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16 Bands of the Yakama Nation

17 **UNITED STATES DISTRICT COURT**
18 **EASTERN DISTRICT OF WASHINGTON**

19 CONFEDERATED TRIBES AND
20 BANDS OF THE YAKAMA
21 NATION, a sovereign federally
22 recognized Native Nation,
23
24 Plaintiff,
25
26 v.

Case No.:

YAKAMA NATION'S
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

KLICKITAT COUNTY, a political
subdivision of the State of
Washington; KLICKITAT COUNTY
SHERIFF'S OFFICE, an agency of
Klickitat County; BOB SONGER, in
his official capacity; KLICKITAT
COUNTY DEPARTMENT OF THE
PROSECUTING ATTORNEY, an
agency of Klickitat County; DAVID
QUESNEL, in his official capacity,
Defendants.

1 Plaintiff, Confederated Tribes and Bands of the Yakama Nation (“Yakama
2 Nation”), signatory to the Treaty with the Yakamas of June 9, 1855, 12 Stat. 951
3 (1859), alleges as follows:

4 1. INTRODUCTION

5 1.1 This action concerns the unlawful arrest, detention, prosecution,
6 conviction, sentencing, and incarceration of an enrolled Yakama Member for
7 alleged crimes occurring within the exterior boundaries of the Yakama
8 Reservation, and the imminent further violation of Yakama sovereignty and
9 jurisdiction by Defendants.

10 1.2 Since time immemorial, the tribes and bands that would come to
11 constitute the Yakama Nation exercised their inherent sovereign rights, including
12 criminal jurisdiction, over their members throughout the Pacific Northwest.

13 1.3 By executing the Treaty with the Yakamas of June 9, 1855, 12 Stat.
14 951 (1859) (hereafter the “Treaty of 1855”), the Yakama Nation reserved its
15 inherent sovereign criminal jurisdiction over its enrolled members both within and
16 beyond the exterior boundaries of the Yakama Reservation.

17 1.4 At the time of the signing of the Treaty of 1855, a map was created to
18 depict the lands promised and reserved to the Yakama people as the Yakama
19 Reservation in exchange for a cession of certain rights within lands roughly one-
20 third the size of the present-day State of Washington. This map included the land
21 area known as Tract D, where the alleged crimes at issue in this case occurred.

22 1.5 Federal law acknowledges and codified the Yakama Nation’s criminal
23 jurisdiction within Indian Country. 18 U.S.C. 1151 defines the Yakama Nation’s
24 criminal jurisdiction to include “all land within the limits of any Indian reservation
25 under the jurisdiction of the United States Government, notwithstanding the
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1 issuance of any patent”

2 1.6 Infringing upon both the Yakama Nation’s and United States’ criminal
3 jurisdiction over Yakama Members in Indian Country, Defendants recently
4 arrested, detained, prosecuted, convicted, and sentenced an enrolled Yakama
5 Member and minor for alleged crimes occurring just outside Glenwood,
6 Washington, which is wholly located within the exterior boundaries of the Yakama
7 Reservation in the area known as Tract D.

8 1.7 Defendants’ actions violated, and continue to violate, the rights
9 reserved to the Yakama Nation in the Treaty of 1855.

10 1.8 Accordingly, this Court should declare Defendants’ actions unlawful
11 and enjoin Defendants from further incarcerating, maintaining any custody, or
12 asserting any criminal jurisdiction over enrolled Yakama Members with respect to
13 any alleged criminal activity arising from actions within the exterior boundaries of
14 the Yakama Reservation, including Tract D.

15 **2. JURISDICTION AND VENUE**

16 2.1 The Court has jurisdiction over this action pursuant to 28 U.S.C. 1331
17 and 1362, and under federal common law because the Yakama Nation, as a
18 sovereign and federally recognized Nation, asserts claims arising under the Treaty
19 of 1855.

20 2.2 The Court has jurisdiction to grant the declaratory relief sought
21 pursuant to 28 U.S.C. 2201, and other relief—including injunctive relief—sought
22 pursuant to 28 U.S.C. 2202.

