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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

NORTHERN ARAPAHO TRIBE, for itself and as *parens patriae* Plaintiff, vs. DARRYL LaCOUNTE, LOUISE REYES, NORMA GOURNEAU, RAY NATION, MICHAEL BLACK and other unknown individuals in their individual and official capacities, Defendants.	)	Civil Action No. CV-16-11 and No. CV-16-60 GF-BMM (consolidated) NORTHERN ARAPAHO TRIBE'S BRIEF IN SUPPORT OF ITS MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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The Northern Arapaho Tribe (NAT) submits the following brief in support of its Motion for Temporary Restraining Order (TRO) and Preliminary Injunction.

I. INTRODUCTION

After acknowledging the right of the NAT to operate its Tribal Court, Federal Defendants refuse to honor Tribal Court arrest warrants, refuse to provide police reports to the Tribal prosecutor, refuse to present criminal detainees to the Tribal Court for arraignment, and are in some instances releasing alleged criminals from the custody of BIA Law Enforcement without any arraignment. Defendants now insist that all criminal and civil cases pending in the Tribal Court be re-filed, an approach that would violate the rights of criminal defendants to speedy trials and the rights of all litigants to due process. These actions present serious risks to victims of crime and to public safety. Defendants threaten to remove Tribal Court staff from courthouse offices without further notice. Despite requests from the NAT, Defendants have failed to identify any person with responsibility on behalf of the BIA with whom the NAT can consult to avoid these or other problems now being created by the BIA.

Despite its admission that NAT has lawfully established a Tribal Court, Federal Defendants now work to obstruct that right and violate the rights of criminal defendants and civil litigants alike. The Motion for a TRO is filed to

protect the NAT and the public from the latest in an array of *ultra vires* actions by Federal Defendants.

II. THE STANDARD FOR ISSUANCE OF A TRO

A number of courts have held that "[b]ecause the ISDEAA [Indian Self-Determination and Education Assistance Act] specifically provides for both injunctive and mandamus relief to remedy violations of the Act... the Tribe need not demonstrate the traditional equitable grounds for obtaining the relief it seeks." *Pyramid Lake Paiute Tribe v. Burwell*, 70 F.Supp. 3d 534, 545 (D.D.C. 2014), *appeal dismissed*, No. 15-5076, 2015 WL 5237730 (D.C. Cir. Aug. 14, 2015) (internal citations omitted). In any event, as shown below, the traditional legal standards for granting a TRO are met. These standards are the same as the standards for granting a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n. 7 (9th Cir.2001).

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "'[S]erious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a

preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). "A sliding scale approach, including the 'serious questions' test, preserves the flexibility that is so essential to handling preliminary injunctions, and that is the hallmark of relief in equity." *Id*. at 1139 (Mosman, concurring). As set forth below, NAT meets the ISDEAA standard and the traditional standard for issuance of preliminary relief.

A temporary restraining order can be granted without providing the opposing party an opportunity to be heard, if "specific facts in an affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Rule 65(b)(1), Fed.R.Civ.P.

III. THE FACTS

Backdrop. This case flows from the *ultra vires* issuance of Indian self-determination contracts to the "SBC as JBC" by Federal Defendants. More recently, Defendants threatened to impose a Court of Indian Offenses ("CFR" court) on the NAT and to thereby displace the Tribal Court system established by the Tribe. Doc. 101-1. When that threat occurred, NAT presented facts and argument on the matter to the Court, including live testimony at the September 14,

2016, hearing. At that hearing, counsel for Defendants assured this Court that so long as a Tribal Court continues, it would be unnecessary to establish a CFR court and that if the Tribal Court ceases to exist, a CFR court then would be established on an emergency basis. Transcript, Motion Hearing, September 14, 2016, at 26, lines 18-22. Despite this assurance, Defendants continue their unlawful efforts to impose a CFR court system onto the NAT and its members.

