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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELILE ADAMS,
Petitioner,
v.
RAYMOND DODGE, et al.,
Respondents.

NO. 2:19-cv-1263 JCC

**PETITIONER’S MOTON FOR
RECONSIDERATION OR,
ALTERNATIVELY, OBJECTIONS
TO MAGISTRATE’S REPORT AND
RECOMMENDATION**

Petitioner Elile Adams moves for reconsideration of the Magistrate’s March 3, 2020, Report and Recommendation (“R&R”) based on new evidence and clear errors; or, alternatively, objects to the R&R pursuant to MJR 3(b).

On July 30, 2019, Petitioner was falsely arrested and imprisoned—for the first time in her life. Dkt. # 31 ¶¶35-47; Dkt. # 30-8. After Petitioner’s dad posted \$500.00 bail with the Whatcom County Jail, the County released her. *Id.* She was booked into a County jail, stripped of her belongings and searched, subjected to mug shots, and placed in an unsanitary inhumane jail cell for eight hours—all of which were also firsts for her. *Id.* As new evidence demonstrates, Petitioner has been denied any and all opportunity before the Nooksack Judiciary

1 to receive notice and an opportunity to be heard, as required to contest Respondents’ unlawful
2 restraint of her liberty. Declaration of Gabriel S. Galanda (“Galanda Decl.”), Exs. F, G.

3 Pivotaly, the Magistrate misapprehended that the July 30, 2019, arrest at issue arose on
4 “Nooksack tribal trust land,” seeming to reject Petitioner’s claim that “she was not on the
5 Reservation at the time of her arrest.” Dkt. # 35, at 7-8 (quotation omitted). The arrest in fact
6 arose on off-reservation federal allotted land, which renders the Nooksack police without any
7 criminal jurisdiction whatsoever, as discussed below. In other words, Petitioner is correct that
8 “jurisdiction *is* plainly lacking”—that is not conclusory assertion. *Id.* at 8 (emphasis added)

9 Nevertheless, Petitioner has attempted to exhaust Nooksack Tribal trial court and
10 appellate court remedies. On March 5, 2020, she sought both a “tribal writ of *habeas corpus*
11 [*and*] appeal to the tribal appellate court”—each on her own behalf and through counsel—as the
12 Magistrate suggested. *Id.* at 11, 14. But Respondents summarily “REJECTED” all of her
13 papers. Insofar as Petitioner has attempted to utilize available Tribal judicial remedies without
14 success and proffered new evidence that further establishes Respondents’ manifest bad faith
15 towards her, comity and exhaustion no longer preclude her from now obtaining federal *habeas*
16 *corpus* relief. *Id.* The Magistrate, or Court, should resist dismissal and, in the interest of justice,
17 discharge Petitioner from her unlawful detention and restraint at the hands of Respondents.

18 I. SALIENT FACTS & NEW EVIDENCE

19 On March 30, 2017, Respondent Nooksack Tribal Court Chief Judge Raymond Dodge
20 *sua sponte* initiated a Tribal Court parenting action and entered a “Parenting Plan, Visitation
21 Schedule” Order. Dkt. # 31-5, at 1. Respondent Dodge *sua sponte* converted Petitioner’s plea
22 for domestic protection into a child custody action; that purported Order was proposed *by him*,
23 not “by Mother[,] Father [or] Jointly.” *Id.*

1 Fast forward to February of 2019, when, at Respondent Dodge’s request, Nooksack
 2 police investigated Petitioner’s “possible custodial interference violation(s)” and Petitioner found
 3 herself cited with criminal custodial interference and contempt. Dkt. # 25-2, at 53, 69-62.

4 On July 11, 2019, Petitioner’s public defender appeared before Respondent Dodge on her
 5 behalf in the criminal custodial interference proceeding. Dkt. # 25-2 at 41. Despite appearance
 6 by counsel, Respondent Dodge issued a Warrant of Arrest for Petitioner’s purported failure to
 7 appear (“FTA”) on July 19, 2019. Dkt. # 25-2, at 40. On July 30, 2019, Nooksack police arrived
 8 to Petitioner’s home, which—pivotaly—is situated on off-reservation federal allotted lands.
 9 Dkt. # 30-18; Second Galanda Decl., Exs. A-E; Ex. F ¶¶2, 64.¹