23 2.3 Venue is proper in this District pursuant to 28 U.S.C. 1391(b) because
24 all Defendants are residents of the State of Washington and a substantial part of the
25 events or omissions giving rise to the claim occurred within this judicial District.
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3. PLAINTIFF

3.1 The Yakama Nation is a sovereign, federally recognized Nation and signatory to the Treaty of 1855. In the Treaty of 1855, the Yakama Nation reserved all rights not expressly granted to the United States, including its inherent sovereign rights and jurisdiction both within and beyond the exterior boundary of the Yakama Reservation. Among the rights reserved was the Yakama Nation’s right to the exclusive use and benefit of the 1.3 million-acre Yakama Reservation, which is located north of the Columbia River and immediately east of the Cascade Mountains. The Yakama Nation has roughly 11,000 enrolled Members, many of whom live within the exterior boundaries of the Yakama Reservation in towns like Glenwood.

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4. DEFENDANTS

4.1 Defendant Klickitat County is a political subdivision of the State of Washington.

4.2 Defendant Klickitat County Sheriff’s Office is an agency of Klickitat County.

4.3 Defendant Bob Songer is Klickitat County’s Sheriff, who is sued in his official capacity.

4.4 Defendant Klickitat County Department of the Prosecuting Attorney is an agency of Klickitat County.

4.5 Defendant David Quesnel is a Prosecuting Attorney for Klickitat County, who is sued in his official capacity.

1 **5. FACTUAL BACKGROUND**

2 **A. Treaty of 1855, the Yakama Reservation, and Tract D.**

3 5.1 The Yakama Nation is a sovereign, federally recognized Native Nation
4 with inherent sovereign and Treaty-reserved rights pursuant to the Treaty of 1855.

5 5.2 As a result of the Treaty of 1855, the Yakama Nation reserved—among
6 other rights—the right to the exclusive use and benefit of the Yakama Reservation,
7 whose boundaries were set forth in Article II of the Treaty of 1855 as follows:
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9 Commencing on the Yakama River, at the mouth of the
10 Attah-nam River; thence westerly along said Attah-nam
11 River to the forks; thence along the southern tributary to
12 the Cascade Mountains; thence southerly along the main
13 ridge of said mountains, passing south and east of Mount
14 Adams, to the spur whence flows the waters of the
15 Klickitat and Pisco rivers; thence down said spur to the
16 divide separating the waters of the Satass River from
17 those flowing into the Columbia River; thence along said
18 divide to the main Yakama, eight miles below the mouth
19 of the Satass River; and thence up the Yakama River to
20 the place of beginning.

21 5.3 The exterior boundaries of the Yakama Reservation remain unchanged
22 from the signing of the Treaty of 1855 to today.

23 5.4 On June 12, 1855, shortly after the Treaty of 1855 was executed,
24 Territorial Governor Isaac Stevens prepared a map of the Yakama Reservation as
25 described in the Treaty of 1855 (hereafter the “Treaty Map”), and sent the Treaty
26 Map back to Washington D.C. along with the Treaty of 1855 for ratification.

5.5 Among other things, the Treaty Map depicts a tract of land on the
southwest corner of the Yakama Reservation known as ‘Tract D,’ the boundaries of
which are described in the Treaty of 1855 as “passing south and east of Mount

1 Adams, to the spur whence flows the waters of the Klickitat and Pisco rivers;
2 thence down said spur to the divide separating the waters of the Satass River from
3 those flowing into the Columbia River”

4 5.6 The Treaty of 1855 was ratified by the United States Senate on March 8,
5 1859, and was proclaimed by President James Buchanan on April 18, 1859.

6 5.7 Although some confusion arose in the late 19th century and early part of
7 the 20th century due to (1) the United States’ misplacement of the Treaty Map, and
8 (2) subsequent erroneous surveys related to the Yakama Reservation, Tract D was
9 wholly included among the lands promised to the Yakama Nation in the Treaty of
10 1855. The United States Congress ratified the promise of a Yakama Reservation,
11 including the entirety of Tract D. That act of Congress has never been abrogated
12 nor adjudicated to have been abrogated in any court. In short, regardless of the
13 Defendants’ denials, the entirety of Tract D is and has always been a part of the
14 Yakama Reservation, as recognized by the United States pursuant to the promises it
15 made to the Yakama Nation.

16 **B. Public Law 280 and Retrocession.**

17 5.8 The Yakama Nation’s inherent sovereign and Treaty-reserved rights and
18 jurisdiction remain unchanged since such rights were reserved in the Treaty of
19 1855.

20 5.9 In relevant part, the Yakama Nation exercises its criminal jurisdiction
21 over Indians in Indian Country, including but not limited to any and all land within
22 the exterior boundaries of the Yakama Reservation regardless of land ownership
23 status.

