UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **ED CV 15-1538 DMG (FFMx)** Date August 16, 2016

Title ***Chemehuevi Indian Tribe, et al. v. John McMahon, et al.*** Page 1 of 16

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None	Attorneys Present for Defendant(s) None

Proceedings: ORDER RE PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION [13]

I.
PROCEDURAL BACKGROUND

On August 4, 2015, Plaintiffs Chemehuevi Indian Tribe, Chelsea Lynn Bunim, Tommie Robert Ochoa, Jasmin Sansoucie, and Naomi Lopez filed their First Amended Complaint ("FAC") against Defendants John McMahon (County Sheriff) and Ronald Sindelar (Deputy Sheriff), who are sued in their official capacities.[1] Plaintiffs seek monetary damages, as well as declaratory and injunctive relief, on the grounds that (1) Defendants violated Public Law 280, 18 U.S.C. § 1162, and 28 U.S.C. § 1360 by issuing motor vehicle citations without jurisdiction on reservation land; (2) Defendants interfered with tribal self-government; (3) state authority is preempted; and (4) Defendants violated their civil rights. [Doc. # 11.]

On August 7, 2015, Plaintiffs filed an *ex parte* application for a temporary restraining order and an order to show cause re: preliminary injunction against Defendants. ("Mot.") [Doc. # 13.] On August 11, 2015, the Court denied Plaintiffs' *ex parte* application for a temporary restraining order. [Doc. # 15.] The Court set a briefing schedule on Plaintiffs' preliminary injunction motion. *Id.* at 2-3.

On February 5, 2016, the Court requested the parties file supplemental briefing and evidence concerning questions about standing, irreparable harm, and whether California is a necessary party ("February 5, 2016 Order"). [Doc. # 27.] On February 11, 2016, Plaintiffs filed their first supplemental brief in response to the Court's request ("Plaintiff's First Suppl."). [Doc. # 28.] On February 19, 2016, Defendants filed their supplemental brief ("Def. First Suppl."). [Doc. # 30.]

[1] On March 29, 2016, Plaintiffs dismissed Michael Ramos (District Attorney), Jean Rene Basle (County Counsel), and Miles Kowalski (Deputy County Counsel) from the case. [Doc. # 43.]

On March 2, 2016, in response to issues raised in Defendants' first supplemental brief, Plaintiff filed a second supplemental brief ("Plaintiff's Second Suppl."). [Doc. # 32.] On March 9, 2016, Defendants filed their second supplemental brief ("Def. Second Suppl."). [Doc. # 35.]

The Court held a hearing on the motion on March 18, 2016. [Doc. # 38.]

On March 25, 2016, the Court requested additional information, including a copy of the full and complete Secretarial Order dated February 2, 1907. [Doc. # 42.] Defendants filed their third supplemental response ("Def. Third Suppl.") on April 1, 2016. [Doc. # 44.] Plaintiffs filed their third supplemental response ("Plaintiff's Third Suppl.") on April 4, 2016. [Doc. # 45.]

Having duly considered the parties' written submissions and oral argument, the Court **GRANTS** Plaintiffs' preliminary injunction motion for the reasons set forth below.

II.
FACTUAL BACKGROUND[2]

The Chemehuevi Tribe is a federally recognized Indian tribe. FAC ¶ 3. Individual Plaintiffs Bunim, Ochoa, Lopez, and Sansoucie are American Indians and enrolled members of the Chemehuevi Tribe. *Id.* ¶ 4. They all reside part-time or full-time on the Chemehuevi Tribe's Reservation and drive vehicles within the boundaries of the Reservation. *Id.*

Plaintiffs allege that Defendants illegally enforced the California Motor Vehicle Code on Reservation land. FAC ¶¶ 19-55. From February 14, 2015 to March 15, 2015, Defendants San Bernardino County Sheriff's deputies issued citations to Individual Plaintiffs for various state law violations, including driving without a valid registration and driving with a suspended license. *Id.*; Cal. Veh. Code §§ 4000(a)(1), 16028(a), 14601.1(a). As a result, Plaintiffs allege their cars were impounded, and they incurred significant expense in time and legal fees defending themselves. FAC ¶¶ 23-24, 26-28, 32, 35, 43-45, 52.

The piece of land where San Bernardino County Sheriff's deputies issued at least three of the citations is a one square mile plot of land known as Township 5N, Range 24E, SBM, Section 36 ("Section 36").[3]

[2] The Court sets forth the material facts, which are uncontroverted, except where indicated. Both sides made objections to evidence presented. The Court will address these objections below, but only to the extent that it relied upon the documents that are the subject of the parties' objections. The Court does not address objections relating to facts it did not consider in resolving the motion.

[3] Defendants assert, and Plaintiffs do not dispute, that Lopez's stop was made within Section 30, not Section 36. *See* Opp. at 2 n.1. Both sides agree that Section 30 is reservation land belonging to the Chemehuevi Tribe. *See* Defendants' Opposition at 1 ("As to Section 30, which admittedly is Reservation land….").