10 Petitioner’s home is not reservation land; nor is it “Nooksack tribal trust land . . . within
 11 the jurisdiction of the Nooksack Tribal Police” as Nooksack police reported, and the Magistrate
 12 concluded. *Id.*; Dkt. # 25-2, at 29. **The State of Washington possesses exclusive criminal**
 13 **jurisdiction over the allotment on which Petitioner’s home is located.** RCW 37.12.010; *State*
 14 *v. Cooper*, 928 P.2d 406 (Wash. 1996); AGO 63-64 No. 68 (Nov. 8, 1963). Nevertheless,
 15 Nooksack police arrested Petitioner, pursuant to the July 19, 2019, warrant and transported her to
 16 the Whatcom County jail; despite plainly lacking criminal jurisdiction to either arrest or transport
 17 her. *Id.*; Dkt. # 31 ¶34; Dkt. # 25-2 at 38. The Magistrate erred in finding that Petitioner was
 18 arrested on “Nooksack tribal trust land.” Dkt. # 35, at 8.

19 Petitioner spent the rest of the day in the Whatcom County jail. Dkt. # 31 ¶¶35-47. After
 20 Petitioner’ dad posted \$500.00 bail with the Whatcom County jail, the County released her.
 21 Dkt. # 30-8. That same day, Whatcom County issued a \$500.00 check to the Tribal Court,
 22

23 ¹ The “Suchanon Allotment,” which sits in Everson, predates the Nooksack Reservation, which was formed after
 24 1973 and sits in Deming. *See id.*, Exs. D, E; *Cooper*, 130 Wn.2d at 775. Exs. A through E to the Galanda Decl. do
 25 not constitute newly discovered evidence. Instead, Petitioner offers that evidence in reaction to the Magistrate’s
 apparent error as to Dkt. # 30-18, which shows that the Suchanon Allotment is federal allotment land, not
 “Nooksack tribal trust land.” Dkt. # 35, at 7-8 (quotation omitted).

1 transferring Petitioner’s bail monies to Respondents, who control those monies today. *Id.*; Dkt. #
 2 25-2, at 22. Petitioner “has never received a Summons to appear for the alleged July 19, 2019,
 3 FTA violation; been arraigned for that alleged violation; or been assigned a public defender in
 4 that regard.” Galanda Decl., Ex. F ¶44. Having not yet received a Summons or Complaint, as
 5 required by Nooksack Tribal Code (“NTC”) § 10.07.100 (Dkt. # 13, at 79),² Petitioner *cannot*
 6 “move for acquittal on the grounds the Nooksack Parenting Action is void or . . . to strike the
 7 warrant and return of bail.” Dkt. # 35, at 11; *see also* Dkt. # 25-2. The Magistrate erred.

8 On the morning of March 5, 2020, Petitioner attempted to file an Application for Writ of
 9 *Habeas Corpus* (“Application”) pursuant to NTC § 10.08. Galanda Decl., Ex. F; Dkt. # 13, at
 10 90. Respondent Deanna Francis summarily “REJECTED” the Application. Galanda Decl., Exs.
 11 F, H; Dkt. # 30-3, at 3-4.

12 Later that afternoon, Petitioner attempted to file a Petition for Writ of Mandamus
 13 (“Petition”) with the Nooksack Tribal Court of Appeals, requesting that it “issue a peremptory
 14 Writ of Mandamus reversing the Nooksack Tribal Court/Clerk’s March 5, 2020, Order rejecting
 15 Petitioner’s [Application] and instructing the Tribal Court Clerk to file Petitioner’s Application
 16 and set the process set forth in NTC § 10.08 to motion immediately.” *Id.*, Ex. G at 4.
 17 Respondent Francis also “REJECTED” the Petition, in derogation of Nooksack Tribal law. *Id.*;
 18 Dkt. # 30-3; *id.* at 3-4; Galanda Decl., Ex. H.

19 In bad faith, Respondents have foreclosed any “tribal writ of habeas corpus relief or
 20 appeal to the tribal appellate court” for Petitioner. Dkt. # 35, at 11.

21 II. LAW AND ARGUMENT

22 A. RECONSIDERATION IS PRUDENT.

23 Reconsideration is appropriate in “highly unusual circumstances,” when a Court is
 24

25 ² There is no criminal statute of limitation at Nooksack. Dkt. # 13, at 75 (NTC § 10.07.030).

