UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

JOY SPURR

Plaintiff,

v.

MELISSA L. POPE, *et al*.,

Defendants.

Case No. 1:17-cv-01083
Hon. Janet T. Neff

Joint Response to Request for Preliminary Injunction

DEFENDANTS' JOINT RESPONSE TO REQUEST FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

A preliminary injunction "is an extraordinary measure that has been characterized as one of the most drastic tools in the arsenal of judicial remedies." *Bonnell v. Lorenzo*, 241 F.3d 800, 808 (6th Cir. 2001) (quotation marks omitted). Courts therefore do not grant such relief unless "the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban Cty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002). As shown below, Plaintiff does not come close to carrying that burden.

II. FACTUAL BACKGROUND

Defendant Nottawaseppi Huron Band of the Potawatomi ("NHBP") is a federally-recognized sovereign Indian tribe with a government-to-government relationship with the United States. *See* 81 Fed. Reg. 5019, 5022 (Jan. 29, 2016). Defendant the Honorable Melissa L. Pope is the Chief Judge of the trial court level ("Tribal Court") of the NHBP court system. Defendant NHBP Supreme Court is the highest appellate court in the NHBP system. The State of Michigan has described NHBP as a "model" of good tribal government. *See* 2015 Bill Text MI S.R. 124.

Nathaniel Spurr is an NHBP tribal member. Plaintiff is married to Nathaniel Spurr's father, Stephen Spurr, who is also her attorney in this matter. Plaintiff is a non-Indian and non-member of NHBP.

On February 2, 2017, Nathaniel Spurr sought from the NHBP Tribal Court an ex parte civil personal protection order against Plaintiff.[1] He alleged that Plaintiff had been engaged in a campaign of harassment against him, including: unwanted personal contact on the NHBP

[1] The facts set forth in this brief are presented in more detail in the NHBP Tribal Court's July 21, 2017 Opinion and Order After Hearing on Respondent's Motion for Reconsideration or Modification of Court Order at 3-9 (Attachment A) and the NHBP Supreme Court's January 25, 2018 Opinion at 2-6 (Attachment B).

Reservation; several hundreds of letters, emails, phone calls, and voicemails accusing him of a wide range of criminal activity and other misconduct, and making similar statements within the tribal community; intervening in his personal relationships; and representing herself as him (online and via U.S. mail) to insurance, financial, and government entities and making false statements to some of those entities in order to obtain his confidential information and to impair his standing with those entities.[2]

On February 3, 2017, the Tribal Court, acting pursuant to NHBP statutory law, issued an ex parte temporary (14-day) harassment protection order against Plaintiff in favor of Nathaniel Spurr. *See* Attachment B at 3.

On February 16, 2017, the Tribal Court, again acting pursuant to NHBP law, held a hearing at which the parties presented arguments and evidence as to whether a permanent (one-year) civil personal protection order ("PPO") should be issued against Plaintiff. *See* Attachment A at 4.

On February 17, 2017, the Tribal Court, having found sufficient evidence that Plaintiff's conduct constituted harassment under tribal law, issued a permanent (one-year) PPO against Plaintiff.[3] As authority for that Order, the Court cited the NHBP Domestic Violence Code; the Michigan Court Rule granting full faith and credit to tribal court judgments, MCR 2.615; and the federal Violence Against Women Reauthorization Act of 2013, 18 U.S.C. § 2265. *See id.* ¶ 2.

