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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, GREAT FALLS DIVISION

TRA BOGGS, on behalf of himself and
his minor children C.D.B. and T.J.B.,
DEWAYNE JOHNSON, and
ROBERTA CORBY,

Plaintiffs,

v.

CITY OF CUT BANK, by and through
Cut Bank Police Department,
BLACKFEET INDIAN NATION, by
and through the Blackfeet Family
Tribal Court and Judge Helen
Connelly, and LORI ROSENBERGER
MONROE,

Defendants.

Case No. CV-22-14-GF-BMM-JTJ

**BRIEF IN SUPPORT OF *EX*
PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

I. Introduction

Tra Boggs is an enrolled member of the Blackfeet Indian Nation and the natural father of two children, T.J.B. and C.D.B. Throughout 2020, Mr. Boggs and

Rosenberger (the children's mother) was never even named as a party. *Complaint, Exhibit A*, pp. 3-4. On that same day, the Blackfeet Tribal Family Court entered an order granting "full, primary, and permanent custody of both children" to Lori. *Complaint, Exhibit A*, pp. 14-16. This order is absurd and non-sensical. Lori is the aunt of the children and has no legal basis to seek any custody at all.

Furthermore, at the time of the order, the children were residing off the reservation, and their mother had never been made a party or served. The order limits Mr. Boggs and Chelsea Rosenberger's contact with the children to "supervised visitation" for no rhyme or reason. There is no finding of neglect, abuse, or lack of fitness to parent. And even if there were such a finding, Lori Monroe would have absolutely no standing to assert it. If anyone believed there was any problem with Mr. Boggs' parenting his children, they should call law enforcement or file a report with Child Protective Services. No such thing ever happened.

The next day, April 7, 2021, the Cut Bank Police went to the residence where the children were living at the home of Mr. and Mrs. Corby at

. in Cut Bank, forcibly entered the home without a warrant, took the children, and handed them over to Lori and Rebecca. *Complaint*, ¶ 35. The Cut Bank Police had absolutely no legal basis or justification whatsoever to take this outrageous action.

The rest of the pleadings from this case are attached as **Exhibit A** to the Complaint and referred to in that document. The Court can review them and see that there was a complete violation of due process in this case. The only other thing the Court needs to know is that a hearing is scheduled for today, February 15, 2022, and that there have been multiple continuances and delays. The children have not been with their father, Mr. Boggs, since April 7, 2021, and he has barely seen them since that time.

There is absolutely no basis for this blatantly unconstitutional conduct. It is absurd and a total mockery of justice. Mr. Boggs asks this Court to immediately issue a temporary restraining order so that he can get his children back into his care and custody.

III. Legal standards

A temporary restraining order preserves the status quo and prevents irreparable harm until a hearing can be held on a preliminary injunction application. *Morrow v. City of Oakland*, 2012 WL 2133924 (N.D. Cal. 2012) (citing *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 429, (1974)). A temporary restraining order may be awarded upon plaintiff making a clear showing that it is entitled to such relief. *Id.* (citing *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 22 (2008)). A temporary restraining order may be issued without providing the opposing party an

opportunity to be heard if “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” *Id.* (quoting Fed. R. Civ. P. 65(b)(1)(A)).

The standards for a temporary restraining order and a preliminary injunction are the same. *Morrow*, 2012 WL 2133924, *2 (citing *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001)). The party must demonstrate: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm that would result if an injunction were not issued; (3) the balance of equities tips in favor of the party; and (4) an injunction is in the public interest. *Id.* (citing *Winter*, 555 U.S. at 20). The irreparable injury must be both likely and immediate. *Id.* (citing *Winter*, 555 U.S. at 22) (citation omitted).

“The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Under Federal Rule of Civil Procedure 65, “[d]istrict courts have broad discretion to grant or deny preliminary injunctive relief.” *Squaxin Island Tribe v. State of Wash.*, 781 F.2d 715, 724 (9th Cir. 1986).

III. Mr. Boggs is likely to succeed on his claims under 25 U.S.C. § 1302

Section 25 U.S.C. § 1302(8) prohibits the Blackfeet Indian Nation from denying any person within its jurisdiction the equal protection of the laws or

depriving them of liberty or property without due process of law. A review of the undisputed facts and laws show that Mr. Boggs is likely to succeed on his claim for a violation of due process and rights in its handling of this matter.

