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

REPLY ON PETITIONER'S MOTION FOR RECONSIDERATION OR, ALTERNATIVELY, OBJECTIONS TO MAGISTRATE'S REPORT AND RECOMMENDATION

Petitioner Elile Adams replies to Respondents' respective response briefs.[1] Dkt. ## 38, 39. Retreating from their prior disingenuous suggestion that Petitioner was arrested "on Nooksack tribal land" (Dkt. # 25 at 3), Respondents fail to to refute that Petitioner was arrested on off-reservation federal allotted lands—a pivotal fact that the Magistrate misapprehended. *Id.*; Dkt. ## 30-18. 37-1, 37-2, 37-3, 37-4, 37-5. Respondents concede that dispositive factual point. *Hedenburg v. Aramark Am. Food Servs.*, 476 F. Supp.2d 1199, 1210 (W.D. Wash. 2007).

[1] Judge Respondents take issue with Petitioner's introduction of new evidence on reconsideration, but not with the non-Judge Respondents' introduction of their own new declaration and exhibit evidence in response to Petitioner's reconsideration request. Dkt. ## 39, 38-1. Respondents cannot have it both ways. Reconsideration is appropriate.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

As to the Magistrate's misapprehension that Respondents plainly lack jurisdiction to cause Petitioner's arrest or restraint on her liberty, the non-Judge Respondents grasp at straws to contend that the Nooksack Tribal Court possesses concurrent jurisdiction over the off-reservation Suchanon Allotment. Respondents fail to even address AGO 63-64 No. 68 (Nov. 8, 1963), which makes plain that "the state has **exclusive** criminal and civil jurisdiction over all Indians and Indian territory, except Indians on their tribal lands or allotted lands within the reservation and held in trust by the United States." *Id.* at 15 (emphasis added). Since the Suchanon Allotment is indisputably not within the Nooksack Reservation, the State's jurisdiction is exclusive of the Nooksack Tribe.[2] *Id.*; *see also* RCW 37.12.010; *State v. Cooper*, 928 P.2d 406 (Wash. 1996); *State v. Clark*, 178 Wn.2d 19, 205, 308 P.3d 590 (Wash. 2013); *State v. Comenout*, 173 Wn.2d 235, 238-39, 267 P.3d 355 (Wash. 2011); Dkt. ## 30-18, 37-1, 37-2, 37-3, 37-4, 37-5.

Native Alaska Village of Venetie I.R.A. v. Alaska, 944 F.2d 548 (9th Cir. 1992), rev'd on other grounds, 118 S. Ct. 948 (1998), does not help Respondents. *Venetie* concerned the interplay between the federal Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901-1963, and Public Law 280 ("P.L. 280"), 28 U.S.C. § 1360, in the "mandatory" P.L. 280 state of Alaska.[3] *Id*. The Ninth Circuit Court of Appeals held that neither the ICWA nor P.L. 280 prevents Alaska Native villages from exercising concurrent jurisdiction over "child custody determinations where the tribe has not petitioned for exclusive or referral jurisdiction" from the U.S. Department of the Interior Secretary. 944 F.2d 562.

[2] The State's jurisdiction over off-reservation federal allotments remains concurrent with the United States. *See* 18 U.S.C. §§ 1151-1153; Memorandum from Assistant Att'ys Gen. to U.S. Att'ys in "Optional" Public Law 280 States (Jan. 18, 2017), available at https://turtletalk.files.wordpress.com/2017/01/oaag-80488-v1-optional_pl_280_memo_to_u_s__attorneys.pdf (last accessed Mar. 24, 2020).