Soon after the issuance of the PPO and over the course of two months, Plaintiff and her attorney, Stephen Spurr, began to overwhelm the Tribal Court with relentless submissions of documents aimed at undermining the character of Nathaniel Spurr. The documents arrived

[2] *See* Attachment C (February 2, 2017 Petition for Personal Protection Order and supporting affidavit).
[3] Attached to Plaintiff's Complaint as Ex. 1.

almost daily via email, fax, and U.S. mail, and included partial pages of documents, cut-and-pasted fragments of emails, duplicative documents – some of them submitted repeatedly – unidentifiable documents, some handwritten by unknown persons, and most unsigned and lacking valid contact information. While most of these submissions purported to undermine the character of Nathaniel Spurr, some attacked the integrity of the Tribal Court as well. Most of them also completely disregarded the Tribal Court's filing and service requirements, despite the Court's repeated admonishments to respect those requirements. *See* Attachment A at 4-9, 26-30. Nevertheless, the Tribal Court went to great lengths to accommodate Plaintiff, treating the Spurrs' avalanche of misfiled documents as a motion to reconsider the PPO and as exhibits to that motion.[4]

On July 21, 2017, after a hearing and "after wading through this incredible morass of paper," *id*. at 5, the Tribal Court denied the motion. *See* Attachment A at 35. The Tribal Court found that Plaintiff's submissions in fact tended to support Nathaniel Spurr's claims of harassment. The submissions included numerous conclusory allegations of serious criminal wrongdoing by Nathaniel Spurr, including perjury and employment fraud. *Id*. at 30. They also included documents containing Nathaniel Spurr's private financial information, which Plaintiff was unable to credibly explain how she had obtained. *Id.* Plaintiff's counsel, Stephen Spurr, was at a loss "to address the relevancy of the majority of documents . . . at the Hearing." *Id*. at

[4] As the NHBP Supreme Court found, Plaintiff provided no contact information when "she inundated the court with dozens, even hundreds, of pages of documents. The incredible amount of time and effort the staff of the tribal court took to communicate with Joy Spurr and her counsel, to provide service of court documents to [them], and to receive, manage, and file voluminous material Joy Spurr filed – much of which did not comply with the court's rules for filing and service – is worth noting. The appellate court applauds this effort to ensure Joy Spurr received the process due her in this matter[.]" Attachment B at 4-5.

29. Plaintiff claimed the submissions were necessary for her defense against the PPO. *Id.* The Tribal Court found to the contrary:

> The explanation that the Respondent has gathered these documents simply as a defense to this action is also not supported by the content of the documents submitted. The documents submitted by the Respondent are an attack on the character of the Petitioner. . . . The explanation of the inclusion of these types of documents as a defense against the [PPO] is, simply put, not legitimate.

Id. at 29. The Tribal Court found that Plaintiff's document submissions constituted "further evidence of her harassment of the Petitioner." *Id*. at 30.[5]

On July 22, 2017, Plaintiff appealed the Tribal Court's July 21, 2017 Order to the NHBP Supreme Court. *See id.* at 6.

On September 14, 2017, Plaintiff filed additional documents attacking the character of Nathaniel Spurr in a different Tribal Court proceeding to which Nathaniel Spurr was a party but Plaintiff was not. Upon motion of Nathaniel Spurr alleging that the submission of those documents constituted a violation of the PPO, the Tribal Court ordered Plaintiff to show cause as to why her conduct was not a violation of the PPO and ordered the parties to appear at a show cause hearing on December 13, 2017.

Plaintiff filed suit in this Court on December 11, 2017. *See* ECF No. 1-1. The next day, she expressly informed the Tribal Court that she refused to appear at the December 13, 2017 show cause hearing. The Tribal Court held the scheduled hearing, and Plaintiff did not appear.

On December 21, 2017, the Tribal Court issued orders addressing the December 13 show cause hearing and Plaintiff's failure to appear. In those orders, the Tribal Court found that

[5] The NHBP Supreme Court affirmed that "Joy Spurr's own writings and document submissions confirm Nathaniel Spurr's allegations of unwanted contacts. For example, . . . [she] submitted as evidence exhibits dozens of copies of Nathaniel's personal financial information and other records, supporting Nathaniel's allegations that Joy has improperly obtained his financial records. There is much, much more in the record." Attachment B at 26-27.