Plaintiffs seek an injunction to "enjoin Defendants from citing, arresting, impounding the vehicles of, and prosecuting members of the Chemehuevi Tribe for violations of the California Motor Vehicle Code sections 4000(a)(1), 16028(a), 14601.1(a)" in Section 36. Mot., Exh. 9 ("Proposed Order") at 5; *see also* FAC ¶ 77.

III.
JUDICIAL NOTICE

Federal Rule of Evidence 201 permits a court to take judicial notice of facts not subject to reasonable dispute and "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Campbell v. PricewaterhouseCoopers, LLP*, 642 F.3d 820, 824, n.3 (9th Cir. 2011) (citing Fed. R. Evid. 201(b)). Defendants have submitted a request for judicial notice of the following documents in support of their opposition ("Opp.") [Doc. # 24]:

1. United States Department of Interior, Office of the Solicitor Opinion Dated August 20, 1990 regarding Chemehuevi Request for Trust Patent (Opp., Exh. A);
2. United States Department of Interior, Bureau of Land Management Trust Patent to the Chemehuevi Indians dated June 28, 2010 (Opp., Exh. B);
3. Letter from Special Agent C.E. Kelsey to Commissioner of Indian Affairs dated December 27, 1906 (Opp., Exh. C);
4. Letter from Special Agent C.E. Kelsey to Commissioner of Indian Affairs dated January 3, 1907 (Opp., Exh. D); and
5. Letter from Commissioner of Indian Affairs to Secretary of Interior dated January 31, 1907 (Opp., Exh. E).

Opp., Request for Judicial Notice ("RJN") at 1. [Doc. # 24-2.]

"A court may take judicial notice of 'matters of public record.'" *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (internal citation omitted). A judicially noticed fact must be either "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The documents are maintained by the Bureau of Land Management or the Bureau of Indian Affairs and can be obtained from their respective government websites. *See* RJN at 2.

As Plaintiffs have not opposed Defendants' request and the accuracy of these documents is not questioned, the request for judicial notice is **GRANTED**.

IV.
LEGAL STANDARD

Federal Rule of Civil Procedure 65 governs the issuance of preliminary injunctions. Fed. R. Civ. P. 65(a). Plaintiffs seeking injunctive relief must show that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) that an injunction is in the public interest. *Toyo Tire Holdings Of Ams. Inc. v. Cont'l Tire N. Am., Inc.*, 609 F.3d 975, 982 (9th Cir. 2010) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)).

Under the Ninth Circuit's "sliding scale" approach to preliminary injunctions, the four "elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another." *Alliance For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Thus, "a preliminary injunction could issue where the likelihood of success is such that 'serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff's] favor." *Id.* at 1131-32. Put differently, "'serious questions going to the merits' and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements [likelihood of irreparable injury and public interest] of the *Winter* test are also met. *Id.* at 1132 (internal quotation marks omitted).

V.
DISCUSSION

Plaintiffs seek to enjoin Defendants and their agents from "citing, arresting, impounding the vehicles of, and prosecuting Chemehuevi tribal members for on-reservation violations of California Vehicle Code §§ 4000(a)(1), 16029(a), and 14601.1(a)." Proposed Order at 5. Plaintiffs argue that they have established a strong likelihood of success on their claims that Defendants violated federal law by enforcing California's traffic laws against Chemehuevi Tribe members on reservation land; violated Tribe members' rights to be free from discriminatory treatment under the Fifth and Fourteenth Amendments; and acted improperly by enforcing state laws that are preempted by federal law. *Id.*

Significantly, the likelihood of success on the merits of all of Plaintiffs' causes of action turns on this pivotal question: Is Section 36 located within the boundaries of the Chemehuevi Tribe's Reservation?

As a threshold matter, the Court first addresses the issues of standing and whether Plaintiffs' motion should be denied under Federal Rule of Civil Procedure 19.
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A. Threshold Issues

1. Standing

To establish standing, a plaintiff must show that (1) the plaintiff suffered an "'injury in fact,' i.e., an 'invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual and imminent, not conjectural or hypothetical'"; (2) the plaintiff's injury is "fairly traceable to the challenged conduct of the defendant" and thus, there is a causal connection; and (3) the plaintiff's injury "will likely be redressed by a favorable decision." *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

Here, the Court raised the issue whether Plaintiffs' alleged injury can be redressed in the absence of an injunction against all entities or persons—not just San Bernardino County Sheriff's deputies—capable of issuing citations under California's traffic laws, such as the California Highway Patrol ("CHP") and its agents. *See* February 5, 2016 Order. Plaintiffs assert that a "preliminary injunction would prevent the harm caused specifically by the County. If the Tribe and Indians wish to seek redress for [California Highway Patrol] citations and prosecution, they may file a separate action to do so." Reply at 27. Yet, four of the Plaintiffs—in addition to a mother of one Plaintiff and the Secretary-Treasurer of the Tribal Counsel—all suggest that they face potential harm from any person or entity empowered to enforce the state vehicle code:

> While within the boundaries of my Reservation, I am under the imminent threat of unlawful citation and prosecution for violations of state traffic laws, like California Vehicle Code Section 4000(a)(1) and California Vehicle Code Section 16028(a) if I drive a vehicle not in conformity with those Vehicle Code sections.

