No. _____

IN THE
# Supreme Court of the United States

NATHAN LYNN CLOUD,

*Petitioner*,

vs.

UNITED STATES OF AMERICA,

*Respondent*.

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**On Petition for Writ of Certiorari to the**

**Ninth Circuit Court of Appeals**

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## APPENDIX

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Kimberly A. Deater
1314 S. Grand, 2-288
Spokane, Washington 99201
deaterk@gmail.com
(509) 995-4113

**NOT FOR PUBLICATION**

FILED

JUL 23 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| UNITED STATES OF AMERICA,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>NATHAN LYNN CLOUD,<br><br>Defendant-Appellant. | No. 16-30310<br><br>D.C. No.<br>1:16-cr-02002-LRS-1<br><br>MEMORANDUM* |

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, District Judge, Presiding

Argued and Submitted July 12, 2018
Seattle, Washington

Before: CLIFTON and NGUYEN, Circuit Judges, and RAKOFF,** Senior District Judge.

Nathan Cloud, an enrolled member of the Yakama Nation, appeals his conviction for being a Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Jed S. Rakoff, Senior United States District Judge for the Southern District of New York, sitting by designation.

1. The district court properly denied Cloud's suppression motion. Cloud argues that Yakima County Sheriff's deputies arrested him in violation of Washington State law, making evidence obtained in the incident search inadmissible in federal court. *See United States v. Cormier*, 220 F.3d 1103, 1111 (9th Cir. 2000). But Cloud has not shown the illegality of his arrest under either of his two proposed theories.

First, Cloud's arrest was not unlawful because of the deputies' alleged failure to confirm the existence of Cloud's outstanding arrest warrant prior to his arrest.[1] Cloud concedes that the warrant was valid, and the record shows that Deputy McIlrath confirmed the warrant's existence on the morning of the arrest using the Spillman database. Cloud has not pointed us to authority suggesting that more is required. *Cf.* Rev. Code. Wash. 10.31.030 (allowing an officer who "does not have the warrant in his or her possession at the time of arrest" to "declare that the warrant does presently exist and will be shown to the defendant as soon as possible on arrival at the place of intended confinement").

Second, the violation of the Memorandum of Understanding (MOU) between the County of Yakima and the Confederated Tribes and Bands of the

[1] Because Cloud did not raise this argument before the district court, we review for plain error, and can only reverse if the error was "plain, and . . . affects substantial rights." *United States v. Hammons*, 558 F.3d 1100, 1103 (9th Cir. 2009).

Yakama Nation does not entitle Cloud to the remedy of suppression. "State sovereignty does not end at a reservation's border," *Nevada v. Hicks*, 533 U.S. 353, 361 (2001), and Washington State retains the authority to enforce the conditions of Cloud's prior state criminal sentence on tribal land, *see State v. Cayenne*, 195 P.3d 521, 524 (Wash. 2008) (en banc). Moreover, Cloud cannot show that the Yakama Nation had "share[d] concurrent criminal jurisdiction" over the offense that would require a balancing of tribal sovereign interests under *State v. Clark*, 308 P.3d 590, 596 (Wash. 2013) (en banc) (holding that where a tribe and the state enjoy "shared criminal jurisdiction . . . the accommodation between [their] interests . . . take[s] a different form than the accommodation found in *Hicks*"). Cloud's arrest warrant was for a violation of a condition of community custody for a prior state conviction, a crime in which the Yakama Nation did not have any interest, much less jurisdiction.[2]

2. The district court did not clearly err by denying Cloud a two-level downward adjustment for acceptance of responsibility. *See* U.S.S.G. § 3E1.1(a);

[2] Our conclusion finds support in the MOU itself, which expressly states that "[n]othing in this memorandum shall be construed to cede any jurisdiction of either party, to modify the legal requirements for arrest or search and seizure, [or] to modify the legal rights of either party or of any person not a party to this memorandum[.]" This suggests that the MOU cannot be read as a formal "exercise[] [of tribal] sovereignty to regulate the State's ability to execute its process," as *Clark* would require if the Yakama Nation had concurrent jurisdiction. 308 P.3d at 597.

