforcement activities on the Yakama Reservation. Plaintiffs seek to use the present motion (ECF No. 227) to force compliance with a recently-adopted tribal ordinance, rather than to preserve the status quo pending resolution of this case on the merits.

The motion is an imprudent use of the TRO process. The motion asks the Court -- on a limited record and under rushed circumstances -- to drastically modify longstanding structural

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3 aspects of the allocation of jurisdiction between the Yakama  
4 Nation and all defendants, including the Yakima County Sheriff's  
5 Office. There has been no exigent or concrete action, either  
6 leading up to this filing or likely to occur in the absence of  
7 relief, to justify the hasty manner in which this comes before  
8 the Court.

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10 For these reasons, and because of the significance of the  
11 requested relief to the literally thousands of people who live  
12 within the exterior boundaries of the reservation, the motion  
13 should be denied. Plaintiffs cannot establish the criteria for  
14 a preliminary injunction as set forth in Winter v. Natural  
15 Resources Defense Council, Inc., 555 U.S. 7 (2008).

16 All of the issues raised by plaintiffs are pending before  
17 this Court as part of the underlying lawsuit between the  
18 parties. These claims should be resolved through litigation,  
19 after proper briefing and argument, rather than by way of this  
20 TRO motion.  
21

## 22 **II. Background**

23 The Yakama Reservation (the "reservation") consists of some  
24 1.4 million acres of land, much of which is in Yakima County.  
25 (ECF No. 247, Exhibit A). A sizeable majority of permanent  
26 residents are not enrolled members of the Yakama Nation. In  
27 1979, the United States Supreme Court observed that "[o]f the  
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3 25,000 permanent residents of the Reservation, 3,074 are members  
4 of the Yakima Nation.” Washington v. Confederated Bands and  
5 Tribes of the Yakima Indian Nation, 439 U.S. 463, 470 (1979).

6 In 1989, the United States Supreme Court described the  
7 reservation as follows:

8 . . . roughly 80% is held in trust by the United  
9 States for the benefit of the Yakima Nation or  
10 individual members of the Tribe. The remaining 20% of  
11 the land is owned in fee by Indian or non-Indian  
12 owners. Most of the fee land is found in Toppenish,  
13 Wapato, and Harrah, the three incorporated towns  
14 located in the northeastern part of the reservation.  
The remaining fee land is scattered throughout the  
reservation in a “checkerboard” pattern.

15 Brendale v. Confederated Tribes and Bands of the Yakima  
16 Indian Nation, 492 U.S. 408, 415 (1989); see also ECF No.  
17 247, Exhibit C, at 75:2-7).

18 In 1953, Congress enacted Public Law 280. See Washington,  
19 supra. The law authorized the State of Washington to assume  
20 jurisdiction over criminal offenses and civil causes of action  
21 in Indian country. (Id.) In 1963, the State of Washington  
22 exercised this authority and enacted RCW 37.12.010. (Id.)

24 RCW 37.12.010 extends civil and criminal jurisdiction  
25 throughout Indian Country in the State of Washington.

26 Following enactment of RCW 37.12.010, plaintiffs sued the  
27 State of Washington, challenging the validity of its assertion  
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3 of civil and criminal jurisdiction on the reservation.

4 Washington, 439 U.S. at 466. In 1979, the United States Supreme  
5 Court ruled that Washington's assumption of jurisdiction was  
6 valid. (Id.)

7 Since at least the late 1970s, the Yakima County Sheriff's  
8 Office (YCSO) has engaged in law enforcement activities on the  
9 reservation. (ECF No. 246, at para. 4).

10 Yakima County Sheriff Ken Irwin characterizes YCSO's  
11 operating principles during all relevant times as: (1) respond  
12 to calls anywhere in Yakima County; (2) take measures necessary  
13 to protect life and property; (3) determine jurisdiction  
14 (municipal, tribal or county); and (4) turn over to  
15 jurisdictional authority when they arrive on the scene. (Id.).

16 YCSO responds to approximately 1,000 calls for assistance  
17 on the reservation each year. (ECF No. 245, at para. 2).

18 Because fee land is scattered throughout the reservation in  
19 a "checkerboard" pattern, law enforcement officers cannot always  
20 know if the address to which they are responding is fee land or  
21 trust land. (ECF No. 245, at paras. 3 and 4). In emergent  
22 circumstances, YCSO law enforcement officers may not initially  
23 take steps to ascertain whether the property is trust land.