See Levias Decl.¶ 11; Potts Decl. ¶ 11; Sansoucie Decl. ¶ 10; Bunim Decl. ¶ 9; Lopez Decl. ¶ 8; Ochoa Decl. ¶ 8.

Nonetheless, Plaintiffs assert that the actions of the CHP are irrelevant in deciding whether a limited preliminary injunction would redress their harms. After all, according to Plaintiffs, the Chemehuevi Tribe "currently [has] no reason to allege that the CHP takes the position that Section 36 is not within the boundaries of the Reservation." Plaintiffs' First Suppl. at 7. Moreover, Plaintiffs state they have "no basis for concluding that the CHP's officers have engaged in a pattern or conduct and/or departmental policy of racially profiling tribal members or of impounding vehicles of tribal members to whom they have issued citations." *Id.* at 8.

These arguments do not address the Court's concern regarding how Plaintiffs' asserted injuries—the imminent threat of unlawful citation and prosecution for violations of state traffic

laws—can be fully redressed in the absence of the CHP, which Defendants contend is just as capable as County Sheriff's deputies of issuing citations to Chemehuevi Tribe members on Section 36. *See* Def. First Suppl. at 2; February 5, 2016 Order at 1-2. Nevertheless, Defendants have been unable to produce admissible evidence showing that CHP has in fact issued citations in Section 36 or intends to do so.[4]

Given that there is no admissible evidence in the record that entities other than San Bernardino County Sheriff's deputies issue traffic citations in Section 36, the Court assumes, without deciding, that Plaintiffs' claim are redressable—i.e., a favorable ruling from the Court can sufficiently redress Plaintiffs' alleged harms.

2. Federal Rule of Civil Procedure 19

In opposing Plaintiffs' preliminary injunction motion, Defendants also contend that the State of California is a necessary party under Rule 19(a)(1) and must be joined. Defendant's Opp. at 4. Without the State of California as a named defendant, Defendants argue that Plaintiffs' motion is "both improper and premature." *Id.* at 6.

"A party may be necessary under Rule 19(a) in three different ways." *Salt River Project Agric. Improvement & Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012). "First, a person is necessary if, in his absence, the court cannot accord complete relief among existing parties." *Id.* (citing Fed. R. Civ. P. 19(a)(1)(A)). "Second, a person is necessary if he has an interest in the action and resolving the action in his absence may as a practical matter impair or impede his ability to protect that interest." *Id.* (citing Fed. R. Civ. P. 19(a)(1)(B)(i)). "Third, a person is necessary if he has an interest in the action and resolving the action in his absence may leave an existing party subject to inconsistent obligations because of that interest." *Id.* (citing Fed. R. Civ. P. 19(a)(1)(B)(ii)). There is, however a fourth consideration: even when a person has an interest in the litigation, that person may not be necessary under Rule 19(a) if he is "adequately represented" by a party already present in the litigation. *Id.* at 1180-81.

Because Plaintiffs do not deny that California has an ownership interest in Section 36, and, as discussed *infra*, Congress conveyed Section 36 to California in 1853, the Court finds that that California does have a legally protected interest in the action under the second factor. As such, the Court will not examine the first and third factors for determining necessity under Rule

[4] Defendants' evidence consisted of a declaration by Defense counsel. Counsel claims she spoke with a CHP lieutenant who informed her that CHP had issued 12 citations to individuals within or near Section 36 within the past six months. *See* Declaration of Katelyn Empey at 1-2. Plaintiffs objected to the evidence as inadmissible hearsay. The Court SUSTAINS the hearsay objection.

19(a), and will proceed to the fourth consideration under *Salt River*: whether or not Defendant can adequately represent California's interests.[5]

i. Adequate Representation

Under Ninth Circuit law, "If a legally protected interest exists, the court must further determine whether that interest will be impaired or impeded by the suit. Impairment may be minimized if the absent party is adequately represented in the suit." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990). An absent party may be adequately represented if: (1) "the interests of a present party to the suit are such that it will undoubtedly make all of the absent party's arguments;" (2) "the party is capable of and willing to make such arguments;" and (3) "whether the absent party would offer any necessary element to the proceedings that the present parties would neglect." *Shermoen v. United States*, 982 F.2d 1312, 1318 (9th Cir. 1992) (internal citations and quotations omitted). Additionally, a court must consider whether relief can be shaped to lessen prejudice to the absent party, an adequate remedy exists, and if the suit can be brought in an alternative forum. *Makah*, 910 F.2d at 560.