*United States v. Cantrell*, 433 F.3d 1269, 1284 (9th Cir. 2006) (citation omitted). Cloud is correct that even a defendant who takes his case to trial may receive the acceptance of responsibility downward adjustment. U.S.S.G. § 3E1.1(a), cmt. n.2; *United States v. Cortes*, 299 F.3d 1030, 1039 (9th Cir. 2002). But such a defendant will be entitled to the adjustment only in "rare situations." U.S.S.G. § 3E1.1(a), cmt. n.2. Here, Cloud repeatedly contested his factual guilt, and points only to a post-conviction statement at sentencing to show that he accepted responsibility for the offense. This "belated expression" of remorse, coming only after his conviction, is insufficient to justify overturning the district court's conclusion that he was not entitled to the downward adjustment. *See United States v. Restrepo*, 930 F.2d 705, 710-11 (9th Cir. 1991).

**AFFIRMED.**

FILED

SEP 10 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| UNITED STATES OF AMERICA,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>NATHAN LYNN CLOUD,<br><br>Defendant-Appellant. | No. 16-30310<br><br>D.C. No.<br>1:16-cr-02002-LRS-1<br>Eastern District of Washington,<br>Yakima<br><br>ORDER |

Before: CLIFTON and NGUYEN, Circuit Judges, and RAKOFF,* Senior District Judge.

Nathan Lynn Cloud's petition for rehearing is DENIED.

* The Honorable Jed S. Rakoff, Senior United States District Judge for the Southern District of New York, sitting by designation.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>vs.<br><br>NATHAN LYNN CLOUD,<br><br>Defendant. | No. 1:16-CR-2002-LRS-1<br><br>**ORDER DENYING MOTION TO SUPPRESS** |

BEFORE THE COURT is Defendant's Motion to Suppress (ECF No. 25) filed by former counsel. The Defendant's Motion seeks to suppress evidence, including a loaded .22 caliber revolver located on the Defendant's person in his right front pocket, obtained as a result of an allegedly unlawful search in violation of the Defendant's Fourth Amendment rights and rights under a Memorandum of Understanding between the Yakama Nation and Yakima County. The Defendant is charged in the Indictment with Felon in Possession of a Firearm, 18 U.S.C. § 922(g)(1). (ECF No. 18). The Government filed a Response in opposition (ECF No. 29) and supplemented (ECF No. 49) the Response with leave of court. With leave of court, Defendant filed a Supplement to his Motion on August 18, 2016 (ECF No. 60).

An evidentiary hearing and argument was held on August 23, 2016 in Yakima, Washington. Defendant was present and represented by Rick Smith and Ken Therrien. Representing the Government was Assistant United States Attorney, Laurel Holland. The court has considered the testimony of the witnesses, the argument of counsel, the memoranda, and other materials submitted by the parties, as well as the law relating to this Motion.

The following Findings of Fact, Conclusions of Law, Opinion, and Order are intended to memorialize and supplement the oral rulings of the court.

## I. FINDINGS OF FACT

On October 18, 2015 at approximately 9:30 a.m. Yakima County Sherriff's deputies arrested the Defendant at a residence at 241 Second Street in White Swan, Washington pursuant to an arrest warrant. Present at the time of arrest were Yakima County Sheriff's deputies Brian McIlrath, Justin Mallonee, Gilbert Bazan, Sgt. Bill Splawn, and reserve deputy Les Peratrovich.

Defendant was known to Deputy McIlrath from prior law enforcement contacts. McIlrath knew the Defendant had an outstanding warrant and knew he was a member of the same gang as Elias Culps, who resided in the area at 241 2nd Street. Mr. Culps also had an outstanding arrest warrant. Deputy McIlrath had received information that the Defendant was still in the area.

In the morning of October 18, 2015, both Deputy McIlrath and Deputy Bazan reviewed their internal computer database ("Spillman") for information on Nathan Cloud and Elias Culps. The deputies went to 241 2nd Street intending to perform "warrant service" and execute the arrest warrant of Elias Culps. Deputy McIlrath went to a side window from which he could see Nathan Cloud inside asleep on a recliner. McIlrath went around the corner to tell the deputies at the front door that Nathan Cloud was inside and then returned to the side window. Deputy Bazan testified that he knocked on the door of the residence three times, without response. During the second knock, Deputy Bazan heard the residence door deadbolt "lock unlock." As he knocked a third time, the door swung open. Deputy Bazan testified he announced: "I am with the Yakima County Sheriff's Department." It is unclear whether this announcement was during the second or third knock. Nathan Cloud and Elias Culps testified they were asleep, did not hear anyone knock, and were awakened by police presence in the house.