NAT's Cooperative Judicial Services Proposal. NAT submitted a proposal for ISDEAA funding for judicial services to be provided by the NAT to members of the NAT or others within the jurisdiction of the courts of the NAT. Doc. 1-2 at 4, CV-16-60-GF-BMM (proposal dated January 20, 2016). This proposal was submitted to address the Eastern Shoshone Tribe's (EST) failure or refusal to consent to continued operation of a shared court. The proposal was declined by the Bureau of Indian Affairs (BIA) on April 19, 2016 (Doc. 1-4), and is the subject of the consolidated case CV-16-60-GF-BMM.

NAT outlined in its judicial services proposal a means to assume, as authorized by the NAT Code,[1] those portions of the existing court functions and

[1] The NAT has established its own courts (17 N.A.C. 101 *et seq.*) in ways which harmonize it with the Shoshone and Arapaho Law & Order Code (S&A LOC). For example, the NAT criminal code repeats the criminal laws of the S&A LOC and incorporates by reference provisions of the S&A LOC which do not directly conflict with Arapaho law. *See* N.A.C. Titles 20 - 23 and N.A.C. Title 17,

personnel which serve NAT tribal members or others within the jurisdiction of the court. The NAT proposal includes cross-authorization of court officials and maintenance of functions for the remaining part of the existing court's services, which could be run either as a Court of Indian Offenses or as a Shoshone Tribal Court. The NAT Court is designed to function independently, but based on its budget, structure, personnel and cross-authorization, is positioned to fit like a puzzle piece into the structure of any Shoshone-focused judicial services. Doc. 98-3.

Events After the Preliminary Injunction Hearing. After the September 14 preliminary injunction hearing, NAT learned that on September 9, and again on September 27, BIA transferred to the Shoshone Business Council (SBC) a total of $1,393,318.00 in federal funds, associated with the illegal self-determination contract to "SBC as JBC," for operation of the Shoshone and Arapaho Tribal Court. Also after the hearing, NAT learned that on September 13, 2016, SBC Chairman Darwin St. Clair, Jr., had transferred at least $989,500.00 of those funds

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§603(c). NAT has also authorized, on at least a temporary basis, the Honorable John St. Clair to continue to serve the Arapaho Tribe as its Chief Judge. Doc. 98-3 and N.A.C. Title 17, §603(e) comment. Unless the context shows otherwise, NAT's references herein to the "Tribal Court" include the Shoshone and Arapaho Tribal Court or the Northern Arapaho Tribal Court.

to the SBC's general fund (Exhibit 77). Prior to July, 2015 carryover funds belonging to both Tribes supported the Tribal Court. NAT has now obtained a copy of the September bank statement verifying these fund transfers. Exhibit 78. (On September 30, SBC issued layoff notices to all Tribal Court employees, claiming no funds were available to keep the court in operation.)

This Court's Order Granting Preliminary Injunction was entered on October 17. On October 18, Defendant Gourneau wrote a letter to Judge John St. Clair, Exhibit 79, explaining that BIA had decided to commence operation of a CFR court and sketching her view of that court's jurisdiction. Gourneau also met with the Northern Arapaho Business Council (NABC) to announce her decision. In an effort to clarify the Federal position, Ms. Gourneau told NABC, "You're still going to have your court, the issue comes down to funding." Exhibit 90 at tr. 7.

Defendant Gourneau also delivered a copy of a memorandum from the Principal Deputy Assistant Secretary - Indian Affairs to the Acting Director, BIA. Exhibit 80. The memorandum had been approved on September 30, 2016. The memo requested a "waiver of 25 C.F.R. 11.100 and 11.201(a) and any other applicable regulations in 25 CFR" on the premise that as of October 1, 2016, "there will be *no Judicial System operational to protect the health and safety of the community.*" (Emphasis added.) The following day, Judge St. Clair responded to

Gourneau's letter, Exhibit 81, pointing out some "fundamental problems in [Gourneau's] approach."[2] The decision to waive federal regulations is unsupported by any citation to legal authority. To the extent it purports to waive the sovereign right of the NAT to operate its Tribal Court and to exercise inherent judicial authority over its own members, it violates federal law and is ineffective.