Plaintiff had violated the PPO, and it scheduled hearings for January 31, 2018 to address the consequences for that violation and to show cause why Plaintiff should not be held in civil contempt for her failure to appear at the December 13, 2017 hearing.

On January 25, 2018, the NHBP Supreme Court, after oral argument, issued its order upholding the PPO. *See* Attachment B. Among other specific rulings, the Court concluded that, as a matter of federal law, the Tribal Court possessed jurisdiction to issue the PPO under 18 U.S.C. § 2265(e). *See id.* at 8-13. The Court likewise upheld the Tribal Court's jurisdiction to issue the PPO under NHBP law, *id.* at 13-22, as well as its factual findings, *id*. at 22-27.

On January 31, 2018, the Tribal Court held the scheduled hearings and found Plaintiff in civil contempt for violating the PPO and for failing to appear at the December 13, 2017 hearing. *See* Attachment D at 1-2 (February 13, 2018 Order); Attachment E at 2-3 (February 22, 2018 Order). As civil sanctions for the PPO violation, the Court ordered Plaintiff to pay Nathaniel Spurr's attorney's fees and to compensate NHBP for costs it incurred in investigating and adjudicating Plaintiff's violation of the PPO, with the option of community service in lieu of compensating the Tribe. *See* Attachment D at 2-3; Attachment E at 3. As a civil sanction for her failure to appear at the December 13, 2017 hearing, the Court ordered Plaintiff to pay court costs. *See* Attachment E at 2-3, 5.

On February 13, 2018, the Tribal Court, acting pursuant to NHBP law, held a hearing at which the parties presented arguments and evidence as to whether the PPO should be extended for another year. *See* Attachment E at 2. In the order following that hearing, the Tribal Court detailed Plaintiff's continued intrusions into Nathaniel Spurr's privacy, including her "attempt[] to use court processes to harass the Petitioner by filing three requests" to subpoena Mr. Spurr's employment and sensitive credit card information, and providing to the Court his "private

medical information" and "complete credit card number, date of birth, and the last four numbers of his social security number, all personal information she is not entitled to . . . disseminate[.]" *Id*. at 4. Based on these findings, Plaintiff's recent violation of the PPO, and her "defian[ce] in refusing all accountability for that violation," the Tribal Court renewed the PPO for another year, until February 14, 2019. *Id*.

III. ARGUMENT

A. Preliminary Injunction Factors

In determining whether to grant a preliminary injunction, courts consider (1) whether the movant has demonstrated a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent an injunction, (3) whether the issuance of an injunction would cause substantial harm to others, and (4) whether the public interest would be served by issuing an injunction. *See Tumblebus, Inc. v. Cranmer*, 399 F.3d 754, 760 (6th Cir. 2005). None of these factors weighs in Plaintiff's favor. Defendants address them in turn.

1. Plaintiff has not demonstrated a strong likelihood of success on the merits

Plaintiff's supplemental brief in support of her request for a preliminary injunction does not remotely demonstrate a strong likelihood of success on the merits. *See* ECF No. 21.

a. Sovereign Immunity

In their Request for a Pre-Motion Conference, Defendants asserted, and supported with governing case law, that NHBP and the NHBP Supreme Court enjoy sovereign immunity to this suit in its entirety because Congress has not abrogated that immunity and NHBP has not waived it. *See* ECF No. 13 at 2. Plaintiff makes two arguments in response, both of which are meritless.