24 During his deposition Deputy Sheriff Alan Klise explained that  
25 doing so "would be a bad habit; if it was your son or daughter  
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3 getting hurt, would you care[?]" (ECF No. 247, Exhibit C, at  
4 103:20-22). In non-emergent circumstances, Deputy Sheriff Klise  
5 explained his approach as follows: "I'll go up and ask them, Are  
6 you enrolled Yakama? And they say yeah. Okay, I'll call tribal  
7 [police] for you." (Id. at 104:10-12).

8  
9 Recently, the Yakama Nation adopted an ordinance providing,  
10 in relevant part, that no state actor may enter the reservation  
11 unless permitted or invited by the Yakama Tribal Council or  
12 Tribal Council Chairman. (ECF No. 233, at para. 4; ECF No. 234,  
13 Exhibit A, at § 2011.01.02). A request for permission to enter  
14 the reservation should come from the "highest ranking official"  
15 of the requesting agency. (Id. at § 2011.01.04). A copy of the  
16 request must be sent to the Bureau of Indian Affairs. (Id.)  
17 "At least thirty days (30) should be allowed for an oral or  
18 written response[.]" (Id.)

19  
20 The ordinance establishes no criteria for evaluating a  
21 request. There are no constraints whatsoever on the basis by  
22 which a request may be denied. And in the event a request is  
23 denied, there is no appeal. (Id., at § 2011.01.06). Even the  
24 thirty-day clause states an aspirational response time, and is  
25 otherwise meaningless.

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27 There is a limited exception for emergent circumstances.  
28 (Id., at § 2011.01.09). The exception does not contemplate

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3 routine, non-emergent, law enforcement activities that YCSO has  
4 performed for decades.

5 Some guidance as how plaintiffs interpret emergent  
6 circumstances was provided in a letter from Yakama Nation Public  
7 Safety Commissioner Kelly M. Rosenow to Yakima County Sheriff  
8 Ken Irwin dated May 23, 2011. (ECF No. 246, Exhibit C). Mr.  
9 Rosenow explained:  
10

11 . . . if one of your officers responds to an emergency  
12 call, such as a domestic violence disturbance, and  
13 after an extended period of time no Yakama Nation  
14 police officer is available, the on-scene and  
15 responding police officer will be authorized to handle  
16 the case as appropriate.

17 (Id.) (emphasis added).

18 YCSO law enforcement officers who violate the ordinance -  
19 perhaps by not waiting the requisite "extended period of time"  
20 before intervening to stop a domestic disturbance - may be  
21 subject to civil and criminal penalties. (ECF No. 234, Exhibit  
22 A, at § 2011.01.07 and .08).

### 23 **III. Standard of Review**

24 Plaintiffs seeking a preliminary injunction must establish  
25 (1) that they are likely to succeed on the merits; (2) that they  
26 are likely to suffer irreparable harm in the absence of  
27 preliminary relief; (3) that the balance of equities tips in

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3 their favor; and (4) that an injunction is in the public  
4 interest. Winter, at 7. Although couched in different terms,  
5 the standards for a temporary restraining order and a  
6 preliminary injunction are essentially identical. Stuhlberg  
7 Intern. Sales Co., Inc. v. John D. Brush and Co., Inc., 240 F.3d  
8 832, 839 n. 7 (9<sup>th</sup> Cir. 2001).

#### 9 10 IV. Argument

##### 11 A. The Court should impose heightened scrutiny to plaintiffs' 12 request for a mandatory injunction.

13 Plaintiffs seek to alter, rather than preserve, the status  
14 quo. (See ECF No. 246, at para. 4). In their proposed order,  
15 plaintiffs request that the Court restrain Yakima County from  
16 entering the reservation "without complying with applicable  
17 Yakama law and procedure." (ECF No. 227-1, at 2-3). But the  
18 "applicable Yakama law and procedure" is apparently quite new.  
19 (See ECF No. 233 at 1, 9-17) (implying recent adoption and  
20 absence of similar ordinance in past). Plaintiffs wish to  
21 bootstrap their new ordinance into a claim of legitimacy by  
22 means of Court action on this motion. But this reverses the  
23 proper order of this Court's review and causes great risk of  
24 upheaval in the existing settled allocation of jurisdiction.

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26 To reiterate, the YCSO law enforcement activities have  
27 remained largely unchanged for decades.