Defendant Gourneau correctly recognized "the right of the Northern Arapaho Tribe to operate a tribal court," and asked the Tribal Court to adopt procedures for transfer of new or existing cases concerning the Shoshone Tribe or its members to the CFR court. Exhibit 84. Chief Judge John St. Clair did exactly that, meeting with newly appointed CFR Magistrate Thelma Stiffarm and others to develop "a protocol for the comity of the respective courts." *Id. and see* Exhibit 84. The plan includes presentation of criminal detainees by BIA Law Enforcement to each court for arraignment. *Id.* The plan contemplates that the BIA will

[2] The Shoshone and Arapaho Tribal Court issued two orders (Exhibits 82 and 83), concluding that Shoshone law (somewhat like the U.S. Constitution) incorporates the principle of separation of powers, and creates limits on the authority of executive branch officers such as SBC. The Court ruled, on a temporary basis, that, in the absence of authorization from the Eastern Shoshone *General* Council, SBC lacked authority to dismantle the Shoshone and Arapaho Court, or treat the elected Judges as "at will" employees. This issue of Shoshone law may determine whether the Tribal Court at Wind River is ultimately a Shoshone and Arapaho Tribal Court or only an Arapaho Tribal Court. For purposes of the pending Motion for TRO, NAT refers to the "Tribal Court" as meaning either.

continue to provide police or arrest reports to the Tribal Prosecutor, who needs them to present at arraignments and for subsequent prosecution. Exhibit 84. Detainees who are members of the Shoshone Tribe will be referred by the Tribal Prosecutor to the CFR prosecutor for arraignment in the CFR court. Pending criminal cases will continue to be processed through the Tribal Court, in part because the CFR court did not exist at the time alleged criminal offenses occurred in matters which were pending on October 18, 2016. *Id.*

Before the ink on this plan was dry, the SBC urged Federal Defendants to ignore the status of the NAT as a federally recognized Tribe and to prevent cooperation and coordination between the courts and to violate provisions of federal law.

On October 19, the SBC responded to St. Clair's letter, Exhibit 85, and adopted a resolution reasserting sole and exclusive authority over law and order on the Wind River Reservation. Exhibit 86. SBC called on the BIA to "expel all current occupants of the [court] Building," and once again insisted that the BIA impose a CFR court "regardless of whether NAT consents." SBC asserts it has a "unique and exclusive standing" by treaty "that recognizes the sovereign right of the [EST] over law and order on the Reservation." *Id.*

It is these commands that Defendant Gourneau and her associates are

currently carrying out. Defendants' behavior violates the spirit, if not the letter, of this Court's Order of October 17, 2016, by using the power of the federal government to do the bidding of the SBC without the consent and in derogation of the sovereign authority of the NAT.

On October 19, 2016, NAT learned that Federal Defendants (1) refused to provide any new BIA police or incident reports to the Tribal Prosecutor necessary to arraign criminal detainees, and (2) refused to deliver any new BIA detainees to the Tribal Court for arraignments. Indeed, none of the prisoners scheduled for arraignment in the Tribal Court (or in the CFR court) was presented or arraigned on October 19 or 20. An unknown number of prisoners were released from BIA custody without arraignment or other criminal process. Defendant Gourneau also insisted that Tribal Court staff should expect to be removed from the courthouse in short order. *See* Exhibit 84 and Exhibit 87.

On October 24, NAT learned that Federal Defendants insisted that all criminal cases be brought pursuant to the CFR, all prisoners arraigned only by the CFR Magistrate, and that the 250 to 300 pending criminal cases be re-filed by the CFR prosecutor. See Exhibit 88.

