NO. 21-35490

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ELILE ADAMS,

Petitioner-Appellant,

v.

RAYMOND G. DODGE, JR., Nooksack Tribal Court Chief Judge; RAJEEV MAJUMDAR, Nooksack Tribal Court Judge Pro Tem; BETTY LEATHERS, Nooksack Tribal Court Clerk; DEANNA FRANCIS, Nooksack Tribal Court Clerk; NOOKSACK TRIBAL COURT, instrumentality of the Nooksack Indian Tribe; NOOKSACK INDIAN TRIBE, a federally recognized Indian tribal government,

Respondents-Appellees,

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON
No. 2:19-cv-01263-JCC

PETITIONER-APPELLANT'S OPENING BRIEF

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JURISDICTIONAL STATEMENT

This case comes before the Court on a final order and judgment of the U.S. District Court for the Western District of Washington, which disposed of all Petitioner-Appellant Elile Adams' claims. Ms. Adams appeals from the District Court's September 23, 2020 dismissal of the Second Amended Petition ("Petition") and the June 3, 2021 denial of her motion for reconsideration. The District Court possessed subject-matter jurisdiction pursuant to Section 1303 of the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1303, and 28 U.S.C § 1331. Ms. Adams' notice of appeal, filed with the District Court on June 22, 2021, is timely under Federal Rule of Appellate Procedure 4(a)(1)(A) and 4(a)(4)(A). This Court has jurisdiction over Ms. Adams' appeal pursuant to 28 U.S.C. § 1291

STATEMENT OF THE ISSUES

(1) Whether the bad-faith exception to the exhaustion requirement applies when an illegitimately appointed judge initiated a *sua sponte* parenting action against Ms. Adams; caused her to be criminally investigated and charged with custodial interference; required her to attend over twenty hearings in two years; issued an arrest warrant and caused her arrest and imprisonment after she failed to personally appear at one such hearing despite her attorney's appearance on her behalf as she participated in an annual Indigenous ritual; rejected *habeas corpus* and

mandamus papers filed by her counsel; and refused to consider her *pro se habeas corpus* petition upon the *ex parte* advice of Respondents' counsel.

(2) Whether the Nooksack Indian Tribe plainly lacked jurisdiction to arrest Ms. Adams on off-reservation allotted lands when, pursuant to federal law, the Supreme Court of Washington and the Washington State Office of the Attorney General have both declared that the state has exclusive jurisdiction over such lands.

STATEMENT OF THE CASE

This case arises from the retaliation and harassment faced by political dissident Elile Adams at the hands of the Tribe's judicial branch.[1]

I. THE PURPORTED TRIBE'S ULTRA VIRES ACTS

On March 28, 2016, a cohort of Nooksack individuals purporting to be the Tribe's governing body terminated Tribal Court Chief Judge Susan Alexander after she issued a series of election rulings against that group.[2] On June 13, 2016, those same individuals attempted to install Respondent-Appellee Raymond Dodge, who is non-Indigenous, as Tribal Court Chief Judge.[3] But, on October 17, 2016, these members were informed by then-Principal Deputy Assistant Secretary of Indian Affairs Lawrence S. Roberts that they lacked authority to represent the Tribe.[4] On

[1] ER-59–62.
[2] ER-59.
[3] *Id.*
[4] ER-59–60.

November 14, 2016, Assistant Secretary Roberts wrote that the United States "will only recognize those actions taken by the Tribal Council prior to March 24, 2016, when a quorum existed, and will not recognize any actions taken since that time because of a lack of quorum."[5] On December 23, 2016, Assistant Secretary Roberts specifically invalidated any "so-called tribal actions and orders" taken after March 24, 2016.[6] Each of Assistant Secretary Roberts' orders remain in effect today. *See Nooksack Indian Tribe v. Zinke*, No. C17-0219-JCC, 2017 WL 1957076 (W.D. Wash. May 11, 2017) (dismissing Administrative Procedure Act challenge to Assistant Secretary Roberts' three orders).

The disarray prompted an office of the Washington State Bar Association to write in 2018 that the Nooksack "'justice system' is probably not worthy of that description."[7] In a 2017 letter to Dodge, the National American Indian Court Judges Association wrote that proceedings in the Nooksack Tribal Court during Dodge's tenure "appear starkly inconsistent with the federal Indian Civil Rights Act of 1968 and fundamental notions of tribal due process."[8]

[5] ER-60.
[6] ER-27.
[7] ER-51.
[8] ER-54.