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3 Plaintiffs request injunctive relief that is mandatory  
4 rather than prohibitory. See Heckler v. Lopez, 463 U.S. 1328,  
5 1333 (1983) (a prohibitory injunction “freezes” the position of  
6 the parties until a court can hear the case on the merits);  
7 Meghrig v. KFC W., Inc., 516 U.S. 479, 484 (1996) (mandatory  
8 injunction “orders” a responsible party to take action.)  
9

10 Mandatory injunctions are particularly disfavored and  
11 courts should be extremely cautious about issuing them. Stanley  
12 v. Univ. of Southern California, 13 F.3d 1313, 1320 (9<sup>th</sup> Cir.  
13 1994); Marlyn Nutraceuticals, Inc. v. Mucos Pharma, 571 F.3d  
14 873, 879 (9<sup>th</sup> Cir. 2009) (mandatory injunction should not be  
15 granted “unless extreme or very serious damage will result[.]”).

16 Plaintiffs have not identified any conduct by YCSO that  
17 would alter the status quo. As to harm, plaintiffs allege only  
18 that if the Court denies them injunctive relief, “the County  
19 will continue to enter the Yakama Reservation[.]” (ECF No. 237,  
20 at 8).

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22 Under the heightened criteria applied with respect to  
23 mandatory injunctions, no injunction may issue unless the Court  
24 finds that “the facts and law clearly favor the moving party.”  
25 Anderson v. United States, 612 F.2d 1112, 1114 (9<sup>th</sup> Cir. 1979).  
26 As outlined below, plaintiffs cannot make this case.  
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3 **B. Plaintiffs cannot establish the criteria for a preliminary**  
4 **injunction.**

5 1. **Plaintiffs are not likely to suffer irreparable harm**  
6 **in the absence of preliminary relief.**

7 To obtain a preliminary injunction, plaintiffs must  
8 demonstrate "that there exists a significant threat of  
9 irreparable injury." Oakland Tribune, Inc. v. Chronical Pub.  
10 Co., 762 F.2d 1374, 1376 (9<sup>th</sup> Cir. 1985).

11 Delay in seeking a preliminary injunction "implies lack of  
12 urgency and irreparable harm." Id., at 1377. The predicate to  
13 a request for a preliminary injunction is that "there is an  
14 urgent need for speedy action to protect a plaintiff's rights."  
15 Lydo Enterprises, Inc. v. City of Los Vegas, 745 F.2d 1211, 1213  
16 (9<sup>th</sup> Cir. 1984) (citation omitted). A plaintiff who sleeps on  
17 his or her rights "demonstrates the lack of need for speedy  
18 action[.]" Id.

19 In Tough Traveler, Ltd. v. Outbound Products, 60 F.3d 964,  
20 968 (2<sup>nd</sup> Cir. 1995), the Court of Appeals held that the district  
21 court erred by finding irreparable injury where the plaintiff  
22 waited nine months to file a lawsuit, and then another four  
23 months before moving for a preliminary injunction. Id. at 968.  
24 In Lydo, the Court of Appeals gave weight to the plaintiff's  
25 delay of five years before challenging a municipal ordinance  
26 when measuring the claim of urgency. Id. at 1214. In Winter,

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3 the Court viewed with skepticism a claim of irreparable injury  
4 where the challenged conduct was not a "new type of activity,"  
5 but rather conduct that had been occurring on a regular basis  
6 for 40 years. Id. at 23.

7 As in Winter, the conduct giving rise to the motion in this  
8 case is not new, but rather has been occurring on a regular  
9 basis for decades. (ECF No. 246, at para. 4). Plaintiffs  
10 waited approximately a year after filing their complaint before  
11 filing this motion. (See ECF No. 1). Plaintiffs have no  
12 explanation for this year-long delay, other than to say vaguely  
13 that "[o]nly in recent days has the Nation come to fully  
14 appreciate the extent" of Yakima County's purported violation of  
15 tribal procedures. (ECF No. 237, at 10). Yakima County's law  
16 enforcement procedures have remained essentially unchanged for  
17 more than 30 years. (ECF No. 246, at para. 4). Plaintiffs'  
18 explanation is superficial given the magnitude of the relief  
19 plaintiffs request.  
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22 The instant circumstances are distinguishable from those in  
23 Muckleshoot Indian Tribe v. Hall, 698 F.Supp. 1504 (W.D. Wash.  
24 1988), relied upon by plaintiffs, where the court found a  
25 potential for irreparable harm arising from the proposed  
26 construction of a 1,200 slip marina that would impair treaty  
27 fishing rights.  
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3 In sum, plaintiffs have provided no credible explanation  
4 as to why this motion has been filed now, as opposed to any  
5 other time during the year-long pendency of this lawsuit.  
6 Plaintiffs have likewise not shown any credible harm that will  
7 arise should the motion be denied. Yakima County recognizes  
8 plaintiffs' submissions regarding various specific law  
9 enforcement activities over the past several months. (See ECF  
10 No. 235, 236). But there is no evidence at all to show how  
11 these particular incidents represent a change or deviation from  
12 the prior longstanding allocation of jurisdiction between the  
13 Yakama Nation and Yakima County.  
14