NAT also learned that Federal Defendants will no longer honor Tribal Court arrest warrants, leaving those subject to the warrants at large. Exhibit 88.

These recent actions by Federal Defendants present serious threats to public health and safety. Exhibits 88 and 84. They contradict positions taken in writing by Defendant Gourneau. Exhibit 79. They also violate the sovereign authority of the NAT to establish and operate its own Tribal Court, including the right to prosecute criminal defendants within the jurisdiction of the Court. Ongoing threats to remove Tribal Court staff from the courthouse and efforts to interfere with Tribal Court pending cases have made it necessary for the NAT to seek further equitable relief from this Court.

The NAT is Likely to Succeed on the Merits

Federal Defendants Interfere with NAT Criminal Jurisdiction

The Northern Arapaho Tribe retains inherent sovereign authority to exercise criminal jurisdiction over its members. Courts have repeatedly recognized Tribes' "sovereign power to punish tribal offenders." *U.S. v. Lara*, 541 U.S. 193, 197 (2004) *citing United States v. Wheeler,* 435 U.S. 313, 318, 322-323 (1978). *See also Duro v. Reina*, 495 U.S. 676 (1990), *United States v. Bearcomesout,* No. CR 16-13-BLG-SPW, 2016 WL 3982455 (D. Mont. July 22, 2016). "It is undisputed that Indian tribes have power to enforce their criminal laws against tribe members." *Wheeler* at 322. In fact, "tribes have exclusive jurisdiction" of intra-Indian offenses and "we can [not] with any justice or propriety extend our

laws to" them. *Id. at 325 citing* H.R. Rep. No. 474, 23d Cong., 1st Sess., 13 (1834). "[F]ar from depriving Indian tribes of their sovereign power to punish offenses against tribal law by members of a tribe, Congress has repeatedly recognized that power and declined to disturb it." *Wheeler* at 325.

The Indian Civil Rights Act clearly recognizes and affirms the inherent authority of Tribes to exercise judicial power:

> (2)"powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

25 U.S.C. §1301.

A Tribe's "authority over [its] members extends to the criminal law area as well as civil regulatory area." *Cohen's Handbook of Federal Indian Law [Cohen]*, §4.01[2][d] 2012 ed. at 220. "Retained criminal jurisdiction [of tribes] over members is accepted by our precedents and justified by the voluntary character of tribal membership and the concomitant right of participation in a tribal government, the authority of which rests on consent . . .." *Id.* citing *Duro v. Reina*, 495 U.S. 676, 694 (1990), and *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978).

Federal Defendants admit as much when they recognize "the right of the

Northern Arapaho Tribe to operate a tribal court," and ask the Tribal Court to adopt procedures for transfer of new or existing cases concerning the Shoshone Tribe or its members to the CFR court. Exhibit 79.

Despite their admission, Federal Defendants directly interfere with the acknowledged criminal jurisdiction of the NAT when they (1) refuse to provide the NAT prosecutor with copies of police / incident reports, on which the prosecutor relies at arraignment and trial of detainees; (2) refuse to present prisoners who are in their custody to the Tribal Court for arraignment; (3) refuse to cooperate with the Tribal Court regarding on-going criminal matters, insisting that such cases must be re-filed; and (4) refuse to honor Tribal Court arrest warrants. Exhibit 88.

Federal Defendants' Assertion of Criminal Jurisdiction Here is Ultra Vires

Federal Defendants assert criminal jurisdiction they do not have over members of the NAT who are alleged to violate provisions of tribal law. "Intrinsic in this [tribal] sovereignty is the power of a tribe to create and administer a criminal justice system. 'An Indian tribe may exercise a complete (criminal) jurisdiction over its members and within the limits of the reservation subordinate only to the expressed limitations of federal law.' F. Cohen, Handbook of Federal Indian Law 148 (1942 ed. as republished by the University of New Mexico Press)." *Ortiz-Barraza v. U.S.*, 512 F.2d 1176, 1179 (9th Cir. 1975).