First, Plaintiff contends that "[t]he United States Supreme Court has stated that a federal court has federal question jurisdiction to determine whether a Tribal Court has jurisdiction; tribal

sovereign immunity does not apply." ECF No. 21 at 5. The Court has said no such thing. In fact, it has made clear that federal question jurisdiction and sovereign immunity are "wholly distinct" concepts. *Blatchford v. Native Vill. of Noatak*, 501 U.S. 775, 786 and n.4 (1991) (also stating that "no one contends that § 1331 suffices to abrogate immunity for all federal questions"). And neither case cited by Plaintiff held to the contrary. *See* ECF No. 13 at 5 (citing *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008) and *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985)). *Plains Commerce Bank* did not even involve a claim against a tribe or tribal entity and accordingly said nothing – implicitly or explicitly – about tribal sovereign immunity. *See* 554 U.S. 316 (2008). While *National Farmers Union* held that whether a tribal court has overstepped its jurisdiction is a federal question under 28 U.S.C. § 1331, it went no further because the petitioners had failed to exhaust tribal remedies. *See* 471 U.S. at 857 ("Until petitioners have exhausted the remedies available to them in the Tribal Court system . . . it would be premature for a federal court to consider any relief. *Whether the federal action should be dismissed* . . . is a question that should be addressed in the first instance by the District Court." (emphasis added)). Nor did the court below reach the immunity question. *See Nat'l Farmers Union*, 736 F.2d 1320, 1323 n.5 (9th Cir. 1984) ("We intimate no views on questions involving sovereign immunity[.]").

Second, Plaintiff attempts to distinguish the sovereign immunity cases Defendants cited in their Request for a Pre-Motion Conference on flatly erroneous grounds. *See* ECF No. 21 at 5-6. She asserts that *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998), *Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917 (6th Cir. 2009), and *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024 (2014) all "involved lawsuits brought *against* Indian tribes[.]" ECF No. 21 at 6 (emphasis by Plaintiff). By contrast, she claims, this case "involves a

lawsuit brought by a tribal member under NHBP law against Plaintiff[.]" *Id.* This argument confuses the underlying Tribal Court action with this federal suit, which Plaintiff has clearly levied against NHBP and its Supreme Court.

Plaintiff has demonstrated no likelihood of success on this question, much less a strong likelihood, as is her burden.

b. Subject Matter Jurisdiction over Tribal Law Claims

In their Request for a Pre-Motion Conference, Defendants set forth detailed arguments, supported by governing case law, establishing that this Court lacks subject matter jurisdiction over Plaintiff's alleged violations of NHBP law. *See* ECF No. 13 at 2-4 (discussing why 28 U.S.C. § 1331, 25 U.S.C. § 1302, and 28 U.S.C. § 2201 each fails to confer jurisdiction on this Court over Plaintiff's tribal law claims). Plaintiff makes no attempt to address these arguments in either her supplemental brief or her Response to Defendants' Request for a Pre-Motion Conference. Thus, far from carrying her stringent burden of showing a strong likelihood of success in opposing these arguments, she has effectively conceded them.

c. Tribal Court Jurisdiction

In their request for a Pre-Motion Conference, Defendants established that a federal statute, 18 U.S.C. § 2265(e), plainly affirms the jurisdiction of tribal courts to issue civil personal protection orders over all persons under circumstances as are involved in this case. *See* ECF No. 13 at 4. Plaintiff's attempt to rebut this argument relies on a patent misreading of the plain text of the statute.

She first cites section 2265(b)(1) for the proposition that a protection order issued by a tribe under section 2265 is valid only if the tribe "*has jurisdiction over the parties and matter* under the law of such State, Indian tribe, or territory[.]" ECF No. 21 at 7 (quoting 18 U.S.C.

§ 2265(b)(1) (emphasis by Plaintiff)). She then asserts that "to find out whether a tribal court has jurisdiction, one must refer to Section 1304 on 'Tribal Jurisdiction over crimes of domestic violence.'" *Id*. at 8. This argument is mistaken.