II. DODGE INITIATES A SUA SPONTE PARENTING SUIT AGAINST MS. ADAMS

Ms. Adams sought an order of domestic violence protection against the father of her child in Nooksack Tribal Court, which was issued on March 17, 2017.[9] Less than two weeks later, Dodge initiated a *sua sponte* parenting action against Ms. Adams (the "Parenting Action") despite Assistant Secretary Roberts' determination not even three months earlier that Dodge's actions as purported Tribal Court Chief Judge were invalid.[10]

On that same day—March 30, 2017—Ms. Adams filed an order issued on May 8, 2015 by the Whatcom County Superior Court finding that Ms. Adams is the custodial parent of her child.[11] That Washington State Superior Court later issued an Order finding that it "never declined jurisdiction" over the custody of Ms. Adams' child; and declaring that "this Court retains exclusive, continuing jurisdiction over the custody of [her child] pursuant to the Uniform Child Custody Jurisdiction And Enforcement Act, Chapter 26.27 RCW."[12]

Nonetheless, between 2017 and 2019 Dodge required Ms. Adams to appear before him on over twenty occasions—almost monthly.[13] Dodge's harassment

[9] ER-34.
[10] ER-47.
[11] ER-34.
[12] ER-45.
[13] ER-34–35.

during that span led Ms. Adams to take the extraordinary step of relinquishing Nooksack citizenship for herself and her child in order to "seek asylum" with the Lummi Nation.[14]

III. AT DODGE'S REQUEST, THE TRIBAL POLICE INVESTIGATE MS. ADAMS

Dodge took the unusual judicial step of personally asking Nooksack Tribal Police Chief Mike Ashby to investigate Ms. Adams for possible custodial interference.[15] On February 20, 2019, Ms. Adams was cited for committing ten violations of Nooksack Tribal Code 20.03.160, which provides:

> Any person who knowingly takes or entices a minor or incompetent person from the legal custody of a person, agency, or institution or who fails to return a minor or incompetent person to another's legal custody as required by the terms of a valid court order is guilty of a Class B offense.[16]

Each of the alleged acts of custodial interference occurred on an on off-reservation Nooksack allotted lands held by the United States in the name of John Suchanon (the "Suchanon Allotment"). The fact that Ms. Adams has been the child's custodial parent since 2015 according to a state court and the child's father has not even sought visitation with her since early 2019 has not deterred Dodge from pursuing Adams.[17]

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[14] ER-35.
[15] ER-57.
[16] ER-58.
[17] ER-35.

From July 1 to July 29, 2019, Ms. Adams and her family prepared for and participated in the Northwest Tribes' annual Canoe Journey.[18] On July 11, 2019, Dodge held a hearing in the criminal case he also initiated but, because Ms. Adams was away for ceremonial reasons, her public defender appeared for her.[19] Nevertheless, Dodge issued a warrant for Ms. Adams' arrest due to her failure to appear.[20] The warrant was executed on July 30, 2019, the very next morning after Ms. Adams and her family returned home from Canoe Journey.[21] Ms. Adams was arrested, for the first time in her life, at her home on the off-reservation Suchanon Allotment.[22] She was handcuffed and transported to the Whatcom County Jail, where she was booked, had her fingerprints and mug shots taken, and she was imprisoned in a crowded jail cell for an entire day.[23] Ms. Adams was bailed out that evening and her bail money was later transferred to the Nooksack Tribal Court.[24]

IV. DODGE AND THE TRIBAL COURT DENY MS. ADAMS' RIGHT TO HABEAS CORPUS COUNSEL AND REFUSE TO CONSIDER HER PRO SE PETITION

On March 5, 2020, Ms. Adams attempted to file an application for writ of *habeas corpus* in Nooksack Tribal Court pursuant to Nooksack Tribal Code §

[18] ER-36.
[19] ER-36–37.
[20] ER-56.
[21] ER-37.
[22] ER-37–42.
[23] ER-40–42.
[24] ER-42.