Congress has not limited this inherent tribal jurisdiction. Nor has Congress created federal jurisdiction which would displace or interfere with tribal authority over violations of tribal criminal laws. "The Indian Country Crimes Act, 18 U.S.C. §1152, extends the general criminal laws of federal maritime and enclave jurisdiction to Indian country, except for those 'offenses committed by one Indian against the person or property of another Indian.' *See* F. Cohen, Handbook of Federal Indian Law 288 (1982 ed.). These latter offenses typically are subject to the jurisdiction of the concerned Indian tribe, unless they are among those enumerated in the Indian Major Crimes Act." *Negonsott v. Samuels*, 507 U.S. 99, 102 (1993).

Federal Defendants Violate Rights of Criminal Detainees and Victims

Jurisdiction is a fundamental prerequisite to a valid prosecution and conviction, and must be established before trial. A judgment rendered by a court without proper jurisdiction is void. 22 C.J.S. Criminal Procedure and Rights of Accused §125. The unlawful assertion of criminal jurisdiction by Defendants over members of the NAT violates the rights and liberty interests of those criminal defendants.

Criminal defendants are entitled to an arraignment as soon as reasonably possible after their arrest and in no event longer than 72 hours. S&A LOC, Rules

of Criminal Procedure, Rule 4-3-12(1). Federal Defendants insist that all criminal complaints be re-filed for processing in the CFR court, which entitles a criminal defendant to an arraignment regarding the new charges. *See* S&A LOC Rules of Criminal Procedure, Rule 4-3-12(1). Defendants who have already been arraigned once, by the Tribal Court, will in many cases have been in custody for much longer than 72 hours by the time a second complaint and arraignment are initiated.

Criminal defendants are also entitled to a speedy trial from the BIA under the U.S. Constitution, Sixth Amendment, from the Tribal Court under the Indian Civil Rights Act, 25 U.S.C. §1302(a)(6), and the S&A LOC, Rules of Criminal Procedure, Rule 4-2-2(7). Pursuant to Rule CR-101 of the Tribal Court, complaints must be filed within 30 days "from the date on which such individual was arrested in connection with such charges." Tribal Court Rule CR-101, http://shoshone-arapaho-tribal-court.org/rules_of_court_CR-101.html. Complaints not filed within 30 days "shall be dismissed by the court on its own motion." *Id.* Furthermore, trials "shall commence within ninety (90) days of the filing of the complaint." *Id*. If they do not commence within 90 days, "the complaint shall be dismissed by the court on motion of the defendant." *Id.* If criminal complaints filed prior to October 18, 2016, were re-filed, as Federal Defendants insist, a significant number of criminal defendants would be entitled to dismissal for failure

to timely file a complaint or for failure to provide a speedy trial.

With the exception of three enumerated offenses, all complaints in the Tribal Court alleging the commission of an offense "shall not be valid unless filed within one (1) year of its occurrence." S&A LOC Rules of Criminal Procedure, Rule 4-2-3(1). If criminal complaints filed prior to October 18, 2016, were re-filed, as Federal Defendants insist, an unknown number of criminal prosecutions would be barred for failure to file the complaint within the statute of limitations.

Federal Defendants Fail to Consult with NAT

Federal Defendants have refused or failed to consult with the NAT at virtually every stage in the process of addressing judicial services. When Defendant Gourneau does speak with NAT, she does so after the fact, to inform the NAT of the BIA's recent decisions, and does so in ways which are inconsistent and difficult to interpret.