1. The Blackfeet Family Tribal Court never acquired any jurisdiction over C.B.D. and T.J.B.

Mr. Boggs resides in Cut Bank, Montana, and his children were taken from him off the reservation, in Glacier County, by the Cut Bank police and handed over to Lori Rosenberger Monroe. The Blackfeet Family Tribal Court is now preventing Mr. Boggs from having his children returned to his care and custody in spite of the fact that there is absolutely no issue with his fitness to parent.

There is no statute or judicial decision indicating that a Tribal Court has the legal authority to issue an order affecting the parenting rights of tribal members who reside off the reservation. The Indian Child Welfare Act (ICWA), U.S.C. Title 25, chapter 21, regulates the extent to which tribes may intervene in state court proceedings regarding the parenting of Indian children. The purpose of ICWA, as stated by Congress, is as follows:

to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

25 U.S.C. § 1902.

25 U.S.C. § 1191(a) of ICWA addresses the subject of tribal jurisdiction over Indian custody proceedings and states “[a]n Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child **who resides or is domiciled within the reservation of such tribe**, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.”

The statute does not confer any jurisdiction to the tribe for custody proceedings that occur off the reservation involving Indian children, but does provide a basis for tribal intervention when such proceedings have been commenced. 25 U.S.C. 1191(b) grants the tribe concurrent jurisdiction over state court proceedings involving an Indian child, where foster care placement or termination of parental rights is at issue, unless good cause for declining such jurisdiction is shown. As the Montana Supreme Court explained in *In re S.B.C.*, 340 P.3d 534 (Mont. 2014), “We have held that, pursuant to this flexibility given to state courts, the 'best interests of the child' test will be applied in Montana in determining good cause not to transfer jurisdiction of custody proceedings of Indian children under § 1911(b). We have called this a jurisdictional ‘best interests of the child’ test that ‘should not be confused with’ other best interests of the child tests used in different contexts. In order to satisfy the jurisdictional best interests

of the child test, the State must provide clear and convincing evidence that the best interests of the child would be injured by such a transfer.” *In re S.B.C.*, 340 P.3d at 540 (citations omitted).

ICWA does not give the tribes the authority to independently initiate and establish parenting proceedings over Indian children residing with their natural parents on state lands. While tribes retain sovereignty “over a range of matters relevant to their self-government,” *Brackeen v. Haaland*, 994 F.3d 249, 271 (5th Cir. 2021), it is self-evident that the Blackfeet Family Tribal Court had no legal authority to enter an order directing that the Cut Bank Police take any action to remove C.D.B. and T.J.B. from the care of Mr. Boggs. There are only extremely limited circumstances under which a tribe may assert jurisdiction over the off-reservation conduct of tribal members. *See Kelsey v. Pope*, 809 F.3d 849, 861-862 (6th Cir. 2016) (asserting jurisdiction over off-reservation criminal conduct of tribal member was appropriate because the conduct involved a member of the legislative Tribal Council and implicated “core governmental concerns and substantially affects the tribe’s ability to control its self-governance”). ICWA makes clear that a tribe does not have a free-standing right to initiate parenting proceedings for Indian children who are residing with their parents off the reservation.

But even more importantly, the whole purpose of ICWA is “to promote the stability and security of Indian tribes and families . . .”. 25 U.S.C. § 1902. Here, the

Blackfeet Tribal Family Court has destroyed an Indian family by separating C.D.B. and T.J.B. from their biological father and grandparents and placing them with a great aunt who they barely know. Furthermore, the children's mother, Chelsea Rosenberger, was never even made a party to the proceedings. The action of Judge Connelly and the Blackfeet Tribal Family Court is shameful, harmful, and unconstitutional.

Only express federal legislation could possibly provide a tribe any authority over Indian children residing off reservation, *see Brackeen*, 994 F.3d at 300-304 (discussing sources of Congress' exclusive power to regulate the balance of power between states and tribes), and ICWA clearly does not do that. The Blackfeet Tribal Family Court lacked had absolutely no authority to "commandeer" the Cut Bank police into enforcing an order which would take C.D.B. and T.J.B. from their father, Tra Boggs. *See Brackeen*, 994 F.3d at 298-299.

2. The Blackfeet Family Tribal Court unquestionably violated Mr. Boggs' constitutional rights in the companionship and custody of his children

Assuming *arguendo* that the Blackfeet Family Tribal Court did have jurisdiction to issue an order directing that C.D.B. and T.J.B. be taken from their natural father and placed with a great-aunt with whom they had almost no familial connection, it is self-evident that the Blackfeet Family Tribal Court flagrantly and

unconstitutionally violated Mr. Boggs's constitutional rights as the parent of C.D.B. and T.J.B.