15 **2. Plaintiffs are not likely to succeed on the merits.**

16 Plaintiffs cannot show they are "likely" to prevail on the  
17 merits, and for this reason are not entitled to a preliminary  
18 injunction. Winter, 555 U.S. at 20.  
19

20 Congress has plenary authority over Indian affairs,  
21 including the authority to limit tribal sovereignty. U.S. Const.  
22 art. I, § 8, cl. 3. In an exercise of this power, Congress  
23 authorized the State of Washington to assert civil and criminal  
24 jurisdiction over the reservation. Public Law 280, at 67 Stat.  
25 588. The State of Washington has done so. RCW 37.12.010. The  
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3 United States Supreme Court has upheld this exertion of  
4 jurisdiction as valid. Washington, supra.

5 Fundamentally, the claims brought by plaintiffs in this  
6 lawsuit amount to a procedurally rash collateral attack on  
7 Public Law 280 and RCW 37.12.010.

8 Further, and separately from the above discussion of Public  
9 Law 280, a different line of Indian law stands for the  
10 proposition that "...resolution of conflicts between the  
11 jurisdiction of state and tribal courts has depended, absent a  
12 governing Act of Congress, on whether the state action infringed  
13 on the rights of reservation Indians to make their own laws and  
14 be ruled by them." Fisher v. District Court of Sixteenth  
15 Judicial Dist. of Mont., 424 U.S. 382, 386 (1976). This  
16 analysis of conflicts of law within Indian Country departs from  
17 the view that "'the laws of [a State] can have no force' within  
18 reservation boundaries." Nevada v. Hicks, 533 U.S. 353, 361-62  
19 (2001) (quoting White Mountain Apache Tribe v. Bracker, 448 U.S.  
20 136, 141 (1980)).

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23 A salient, and aptly titled, treatment of this issue can be  
24 found at: Reynolds, Adjudication in Indian County: The  
25 Confusing Parameters of State, Federal and Tribal Jurisdiction,  
26 38 Wm. & Mary L. Rev. 539 (1997).

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3 Plaintiffs mischaracterize the issue before the Court as  
4 whether ongoing YCSO law enforcement activities infringe on  
5 plaintiffs' right to make their own laws and be ruled by them.  
6 (ECF No. 237, at 11-13). In support of this argument, plaintiffs  
7 cite several cases that do not involve Public Law 280 and are  
8 largely beside the point. See e.g., South Dakota v. Cummings,  
9 679 N.W.2d 484 (S.D. 2004); Miccosukee Tribe of Indians v. United  
10 States, 2000 WL 35623105 (S.D. Fla. 2000); Tracy v. Superior  
11 Court, 810 P.2d 1030 (Ariz. 1991); Arizona ex. rel. Merrill v.  
12 Turtle, 413 F.2d 683 (9<sup>th</sup> Cir. 1969).

14 Plaintiffs also rely upon Saginaw Chippewa Indian Tribe of  
15 Michigan v. Granholm, 2010 WL 518114 (E.D. Mich. 2010), in which  
16 the court approved a voluntary agreement between a tribe and  
17 state and local authorities relating to service of search  
18 warrants within a "tribal enclave." The court did not indicate  
19 whether the state had assumed criminal jurisdiction under Public  
20 Law 280, and did not consider whether the tribe could  
21 unilaterally impose access requirements on state law enforcement.  
22 The court merely held that the settlement agreement represented a  
23 reasonable compromise between the parties. Id. at 3.

25 Yakima County acknowledges the holding in State v. Mathews,  
26 986 P.2d 323 (1999), that "in the absence of an established  
27 tribal procedure," the state court's issuance and execution of a  
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3 warrant for a search within a reservation did not unlawfully  
4 undermine the tribe's self-governance or conflict with federal  
5 law. Id. at 337.