When the door opened, deputies Bazan and Mallonee were able to see a male sitting in a recliner a few feet from the front door. Bazan used his forearm to move the door further inward, whereupon he and Mallonee identified the male in the recliner as the Defendant. Deputy Bazan entered the residence with Deputy Mallonee. Deputy Bazan told Mr. Cloud there was a felony warrant for his arrest and placed Mr. Cloud into handcuffs and led him outside to the patrol car. Bazan

then confirmed Mr. Cloud's arrest warrant for escape from community custody. Mr. Cloud was searched incident to arrest and a loaded .22 revolver was discovered in his right front pocket.

Mr. Cloud is an enrolled member of the Confederated Tribes and Bands of the Yakama Nation. The residence at 241 2nd Street, White Swan, Washington is located on Yakama Nation trust land. Pursuant to Public Law 280, the State of Washington has assumed criminal jurisdiction over tribal members in Indian Country. The Yakama Nation and Yakima County, in June, 2013, entered into a Memorandum of Understanding (MOU) regarding the service of arrest warrants by the Yakima County Sheriff on members of the Yakama Nation who are on or located within the boundaries of the Yakama Reservation. The MOU provides that unless exigent circumstances exist, the county deputy sheriff will first notify the Yakama Nation police dispatch. Deputies did not contact the Yakama Nation prior to Defendant's arrest.

The MOU further states:

> Nothing in this memorandum shall be construed to ceded any jurisdiction of either party, to modify the legal requirements for arrest or search and seizure, to modify the legal rights of either party or of any person not a party to this memorandum, to accomplish any act violative of state or federal law, or to subject the parties to any liability to which they would not otherwise be subject to by law.

Ex. 102; *see also,* ECF No. 25, Ex. C at 12. The MOU also provides that it "expressly does not create any right, benefit, or other legally enforceable

responsibility, substantive or procedural, enforceable at law or equity by either party or against the other party." *Id.* at 14.

## II. DISCUSSION

Defendant claims the Yakima County Sherriff lacked jurisdiction to execute the arrest warrant and that his "rights were violated" when 1) the arresting deputies didn't notify the Yakama Nation police of their intent to execute warrants on trust land; and 2) Deputy Bazan violated the "knock and announce" rule by failing to announce his presence until the third knock and failing to shout or state that he had a warrant.

### A. Jurisdiction for the Arrest

Tribal sovereignty is not infringed when a state court warrant is executed within Indian country where the state possesses jurisdiction over the underlying crime, unless it disregards mandatory procedures governing the execution of state criminal process. *State v. Clark*, 178 Wash.2d 19 (2013), citing *Nevada v. Hicks*, 533 U.S. 353, 362 (2001) and *State v. Mathews*, 133 Idaho 300, 314, 986 P.2d 323 (1999). In *State v. Pink*, 144 Wash.App. 945 (2008), cited by Defendant, the state lacked jurisdiction to investigate the crime of unlawful possession of a firearm occurring on the reservation. The validity of the state court warrants involved in this case are not contested. This case is distinguishable from *Pink* because the

Yakima County deputies had jurisdiction to execute the arrest warrant of Mr. Cloud for violating the terms of his state community custody.

Furthermore, the Memorandum of Understanding (MOU) between the Yakama Nation and Yakima County, while an important tool, does not *mandate* the manner in which law enforcement must enforce laws on the reservation, nor does it provide the Defendant a source of rights. The MOU's language explicitly confirms this. It is only an overview of the joint coordination of law enforcement activities, not binding authority. It does not deprive this court of jurisdiction; and recognizes the jurisdiction of Yakima County deputies to execute arrest warrants for enrolled members residing on the Reservation. *See e.g., State v. Clark*, 178 Wash.2d. 19, 32 (2013)(failure to utilize provision to obtain tribal permission as provided in cooperation provision between State and Colville Tribe "does not regulate the State's ability to execute a warrant on tribal lands as it provides no limits on, or guidance or procedures for, executing state warrants.).