Here, Defendants and the State of California ostensibly share an interest in enforcing the Motor Vehicle Code in Section 36. There is no indication that Defendants would fail to make all of California's arguments regarding its ability to exercise jurisdiction over the land at issue. Similarly, Defendants have demonstrated through its extensive briefing that it is capable of and willing to make California's arguments—namely, that Section 36 is within the State's jurisdiction and therefore subject to state traffic laws. Defendants have also not indicated any "necessary element to the proceedings" that would be neglected with California's absence. Indeed, Defendants' primary argument here is to characterize the instant case as a boundary dispute. *See* Def. First Suppl. at 7. Moreover, Plaintiffs assert that they are not seeking an order divesting California of title or possession of Section 36. *See* Plaintiff's First Suppl. at 11. Nor would a preliminary injunction enjoining Defendants from issuing citations and prosecuting Plaintiffs for traffic code violations alter territorial boundaries of the reservation such that California's stake in Section 36 would be affected.

More importantly, relief can also be shaped to avoid prejudice to the State of California. *See Makah*, 910 F.2d at 560 (citing *Provident Tradesmen Bank & Trust Co. v. Patterson*, 390 U.S. 102, 111-12 (1968) ("a court should consider modification of a judgment as an alternative to dismissal")). A preliminary injunction enjoining only San Bernardino County officials and no other State officials or entities, like the CHP, who enforce traffic laws would provide Plaintiffs with their requested relief, while avoiding prejudice to the State. Such shaped relief is especially

[5] Neither Defendants nor Plaintiffs discuss the first and third *Salt River* factors as applied under Rule 19.

appropriate considering that neither side has offered admissible evidence that State officials have harmed Plaintiffs in any way. *See* section V.A.1 *supra*.

Thus, because Defendants can adequately represent the State of California's interests in this case, Rule 19 does not require dismissal.[6]

Having resolved the initial issues of standing and whether Rule 19 applies, the Court proceeds with its preliminary-injunction analysis.

C. Preliminary Injunction Factors

1. Serious Questions and Likelihood of Success on the Merits

i. Indian Country

Title 18 U.S.C. section 1151(a) defines "Indian country" as "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation[.]"[7] Congress defined Indian country "broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States." *Oklahoma Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 123 (1993) ("a tribal member need not live on a formal reservation to be outside the State's taxing jurisdiction; it is enough that the member live in 'Indian country'"). Whether or not land falls within Indian country is significant: "[g]enerally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States." *Alaska v. Native Vill. of Venetie*, 522 U.S. 520, 527 n.1 (1998).

Under Public Law 280 (18 U.S.C. section 1162 and 28 U.S.C. section 1360), California has limited jurisdiction over Indian country, depending on whether the state law at issue prohibits or regulates conduct. *United States v. E.C. Invs.*, 77 F.3d 327, 330 (9th Cir. 1996) ("Public Law 280 gives states power over Indian lands only if the state law in question prohibits, rather than regulates, conduct") (citing *California v. Cabazon Band of Mission Indians*, 480 U.S.

[6] Defendants also contend that private landowners in Section 36 need to be joined as well. Opp. at 4. The Court rejects this contention. Private landowners will generally not become subject to tribal regulations and will continue to be subject to state law regardless of whether their land falls within the borders of an Indian reservation. *See Montana v. United States*, 450 U.S. 544, 565-66 (1981) (Indian tribe could not regulate non-Indian fishing and hunting on reservation land). Moreover, the possibility of an impact on property value is speculative. *See Makah*, 910 F.2d at 558 ("interest must be more than a financial stake, and more than speculation about a future event").

[7] Section 1151's definition of Indian country also includes dependent Indian communities and Indian allotments. These subsections are not relevant in this case. *See* 18 U.S.C. § 1151(b), (c).

202, 209 (1987)). On the one hand, if a California law generally prohibits certain conduct, California has criminal jurisdiction under 18 U.S.C. section 1162. *See Cabazon*, 480 U.S. at 209. On the other hand, if a California law merely *regulates* conduct and otherwise permits the conduct at issue, i.e. "civil/regulatory laws," California has no jurisdiction within Indian country to enforce that law. *Id.* For example, laws regulating speeding merely regulate the otherwise permissible conduct of driving, and, therefore, are considered civil/regulatory, under which the state may not assert jurisdiction over tribal members within Indian country. *Confederated Tribes of the Colville Reservation v. Washington*, 938 F.2d 146, 148 (9th Cir. 1991); *but see Quechan Tribe v. McMullen*, 984 F.2d 304, 308 (9th Cir. 1993) (law prohibiting dangerous fireworks except in the hands of licensed or trained persons was criminal/prohibitory and therefore enforceable within Indian country).