The United States has long acknowledged that "[c]onsultation is a critical ingredient of a sound and productive Federal-tribal relationship." Tribal Consultation Policy, FR 57881, Vol. 74, No. 215, Nov. 9, 2009. Agencies like the BIA "are charged with engaging in regular and meaningful consultation and collaboration with tribal officials. ..." *Id.* This policy is not merely aspirational; it is based on the "unique legal and political relationship with Indian tribal

governments." *Id.* [3]

BIA policies state that "[t]he United States recognizes the ongoing right of Indian tribes to self-government and supports tribal sovereignty and self-determination and continues to work with Indian tribes on a government-to-government basis concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights. Federal action shall defer to the laws and policies established by Indian tribes to the extent permitted by law." *See* http://www.bia.gov/cs/groups/public/documents/text/idc-002000.pdf.

Defendants' recent pronouncements that the BIA will no longer honor Tribal Court arrest warrants, deliver detainees for Tribal Court arraignment, or provide police reports to the Tribal prosecutor are some of the latest in a string of federal actions affecting the NAT and the Tribal Court without prior notice or consultation.

Tribal Court Should be Permitted to Use Existing Facilities Pending Further Orders of this Court

The Tribal Court, prosecutor, defender, clerks and other staff have used the

[3] The policy states that it does not, by itself, create independent legal obligations. *Id.* But failure to consult, in and of itself, can justify issuance of injunctive relief. *Nez Perce Tribe et al. v. U.S. et al.*, (No. 3:13-CV-348-BLW, 2013 WL 5212317 (D. Idaho Sept. 12, 2013) (meaningful consultation occurs in advance of a decision; Forest Service's failure to consult before deciding not to exercise its authority was an abdication of its statutory responsibilities).

existing court building for decades. Federal Defendants have not shown proof that the United States owns the land or buildings where the Tribal Court is located. *See* Exhibit 83. In disputes regarding property ownership, the burden of proof rests on the non-Indian claimant. 25 U.S.C. §194.

Even if the existing courthouse is federally owned, the Tribal Court should be permitted to function in that location pending further order of this Court. Tribal Court staff currently include 24 employees. Exhibit 83. On information and belief, CFR court staff include only four employees. *Id.* Records of the Tribe are housed in the existing courthouse. Wholesale displacement of Tribal Court staff and records will create a crisis affecting the administration of justice. *Id.* Federal Defendants have threatened to remove Tribal Court staff without specifying how or when removal may occur. Exhibit 86.

Federal Defendants improperly threaten to remove Tribal Court judges and staff as a means to create uncertainty and to pressure the NAT to concede jurisdiction to the CFR court.

The ISDEAA expressly allows the BIA to permit a Tribe to use existing buildings and other facilities and equipment used in connection with ISDEAA contracts. 25 U.S.C. §5324(f)(1). In the case at bar, the issue of the right of NAT to a contract to fund judicial services is joined and ripe (Civil No. 16-60,

consolidated). If NAT prevails, it will have authority to use the building and facilities. In this instance, NAT should be permitted to continue to use existing buildings pending further order of this Court.

Furthermore, federally funded programs depend on the use of existing facilities for the Tribal Court. For example, the Northern Arapaho child support enforcement program relies on the Tribal Court building as its match for federal funds. See Exhibit 88. The Department of Health and Human Services (HHS) and NAT have contracted to use the existing facilities.[4] HHS recognizes the Northern Arapaho Code, Title 10 (Family Support), and both HHS and the NAT rely on BIA law enforcement to enforce the provisions of Title 10. *Id.* Enforcement necessary for the program to operate includes issuance of show cause warrants by the Tribal Court and the arrest of non-compliant parents by BIA law enforcement. *Id.* Federal Defendants' refusal to present detainees to the Tribal Court interferes with the rights of children and families to needed financial support, violates the Northern Arapaho Family Support Code and NAT sovereignty, and interferes with the funding and enforcement contract entered into between the Tribe and HHS. Other federally funded tribal programs also rely on the Tribal Court, including the

[4] On information and belief, the EST has a similar contract with HHS for its child support enforcement program to use existing facilities, also designating the building as a tribal match for HHS funds.