24 5.10 On March 13, 1963, the State of Washington assumed partial civil and
25 criminal jurisdiction from the United States over the Yakama Reservation under
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1 Public Law 83-280, which the Yakama Nation did not agree to, and which the
2 Yakama Nation unsuccessfully challenged to the United States Supreme Court in
3 *Washington v. Confederated Bands & Tribes of the Yakima Indian Nation*, 439 U.S.
4 463 (1979).

5 5.11 On January 17, 2014, Washington State Governor Jay Inslee issued
6 Proclamation by the Governor 14-01 partially retroceding the State of
7 Washington’s jurisdiction over the Yakama Reservation back to the United States
8 (hereafter referred to as “Proclamation 14-01”).

9 5.12 In Proclamation 14-01, the State of Washington retroceded to the
10 United States “full civil and criminal jurisdiction in the following subject areas . . .
11 Juvenile Delinquency.” Further, the State of Washington retroceded to the United
12 States criminal jurisdiction over all offenses within the exterior boundaries of the
13 Yakama Reservation, subject to limited exceptions that are not implicated here.

14 5.13 On October 19, 2015, the United States Department of the Interior
15 accepted the State of Washington’s retrocession of jurisdiction concerning the
16 Yakama Reservation.

17 5.14 Therefore, Klickitat County may no longer exercise any criminal
18 jurisdiction over a minor Yakama Member for alleged crimes committed on the
19 Yakama Reservation; that jurisdiction lies with the Yakama Nation and/or the
20 United States.

21 **C. Klickitat County’s Unlawful Arrest, Detention, Prosecution,**
22 **Conviction, Sentencing, and Ongoing Incarceration of Enrolled**
23 **Yakama Member.**

24 5.15 Klickitat County does not have the authority or jurisdiction to arrest,
25 detain, charge, prosecute, convict, or sentence Yakama Members for alleged crimes
26 occurring within Indian Country as defined by 18 U.S.C. 1151, including by

1 definition all land within the exterior boundaries of the Yakama Reservation.

2 5.16 On September 27, 2017, Klickitat County arrested PTS, an enrolled
3 Yakama Member and minor, detained PTS at the Northern Oregon Regional
4 Correctional Facility, and charged PTS with two counts of statutory rape.

5 5.17 PTS's alleged crimes occurred within the exterior boundaries of the
6 Yakama Reservation near Glenwood within Tract D.

7 5.18 Defendants have acted unlawfully by arresting, detaining, charging,
8 prosecuting, and convicting PTS.

9 5.19 Defendants will further act unlawfully by enforcing State laws within
10 the boundaries of the Yakama Reservation. Since retrocession occurred,
11 Defendants have steadfastly maintained that Tract D, including Glenwood and
12 Glenwood Valley, is not part of the Yakama Reservation, and that Defendants
13 would continue operating on the Yakama Reservation within Tract D, exercising
14 criminal jurisdiction over this part of the Yakama Reservation without regard to
15 Yakama Nation sovereignty or jurisdiction. On April 11, 2016, for example
16 Defendant Klickitat County Sheriff's Office publicly stated that "we do not
17 consider the town of Glenwood or any portion of Glenwood Valley part of the
18 Reservation" and the Sheriff indicated that he would dispatch "additional deputies"
19 to this area of the Yakama Reservation.

20 **6. FIRST CLAIM FOR RELIEF**

21 (Violation of the Treaty with the Yakamas of June 9, 1855)

22 6.1 The Yakama Nation hereby incorporates and reasserts all prior
23 allegations by reference.

24 6.2 Defendants' acts and/or omissions have violated and continue to
25 violate the rights reserved to the Yakama Nation in the Treaty of 1855.

1 and Treaty-reserved rights by unlawfully exercising criminal jurisdiction over PTS,
2 an enrolled Yakama Member whose alleged crimes occurred in Indian Country.

3 B. Both a preliminary and permanent injunction pursuant to 28 U.S.C.
4 2202 enjoining Defendants from exercising criminal jurisdiction over enrolled
5 Yakama Members for actions arising within the Yakama Reservation, including but
6 not limited to the jurisdiction to arrest, detain, prosecute, adjudicate, convict,
7 sentence, or incarcerate such enrolled Yakama Members, within the exterior
8 boundaries of the Yakama Reservation.

9 C. Award the Yakama Nation such other relief as the Court deems just
10 and appropriate.

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12 Respectfully submitted this 3rd day of November, 2017.

13
14 s/Ethan Jones

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