Here, the parties dispute whether Section 36 falls within Indian country. While Defendants do not contest the assertion that enforcement of the California Motor Vehicle Code in Indian country is unlawful, *see* Opp. at 1, 18, they argue that Section 36 is not in Indian country because it is not a part of the Indian reservation.[8] Opp. at 1. According to Plaintiffs, however, Section 36 is within Indian country as it "lies within the boundaries of the Reservation as established by Congress through enactment of federal statutes and action of the President through issuance of a Secretarial order." *See* Reply at 2.

ii. Section 36 and the Chemehuevi Indian Reservation

The Secretarial Order to which Plaintiffs refer dates back to 1907, and was preceded by Congressional action concerning Indian reservation land. Such action began on March 3, 1853, when Congress passed legislation ("1853 Act") that conveyed to the State of California Sections 16 and 36 in each township for public school purposes. 10 Stat. 244, ch. 145, § 6; *see also United States v. Southern Pacific Transp. Co.*, 601 F.2d 1059, 1061 (9th Cir. 1979) (stating the 1853 Act "established the United States' public lands system for California, a newly admitted state").

On January 12, 1891, Congress then enacted the Mission Indian Relief Act ("MIRA"), which authorized the Secretary of the Interior of the United States ("the Secretary") to oversee the establishment of new reservations for Mission Indians[9] residing in California. 26 Stat. 712,

[8] Defendants also do not dispute Plaintiffs' assertion that the Motor Vehicle Code is a civil/regulatory law. *See* Opp. at 1, 18 ("Defendants do not intend to enforce civil/regulatory traffic citations against Indians for violations that occur within Section 30"); *see also* Mot. at 11-12.

[9] Although Defendants note that members of the Chemehuevi Tribe may not ethnically be Mission Indians, Congress and the Department of the Interior treated the Chemehuevi as Mission Indians for the purposes of MIRA. *See* Opp. at 9; Opp., Exh. A ("Solicitor's Opinion of August 20, 1990") at 4. The parties do not dispute that the Congressional acts mentioned *supra* apply to the Chemehuevi Tribe in this case. *See* Opp. at 6-9; Reply at 16-18.

ch. 65 (1891). This involved the Secretary's appointment of commissioners to propose reservation sites. *Id.* §§ 1, 2. These selected sites would then become "valid when approved by the President and the Secretary of the Interior." *Id.* § 2. MIRA instructed that "if no valid objection exists, [the Secretary] shall cause a patent to issue for each of the reservations selected by the commission." *Id.* § 3. "An explicit constraint on this consummating act was that 'no patent shall embrace any tract or tracts to which existing valid rights have attached in favor of any person under any of the United States laws providing for the disposition of the public domain.'" *Pechanga Band of Mission Indians v. Kacor Realty, Inc.*, 680 F.2d 71, 74 (9th Cir. 1982) (quoting MIRA § 3).

Thus, unless the Secretary issues a trust patent under MIRA to certain land, that land is not part of the Indian reservation.

The commission at that time did not submit any proposals regarding reservation sites for the Chemehuevi Tribe, and the Secretary therefore issued no trust patents to the Chemehuevi Tribe. Opp., Exh. A, "Solicitor's Opinion of August 20, 1990" at 4. [Doc. # 24.] Recognizing that certain lands remained unassigned to Mission Indian reservations, the Commissioner of Indian Affairs sent a letter to the Secretary on January 31, 1907, recommending that certain lands be added to reservation land for the Chemehuevi. Opp., Exh. E at 1-4. In particular, the January 31, 1907 letter recommended that Section 36 be added to the Chemehuevi Tribe Reservation. *Id.* at 2.

On February 2, 1907, the Secretary issued an Order to the General Land Office directing that lands, including Section 36, be "withdrawn from all form of settlement or entry, *pending action by Congress* authorizing the addition of the lands described to the various Mission Indian Reservations." Certified Copy of February 2, 1907 Secretarial Order ("February 2, 1907 Order") at 1 (emphasis added). [Doc. # 48.] The Secretary referenced the lands identified in the Commissioner's January 31, 1907 letter, including Section 36. *Id.* at 3.

Here, Plaintiffs' primary contention is that the Secretary's February 2, 1907 Order "withdrew the lands identified in the Commissioner's January 31, 1907 letter from future settlement and entry, and thereby established the territorial boundaries of the Chemehuevi Indian Reservation." Plaintiffs' Reply at 12; *see also id.* at 11 ("The question is, did the Secretary include Section 36 within the boundaries of the Reservation?").