Plaintiff errs in asserting that "one must refer to" 25 U.S.C. § 1304's recognition of tribes' inherent power to exercise special domestic violence *criminal* jurisdiction to determine whether tribes have jurisdiction to issue *civil* protection orders under section 2265. This assertion makes no sense as a matter of statutory construction because section 2265 *itself* contains an express grant of tribal jurisdiction to issue the civil protection orders covered by section 2265: "For *purposes of this section*, a court of an Indian tribe *shall have full civil jurisdiction* to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings[.]" 18 U.S.C. § 2265(e) (emphasis added). Plaintiff's contention that "2265 is about 'full faith and credit given to protection orders,' not jurisdiction," ECF No. 21 at 10, simply denies the existence of this language.

Nor does the fact that "the word 'jurisdiction' does not appear in [2265's] title," *id*., help Plaintiff in the least. As this District has explained, "headings may not be used to limit the plain meaning of a statute[.]" *South Side Landfill, Inc. v. United States*, 282 F. Supp. 2d 600, 605 (W.D. Mich. 2003) (quotation marks omitted). And the United States Court of Appeals for the Sixth Circuit has explained:

> That the heading of [a section] fails to refer to all the matters which the framers of that section wrote into the text is not an unusual fact. . . . While accurately referring to [certain subjects], it neglects to reveal that [the section] also deals with [other subjects]. But headings and titles are not meant to take the place of the detailed provisions of the text. Nor are they necessarily designed to be a reference guide or a synopsis.

United States v. Cain, 583 F.3d 408, 416 (6th Cir. 2009) (bracketed language in original) (quoting *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R.*, 331 U.S. 519, 528-29 (1947) (also referring to "the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text. . . . [T]hey cannot undo or limit that which the text makes plain.")).

Plaintiff likewise misreads section 2265(b)(1), which simply requires that a tribe, in order to exercise the jurisdiction plainly granted under section 2265(e), also "has jurisdiction over the parties and matter *under the law of such . . . Indian tribe*[.]" *Id*. at § 2265(b)(1) (emphasis added). Plaintiff cannot escape this language by ignoring it.[6]

Faced with clear statutory text irreconcilable with her position, Plaintiff seeks refuge in the legislative history, but this too she misapprehends. She asserts that "the legislative history clearly states that [2265] does not 'alter' or 'expand' tribal criminal jurisdiction." ECF No. 21 at 10 (citing S. Rep. No. 112-153, at 11 (2012)). This point is irrelevant. The Tribal Court did not issue a criminal protection order against Plaintiff and has not sought to assert criminal jurisdiction over her in any way. It issued a civil PPO expressly permitted by section 2265. And the very passage of legislative history quoted by Plaintiff makes unmistakable "Congress's intent

[6] The NHBP Tribal Courts clearly enjoy civil jurisdiction to issue the civil PPO as a matter of tribal law. The NHBP Supreme Court expressly ruled so in its January 25, 2018 Opinion. *See* Attachment B at 13-22 (discussing NHBP Constitutional and statutory provisions conferring jurisdiction to issue the PPO). That ruling by the Tribe's highest court is definitive. *See Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987) ("[T]ribal courts are best qualified to interpret and apply tribal law."); *Sanders v. Robinson*, 864 F.2d 630, 633 (9th Cir. 1988) ("The Northern Cheyenne Appellate Court has held (in this same case) that these provisions [of tribal statutory law] permit tribal court jurisdiction over a non-Indian married to an enrolled member of the tribe. That court's interpretation of tribal law is binding on this court."); *Prescott v. Little Six, Inc.*, 387 F.3d 753, 754 (8th Cir. 2004) ("Because we determine that the District Court erred in not giving proper deference to a tribal court finding that the plans were not authorized under tribal law, we reverse and remand the case to the District Court and direct that the lawsuit be dismissed.").

to recognize that tribal courts have full *civil* jurisdiction to issue and enforce protection orders involving any person, Indian or non-Indian." S. Rep. No. 112-153, at 11 (emphasis added).