6 But Matthews is not particularly useful here because: 1) it  
7 is not an injunction case; 2) it did not address what it meant by  
8 an "established tribal procedure," which precludes comparison  
9 with the pertinent Yakama Nation ordinance; and 3) its analysis  
10 is cutting-edge, to the point of being novel, and has never been  
11 endorsed by any federal appellate court.

12  
13 The case law cited by plaintiffs obscures the actual impact  
14 of the 2011 ordinance. Under the ordinance, the ability of the  
15 YCSO to exercise civil and criminal jurisdiction (including  
16 service of process/warrants) on the reservation is subject to the  
17 unfettered discretion of the Yakama Tribal Council or Tribal  
18 Council Chairman. There are no standards or criteria that  
19 specify the circumstances under which tribal authorities will  
20 grant or deny YCSO permission to enter the reservation. The  
21 decision is not subject to appeal.

22  
23 Plaintiffs' argument is not likely to succeed. As observed  
24 by the United States Supreme Court, "if a tribe can affix  
25 penalties to acts done under the immediate direction of the state  
26 government, and in obedience to its laws, the operation of the  
27 state government may at any time be arrested by the will of the  
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3 tribe." Nevada v. Hicks, 533 U.S. 533 (2001) (internal quotation  
4 and brackets omitted) (quoting Tennessee v. Davis, 100 U.S. 257,  
5 263 (1879)).

6 As the foregoing illustrates, the issues raised by  
7 plaintiffs are complex and weighty. Plaintiffs' motion, without  
8 coming out and saying so, entices the Court into a maze of  
9 jurisdictional interplay between Public Law 280, RCW 37.12.010,  
10 and background principles of Indian sovereignty. The complexity  
11 is considerably heightened because the answers to these matters  
12 of jurisdiction may not be uniform across all the kinds of  
13 activity posed by plaintiffs' claims.  
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15 The effectuation of service of process, for instance, or  
16 questions of extradition, may not implicate identical legal and  
17 factual considerations. See, e.g., Nevada, 533 U.S. at 363-64  
18 ("The Court's reference to 'process' in Utah & Northern R. Co.  
19 and Kagama, and the Court's concern in Kagama over possible  
20 federal encroachment on state prerogatives, suggest state  
21 authority to issue search warrants in cases such as the one  
22 before us.")  
23

24 And neither topic ("extradition" or "process") may prove to  
25 be equivalent to whatever it is that plaintiffs mean by their  
26 catchall phrase "assert criminal jurisdiction." (See ECF No. 237  
27 at 1). The Court will appreciate that Indian law is not so  
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3 facile as plaintiffs' strategically streamlined motion supposes.  
4 These issues deserve serious briefing on the merits, rather than  
5 summary review by way of this expedited motion.

6 **3. The balance of equities tips in favor of Yakima**  
7 **County.**

8 When reviewing this motion, the Court must identify the  
9 harms an injunction might cause to Yakima County and weigh these  
10 against plaintiffs' threatened injury. Los Angeles Memorial  
11 Coliseum Comm'n v. Nat'l Football League, 634 F.2d 1197,  
12 1203 (9<sup>th</sup> Cir. 1980). An injunction cannot issue unless the  
13 plaintiffs establish that the balance of equities tips in their  
14 favor. Winter, 555 U.S. at 20.

15  
16 Issuance of a preliminary injunction will materially  
17 degrade the ability of YCSO to conduct law enforcement  
18 activities on the reservation. (ECF No. 246, at para. 13; ECF  
19 No. 244, at para. 15). The harm a preliminary injunction will  
20 cause to Yakima County is real, and includes significant  
21 operational difficulties.

22  
23 YCSO cannot reasonably respond to requests for assistance  
24 on the reservation when it does not know whether its officers  
25 will be permitted entry. In addition, YCSO cannot always know  
26 in advance whether the location at which assistance is sought is  
27 trust land or fee land. Nor can YCSO always know in advance if

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3 the people it finds there will be enrolled or non-enrolled  
4 members. (ECF No. 245, at para. 5). These difficulties are  
5 magnified by the vague "protocols" issued by plaintiffs with  
6 respect to law enforcement efforts on the reservation. (ECF No.  
7 246, Exhibit C).