The Court does not find this argument persuasive. Under MIRA, the Secretary must issue a trust patent *before* certain lands can become part of an Indian Reservation. The Secretary did not do so here. The Secretary stated that "[i]n review of the recommendation of the Indian office [i.e., the Commissioner], I have to *direct* that the lands referred to be withdrawn from all forms of settlement or entry until further notice. . . ." February 2, 1907 Order at 2 (emphasis added). The Secretary's ability to "direct" action, however, does not translate into the

establishment of reservation boundaries without a patent.[10] *See* MIRA, 26 Stat. 712, ch. 65 § 3 (if no valid objection exists to the commissioners' report, the Secretary "*shall* cause a patent to issue for each of the reservations selected by the commission") (emphasis added); *see also Pechanga*, 680 F.2d at 75 (finding government did not grant land to Indian Tribe because patent issued by Secretary establishing reservation did not include land at issue). Plaintiffs cite to no authority for the proposition that an Indian reservation's "territorial boundaries" can be established without also establishing the reservation itself through a trust patent.

For reasons not fully explained in the record, the United States Bureau of Land Management[11] did not issue a trust patent to the Chemehuevi Tribe until June 28, 2010. *See* Opp., Exh. B, "U.S. Trust Patent No. 04-2010-0007" ("2010 Trust Patent"); Opp. at 9; Declaration of Lester Marston at 4 [Doc. # 26-2]. While the trust patent acknowledges the Secretary's February 2, 1907 Order, it expressly *excluded* Section 36:

> WHEREAS, an Order of the Authorized Officer of the Bureau of Indian Affairs is now deposited in the Bureau of Land Management, directing that, pursuant to the Act of January 12, 1891 (26 Stat. 712), as amended by the Act of March 1, 1907 (34 Stat. 1015), and other acts, a trust patent issue to the Chemehuevi Tribe of Mission Indians ("Tribe") for the above described lands **excluding** . . .
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> 3. Those lands granted to the State of California as school sections on July 10, 1895, located in sec. 36, T. 4 N., R. 25 E and **sec. 36, T. 5 N., R. 24 E**. . . .

2010 Trust Patent at 2 (emphasis added).

Plaintiffs fail to meaningfully address the substance of this June 28, 2010 trust patent. Plaintiffs do attempt to distinguish the Ninth Circuit's *Pechanga* case. While the facts in *Pechanga* do differ from the present case—it involved a quiet-title action—the core issue remains the same: whether the disputed land is part of the Indian reservation under MIRA. Plaintiffs cannot evade the Ninth Circuit's interpretation of MIRA that the Secretary must issue a trust patent to delineate the boundaries of the Reservation.

[10] One month after the Secretary's February 2, 1907 Order, Congress amended MIRA ("March 1, 1907 Act"). *See* 34 Stat. 1015, 1022-23. The March 1, 1907 Act continued to "authorize the Secretary of the Interior to select, set apart, and *cause to be patented* to the Mission Indians such tracts of the public lands of public lands of the United States, in the State of California as he shall find upon investigation to have been in occupation and possession of the several bands or villages of Mission Indians. . . ." *Id.* (emphasis added).

[11] The Bureau of Land Management is the successor of the General Land Office, both of which are part of the Department of the Interior. *See* "A Long and Varied History," Bureau of Land Management, Aug. 25, 2011, http://www.blm.gov/wo/st/en/info/About_BLM/History.html.

Thus, Section 36 is not part of the Chemehuevi Indian Reservation. Nevertheless, the inquiry does not end here.

iii. Section 36 and Indian Country

Under 18 U.S.C. section 1151(a), Indian country is not merely limited to reservation land, but includes "*all land within the limits* of any Indian reservation under the jurisdiction of the United States Government, *notwithstanding the issuance of any patent*, and, including rights-of-way running through the reservation." 18 U.S.C. § 1151(a) (emphasis added).

Indian country includes non-Indian land within the exterior boundaries of an Indian reservation. *See United States v. Crowe*, 563 F.3d 969, 971 n.1 (9th Cir. 2009) (Montana town is "located within the exterior boundaries of the Fort Peck Indian Reservation and thus is 'Indian country' within the meaning of 18 U.S.C. §1151(a)"); *Alexander Bird in The Ground v. District Court of Thirteenth Judicial Dist.*, 239 F. Supp. 981, 983-84 (D.C. Mont. 1965) ("'Indian country' includes private lands located within the exterior boundaries of an Indian reservation") (citing *Seymour*, 368 U.S. 351, 358 (1962) (rejecting argument that only fee-patented lands held by Indians were covered under section 1151)).[12]

Indeed, the Supreme Court has repeatedly made clear that the "plain language of § 1151" seeks to avoid "an impractical pattern of checkerboard jurisdiction" and cautioned against "adopting an unwarranted construction of [section 1151] where the result would be merely to recreate confusion Congress specifically sought to avoid." *Seymour*, 368 U.S. at 358. The term "checkerboard jurisdiction" refers to the idea that there can be patches of non-Indian-owned land, which are subject to state jurisdiction, interspersed with patches of Indian-owned land, which are subject to federal jurisdiction. The Supreme Court sought to avoid scenarios where law enforcement officials would find themselves having to constantly "search tract books in order to determine whether criminal jurisdiction over each particular offense, even though committed within the reservation, is in the State or Federal Government." *Id.*; *see also Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 479 (1976) ("Congress by its more modern legislation has evinced a clear intent to eschew any checkerboard approach within an existing Indian reservation."); *DeCoteau v. Dist. County Court for Tenth Judicial Dist.*, 420 U.S. 425, 466 (1975) ("crazy quilt pattern" or "'checkerboard' jurisdiction defeats the right of tribal self-government") (Douglas, J., dissenting).[13]

