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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ELILE ADAMS,

Petitioner,

v.

BILL ELFO, Whatcom County Sheriff; and  
WENDY JONES, Whatcom County Chief of  
Corrections,

Respondents.

NO. 2:19-cv-1263-JCC

**RESPONSE TO RESPONDENTS’  
RETURN TO PETITION FOR WRIT  
OF *HABEAS CORPUS* AND  
MOTIONS FOR DISMISSAL**

**I. FACTS**

On July 30, 2019, Nooksack Tribal Police officers arrested Petitioner Ellie Adams at her off-reservation home at 7098 #4, Mission Road, Deming, Washington.<sup>1</sup> She was allegedly in violation of a Nooksack Tribal Court warrant that she was unaware of.<sup>2</sup> The Tribal Police did not present any warrant to Ms. Adams, before arresting her and transporting her to the Whatcom

<sup>1</sup> Declaration of Petitioner Ellie Adams (“Adams Decl.”), ¶ 2.

<sup>2</sup> *Id.*

1 County Jail without jurisdiction to do so.<sup>3</sup> See *State v. Eriksen*, 172 Wash. 2d 506, 515 (2011) (a  
 2 tribe’s “inherent sovereign powers do not include the authority to stop and detain outside the  
 3 tribe’s territorial jurisdiction”).

4 After Nooksack Police illegally transported Ms. Adams to the Whatcom County Jail, she  
 5 was booked into custody, at 11:12 a.m., “for contempt of court/FTA.”<sup>4</sup> She was booked into the  
 6 Jail despite explicit notice by counsel for Ms. Adams that Tribal Police did not possess “lawful  
 7 authority to affect any arrest or search upon” Ms. Adams, and an unequivocal request that  
 8 “Whatcom County should refuse to accept custody of . . . Elile Adams” because of this fact.<sup>5</sup>  
 9 These warnings went unheeded, with Whatcom County blithely taking the position that it was  
 10 “an issue for [Ms. Adams] and the Nooksack Tribe to work out amongst themselves.”<sup>6</sup>

11 Ms. Adams was incarcerated at the Whatcom County Jail for nearly eight hours,<sup>7</sup> in  
 12 knowing violation of her Fourth Amendment right to be free from unreasonable seizures.<sup>8</sup>  
 13 *Malone v. County of Suffolk*, 968 F.2d 1480, 1482–83 (2nd Cir. 1992); *Ross v. Neff*, 905 F.2d  
 14 1349, 1354 (10th Cir. 1990); *Cole v. Nebraska State Bd. of Parole*, 997 F.2d 442, 444 (8th Cir.  
 15 1993); *United States v. Foster*, 566 F.Supp. 1403, 1411-12 (D.D.C. 1983). Whatcom County Jail  
 16 personnel released her that evening after her father posted \$500.00 cash bail to the County.<sup>9</sup>

17 Since filing her Petition in this case, it has come to light through a Whatcom County  
 18 public records disclosure that Ms. Adams’ \$500 cash bail paid to Whatcom County was  
 19 transferred to the Nooksack Tribal Court at approximately 3:30 p.m. on July 30, 2019.<sup>10</sup>

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21 <sup>3</sup> *Id.*, ¶ 3.

22 <sup>4</sup> Declaration of Gabriel S. Galanda in Support of Response to Respondents’ Return to Petition for Writ of Habeas  
 Corpus and Motions for Dismissal (“Galanda Decl.”), Ex. B.

23 <sup>5</sup> Adams Decl., ¶ 2.

24 <sup>6</sup> Galanda Decl., Ex. A.

25 <sup>7</sup> *Id.*, Ex. B.

<sup>8</sup> The Whatcom County Sheriff Department’s own training materials make this clear. See *id.*, Ex. E (“Tribal courts  
 will issue arrest warrants for fugitives. These warrants are not enforceable by state officers . . .”).

<sup>9</sup> *Id.*, Ex. C; Dkt. # 14, ¶5.

<sup>10</sup> Galanda Decl., Ex. D; Dkt. # 14, ¶6.