**B. No Violation of Knock and Announce Without Forcible Entry**

There was no violation of the Fourth Amendment/knock-and-announce rule here. In *Wilson v. Arkansas*, 514 U.S. 927, 934, 115 S. Ct. 1914, 1918 (1995), the Supreme Court held that "in some circumstances an officer's unannounced entry into a home" might run afoul of the Fourth Amendment's protection against unreasonable searches and seizures. In so ruling, the Court observed that "[a]t the time of the

framing, the common law of search and seizure recognized a law enforcement officer's authority to break open the doors of a dwelling, but generally indicated that he first ought to announce his presence and authority." *Wilson*, 514 U.S. at 929. The Court determined that "this common-law 'knock and announce' principle forms a part of the reasonableness inquiry under the Fourth Amendment," explaining that it had "little doubt that the Framers of the Fourth Amendment thought that the method of an officer's entry into a dwelling was among the factors to be considered in assessing the reasonableness of a search or seizure." 514 U.S. at 929. The knock and announce requirement is reflected in 18 U.S.C. § 3109, which provides that an officer "may break open any outer or inner door or window of a house ... to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance…" 18 U.S.C.A. § 3109; *Miller v. United States*, 357 U.S. 301 (1958)(extending standards to execution of arrest warrants). Subsequent Supreme Court authority confirms that forced entry is an essential element of a claimed knock and announce violation. *Hudson v. Michigan*, 547 U.S. 586, 594, 126 S. Ct. 2159, 2165 (2006)(the rule protects against the inherent risks in "an unannounced entry," including "the destruction of property occasioned by a forcible entry.")

Here, there is no allegation of forcible entry. The allegation is that "the door swung open" after or simultaneous with the officer's third knock and announcement of identification. As such, it cannot be said that the deputies forcibly entered the

home. *See United States v. Gatewood*, 60 F.3d 248, 250 (6th Cir.), cert. denied, 516 U.S. 1001 (1995) (finding that the Fourth Amendment was not implicated where there was no forcible entry); *United States v. Michaud*, 268 F.3d 728, 733 (9th Cir.2001) (holding that officer's "use of trickery to encourage [appellant] to open her hotel room door" did not violate Fourth Amendment given existence of valid warrant); *United States v. Alejandro*, 368 F.3d 130, 137–38 (2d Cir.2004) (officers knocked for 3-5 minutes then announced he was a gas company employee, then the defendant opened the door; Court held "There is no constitutional mandate forbidding the use of deception in executing a valid arrest warrant." (internal quotation marks and citation omitted).

**C. Suppression Not an Available Remedy**

Even assuming there was a violation of the knock and announce rule, suppression is not an available remedy under *Hudson v. Michigan*, 547 U.S. 586 (2006)(5-4 decision). The *Hudson* Court found that "substantial social costs" would flow from application of the exclusionary rule, not only from the lost evidence that would be inadmissible at trial, but also from causing police to hesitate before entering the home, hesitation that the court feared could lead to "preventable violence against officers in some cases, and the destruction of evidence in many others." Balanced against these costs was, in the Court's view, the small benefits of deterrence. Writing for the 5-4 majority, Justice Scalia said:

> the value of deterrence depends upon the strength of the incentive to commit the forbidden act. Viewed from this perspective, deterrence of knock-and-announce violations is not worth a lot. … [I]gnoring knock-and-announce can realistically be expected to achieve absolutely nothing except the prevention of destruction of evidence and the avoidance of life-threatening resistance by occupants of the premises-dangers which, if there is even "reasonable suspicion" of their existence, suspend the knock-and-announce requirement anyway. Massive deterrence is hardly required.

547 U.S. at 596.

After *Hudson*, some litigants have argued its ruling should apply only to search warrants and not to arrest warrants. The First circuit has explicitly rejected this argument and concluded *Hudson*'s reasoning mandates extension to the context of an arrest warrant. *U.S. v. Pelletier*, 496 f.3d 194 (1st Cir. 2006); *United States v. Jones*, 523 F.3d 31, 36 (1st Cir. 2008) ("[W]e have recognized the absence of an exclusionary rule for knock– and-announce violations, provided the police have a valid arrest warrant or some other valid grant of authority to enter the target's residence, and reason to believe the target is inside"). Though the Ninth Circuit has not ruled explicitly on the issue, it has indicated it does not read *Hudson* narrowly. In *U.S. v. Ankeny*, 502 F.3d 829 (9th Cir. 2007) the Ninth Circuit explicitly stated it "decline[s] to limit *Hudson* so narrowly to its facts," "because the purposes of the knock-and-announce rule—to protect bodily safety, property, and privacy—are not vindicated by excluding evidence obtained after the rule has been violated." 502 F.3d at 835. In particular, the court reasoned "[e]ven without the use of a flash bang device, rubber bullets, or any of the methods that defendant challenges, the police

would have executed the warrant they had obtained, and would have discovered the [evidence] inside the house." *Ankeny*, 502 F.3d at 838.