[12] Although 18 U.S.C. § 1151 is part of the criminal code, its definition of Indian country applies in both the criminal and civil context. *See* 1-3 Cohen's Handbook of Federal Indian Law § 3.04 (2015) (citing *Cabazon*, 480 U.S. at 208 n.5).

[13] As one court noted, "[i]t is possible to read *Seymour* as extending federal jurisdiction over land patented to non-Indians only when that land is patented *subsequent* to the establishment of the Indian reservation." *See Cardinal v. United States*, 954 F.2d 359, 363 (6th Cir. 1992). *Seymour* and its progeny concern situations where

By considering land not owned by the Indians, but within the exterior boundaries of the reservation "Indian country," courts can avoid the impracticalities associated with checkerboard jurisdiction.

As applied here, Section 36 is a landlocked parcel surrounded on all sides by Chemehuevi Reservation land, a near-perfect example of the type of checkerboard jurisdiction the Supreme Court counseled against. *See* Def. Third Suppl., Exh. B at 46 [Doc. # 44-2]; Plaintiff's Third Suppl., Declaration of Stan Webb ("Webb Decl."), Exh. A, B [Doc. # 45-2].[14] In fact, the "impractical pattern of checkerboard jurisdiction" and confusion described in *Seymour* are plainly apparent: Defendants concede that they mistakenly issued a citation to Plaintiff Lopez in Section 30, which is Indian-owned land located near Section 36, which is non-Indian-owned land. *See* Opp. at 18 ("it is not, and has not been the policy of the County to issue citations against Indians for violations that occur within Section 30," which is "within the boundaries of the Reservation").

In short, because Section 36 falls within the boundaries of the Chemehuevi Tribe Reservation, Plaintiffs have raised at least serious questions going to the merits of their claim that Section 36 is Indian country.[15]

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land within an already-existing reservation was conveyed to non-Indians or became trust lands for non-Indians. *See, e.g.*, *Seymour*, 368 U.S. at 358 (land at issue originally belonging to the Colville Indian Tribe was patented to the governmental townsite of Omak); *Bugenig v. Hoopa Valley Tribe*, 266 F.3d 1201, 1205-06 (9th Cir. 2001) (various parcels of the Hoopa Valley Reservation were sold to non-Indians). In contrast, Section 36 was never part of the Chemehuevi Reservation and was conveyed to the State of California *prior* to the establishment of the Chemehuevi Reservation. The Court is unaware of any jurisdiction that has adopted such a cabined interpretation of *Seymour*—in fact, the *Cardinal* court itself did not adopt that narrow reading of *Seymour*. In any event, given the concerns animating the *Seymour* Court's decision, the Court does not see why the rationale in *Seymour* should be limited to situations where disputed land was patented after an Indian Reservation had been created.

[14] Stan Webb is the Realty Officer for the Western Regional Office of the Bureau of Indian Affairs ("BIA") in Phoenix, Arizona, a position he has held for the last 25 years. Webb Decl. ¶¶ 1-2. His BIA regional office is responsible for, among other things, approving the acquisition of land into trust for Chemehuevi tribal members, and granting easements and rights-of-way across Indian trust lands. *Id.* ¶ 4. Webb attaches to his declaration copies of maps, "maintained in the files and records of the [BIA regional office]," which identify the physical location of the different parcel sections at issue in this matter, i.e., Sections 30 and 36. *Id.* ¶¶ 8-9, Exhs. A and B. Defendants object to the introduction of the maps, contending that Webb lacks the foundation and personal knowledge to authenticate the maps' contents or to testify that the maps properly depict the reservation's boundaries. [Doc. # 47 at 38-39.] The Court OVERRULES Defendants' objections. Webb has properly authenticated the documents as the custodian of record for the BIA regional office. As such, these documents are admissible either as business records maintained by the BIA regional office or as public records. *See* Fed. R. Evid. 803(6) or 803(8).

[15] To the extent Plaintiffs base their civil rights claim on Defendants' alleged racial profiling of tribal members, the Court finds that Plaintiffs have failed to raise serious questions or show a likelihood of success on the merits. Their written submissions are entirely devoid of any evidence that Defendants' actions were racially

2. Likelihood of Irreparable Injury

Subjecting an Indian tribe to an unlawful exercise of jurisdiction is an "irreparable injury vis-à-vis the Tribe's sovereignty." *EEOC v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1077 (9th Cir. 2001); *see also Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255 (10th Cir. 2006) ("an invasion of tribal sovereignty can constitute irreparable injury"). Interference with tribal sovereignty is an irreparable injury because it cannot "be adequately compensated for in the form of monetary damages." *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1251 (10th Cir. 2001).