In sum, Plaintiff has failed to demonstrate a strong likelihood that she can successfully establish that the Tribal Court lacked jurisdiction to issue the PPO under 18 U.S.C. § 2265(e).

d. Exhaustion of Tribal Court Remedies

After Defendants filed their request for a Pre-Motion Conference, the NHBP Supreme Court upheld the Tribal Court's jurisdiction to issue the PPO under both 18 U.S.C. § 2265(e) and NHBP law. *See* Attachment B at 8-22. As a result, Plaintiff has exhausted tribal court remedies over her jurisdictional challenge. *See Nat'l Farmers Union*, 471 U.S. at 856-57. But this fact does nothing to mitigate Plaintiff's failure to establish that the Tribal Court likely lacked jurisdiction to issue the PPO under 18 U.S.C. § 2265(e).

* * *

Plaintiff has shown no likelihood of success on the merits of any of her arguments. As this District has explained, "[t]he failure to show any likelihood of success on the merits – let alone a strong or substantial likelihood of success – is enough, by itself, to warrant denial of preliminary injunctive relief." *Mich. Chamber of Commerce v. Land*, 725 F. Supp. 2d 665, 684-85 (W.D. Mich. 2010). *See also Essroc Cement Corp. v. CPRIN, Inc.*, 593 F. Supp. 2d 962, 967 n.1 (W.D. Mich. 2008) ("Our Circuit . . . has held, however, that it was not error to dispense with analysis of the other three factors where the movants made a weak showing on the merits[.]"); *Abney v. Amgen, Inc.*, 443 F.3d 540, 547 (6th Cir. 2006) ("[A] finding of no likelihood of success is usually fatal[.]" (quotation marks omitted)).

2. Irreparable Injury to Plaintiff

Plaintiff asserts irreparable harm based on the costs of litigation that she has thus far incurred and could incur going forward. *See* ECF No. 21 at 13-16. But "[t]he expense of litigation, even substantial and unrecoupable cost, does not constitute irreparable injury." *Parma v. Levi*, 536 F.2d 133, 135 (6th Cir. 1976) (quoting *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974)). Plaintiff cites an out-of-circuit case for a purported exception to that rule in the tribal court context. *See* ECF No. 21 at 15 (citing *McKesson Corp. v. Hembree*, 2018 U.S. Dist. LEXIS 3700 (N.D. Okla. Jan. 9, 2018)). However, she fails to grapple with the fact that the court in *McKesson* first found it "patently obvious" that tribal jurisdiction was statutorily "foreclosed." 2018 U.S. Dist. LEXIS 3700 at *17. It further described the tribal court's assertion of jurisdiction as "presumptively invalid" and noted the tribal court's "clear lack of jurisdiction." *Id*. at *30. The court then reasoned that:

> *in cases where a tribal court clearly lacks jurisdiction*, courts have found a litigant's time and expense to defend itself may constitute irreparable harm. . . . The burden and cost of litigation is a significant consideration here, *where the Court has found that the tribal court clearly lacks jurisdiction*.

Id. at *35 (emphasis added). Plaintiff has not remotely established that this case bears any similarity in this regard to *McKesson* or the cases cited therein. Nor could she. *See* 18 U.S.C. § 2265(e). *See also, e.g.*, *DISH Network Serv. LLC v. Laducer*, 725 F.3d 877, 885, 882 (8th Cir. 2013) (concluding that it was "not 'plain' that the tribal courts lack jurisdiction" over non-Indians and that "[t]here is no reason to believe that [plaintiff's] financial injury in this case would be anything other than the normal costs of litigation" and that "it is doubtful that [plaintiff] would suffer an irreparable injury if forced to litigate in tribal court").

Plaintiff further asserts that "[t]here is a high probability that the personal protection order will be renewed again and again, on into the indefinite future unless and until this Court

addresses the fact that the NHBP Trial Court lacks jurisdiction." ECF No. 21 at 15. This argument is pure unsubstantiated speculation. As the Supreme Court has explained, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008). *See also, e.g.*, *Abney*, 443 F.3d at 552 ("To demonstrate irreparable harm, the plaintiffs must show . . . 'actual and imminent' harm rather than harm that is speculative or unsubstantiated."); *NACCO Materials Handling Grp., Inc. v. Toyota Materials Handling USA, Inc.*, 246 Fed. Appx. 929, 943 (6th Cir. 2007) (party "must show irreparable harm that is 'both certain and immediate, rather than speculative or theoretical' to satisfy its burden to receive preliminary injunctive relief").