The court is aware that in a recent split decision, the D.C. Circuit in *U.S. v. Weaver*, 808 F.3d 26 (D.C.Cir. 2015) limited *Hudson's* application to the search-warrant context and held that the exclusionary rule does apply for knock and announce violations in the execution of arrests warrants. The vigorous dissent in *Weaver* states, "[a]pplying the exclusionary rule to knock-and-announce violations in the arrest-warrant context will drain judicial resources, let guilty criminals go free and risk the lives of police officers." 808 F.3d at 59.

Here, like in *Ankeny*, regardless of the knock and announce procedure followed, the police would have executed the valid arrest warrant they had, and would have discovered the firearm on the Defendant's person. Thus even assuming a violation occurred, suppression of the evidence is not an appropriate remedy.

## III. CONCLUSION

For the reasons stated orally on the record and herein, Defendant's Motion to Suppress (ECF No. 25) is **DENIED**.

DATED this 30th day of August, 2016.

*Lonny R. Suko*

LONNY R. SUKO
U.S. DISTRICT COURT JUDGE

# MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is executed by the County of Yakima and the Confederated Tribes and Bands of the Yakama Nation this _____ day of _____, 2013.

## RECITALS

The Confederated Tribes and Bands of the Yakama Nation is a federally recognized Indian Tribe whose reservation was established by the 1855 Treaty With The Yakama, 12 Stat. 951 (1859). Yakima County is a political subdivision of the State of Washington with boundaries established by RCW 36.04.390. Portions of the Yakama Nation and the Yakama Indian Reservation are geographically located within Yakima County.

Pursuant to Public Law 280, the State of Washington has assumed criminal jurisdiction over Indians in Indian Country (herein defined in accordance with 18 U.S.C. § 1151 and related federal and state law), provided that such assumption of jurisdiction does 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 except for, among other specified subjects, operation of motor vehicles upon the public streets, alleys, roads and highways. RCW 37.12.010.

In light of this statutory scheme, Yakima County has law enforcement responsibilities on the Yakama Reservation involving both members of the Yakama Nation and non-members.

Yakima County and the Yakama Nation have a unique opportunity to work together to ensure the safety and security of their residents and visitors to the Yakama Indian Reservation.

Yakima County has need to serve arrest warrants issued by Washington State courts on members of the Yakama Nation and other federally recognized Indian Tribes who may be found on Yakama Nation trust lands.

Yakima County and the Yakama Nation have engaged in discussions as how to best effectuate the Yakima County Sheriff's responsibilities to serve such warrants.

Yakima County and the Yakama Nation have come to a mutual understanding regarding the procedures by which the Yakima County Sheriff will serve arrest warrants on members of the Yakama Nation and other members of federally-recognized Indian Tribes who are on trust lands within the boundaries

of the Yakama Reservation, without waiving any claims of jurisdiction or sovereignty.

Now therefore the parties express and state their mutual understanding on the following subjects.

1. DEFINITIONS. As used in this memorandum:

(a) "Deputy sheriff" means a law enforcement officer employed by Yakima County, who has a current commission as a deputy granted by the Yakima County Sheriff.

(b) "Fee lands" means lands within the exterior boundaries of the Yakama Indian Reservation that are not held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(c) "Reservation" means the Yakama Indian Reservation and all territory within the exterior boundaries thereof, including, without limitation, all roads, rights or way, easements and waterways within such exterior boundaries.

(d) "Sheriff" means the Sheriff of Yakima County.

(e) "Tribal member" means an enrolled member of the Yakama Nation

(f) "Trust lands" means tribal or allotted lands within the exterior boundaries of the Yakama Indian Reservation held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(g) "Yakama Nation police officer" or "Tribal officer" means a law enforcement officer employed and commissioned by the Yakama Nation.

2. RETENTION OF LEGAL RIGHTS, JURISDICTION. Nothing in this memorandum shall be construed to cede any jurisdiction of either party, to modify the legal requirements for arrest or search and seizure, to modify the legal rights of either party or of any person not a party to this memorandum, to accomplish any act violative of state or federal law, or to subject the parties to any liability to which they would not otherwise be subject to by law.