Here, Plaintiffs face the threat of continued citation and prosecution by San Bernardino County officials. *See Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005 (6th Cir. 2015) (finding Indian tribe suffered an irreparable injury when state repeatedly cited and prosecuted tribe members for state traffic law violations within Indian country). Indeed, Plaintiffs present evidence that Defendants have cited and prosecuted several Chemehuevi Tribe members for violations of the California Vehicle Code while on Section 36. Allowing Defendants to exercise state jurisdiction over Chemehuevi Tribal members in Section 36 would lead to a likelihood of "irreparable injury vis-à-vis the Tribe's sovereignty." *See Karuk Tribe*, 260 F.3d at 1077.

Thus, Plaintiffs have shown a likelihood of irreparable injury.

3. Balance of Hardships

A preliminary injunction would prevent Plaintiffs from having to expend additional time and money defending against Defendants' allegedly unlawful interference with the Chemehuevi Tribe's sovereignty. In contrast, Defendants make no showing of any harm that may result if an injunction is issued.

Defendants' primary claim of harm is that "at least 56 landowners and real estate agents have expressed concerns" of affected property interests and public safety risks. *See* Opp. at 16. Defendants provide no evidentiary support for this assertion. Furthermore, a preliminary injunction enjoining Defendants from citing and prosecuting Plaintiffs for violations of the California Motor Vehicle Code would not give Plaintiffs free rein to violate state laws. California's criminal laws of general application, for instance, still apply. *See* 18 U.S.C. § 1162(a) ("the criminal laws of [California] shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory"); 28 U.S.C. § 1360(a)

motivated. Given that Plaintiffs cannot satisfy either of these factors, the Court need not address the remaining three factors of irreparable harm, balance of equities, and public interest as to Plaintiffs' civil rights claim.

("those civil laws of [California] that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State").

Balancing the lack of cognizable harm an injunction would cause to Defendants, with the irreparable harm that would result from Defendants' interference with the Chemehuevi Tribe's sovereignty, the balance of hardships tips sharply in favor of Plaintiffs.

4. Public Interest

Plaintiffs' case is supported by "Congress's clearly stated federal interest in promoting tribal self-government." *Water Wheel Camp Rec. Area, Inc. v. Larance*, 642 F.3d 802, 813 (9th Cir. 2011) (citing *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335-36 (1983)).

Although Plaintiffs have only raised serious questions as to whether Section 36 is Indian country, the public interest in promoting the federal policy of ensuring that Indian tribes are not hampered from developing robust self-governance nevertheless weighs in favor of granting a preliminary injunction.

C. Bond

Under Federal Rule of Civil Procedure 65(c), "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). The Ninth Circuit has recognized that Rule 65 "invests the court with discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (emphasis in original) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). "The district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Id.*

In their opposition, Defendants offer no explanation for why a bond should be required nor do they offer a proposed amount. Moreover, it is unclear what harm, if any, would result to Defendants if this injunction is wrongful.

Given that Defendants have not presented any evidence of a realistic likelihood of harm that would result from a preliminary injunction, the Court waives the bond requirement.
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VI.
CONCLUSION

In light of the foregoing, Plaintiffs' motion for preliminary injunction is **GRANTED**.

During the pendency of this action, Defendants and their agents or representatives are hereby enjoined:

1. From citing, arresting, impounding the vehicles of, and prosecuting Chemehuevi tribal members for on-reservation violations of California Vehicle Code §§ 4000(a)(1), 16028(a), and 14601.1(a) (where suspension of a driver's license stems from violation of a civil/regulatory law) on Section 36;

2. From prosecuting Plaintiff Bunim in the Superior Court of San Bernardino County in the case of *People of the State of California v. Chelsea Lynn Bunim*, Case No. 3457605CB; and

3. From prosecuting Plaintiff Ochoa in the Superior Court of San Bernardino County in the case of *People of the State of California v. Tommie Robert Ochoa*, Case No. 3114197TO. [16]

Within 10 business days from the date of this Order, the Defendants shall serve and file a declaration verifying that they have complied with this Order and detailing what steps, if any, they have taken to do so. The parties shall meet and confer within 10 business days from the date of this Order and file an Amended Joint Rule 26(f) Report by no later than **September 2, 2016**, with proposed new dates and deadlines governing the litigation of this matter.

IT IS SO ORDERED.

[16] The parties have stipulated that the criminal cases against both Bunim and Ochoa have been dismissed. [Doc. # 43.] Defendants have nonetheless reserved the right to refile charges against both Plaintiffs upon this action's resolution. *Id.*