## II. LAW AND ARGUMENT

As deftly explained by Judge Posner in the Seventh Circuit case of *Reimnitz v. State's Attorney of Cook Cty.*:

The *habeas corpus* statute does not say who shall be named as respondent in a *habeas corpus* petition but implies, quite naturally since *habeas corpus* challenges the lawfulness of the petitioner's custody, that it shall be the person who has that custody. . . . [A] person released after posting bail is usually considered to be in either his lawyer's custody or the bondsman's custody. But it would be odd to make any of these the respondent in a *habeas corpus* action. . . . Whoever operates the local jail . . . has potential custody, which would ripen into actual custody if the accused violated the terms of bail and was recommitted. So maybe the Sheriff should be the respondent. . . . The truth is that no one has custody of a person who is out on bail but that the Supreme Court has decided that such a person should be allowed to seek unconditional freedom through an action for *habeas corpus* despite the absence of a custodian. The important thing is not the quest for a mythical custodian, but that the petitioner name as respondent someone (or some institution) who has both an interest in opposing the petition if it lacks merit, and the power to give the petitioner what he seeks if the petition has merit—namely, his unconditional freedom. From this practical standpoint the court that admitted the petitioner to bail, represented in the *habeas corpus* action by the prosecutor who wants to keep the petitioner from getting unconditional freedom, is a logical respondent.

761 F.2d 405, 408-409 (7th Cir. 1985).

Here, because it is now clear that the Nooksack Tribal Court is in possession of Ms. Adams' \$500 cash bail, Whatcom County is correct that it is no longer in "custody" of Ms. Adams for the purposes of her *habeas corpus* petition.<sup>11</sup> Whatcom County is also correct that "sovereign immunity does not prevent the joinder of" Nooksack Tribal Court "Chief Judge" Raymond Dodge or any other Nooksack officer who might want to prevent Ms. Adams from obtaining unconditional freedom. Dkt. # 12, at 6; *Reimnitz*, 761 F.2d at 409.

## III. CONCLUSION

Whatcom County requests that Ms. Adams "be granted leave to amend . . . to replace the current Respondents with the person currently in custody of Petitioner." Dkt. # 12, at 8. Ms.

<sup>11</sup> This of course does not excuse Whatcom County and its officers' clear and knowing violation of Ms. Adams' constitutional rights by way of an illegal detention.

1 Adams agrees with this course of action and thus also requests that: (1) Whatcom County's  
2 motion to dismiss be granted, without prejudice; and (2) the Court "order the joinder of a party  
3 required for just adjudication under Fed. R. Civ. P. 19(a) and grant Petitioner [Adams] leave to  
4 amend the Petition to identify and join a proper tribal official as respondent." *Toya v.*  
5 *Casamento*, No. 17-00258, 2017 WL 3172822, at \*1 (D.N.M. May 25, 2017).

6 Petitioner is prepared to file an amended petition in short order.

7 DATED this 14th day of October, 2019.

8 GALANDA BROADMAN, PLLC

9 s/Gabriel S. Galanda

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Gabriel S. Galanda, WSBA #30331  
11 Ryan D. Dreveskracht, WSBA #42593  
12 Attorneys for Petitioner  
13 P.O. Box 15146, Seattle, WA 98115  
14 (206) 557-7509 Fax: (206) 299-7690  
15 Email: gabe@galandabroadman.com  
16 Email: ryan@galandabroadman.com

**CERTIFICATE OF SERVICE**

I, Wendy Foster, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35<sup>th</sup> Avenue NE, Ste. L1, Seattle, WA 98115.

3. Today, I served the foregoing document via the court's CM/ECF filing system, on the following:

George Roche, WSBA #45698  
Whatcom County Civil Deputy Prosecuting Attorney  
311 Grand Avenue Suite 201  
Bellingham, WA 98225  
360-778-5710  
groche@co.whatcom.wa.us  
Attorney for Respondents

The foregoing statement is made under penalty of perjury and under the laws of the State of Washington and is true and correct.

Signed at Seattle, Washington, this 14<sup>th</sup> day of October, 2019.

s/Wendy Foster

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Wendy Foster