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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

**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.<sup>1</sup> 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).

<sup>1</sup> 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.

1 As to the Magistrate’s misapprehension that Respondents plainly lack jurisdiction to  
 2 cause Petitioner’s arrest or restraint on her liberty, the non-Judge Respondents grasp at straws to  
 3 contend that the Nooksack Tribal Court possesses concurrent jurisdiction over the off-reservation  
 4 Suchanon Allotment. Respondents fail to even address AGO 63-64 No. 68 (Nov. 8, 1963),  
 5 which makes plain that “the state has **exclusive** criminal and civil jurisdiction over all Indians and  
 6 Indian territory, except Indians on their tribal lands or allotted lands within the reservation and held  
 7 in trust by the United States.” *Id.* at 15 (emphasis added). Since the Suchanon Allotment is  
 8 indisputably not within the Nooksack Reservation, the State’s jurisdiction is exclusive of the  
 9 Nooksack Tribe.<sup>2</sup> *Id.*; see also RCW 37.12.010; *State v. Cooper*, 928 P.2d 406 (Wash. 1996);  
 10 *State v. Clark*, 178 Wn.2d 19, 205, 308 P.3d 590 (Wash. 2013); *State v. Comenout*, 173 Wn.2d  
 11 235, 238-39, 267 P.3d 355 (Wash. 2011); Dkt. ## 30-18, 37-1, 37-2, 37-3, 37-4, 37-5.

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

20  
 21  
 22 <sup>2</sup> The State’s jurisdiction over off-reservation federal allotments remains concurrent with the United States. See 18  
 23 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](https://turtletalk.files.wordpress.com/2017/01/oaag-80488-v1-optional_pl_280_memo_to_u_s_attorneys.pdf) (last accessed Mar. 24, 2020).

24 <sup>3</sup> 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

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

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

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

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19 <sup>4</sup> If anything, *Venetie* undercuts Respondents’ position insofar as the Ninth Circuit deferred to Attorney Generals for  
20 P.L. 280 states regarding whether state jurisdiction is exclusive of tribal jurisdiction. 944 F.2d 561. Here,  
21 Washington’s Attorney General has concluded that state jurisdiction is in fact exclusive, AGO 63-64 No. 68 at 15,  
22 and the State’s position controls. *Anderson v. Gladden*, 293 F.2d 463, 467-68 (9th Cir. 1961), cert. denied, 368 U.S.  
23 949 (1961) (whether states have criminal jurisdiction “upon the relinquishment of federal jurisdiction” pursuant to  
24 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  
25 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.

<sup>5</sup> 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.

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

6 A federal Writ of *Habeas Corpus* must issue.

7 DATED this 24<sup>th</sup> day of March 2020.

8 GALANDA BROADMAN, PLLC

9 s/Ryan D. Dreveskracht

10 Gabriel S. Galanda, WSBA #30331  
11 Ryan D. Dreveskracht, WSBA #42593  
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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 35<sup>th</sup> 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 24<sup>th</sup> day of March 2020.

s/Wendy Foster

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Wendy Foster