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 P.L. 280 BRIEF

NOTED FOR HEARING
MARCH 8, 2021

Pursuant to the Magistrate's latest Minute Order, Petitioner Elile Adams hereby briefs "whether the fact that Public Law 280 predates federal recognition of the Nooksack Tribe impacts the determination that the Nooksack Tribal Court did not plainly lack jurisdiction over the off-reservation allotted lands . . . has been clearly determined by local law and whether it should be certified to the Washington State Supreme Court." Dkt. # 64.

A. Pre-recognition Exclusive State Criminal Jurisdiction Exists.

"In 1953 Congress granted to several States *full* civil and criminal jurisdiction over Indian reservations." *Organized Vill. of Kake v. Egan*, 369 U.S. 60, 74 (1962) (emphasis added). The main objective of P.L. 280 was to confer state jurisdiction over criminal offenses committed in Indian country. *Bryan v. Itasca Cty., Minnesota*, 426 U.S. 373, 380 (1976).

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Ten years later, "Washington assumed *full* nonconsensual civil and criminal jurisdiction over all Indian country outside established Indian reservations." *State v. Cooper*, 928 P.2d 406, 408 (Wash. 1996) (citing RCW § 37.12.010) (emphasis added); *id.* ("Allotted or trust lands are not excluded from *full* nonconsensual state jurisdiction unless they are 'within an established Indian reservation.'") (emphasis added); *see also generally Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 498 (1979) ("State jurisdiction is *complete*" when delegated to P.L. 280 states) (emphasis added).

What does it mean that Washington assumed "full" and "complete" jurisdiction over Indian lands beyond reservations in 1963? For present purposes, it means Washington assumed "**exclusive jurisdiction**" over crimes on off-reservation Nooksack allotted lands. 18 U.S.C. § 1162(c) (emphasis added); *see also* AGO 63-64 No. 68 (Nov. 8, 1963).[1]

According to the Ninth Circuit Court of Appeals in *United States v. Hoodie*, P.L. 280 criminal jurisdiction depends upon what "Indian country" existed when a state assumed that authority under P.L. 280. 588 F.2d at 295. The Suchanon Allotment was "Indian country" as of 1953 when Congress passed 18 U.S.C. § 1151(c) and as of 1963 when the Washington State Legislature passed RCW § 37.12.010. Dkt. # 37-5l; *see also* 18 U.S.C. § 1151(c) ("The term 'Indian country' includes . . . all Indian allotments . . ."). Washington State assumed exclusive criminal jurisdiction over the Suchanon Allotment in 1963, and that did not change when the Tribe was recognized in 1973; the State "continues to exercise jurisdiction" over the allotment to this

[1] The State's jurisdiction over the Suchanon Allotment is exclusive of the Tribe, but not the United States. *See generally* 18 §§ U.S.C. 1151-1153. *State v. Schmuck*, does not create concurrent state and tribal criminal jurisdiction on that land. 850 P.2d 1332, 1343 (Wash.1993). The *Schmuck* Court held that RCW § 37.12.010 "does not divest the Suquamish Indian Tribe of its inherent authority to stop and detain *a non-Indian* who has allegedly violated state and tribal law while traveling *on a public road in the Reservation* . . . ." *Id.* at 396-97 (emphasis added); *see also U.S. v. Cooley*, 947 F.3d. 1215, 128 (9th Cir. 2020) (*Schmuck* recognizes "a limited tribal power 'to stop and detain alleged offenders . . . on the Reservation's roads'"). *Schmuck* does not speak to state criminal *arrest* power over *Indians* on *off-reservation* "tribal or allotted lands" under RCW § 37.12.010. *Cf. State v. Eriksen*, 25 P.3d 1079, 1082 (Wash. 2011) ("The inherent sovereign power identified in *Schmuck* does not logically extend beyond reservation boundaries."); *id.* at 1081 ("'[A] valid arrest may not be made outside the territorial jurisdiction of the arresting authority.'") (quoting Cohen's Handbook of Federal Indian Law § 9.07 at 763 (2005)).

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day. *Cooper*, 928 P.2d at 409; *see also United States v. Hoodie*, 588 F.2d 292, 295 (9th Cir. 1978) (Oregon's assumption of "exclusive jurisdiction under § 1162" in 1953 was not affected by the establishment of the Burns Paiute Reservation in 1972).