8  
9 The harm also potentially includes civil liability for  
10 failing to respond to calls coming from the reservation. See  
11 e.g., Beal for Martinez v. City of Seattle, 134 Wn.2d 769 (1998)  
12 (cause of action premised on failure by City to promptly  
13 dispatch officer in response to request for a "civil standby");  
14 Chambers-Castanes v. King County, 100 Wn.2d 275 (1983)  
15 (negligence claim premised on tardy police response to assault).

16 In contrast, plaintiffs' have alleged that YCSO will  
17 continue to violate the law and its treaty obligations. (ECF No.  
18 237, at 16 and 18). But plaintiffs possess no evidence tending  
19 to show this. Evidence of separate individual events of law  
20 enforcement activities is only evidence of the status quo.  
21

22 Under these circumstances, the balance of equities tips  
23 sharply in favor of the County.

24 **4. An injunction is not in the public interest.**

25 The public interest analysis for the issuance of  
26 preliminary injunctions requires the Court to consider whether  
27 there exists some critical public interest that would be injured  
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3 by the grant of preliminary relief. Alliance for Wild Rockies  
4 v. Cottrell, 632 F.3d 1127 (9<sup>th</sup> Cir. 2011) (citation omitted).

5 The interest of the general public in Yakima County to  
6 continued law enforcement by YCSO on the reservation is great.  
7 See Branzburg v. Hayes, 408 U.S. 665, 690 (1972) (discussing  
8 generally the public interest in law enforcement). The interest  
9 is heightened with respect to those members of the public who  
10 live on the reservation and are not enrolled members. This  
11 group comprises a majority of those living on the reservation.

12 In the event a preliminary injunction is issued, YCSO will  
13 be compelled to comply with the 2011 ordinance. YCSO will no  
14 longer be able to respond to non-emergent calls from reservation  
15 residents until it has received permission to do so from the  
16 Yakama Tribal Council or its Chair. This is an extraordinarily  
17 tangible impact. And while the general public is not  
18 represented in these proceedings, the Court is required to  
19 consider the consequences of its decision as it affects these  
20 individuals. Winters, at 24 (Court should pay particular regard  
21 for the public consequences in employing the extraordinary  
22 remedy of injunction).

23 Plaintiffs refer to Miccosukee Tribe for the proposition  
24 that the public interest favors an injunction. This argument is  
25 inaccurate. (See ECF No. 237, at 17-18). The state interest

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3 advanced in Miccosukee Tribe was the criminal prosecution of a  
4 single individual. See 2000 WL 35623105 at 1. In contrast, the  
5 preliminary injunction sought by plaintiffs here will impact  
6 literally thousands of people living on the reservation, both  
7 enrolled and non-enrolled. (ECF No. 245, at para. 15; ECF No.  
8 246, at para. 13).

9  
10 Issuance of a preliminary injunction is not in the interest  
11 of the general public of Yakima County.

12 **C. If the Court issues injunctive relief, the Court should**  
13 **require plaintiffs to post a bond.**

14 If the Court grants relief as sought by plaintiffs, the  
15 Court should require plaintiffs to post a security bond pursuant  
16 to Fed. R. Civ. P. 65(c). Yakima County will indisputably have  
17 tort liability arising from restrictions on its ability to  
18 respond in a timely manner to calls for law enforcement  
19 assistance arising from the reservation.

20 Does the Yakama Nation propose to indemnify the County from  
21 such risks that may be inflicted upon its own members? The  
22 amount of the bond should, at a minimum, be sufficient to cover  
23 litigation costs and damages, if any, arising from such claims.  
24 Yakima County submits a bond amount of ten million dollars may  
25 be appropriate. See Washburn v. City of Federal Way, 2010 WL  
26 5624419 (King County Superior Court Cause No. 09-2-19157-3)  
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3 (jury verdict of \$1,100,000 for police officer failure to  
4 properly enforce protective order); see also Mead Johnson & Co.  
5 v. Abbott Laboratories, 201 F.3d 883, 888 (7<sup>th</sup> Cir. 2000) ("When  
6 setting the amount of security, district courts should err on  
7 the high side.").

8  
9 **V. Conclusion**

10 For the foregoing reasons, plaintiffs' Motion for Temporary  
11 Restraining Order and Preliminary Injunction should be denied.

12 DATED THIS 13<sup>th</sup> day of March, 2012.

13 s/QUINN N. PLANT, WSBA #31339  
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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2012, I filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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