Plaintiff next contends that she "has already suffered substantial emotional harm" and sets forth "some examples of the consequences of the Trial Court's actions[.]" ECF No. 21 at 16. These examples are conclusory characterizations of alleged events with no factual support. *See id*. at 16-18. Even if had they some factual support, "[i]t is well settled that a preliminary injunction cannot be issued based on past harm. The purpose of a preliminary injunction is to prevent future irreparable harm." *RGIS LLC v. A.S.T. Inc.*, 2008 U.S. Dist. LEXIS 24844, at *5 (E.D. Mich. Mar. 28, 2008) (quotation marks and brackets omitted). *See also Gratz v. Bollinger*, 539 U.S. 244, 284 (2003) ("To seek forward-looking, injunctive relief, petitioners must show that they face an imminent threat of future injury."); *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005) ("The purpose of a preliminary injunction is not to remedy past harm but to protect plaintiffs from irreparable injury that will surely result without their issuance.").

Equally unavailing is Plaintiff's assertion that "[s]he has experienced great anxiety over the possibility of being incarcerated by the Trial Judge[.]" ECF No. 21 at 18. In its recent order issuing civil sanctions against Plaintiff for violating the PPO, the Tribal Court took great care to specify that Plaintiff will not be subject to *any* future sanctions so long as she complies with the PPO. *See* Attachment D at 3-4. Therefore, she no longer even has a basis to speculate that she might be fined or incarcerated because, as the Tribal Court stated, she "is solely in control of her destiny." *Id.* at 4.[7]

As with her failure to demonstrate a likelihood of success on the merits, Plaintiff's failure on this factor likewise suffices to deny her requested relief. *See JDC Mgmt., LLC v. Reich*, 2009 U.S. Dist. LEXIS 66560, at *108 (W.D. Mich. July 24, 2009) ("The failure to show irreparable harm, by itself, can justify the denial of preliminary injunctive relief without consideration of the

[7] Plaintiff's suggestion that the Tribal Court found her in "Criminal Violation," of the PPO is in error. ECF No. 21 at 17. The Court issued patently civil sanctions designed to compensate for her contemptuous conduct (attorney's fees and court costs) and to compel her future compliance with the PPO (*potential* fines and incarceration). Compensatory fees and court costs are squarely civil sanctions. *See, e.g., In re Jaques*, 761 F.2d 302, 305-06 (6th Cir. 1985) (describing contempt proceedings as "plainly civil" where "[t]he District Court imposed a fine which was explicitly fashioned merely to compensate the government and the opposing counsel for the harm caused by [party]"); *Downey v. Clauder*, 30 F.3d 681, 685 (6th Cir. 1994) (order requiring "compensation for damages caused by the contemnor's noncompliance . . . is civil in nature" (quotation marks omitted)); *Stryker Corp. v. Davol, Inc.*, 75 F. Supp. 2d 741, 745 (W.D. Mich. 1999) ("Inasmuch as the purpose of the civil contempt sanction is essentially remedial and compensatory, fees and costs are properly recoverable."). Likewise, conditional "[i]ncarceration has long been established as an appropriate sanction for civil contempt." *United States v. Bayshore Assocs., Inc.*, 934 F.2d 1391, 1400 (6th Cir. 1991). *See also, e.g., Int'l Union v. Bagwell*, 512 U.S. 821, 829 (1994) (incarceration is criminal when, unlike here, "the contemnor cannot avoid . . . the confinement through later compliance"); *id.* at 827 ("civil contempt sanctions [are] those penalties *designed to compel future compliance with a court order* . . . and *avoidable through obedience*, and thus may be imposed in an ordinary civil proceeding" (emphasis added)); *Bayshore*, 934 F.2d at 1400 (civil/criminal distinction does not depend on "whether the contemnor is physically required to set foot in a jail but whether the contemnor *can avoid the sentence imposed on him . . . by complying with the terms of the original order*." (quotation marks omitted) (emphasis added)).