Further, the United States did not create any P.L. 280 exemption for the Suchanon Allotment or other pre-existing Nooksack Indian lands when the Tribe was recognized in 1973. *See generally id*. Contrast that with the language employed by Congress when, in 1970, it amended P.L. 280 with the passage of P.L. 91-523, which excepted the Metlakatla Indian Community from the exclusive criminal jurisdiction of Alaska. 18 U.S.C. § 1162(a). The purpose of P.L. 91-523 was to "add[] language permitting the Metlakatla Indian community on the Annette Islands in Alaska to exercise jurisdiction over minor offenses concurrent with the State of Alaska." H.R.Rep. No. 91–1545 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4783, 4783. And as noted by the Alaska Supreme Court: "This amendment is important because it recognizes that the Metlakatla community lacked concurrent jurisdiction prior to the amendment. **This, in turn, represents a recognition of pre-amendment exclusive jurisdiction in the state**." *John v. Baker*, 982 P.2d 738, 810 (Alaska 1999) (emphasis added).

No such language exists for Nooksack. *Cf. Cooper*, 928 P.2d at 409. Pre-recognition exclusive jurisdiction in Washington State—the *status quo ante*—therefore must be assumed of the Suchanon Allotment.

B. There Is No Need For State Supreme Court Direct Review.

The issue need not and should not be certified to the Washington State Supreme Court pursuant to RCW § 2.60.020. As discussed above, the State's exclusive criminal jurisdiction over the Suchanon Allotment is clearly determined under both federal and state law. RCW § 2.60.020.

If concerns about Nooksack self-governance are what prohibits the Magistrate or Court from ruling that Nooksack plainly lacks criminal jurisdiction over the Suchanon Allotment under

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RCW § 37.12.010[2] (*see* Dkt. # 45 at 11), Washington State law already affords the Nooksack Tribe a solution for its jurisdictional dilemma. RCW § 37.12.160 prescribes a process whereby the state may retrocede its exclusive criminal jurisdiction over off-reservation Nooksack allotments. *See* RCW § 37.12.160(1) ("the state may retrocede to the United States all or part of the civil and/or criminal jurisdiction previously acquired by the state over a federally recognized Indian tribe, and the Indian country of such tribe . . . in accordance with the requirements of this section); RCW § 37.12.160(9)(d)(iii) ("'Indian country' means . . . [a]ll Indian allotments . . ."); *see also Eriksen*, 25 P.3d at 1083 (encouraging state-tribal "use of political and legislative tools" to address policy concerns created by "the territorial limits on [tribal] sovereignty," including cross-deputization or mutual aid pacts in Whatcom County).

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The Court should narrowly rule that Respondents plainly lack criminal jurisdiction over Petitioner because state criminal jurisdiction over Indians on the off-reservation Suchanon Allotment pre-exists Nooksack recognition and is exclusive under federal and state law.[3]

DATED this 8th day of March 2021.

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[2] Respondents' claim that RCW § 37.12.160 "'must be liberally construed in favor of the tribe, and all ambiguities are to be resolved in its favor," is misplaced. Dkt. # 66 at 5 (quoting *State v. Jim*, 156 Wn. App. 39, 41, 230 P.3d 1080, 1082 (2010)). The U.S. Supreme Court has made clear that when both parties are Indian, as here, that canon of construction "has no application." *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649, 655 n.7 (1976).

[3] Nearly eight months have now passed since Petitioner filed her *Pro Se* Application for Writ of *Habeas Corpus* with Respondents (Dkt. # 47-1), without them having yet commenced the tribal *habeas corpus* process by issuing a writ as required by the Nooksack Tribal Code. Seventh Declaration of Elile Adams at 2. Nor has she yet received any Summons to appear before the Tribal Court for the alleged July 19, 2019, Failure to Appear violation for which she was falsely arrested on July 30, 2019. *Id*. Petitioner's claim to the bad faith exception to tribal court exhaustion grows stronger with each passing day of Respondents' gamesmanship (*see id*.), and remains a basis for this Court to finally afford her the relief she has sought from this Court since August of 2019. Dkt. # 2; *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196, 1201 (9th Cir. 2013).

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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 8th day of March 2021.

s/Wendy Foster
Wendy Foster

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