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13 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

14 CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA NATION,

15 Plaintiffs;

16 v.

17 ERIC H. HOLDER JR.; et al.,

18 Defendants.
19

NO. CV-11-3028-RMP

REPLY RE: FEDERAL
DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

1 As to the United States, much as they have throughout the events leading up
2 to this Motion, Federal Defendants attempt to insert themselves into the Tribal-
3 County relationship. ECF No. 244. Federal Defendants lack standing to oppose
4 Plaintiff's Motion, quite simply, because it seeks no relief against them. To be
5 clear, "Plaintiffs . . . respectfully request that the Court enjoin Yakima County[,] "
6 only. ECF No. 227 at 1 (emphasis added). Respectfully, the Court should ignore
7 Federal Defendants' Opposition. ECF No. 244.

8 But even if Federal Defendants' arguments are examined, they fail. Federal
9 Defendants argue that the Nation "cannot prevent Yakima County law
10 enforcement, when acting as deputized federal officers, from entering the
11 Reservation." ECF No. 244.¹ Again, the motion at bar is aimed at Yakima County
12 only; it does not seek to enjoin federal agents. The Court has already signaled that
13 resolution of that matter must wait until it resolves Federal Defendants' Motion to
14 Dismiss. Still, Federal Defendants now attempt to put on part of their case in chief
15 by arguing that County agents should be able to enter Reservation trust lands at
16 will, while acting under color of federal law pursuant to the United States Marshal
17 Service's Pacific Northwest Violent Offender Task Force.

18 ¹ Federal Defendants concede that Yakima County law enforcement, when not
19 acting as deputized federal officers, lack authority to enter Reservation trust lands
absent Yakama's permission. ECF No. 245 at 5.

1 Federal Defendants' curious advocacy on behalf of Yakima County,
2 however, belies the fact that to the extent County agents participate in this task
3 force, they are not "federal officers." ECF No. 244 at 5. *See* ECF No. 146 at 48
4 (Memorandum of Understanding between Federal Defendants and Benton County
5 stating that "[e]ach Agency shall be responsible for the acts or omissions of its
6 employees. Participating agencies or their employees shall not be considered as
7 agents of any other participating agency.") (emphasis added).

8 Plaintiffs presume that Yakima County has entered into the same MOU
9 since they refer to the same Pacific Northwest Violent Offender Task Force.
10 Despite several discovery and governmental requests for any MOU to which
11 Yakima County is a party, which falls within the Court's Discovery Orders ECF
12 Nos. 159, 190, Federal Defendants have still refused to produce such records.
13 Indeed, the MOU is curiously absent from the declaration evidence submitted here
14 (and previously) by Federal Defendants in defense of Yakima County, perhaps
15 because of the above-quoted language making clear that County agents remain
16 County agents while engaged in Task Force activities.

17 Yet no matter what the MOU says, the United States Executive Branch does
18 not have "generalized power to make rules governing Indian conduct" or "limit
19 sovereignty," meaning the Department of Justice stands without "authority to
promulgate, on a case-by-case basis . . . procedures for domesticating, serving or

1 enforcing state process in Indian country.” *Miccosukee Tribe of Indians of Fla. v.*
2 *U.S.*, No. 00-3453, 2000 WL 35623105, at *9 (S.D. Fla. Dec. 15, 2000). In other
3 words, even were County agents somehow “not considered agents of [Yakima
4 County]” while engaged in task force activities, the Department of Justice does not
5 have the authority to somehow license them to act as agents of the United States in
6 order to import state process over enrolled Yakamas on Reservation trust lands.
7 *Id.*; *Organized Village of Kake v. Egan*, 369 U.S. 60, 63 (1961); *Logan v. Andrus*,
8 447 F.Supp. 1318, 1324 (N.D.Okla. 1978) (only the Congress, and not the
9 Executive Branch, has the authority to limit tribal sovereignty).

10 Nor has the County introduced any evidence in support of its opposition
11 papers to suggest that on February 16, 2011, or August 9, 2011, or February 18 or
12 27, 2012, County Deputies were in any way acting as “deputized” federal cops,
13 while attempting to impose state criminal or civil processes on enrolled Yakamas
14 on Reservation trust lands. Therefore, the existence or operations of the United
15 States Marshal Service’s Pacific Northwest Violent Offender Task Force is
16 immaterial to Plaintiffs’ Motion against the County vis-à-vis the County.

17 For all of these reasons, the Court should ignore Federal Defendants’
18 opposition, and issue the TRO against *the County* from further entering Yakama
19 Reservation trust lands to assert criminal jurisdiction over Yakamas without
complying with Yakama law.

1 DATED this 14th day of March 2012.

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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 14th, 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 14th day of March 2012.

s/Gabriel S. Galanda