10.08.[25] Her application was "REJECTED" by Nooksack Tribal Court Clerk Deanna Francis, claiming Ms. Adams' counsel was barred from practicing before the Nooksack Tribal Court.[26] The same day, Ms. Adams attempted to file a petition for a writ of mandamus with the Nooksack Court of Appeals, but that filing was also "REJECTED" by the Nooksack Tribal Court.[27]

On July 16, 2020, Ms. Adams filed a *pro se* application for writ of *habeas corpus* in Nooksack Tribal Court.[28] Nooksack Tribal Court Clerk Deanna Francis inadvertently sent Ms. Adams an *ex parte* email intended for Charles Hurt, Respondents' counsel, on August 10, 2020.[29] In the email, Francis sought Hurt's continued advice on how to forgo action sought by Ms. Adams regarding her tribal court *habeas corpus* application.[30] The Tribal Court has not yet taken any action to issue a writ or otherwise commence review of her *pro se* application.[31] She lacks any opportunity in Tribal Court to secure her unconditional freedom.[32]

V. PETITION FOR HABEAS CORPUS

[25] ER-36–37.
[26] *Id.*
[27] ER-29–30.
[28] ER-21.
[29] ER-16.
[30] *Id.*
[31] ER-14.
[32] *Id.*

On October 18, 2019, Ms. Adams filed the Petition in the Western District of Washington, seeking a writ of *habeas corpus*. Dodge, Nooksack Tribal Court Judge Pro Tem Rajeev Majumdar, Nooksack Tribal Court Clerks Betty Leathers and Deanna Francis, the Nooksack Tribal Court, and the Tribe. The Tribal Respondents filed a return to the Petition and moved to dismiss on November 22, 2019. Dodge and Majumdar filed another return on November 27, 2019.

In a Report-Recommendation issued March 3, 2020 (the "First Report-Recommendation"), United States Magistrate Judge Michelle L. Peterson recommended dismissal of the Petition. Ms. Adams filed timely objections on March 12, 2020. The District Court adopted the First Report-Recommendation in part and rejected it in part on April 21, 2020, remanding for consideration of whether the Tribe lacked jurisdiction to arrest Ms. Adams on the Suchanon Allotment.

Judge Peterson issued another Report-Recommendation (the "Second Report-Recommendation") on July 13, 2020, again recommending dismissal of the Petition. Ms. Adams filed objections on August 3, 2020, but the District Court adopted the Second Report-Recommendation on September 23, 2020, dismissing the Petition.[33] Ms. Adams moved for reconsideration of that order on October 5, 2020. The District Court granted the reconsideration motion in part and denied it in part, again

[33] ER-8–11.

remanding for consideration of the issue of the Tribe's jurisdiction to arrest Ms. Adams on the Suchanon Allotment.

Judge Peterson issued another Report-Recommendation (the "Third Report-Recommendation") on April 13, 2021, again recommending dismissal of the Petition. Over Ms. Adams' objections filed April 30, 2021, the District Court adopted the Third Report-Recommendation on June 3, 2021.[34] This appeal followed.

SUMMARY OF THE ARGUMENT

Two exceptions to the general requirement of tribal court exhaustion apply here, freeing Ms. Adams from further litigation before a tribunal whose legitimacy was renounced by the federal government at all times relevant to this appeal.

First, this case is the archetype for the bad-faith exception to exhaustion, mirroring the facts of *Juidice v. Vail*, 430 U.S. 327 (1977) where the exception originated. If the bad-faith exception does not apply on Ms. Adams' facts, it cannot fairly be said to exist.

Second, exhaustion should not be required because in keeping with federal Public Law 280, the Supreme Court of Washington and Washington State Office of

[34] ER-4–7.

the Attorney General have both determined that the state has exclusive criminal jurisdiction over off-reservation allotted lands.

ARGUMENT

I. STANDARDS OF REVIEW

The Ninth Circuit reviews de novo "[w]hether exhaustion of tribal court remedies is required." *Boozer v. Wilder*, 381 F.3d 931, 934 (9th Cir. 2004). The Court also reviews de novo "a district court's denial of a petition for writ of habeas corpus under the ICRA." *Jeffredo v. Macarro*, 599 F.3d 913, 917 (9th Cir. 2010).

II. BACKGROUND

ICRA's right of *habeas corpus* is the sole federal protection against civil rights violations on lands defined by 18 § U.S.C. 1151 as "Indian country," regardless of whether those violations are committed against Indians or non-Indians. *Talton v. Mayes*, 163 U.S. 376, 384 (1896); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 (1978); *see also* 25 U.S.C. § 1303. As explained in *Jeffredo*:

> In 1968, Congress enacted ICRA to protect against such abuses by imposing restrictions upon tribal governments similar to those contained in the Bill of Rights and the Fourteenth Amendment. The enforcement mechanism Congress provided was that of *habeas corpus* in federal courts. The statute at issue, 25 U.S.C. § 1303, provides, "The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe." A central purpose of ICRA was to "'secur[e] for the American Indian the broad constitutional rights afforded to other Americans,' and thereby to 'protect individual Indians from arbitrary and unjust actions of tribal governments.'"