3. EXECUTION OF WARRANTS OF ARREST. When a Yakima County deputy sheriff knowingly enters Trust lands for the purpose of serving a state court arrest warrant on an enrolled member of the Yakama Nation or another federally-recognized Indian Tribe:

(a) The deputy sheriff will, except in the event of exigent circumstances, first contact the Yakama Nation police dispatch. Should the Yakama Nation police elect to cooperate in the execution of the arrest warrant, the deputy sheriff shall not frustrate such cooperation by any dispatched Yakama Nation police officer.

(b) Following service of the warrant, the deputy sheriff may, in the company of any dispatched Yakama Nation police officer should the Yakama Nation police elect to cooperate, take custody of the defendant for booking into the Yakama Nation jail pending extradition.

(c) The extradition process by and between Yakima County and the Yakama Nation shall be conducted pursuant to this memorandum, as follows:

Copies of any warrants may be presented to a Yakama Nation Tribal Court Judge. The judge will promptly hold a hearing to determine only whether the warrant is facially valid per state law and whether the person in custody and before the Court is the same person charged on the face of the warrant; provided, however, that any person may waive such hearing by executing a waiver of extradition hearing and he or she will be promptly turned over to the custody of the appropriate Yakima County official. After a hearing as provided above, if the judge is satisfied that the warrant is facially valid per state law and the person is the same person named in the warrant, the judge shall issue an order to that effect.

The Yakama Nation Prosecuting Attorney shall keep the Yakima County Sheriff and Prosecuting Attorney apprised of any proceedings conducted pursuant to the foregoing process. The person in custody shall not otherwise be released from custody except that he or she may be released:

(i) upon bail as stated in the warrant;
(ii) upon a finding by the Yakama NationTribal Court Judge that he or she is not the person named in the warrant;

(iii) upon a finding by the Yakama Nation Tribal Court Judge that the warrant is facially invalid; or

(iv) upon the issuance of a writ of habeas corpus from a state or federal court.

The Yakima County Sheriff, or a duly authorized designee, will take custody of the person immediately upon either his or her waiver of extradition or the issuance of an order as provided for above, and thereupon remove the person from the Reservation.

(d) At all times hereunder, the burden is on any person claiming to be an enrolled member of the Yakama Nation or another federally recognized Indian Tribe to provide proof of such membership.

(e) The parties recognize that the extradition process by and between Yakima County and the Yakama Nation that is set forth in Paragraph 3(c) is a negotiated variance from the Yakama Nation's *Uniform Criminal Extradition Act, codified at Title V of the* Revised Yakama Code, as most recently amended in 2012. In other words, the extradition process set forth in that Paragraph 3(c) shall govern the parties' extradition of an enrolled member of the Yakama Nation or another federally-recognized Indian Tribe, from Trust lands, in lieu of the extradition process set forth in that Title V.

4. NO CAUSE OF ACTION; TERMINATION: This memorandum expressly does not create any right, benefit, or other legally enforceable responsibility, substantive or procedural, enforceable at law or equity by either party against the other party. Nothing in this memorandum is intended to create a cause of action by either party against the other. As such, the terms of this memorandum are terminable at any time without cause, upon written notice.

5. NO CROSS-COMMISSIONING: This memorandum does not seek, nor does it authorize, any cross-commissioning of officers. Assistance is appreciated when addressing criminal matters within and outside the parties' jurisdictional areas, and both parties acknowledge that providing assistance to each other is mutually beneficial as well as beneficial to residents and visitors to the area.

6. INTEGRATION: This written document contains the entire statement of understandings between the parties as to this subject matter.

7. NO SOVEREIGNTY WAIVER. Nothing contained within this memorandum is intended to waive alter, or otherwise diminish the rights, privileges, remedies, authority, or services guaranteed by the Treaty With The Yakama, either expressed or implied.

Dated this ___ day of _____, 2013.

For Yakima County

By: _____
Kenneth Irwin, its SHERIFF

By: _____
James P. Hagarty, its PROSECUTING ATTORNEY

For Yakama Nation

_____
Harry Smiskin, Chairman
Yakama Tribal Council

SEAL OF THE BOARD OF YAKIMA COUNTY COMMISSIONERS STATE OF WASHINGTON

_____
Michael D. Leita, Chairman

_____
Kevin J. Bouchey, Commissioner

_____
Attest: Tiera L. Girard
Clerk of the Board

BOCC294-2013
June 18, 2013

_____
J. Rand Elliott, Commissioner
*Constituting the Board of County Commissioners for Yakima County, Washington*

Approved as to form:

_____
Terry D. Austin, Chief Civil
Deputy Prosecuting Attorney