other three factors."). *See also id*. at *109 (stating that failure on "first two factors (likelihood of success on the merits, and irreparable harm absent a [preliminary injunction]) obviates the need to consider the third and fourth factors").

3. Substantial Harm to Others

Plaintiff argues that the injunction she seeks is "unlikely" to cause substantial harm to others. *See* ECF No. 21 at 18. This perfunctory argument rests solely on her contention that the Tribal Court lacked jurisdiction to issue the PPO against her. *Id.* However, as explained above, Plaintiff has entirely failed to demonstrate a strong likelihood of prevailing on that contention. Further, the facts found and upheld by the tribal courts demonstrate the threat of substantial harm that Plaintiff poses to Nathaniel Spurr, and nothing in Plaintiff's submissions to this Court suggests otherwise. As this Court stated, "[o]n the limited and rather one-sided record before the Court thus far, the Court cannot find that substantial harm would not result to others – specifically, Nathaniel Spurr – should the Court issue an order that in some way enjoined" the Tribal Court proceedings. ECF No. 20 at 3. Plaintiff tellingly did not address the Court's point.

Moreover, Plaintiff's requested relief would directly intrude into tribal sovereignty and run roughshod over the sovereign immunity of NHBP and its courts. *See, e.g.*, *Dine Dev. Corp. v. Fletcher*, 2017 U.S. Dist. LEXIS 34590, at *9 (D. N.M. Mar. 10, 2017) (allowing suit against tribal entities "when they are immune from suit would damage . . . tribal sovereignty"). As then-Judge Gorsuch has explained, "an invasion of tribal sovereignty can constitute irreparable injury" for preliminary injunction purposes. *Ute Indian Tribe of the Uintah & Ouray Reservation v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015) (quotation marks omitted).

4. The Public Interest

Plaintiff maintains that a "preliminary injunction would serve the public interest, by signaling to the Tribal Courts that they must take into account the limits on their jurisdiction imposed by federal law and improv[e] the quality of [their] decisions[.]" ECF No. 21 at 19. But again – and setting aside Plaintiff's unfortunate habit of disparaging the Tribal Court – this contention is predicated on the Tribal Court's purported lack of jurisdiction to issue the PPO under 18 U.S.C. § 2265(e) – an argument that Plaintiff has failed to show is likely to succeed. Rather, as this Court recognized, "the tribal sovereignty issues present in this case" are a matter of public interest, ECF No. 20 at 3, and they weigh strongly against issuing a preliminary injunction. *See, e.g.*, *United States v. Michigan*, 534 F. Supp. 668, 669 (W.D. Mich. 1982) (stating the "public interest would best be served . . . by encouraging and fostering the concept of tribal sovereignty"); *Iowa Mut. Ins. Co.*, 480 U.S. at 14 (noting the "federal policy favoring tribal self-government" and stating that "Tribal courts play a vital role in tribal self-government"); 25 U.S.C. § 3601 ("the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government . . . tribal justice systems are an essential part of tribal governments"); *Dine Dev. Corp.*, 2017 LEXIS 34590 at *9 (allowing suit against immune tribal entities would harm "the public interest in . . . strong [tribal] self-government" (quotation marks omitted)).

CONCLUSION

For the reasons stated above, the Defendants respectfully request that this Court deny Plaintiff's request for a preliminary injunction.

Dated this 26th Day of February, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 26, 2018, this document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/ David A. Giampetroni