Jeffredo, 599 F.3d at 922 (Wilken, J. dissenting) (quoting *Santa Clara Pueblo*, 436 U.S. at 61 (in turn quoting S.Rep. No. 841, 90th Cong., 1st Sess., 5-6 (1967)).

The Congressional investigation that preceded ICRA revealed a "broad picture of constitutional neglect." Donald L. Burnett, Jr., *An Historical Analysis of the 1968 Indian Civil Rights Act*, 9 HARV. J. LEGIS. 557, 577 (1972); *see also Santa Clara Pueblo*, 436 U.S. at 71 ("[Congress's] legislative investigation revealed that . . . serious abuses of tribal power had occurred in the administration of criminal justice."); 113 Cong. Rec. 35473 (1967) ("[A]ll of us who were students of the law were jarred and shocked by the conditions as far as constitutional rights for members of the Indian tribes were concerned. There was found to be unchecked and unlimited authority over many facets of Indian rights.") (statement of Sen. Roman Hruska); S. Rep. No. 841, 90th Cong., 1st Sess., at 11 (1967) ("Investigations have shown that tribal members' basic constitutional rights have been denied at every level.").

ICRA was enacted in order to safeguard Indigenous individuals' constitutional rights, when infringed upon by tribal governments. *See Santa Clara Pueblo*, 436 U.S. at 61 (noting that ICRA was enacted to "protect individual Indians from arbitrary and unjust actions of tribal governments") (quotation omitted). Pursuant to this objective, the Supreme Court affirms that ICRA confers upon individuals subjected to tribal governmental action the right to seek a writ of *habeas corpus* in federal court (and only that federal right). *Id.* at 61; 25 U.S.C. § 1303; *see*

also S. Rep. No. 841, at 10 (Congress sought to grant to individuals at least that "protection from arbitrary action in their relationship with tribal governments").

III. ARGUMENT

A. The District Court Should Not Have Dismissed the Petition for Failure to Exhaust Tribal Court Remedies Because the Record Demonstrates Bad Faith by Dodge and the Tribal Court.

The District Court found that Ms. Adams' allegations "do not . . . rise to the level of bad faith or harassment such that [she] is excused from exhausting" her claims in tribal court.[35] But a review of the case where the bad-faith doctrine originated suggests Ms. Adams should be permitted to invoke the exception.

"The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe." 25 U.S.C. § 1303. The exhaustion of tribal court remedies is generally "a prerequisite to a federal court's exercise of jurisdiction." *Grand Canyon Skywalk Development, LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196, 1200 (9th Cir. 2013).

However, an exception to the exhaustion requirement exists where "an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith." *Burlington N. R.R. Co. v. Red Wolf*, 196 F.3d 1059, 1065 (9th Cir. 1999). In understanding the meaning of "bad faith," this Court has looked to the *Black's*

[35] ER-26.

Law Dictionary definition: dishonesty of belief or purpose. *Grand Canyon Skywalk Development*, 715 F.3d at 1201. At the motion-to-dismiss stage, a court must take allegations of bad faith as true and allow the action to proceed. *See Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida*, 898 F. Supp. 1549, 1562 (S.D. Fla. 1994).

As this Court has recognized, the bad-faith exception to the exhaustion requirement has its ultimate origins in *Juidice v. Vail*, 430 U.S. 327 (1977). *See Grand Canyon Skywalk Development*, 715 F.3d at 1201. In *Juidice*, a judgment debtor was held in contempt by a county judge and jailed after failing to appear at a deposition and a show-cause hearing. *Juidice*, 430 U.S. at 329–30. Instead of appealing in state court, a class of plaintiffs brought a constitutional challenge to New York's statutory contempt procedures in federal district court. *Id.* at 330. The issue was whether the class could pursue its claims in federal court when it had a state forum available. *Id.*

The United States Supreme Court held that the federal court was required to abstain unless the state proceeding was motivated by a desire to harass or was conducted in bad faith. *Id.* at 338. Though the federal complaint made bad-faith allegations against the creditors, there were "no comparable allegations with respect to appellant justices who issued the contempt orders." *Id.*; *see also Grand Canyon Skywalk Development*, 715 F.3d at 1202 ("The [*Juidice*] Court looked to the

proceeding and the court overseeing that proceeding to make its determination.") (emphasis in original). Thus, the bad-faith exception was unavailable. *Juidice*, 430 U.S. at 338.