1 “presented with newly discovered evidence” or “committed clear error.” *Marlyn Natraceuticals,*
2 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Petitioner recognizes
3 that reconsideration is an “extraordinary remedy, to be used sparingly in the interests of finality
4 and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877,
5 890 (9th Cir. 2000). Here, though, the highly unusual circumstances at bar, coupled with the
6 Magistrate’s clear factual and legal errors and new evidence (*see, e.g.*, Galanda Decl., Exs. F, G),
7 render reconsideration of the R&R a prudent use of judicial resources. *Id.*

8 **B. TRIBAL EXHAUSTION DOCTRINE DOES NOT APPLY; COMITY IS UNWARRANTED.**

9 The Magistrate correctly noted that the U.S. Supreme Court’s “exhaustion rule” is one of
10 comity, which requires *habeas corpus* petitioners “to exhaust their claims with the appropriate
11 tribal court before turning to federal court”—unless, *inter alia*, “an assertion of tribal jurisdiction
12 is . . . conducted in bad faith . . . or where the action is patently violative of express jurisdictional
13 prohibitions” Dkt. # 35, at 6-8, 14 (citation omitted); *see also National Farmers Union Ins.*
14 *Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985). Here, new evidence makes plain that
15 Petitioner has exhausted all Nooksack Tribal Court remedies regarding her July 30, 2019, arrest
16 and Respondents’ subsequent restraint on her liberty. Alternatively, that evidence establishes
17 Respondents’ continued bad faith towards Petitioner and plain violation of express jurisdictional
18 prohibitions. In any event, comity towards the Nooksack Tribal Court is unwarranted.

19 **1. Petitioner Has Exhausted All “Available” Tribal Court Remedies.**

20 In recommending to the Court a finding that Respondent was not yet eligible for federal
21 *habeas corpus*, the Magistrate reasoned: “Petitioner could move for acquittal on the grounds the
22 Nooksack Parenting Action is void or could move to strike the warrant and return of bail.
23 Petitioner could also seek tribal writ of habeas corpus relief or appeal to the tribal appellate
24 court.” Dkt. # 35, at 14. The Magistrate erred in the first regard because Petitioner has never

1 received a Summons to appear for the alleged July 19, 2019, FTA violation. Galanda Decl., Ex.
 2 F ¶44. As such, she cannot move for acquittal or strike the warrant and seek return of bail. Dkt.
 3 # 35, at 11. Her only “available” tribal legal avenue to seek her unconditional freedom was tribal
 4 *habeas corpus*, but Respondents summarily foreclosed any such opportunity both before the
 5 Nooksack trial and appellate courts. *Id.*; Galanda Decl., Exs. F, G.

6 **2. The Nooksack Tribal Court Plainly Lacks Jurisdiction.**

7 Again, when it is “plain” that a tribal court lacks jurisdiction, “the otherwise applicable
 8 exhaustion requirement *must* give way.” *Strate v. A-1 Contractors*, 520 U.S. 438, 459 n.14
 9 (1997) (emphasis added). Pursuant to RCW 37.12.010, “Washington assumed full
 10 nonconsensual civil and criminal jurisdiction over all Indian country outside established Indian
 11 reservations. Allotted or trust lands are not excluded from full nonconsensual state jurisdiction
 12 unless they are ‘within an established Indian reservation.’” *Cooper*, 130 Wn.2d at 775-76
 13 (quoting RCW 37.12.010) (emphasis added); *see also State v. Clark*, 178 Wn.2d 19, 205, 308
 14 P.3d 590 (Wash. 2013); *State v. Comenout*, 173 Wn.2d 235, 238-39, 267 P.3d 355 (Wash. 2011).

15 More precisely, the Washington State Supreme Court has held that off-reservation federal
 16 allotted lands *at Nooksack* are subject to state criminal jurisdiction. *Id.* And the state’s criminal
 17 jurisdiction on such lands is exclusive—not concurrent. AGO 63-64 No. 68 at 15.