Tribe's Sex Offender Registration and Notification Act program and the Tribe's child protection services program.[5]

The NAT, Litigants, Victims and the Public Face Irreparable Injury

Tribal Sovereignty. Violations of tribal sovereignty constitute irreparable harm, *ipso facto*. "[I]nfringement of federally protected rights of self-government and self-determination . . . cannot be remedied by any other relief other than an injunction . . .." *Tohono O'odham Nation v. Schwartz*, 837 F.Supp. 1024, 1034 (D.Ariz. 1993) (State exercise of authority in violation of tribal sovereignty enjoined). Violations of tribal jurisdiction "results in irreparable injury vis-a-vis the Tribe's sovereignty" and must be restrained, *E.E.O.C. v. Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1077 (9th Cir. 2001) (subpoena from federal agency which infringes on tribal sovereignty enjoined). *See also Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255 (10th Cir. 2006), and *Kiowa Indian Tribe of Oklahoma v. Hoover*, 150 F.3d 1163, 1171-72 (10th Cir. 1998)); *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250-51 (10th Cir. 2001).

The Interests of Public Safety and Victims of Crime. Defendants' refusal to arrest persons subject to Tribal Court arrest warrants endangers public safety and

[5] The NAT Department of Family Services receives federal funding for social services under the ISDEAA as well as funding from the State of Wyoming.

those victimized by criminal activity. The release of criminal defendants which would result from re-filing criminal cases in the CFR court will also endanger public safety and those already victimized by those defendants.

An Injunction is in the Public Interest

Supporting tribal self-government is a matter of public interest. *Prairie Band of Potawatomi Indians*, 253 F.3d at 1253 (citing *Seneca-Cayuga v. Oklahoma*, 874 F.2d 709, 716 (10th Cir. 1998); *see also Sac and Fox Nation of Mo. v. LaFaver*, 905 F.Supp. 904, 907-08 (D.Kan. 1995) ("The public also has a genuine interest in helping to assure Tribal self-government, self-sufficiency and self-determination.").

The Secretary of the Interior adopted a policy that "[th]e Secretary shall make best efforts to remove any obstacles which might hinder Indian tribes and tribal organizations including obstacles that hinder tribal autonomy and flexibility in the administration of such programs." 25 C.F.R. §900.3(b)(1). Enjoining Federal Defendants from interfering with federal policy and regulation is in the public interest.

Federal Defendants have no legitimate interest in violating the rights described above. Temporary injunctive relief against further violations creates no harm to the Federal Defendants to be weighed in the balance.

As set forth above, protection of the public safety, the rights of criminal detainees, and victims of crime advances the public interest.

The Equities Favor Issuance of a Temporary Restraining Order

For the reasons set forth above, the equities favor issuance of a temporary restraining order.

IV. CONCLUSION

The NAT has the right to operate a judicial system for its members and others within its jurisdiction on an equal basis or equal footing with any other Indian tribe. 25 U.S.C. §5123(f) and (g), *Cohen* §3.02[3] at 133-34. Criminal defendants have the right to be charged by prosecutors who have jurisdiction over their alleged offenses, and have the right to a speedy trial. Victims of crime should not be subject to re-victimization. Release of significant numbers of detainees, dismissal of criminal charges based on Federal Defendants' decision to re-file charges, and BIA's refusal to honor arrest warrants threaten public safety. Interference with these rights and with public safety by Federal Defendants should be restrained.

DATED October 26, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2016, I electronically filed the foregoing filing. Notice of this filing will be sent by email to all parties of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Andrew W. Baldwin
Andrew W. Baldwin

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), the attached brief is proportionately spaced, has a typeface of 14 points and contains 4,774 words, excluding the caption and certificates of service and compliance.

DATED this 26th day of October, 2016.

/s/ Andrew W. Baldwin
Andrew W. Baldwin