The allegations here are directed against the proper parties to invoke the bad-faith exception, unlike in *Juidice*. Like in *Juidice*, though, they involve a judge's overzealous response to a failure to appear. Ms. Adams alleges that Dodge and the Nooksack Tribal Court: (1) initiated a *sua sponte* parenting action against Ms. Adams; (2) ignored a 2015 state court parenting order and its jurisdictional impact; (3) harassed her by requiring her to appear before him at least twenty times in two years; (4) issued a warrant for her arrest and caused her to be imprisoned because of her failure to appear at a July 11, 2019 hearing despite her public defender's appearance on her behalf; (5) rejected her *habeas corpus* counsel's appearance before the Tribal Court; and (6) refused to consider her *pro se habeas corpus* petition upon the *ex parte* advice of Respondents' counsel.

By making these allegations, Ms. Adams has done what the Supreme Court has held is necessary before a federal court can intervene with an unexhausted proceeding in a non-federal tribunal. *Juidice*, 430 U.S. at 338. If the bad-faith exception is not applied on these facts—especially where a judge initiates a parenting action on his own accord and issues a warrant for a litigant's arrest after a

single failure to personally appear while his court conspires to deny her any right to *habeas corpus* counsel or process—it cannot fairly be said to exist.

Since the Petition contains allegations of bad faith, the District Court should not have granted dismissal. *See Tamiami Partners*, 898 F. Supp. at 1562. Even if affirmative proof of bad faith were required at this stage, the record contains such evidence. The purported Nooksack Tribal Court parenting plan, filed in the Parenting Action, indicates that it was issued not by Ms. Adams or the father of her daughter, but rather *sua sponte* by Dodge.[36] And Ms. Adams' allegations of bad faith are substantiated by the federal government's extraordinary invalidation of Dodge's "so-called . . . orders"[37] as well as critiques of the Nooksack Tribal Court issued by an office of the Washington State Bar Association[38] and the National American Indian Court Judges Association.[39] Even in recommending dismissal, the Magistrate Judge noted that Ms. Adams' allegations "may raise suspicions" regarding Respondents' actions.[40]

B. The District Court Should Not Have Dismissed the Petition for Failure to Exhaust Tribal Court Remedies Because the Tribe Plainly Lacked Jurisdiction Over Ms. Adams.

[36] ER-47.
[37] ER-27.
[38] ER-49–52.
[39] ER-54–55.
[40] ER-33.

Exhaustion is also not required where it is "plain that the tribal court lacks jurisdiction over the dispute, such that adherence to the exhaustion requirement would serve no purpose other than delay." *Boozer*, 381 F.3d at 935. The District Court found that the magistrate judge "did not err in concluding that the Nooksack Tribal Court did not plainly lack jurisdiction in this matter."[41]

When Nooksack law enforcement arrested Ms. Adams at her home on the off-reservation Suchanon Allotment on July 30, 2019, the Tribe plainly lacked criminal jurisdiction. First, federal Public Law 280 allowed states such as Washington to assume jurisdiction "in such manner" as those states approve by statute, and Washington's statutory assumption suggests its jurisdiction is exclusive. Second, the Supreme Court of Washington has stated that the state has exclusive criminal jurisdiction over off-reservation allotted lands. Third, a longstanding opinion of the Washington State Office of the Attorney General makes clear that the state's jurisdiction on off-reservation allotted lands is exclusive, rather than concurrent.

In 1953, Congress passed Public Law 280, requiring certain "mandatory" states to assume criminal jurisdiction over Indian country and permitting other "optional" states, such as Washington, to do the same. Pub. L. No. 280, 67 Stat. 588, 590 (codified as amended at 25 U.S.C. § 1321). In 1963, Washington passed RCW § 37.12.010, binding itself:

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[41] ER-6.