“[A] parent has a constitutionally protected liberty interest in the companionship and society of his or her child,” and “[t]he state's interference with that liberty interest without due process of law is remediable under section 1983.” *Kelson v. City of Springfield*, 767 F.2d 651, 655 (9th Cir. 1985). There exists “a constitutionally protected right to be free from termination of the parent-child relationship or from governmental interference with the parent-child relationship [when it is] so intrusive as to be the equivalent of termination of that relationship.” *Harry A. v. Duncan*, 351 F.Supp.2d 1060, 1068 (D. Mont. 2005). Any restriction of parenting rights must be made under the “clear and convincing” standard of proof. *Santosky v. Kramer*, 455 U.S. 745, 770-71 (1982). “The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy

weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *Santosky*, 455 U.S. at 753-54.

Mr. Boggs’ fundamental right to parent his children cannot be abridged in the absence of a clear showing that he is an unfit parent. *Stanley v. Illinois*, 405 U.S. 645, 657-658 (1972). Mr. Boggs is entitled on a hearing on his fitness before his children are removed from his custody. *Stanley*, 405 U.S. at 658.

The facts of this case show a shocking lack of due process for Mr. Boggs before his children were removed from his care. First, even in the order removing the children from his care and custody, there are no findings of abuse, neglect, or unfitness to parent against Mr. Boggs, and Mr. Boggs was never determined to be an unfit parent.

Second, Lori did not have standing to seek parental rights, under either state or tribal law, and have never established any parental rights in this case.

Third, Mr. Boggs rights were interfered with and restricted before he had any opportunity to be heard or present evidence.

Fourth, the Blackfeet Family Court lacked personal jurisdiction over the children, because Chelsea Rosenberger was never properly served. Although Mr. Boggs did subsequently appear in Court to contest the proceedings, Mrs. Rosenberger never did.

For these reasons, Mr. Boggs is likely to succeed on the merits of his claims.

V. There is a high likelihood of irreparable harm that would result to Mr. Boggs and his children if a temporary restraining order is not issued.

The Ninth Circuit Court of Appeals has held ““that an alleged constitutional infringement will often alone constitute irreparable harm.”” *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997) (quoting *Assoc. Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equal.*, 950 F.2d 1401, 1412 (9th Cir. 1991)). Mr. Boggs has easily met this standard.

VI. The equities and public interest overwhelmingly tip in Boggs’ favor

There is simply no basis for the Blackfeet Indian Nation, and Blackfeet Tribal Family Court to deprive Mr. Boggs of the care and custody of his children. Lori has never established standing or parental rights over C.D.B. or T.J.B. On the other hand, Mr. Boggs holds a fundamental right in the parenting of his children.

In *Soberano v. Guillen*, 2021 U.S. Dist. LEXIS 198465 (W.D. Wash. October 14, 2021), the Court held that “[t]he record indicates that Respondent wrongfully removed the children in violation of Petitioner’s custody rights and interfered with the custodial and parental relationship. Conversely, the nature of the conduct to be temporarily enjoined is unlikely to harm respondent. Accordingly, both the equities and the public interest favor protecting Petitioner’s rights and Respondent has not argued that the restrictions requested by Petitioner will constitute an undue burden upon her or the children.” The Court cited to

Morgan v. Morgan, 289 F.Supp.2d 1067, 1070 (N.D. Iowa 2003), for the proposition that “father's inability to interact with his children and the likelihood that custody and visitation rights would be further hindered in the absence of injunctive relief sufficiently established likelihood of irreparable harm.” Accordingly, the public interest and equities are served by entering injunctive relief.

VI. Conclusion

The Blackfeet Tribal Family Court had no legal basis whatsoever to remove C.D.B. and T.J.B. from the care of Mr. Boggs. The children were residing in Cut Bank, Montana, at the time they were taken from Mr. Boggs' care. The proceedings are blatantly unconstitutional and a mockery of justice. This Court should issue a temporary restraining order against the Blackfeet Indian Nation, the Blackfeet Tribal Family Court, Judge Helen Connelly, and Lori Rosenberger Monroe, ordering the immediate return of C.D.B. and T.J.B. to Mr. Boggs' care and then set a show cause hearing on a preliminary injunction at the Court's earliest convenience.

Dated this 15th date of February, 2022

/s/ Brian J. Miller

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