3 Washington is an "optional" P.L. 280 state. See Memorandum from Assistant Att'ys Gen. to U.S. Att'ys in "Optional" Public Law 280 States, supra, n.3

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

This is not an ICWA case. *Venetie* is inapposite. Under AGO 63-64 No. 68, Washington State confirms its exclusive criminal jurisdiction; as such, Respondents plainly lack jurisdiction.[4]

Non-Judge Respondents manufacture excuses why Petitioner has not exhausted her Tribal Court remedies, or why they do not exhibit bad faith. Dkt. # 38 at 4-5. They claim she has counsel "in the pending criminal case," *Nooksack Indian Tribe v. Elile Adams*, No. 2019-CR-A-004. *Id*. at 4; *see also* Dkt. # 38-1 ¶¶5-7, 21. But as it relates to **Petitioner's July 30, 2019, arrest** and related restraint of her liberty, there is no "pending criminal case." Third Declaration of Elile Adams ("Adams Decl.") ¶4. Petitioner "still [has] not received any Summons to appear for [her] alleged July 19, 2019, 'failure to appear' violation or related criminal Complaint" or "been arraigned for that alleged violation or been assigned a public defender in that regard." *Id.*

Respondents also claim Petitioner did not present a filing fee when attempting to file her Application for Writ of *Habeas Corpus* with the Tribal Court and Petition for Writ of Mandamus with the Nooksack Tribal Court of Appeals, on March 5, 2020. Dkt. # 38 at 5. The truth of the matter is she was never given "the choice of presenting or paying any filing fee" that day despite having taken "$100.00 cash with [her] to cover any filing fee"; instead Respondent Tribal Court Clerk Deanna Francis handed her back both papers as "REJECTED."[5] Adams Decl. ¶¶2-3.

[4] If anything, *Venetie* undercuts Respondents' position insofar as the Ninth Circuit deferred to Attorney Generals for P.L. 280 states regarding whether state jurisdiction is exclusive of tribal jurisdiction. 944 F.2d 561. Here, Washington's Attorney General has concluded that state jurisdiction is in fact exclusive, AGO 63-64 No. 68 at 15, and the State's position controls. *Anderson v. Gladden*, 293 F.2d 463, 467-68 (9th Cir. 1961), cert. denied, 368 U.S. 949 (1961) (whether states have criminal jurisdiction "upon the relinquishment of federal jurisdiction" pursuant to P.L. 280, "is a state question"); *see Tyndall v. Gunter*, 840 F.2d 617, 618 (8th Cir. 1988) (the scope of P.L. 280 jurisdiction retained by a state is a question of state law); *cf. State v. Comenout*, 173 Wn.2d at 239–40. The out-of-Circuit decision, *Walker v. Rushing*, 898 F.2d 672 (8th Cir. 1990), also does not aid Respondents. *Walker* arose "on a public road within the boundaries of the Omaha Indian Reservation," and involved the application of the federal Major Crimes Act, 18 U.S.C. § 1153, and P.L. 280 in Nebraska, another "mandatory" state.

[5] Respondents also feign that Petitioner's counsel, Galanda Broadman, PLLC, are unable to practice law at Nooksack. Dkt. # 38 at 5; *see also* Dkt. # 38-1 ¶¶9, 12, 17, 20. This is false. Galanda Broadman and its attorneys have unequivocally been "reinstated as advocates permitted to practice in the Nooksack Tribal Court" since at least September 21, 2016. Dkt. # 30-3.

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

Petitioner has exhausted all available Nooksack Tribal trial court and appellate court remedies. Even had she not, Respondent Chief Judge Raymond Dodge and the Nooksack Tribal police plainly lacked jurisdiction to cause her arrest from the off-reservation Suchanon Allotment on July 30, 2019. Having "REJECTED" all of Petitioner's efforts to challenge her arrest and detention, Respondents' bad faith towards her is otherwise obvious. Dkt. ## 37-6, 37-7.

A federal Writ of *Habeas Corpus* must issue.

DATED this 24th day of March 2020.

GALANDA BROADMAN, PLLC

s/Ryan D. Dreveskracht

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

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509

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 24th day of March 2020.

s/Wendy Foster
Wendy Foster

GALANDA BROADMAN, PLLC
8606 35th Avenue, NE, Ste. L1
Mailing: P.O. Box 15146
Seattle, Washington 98115
(206) 557-7509