> to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state . . . but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States[.][42]

Public Law 280 was amended in 1968 to require tribal consent before a state could assume jurisdiction, but the U.S. Supreme Court has held that the tribal consent requirement is not retroactive. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138, 150 (1984). The version of the law that was in effect at the time Washington accepted Congress' invitation to assume jurisdiction read:

> The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.[43]

By allowing a state to assume jurisdiction "in such manner as the People of the State . . . obligate and bind the State" to assume, Congress gave states the power to determine whether their jurisdiction would be exclusive or concurrent. The question, then, is not whether *Congress* divested tribes of jurisdiction through Public

[42] RCW § 37.12.010.
[43] 67 Stat. 590 (1953).

Law 280,[44] but rather whether *Washington* assumed jurisdiction over off-reservation allotted lands through RCW § 37.12.010.[45] And the state statute suggests Washington's jurisdiction is exclusive, excepting only "tribal lands or allotted lands *within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States*[.]"[46] For off-reservation allotted lands such as those upon which Ms. Adams was arrested, Washington's jurisdiction is clear and exclusive.

The amended version of Public Law 280 bolsters Ms. Adams' argument that Washington possesses exclusive jurisdiction over the land upon which she was arrested. It allows a state to assume "such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State *to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State*[.]" 25 U.S.C. § 1321(a)(1) (emphasis added). "Elsewhere within the State"—meaning beyond Indian country—Washington does not share its jurisdiction with tribes. Its assumption of jurisdiction pursuant to Public Law 280, then, is exclusive, not concurrent.

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[44] *See Native Village of Venetie v. Alaska*, 944 F.2d 548, 560 (9th Cir. 1991) (noting the U.S. Supreme Court has "adopted the view that Public Law 280 is not a divestiture statute").

[45] Respondents agreed before the District Court that the "scope of a state's assumption under P.L. 280 is a question of state law." ER-12.

[46] RCW § 37.12.010 (emphasis added).

Next, Washington case law makes clear that, on off-reservation allotted lands, the state does not share criminal jurisdiction with tribes; its jurisdiction is exclusive. *See State v. Clark*, 178 Wn.2d 19, 30 (Wash. 2013) ("[U]nlike crimes committed off-reservation, the State does not have exclusive jurisdiction over crimes by Indians occurring on their reservations."); *see also State v. Cooper*, 130 Wn.2d 770, 775–76 (Wash. 1996) (noting that, through RCW 37.12.010, "Washington assumed full nonconsensual civil and criminal jurisdiction over all Indian country outside established Indian reservations. Allotted or trust lands are not excluded from full nonconsensual state jurisdiction unless they are 'within an established Indian reservation.'"). Thus, Nooksack police did not have the authority to arrest Ms. Adams at Dodge's behest on the off-reservation Suchanon Allotment. Tribal jurisdiction was plainly lacking, and Ms. Adams need not exhaust her Tribal Court remedies before pursuing a writ of *habeas corpus* in federal court under ICRA.

Finally, the Washington State Office of the Attorney General has long shared the view that state jurisdiction over off-reservation allotted lands is exclusive, not concurrent. In a 1963 opinion, then-Attorney General John J. O'Connell and Assistant Attorney General Jane Dowdle Smith wrote that "it is the opinion of this office that to the extent that the State of Washington has assumed criminal and civil jurisdiction pursuant to [RCW 37.12.010], that jurisdiction is exclusive." AGO 63-64 No. 68. The opinion concluded that Washington has exclusive criminal

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*" and in other situations not relevant to this appeal. *Id.* (emphasis added). The allotted lands upon which Ms. Adams was arrested are indisputably not located within the Nooksack Reservation, and therefore the statutory exception to exclusive state criminal jurisdiction does not apply. This Court should afford deference to the opinion of the state Attorney General as it has in the past. *See Venetie*, 944 F.2d at 561 (recognizing that attorneys general in mandatory Public Law 280 states had determined that jurisdiction was concurrent).

Because Nooksack criminal jurisdiction is plainly lacking under Public Law 280, Ms. Adams is not required to exhaust any ostensible Tribal Court remedies.

CONCLUSION

The District Court erred by dismissing Ms. Adams' Petition. The Court should reverse the dismissal.

DATED this 26th day of August, 2021.

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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, Appellant states that she knows of no related case pending in this Court.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document, **OPENING BRIEF OF PETITIONER-APPELLANT,** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 26, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system to the all parties of record.

Signed under penalty of perjury and under the laws of the United States this 26th day of August, 2021.

/s/ Gabriel S. Galanda
Gabriel S. Galanda, WSBA #30331
Attorney for Petitioner-Appellant