18 Here, Respondent Dodge plainly lacked jurisdiction to order or adjudicate Petitioner’s
 19 arrest at “7094 Mission Road Apartment #4 in Everson, WA,” and Nooksack Tribal police
 20 lacked jurisdiction to arrest her (or transport her from) those off-reservation federal allotted
 21 lands.³ Dkt. # 25-2, at 27; Galanda Decl., Exs. A-E; Ex. F ¶¶2, 64; RCW 37.12.010; *Cooper*,
 22 130 Wn.2d at 775-76; AGO 63-64 No. 68 at 15; *State v. Eriksen*, 172 Wn.2d. 506, 25 P.3d 1079,
 23 1083 (Wash. 2011) (“[T]he powers of tribal law enforcement officers [do not extend] outside the

24 ³ Even reported violations of Respondent Dodge’s March 30, 2017, invalid “Parenting Plan, Visitation Schedule”
 25 Order, arose from the Suchanon Allotment, where Nooksack criminal jurisdiction is lacking. Dkt. # 25-2, at 53-58.

1 reservation.”).⁴ *Habeas corpus* is the appropriate relief, as here, where a Petitioner is arrested by
 2 officers with “no jurisdiction to arrest.” *Campbell v. Waite*, 88 F. 102, 103 (8th Cir. 1898).

3 **3. Respondents Act In Bad Faith Towards Petitioner.**

4 A tribal court “that acts . . . to avoid the requirement to exhaust tribal court remedies,”
 5 acts in bad faith. *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196, 1201
 6 (9th Cir. 2013). A tribal court that fails to provide a fair proceeding,” acts in bad faith. *Acres v.*
 7 *Blue Lake Rancheria*, No. 16-5391, 2017 WL 733114, at *3 (N.D. Cal. Feb. 24, 2017).

8 Here, Respondents summarily “REJECTED” Petitioner’s *habeas corpus* application to
 9 the Tribal trial court and her *mandamus* petition to the Tribal appeals court, on March 5, 2020.
 10 Galanda Decl., Exs. F, G. Respondents denied Petitioner her own constitutional right to appear,
 11 as well as her due process right to appear through counsel.⁵ *Id.*; Dkt. # 30-3; Galanda Decl., Ex.
 12 I, *Roberts v. Kelly*, 12 NICS App. 33 (Nooksack Tribal Ct. App. 2014) (a litigant’s “right to
 13 representation is crucial.”); *id.* (prohibiting one’s right to be “represented at the proceeding
 14 violates due process”); *id.*, Ex. H, at 5, n.3.

15 Meanwhile, Respondents have not furnished Petitioner a public defender in connection
 16 with the alleged July 19, 2019, FTA violation. At present there is nothing in that regard to
 17 defend.⁶ Galanda Decl., Ex. F ¶44; Dkt. # 13, at 79 (NTC § 10.07.100).

18 In all, Petitioner’s new evidence establishes that she is “unable to pursue tribal *habeas*
 19 relief,” due to Respondents’ manifest bad faith. Dkt. # 35 at 13; Galanda Decl., Exs. F, G.

21 _____
 22 ⁴ Although Petitioner presumes that Nooksack police unwittingly reported that she was arrested “on Nooksack tribal
 23 trust land . . . within the jurisdiction of the Nooksack Tribal Police,” Dkt. # 25-2, at 29, Respondents disingenuously
 24 suggest that Petitioner was arrested “on Nooksack tribal land.” Dkt. # 25, at 3. That is false.

25 ⁵ Petitioner is a single mother and student who lives with her parents; was forced to represent herself *pro se* in the
 Nooksack parenting action; and was assigned a public defender in the original criminal action. Dkt. #31; Dkt. #25-2,
 at 15-17. The notion that she could find a “different lawyer” defies her reality, and violates her right to private
 defense counsel of her choice. Dkt. #35 at 13; *see U.S. v. Gonzalez-Lopez*, 548 U.S. 140 (2006).

⁶ To the extent the Magistrate believed that “Petitioner is represented by a public defender” in relation to her alleged
 July 19, 2019, FTA violation, that, too, is error. Dkt. # 35, at 12, n.5.

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III. CONCLUSION

By now, the Magistrate, or Court, should have seen quite enough gamesmanship by Respondents to realize that comity is unwarranted, and that federal judicial intercession is required. There are no Tribal remedies for Petitioner to exhaust. A federal Writ of *Habeas Corpus* must issue.

A proposed Order accompanies this Motion.

DATED this 12th day of March 2020.

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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 35th Avenue NE, Ste. L1, Seattle, WA 98115.

3. Today, I electronically filed the foregoing with the clerk of the Court using the CM/ECF system which will send notification of such filing to the parties registered in the Court's CM/ECF system.

Signed at Seattle, Washington, this 12th day of March 2020.

s/Wendy Foster

Wendy Foster