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6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF WHATCOM  
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9 In re Gabriel S. Galanda, pro se, Anthony S.  
10 Broadman, pro se, and Ryan D. Dreveskracht,

11 Petitioners,

12 v.

13 Nooksack Tribal Court,

14 Defendant.

NO. 16-2-01663-1

**PETITIONERS' RESPONSE TO  
NOOKSACK POLICE CHIEF'S  
MOTION TO VACATE ORDER  
DOMESTICATING FOREIGN  
JUDGMENT AND QUASH  
EXECUTION AND ENFORCEMENT  
EFFORTS**

15 Petitioners hereby respond to the "Nooksack Police Chief Rory Gilliland's" Motion to  
16 Vacate Order Domesticating Foreign Judgment and Quash Execution and Enforcement Efforts.  
17 Dkt. No. 37.

18 **I. INTRODUCTION**

19 On October 21, 2016, this Court granted Petitioners' Petition for Entry of Foreign  
20 Judgment ("Foreign Judgment Order"), which Rory Gilliland did not oppose or appear to defend.  
21 Dkt. No. 15.

22 On November 18, 2016, this Court dismissed the "Nooksack Indian Tribe's" Motion to  
23 Vacate Order Domesticating Foreign Judgment and Quash or Bar Execution and Enforcement  
24 Efforts pursuant to CR 60(b) for lack of jurisdiction. Dkt. No. 34. The Court determined that the  
25 Nooksack Indian Tribe lacked standing to challenge the Court's Order granting Petitioners'

PETITIONERS' RESPONSE TO NOOKSACK POLICE CHIEF'S MOTION  
TO VACATE ORDER DOMESTICATING FOREIGN JUDGMENT AND  
QUASH EXECUTION AND ENFORCEMENT EFFORTS - 1

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unopposed Petition for Entry of Foreign Judgment. *Id.* In Mr. Gilliland’s presence, the Court affirmed its October 21, 2016 Order. *Id.*

On November 22, 2016, seeking another bite at the apple, Rory Gilliland filed essentially the same Motion to Vacate Order Domesticating Foreign Judgment and Quash or Bar Execution and Enforcement that the Tribe unsuccessfully brought. *Compare* Dkt. No. 37 *with* Dkt. No. 17. Mr. Gilliland asked this Court

to Vacate the Court’s Order domesticating the September 21, 2016 Order and Judgment of the Nooksack Tribal Court of Appeals, and to quash all ongoing and contemplated execution and enforcement efforts by petitioners, on the ground that the underlying judgment was void *ab initio*, has been vacated by the Nooksack Supreme Court, and been found unenforceable by the Nooksack Tribal Court in a separate proceeding.

Gilliland Motion, Dkt. No. 37.

As with “the Tribe’s” motion, Mr. Gilliland is not entitled to any of the relief he seeks. The Foreign Judgment Order is not void for the purposes of CR 60(b)(5). Further, no action has been taken that legally reverses or vacates the Nooksack Tribal Court of Appeals’ Order and Judgment Awarding Costs issued on September 21, 2016 (“NTCA Order”)—upon which the Foreign Judgment Order is based—such that vacature under CR 60(b)(6) would be proper.

The Court must therefore deny Mr. Gilliland’s motion for failure to satisfy CR 60(b).

## II. FACTS

Given the ever-fluid and unprecedented nature of things at Nooksack, Petitioners hereby restate certain relevant facts: On June 28, 2016, the Nooksack Tribal Court of Appeals found Nooksack Tribal Court Clerk Betty Leathers in contempt of court for failure to comply with previously issued Nooksack Tribal Court of Appeals orders that instructed her to accept Petitioners’ *pro se* Complaint. Dkt. No. 25, Ex. A. The Nooksack Tribal Court of Appeals’ June 28, 2016 Order also ordered Nooksack Chief of Police Rory Lee Gilliland to arrest and jail Ms. Leathers on or before July 6, 2016, if she failed to accept Petitioners’ *pro se* Complaint. *Id.*

1 On July 25, 2016, the Nooksack Tribal Court of Appeals issued another order that  
2 directed Mr. Gilliland to show cause on or before August 3, 2016, why he should not be held in  
3 contempt for failure to comply the June 28, 2016 Order. *Id.*, Ex. B. The Appeals Court's July  
4 25, 2016 Order also directed Mr. Gilliland to show cause why he should not be sanctioned for  
5 failure to comply with the June 28, 2016 Order. *Id.*

6 On August 15, 2016, the Nooksack Tribal Court of Appeals found Mr. Gilliland in  
7 contempt and sanctioned him, and instructed Petitioners to file a fee and cost accounting for  
8 purposes of an award against Mr. Gilliland. *Id.*, Ex. C. Petitioners filed their accounting with  
9 the Appeals Court on September 7, 2016. *Id.*, ¶5.

10 On September 21, 2016, the Nooksack Tribal Court of Appeals issued the NTCA Order.  
11 Dkt. No. 4, at 3. Finding Petitioners' accounting reasonable, the Appeals Court thereby entered  
12 judgment against Mr. Gilliland in the amount of \$2,790.15. *Id.* Katie Nicoara, the Nooksack  
13 Tribal Court of Appeals' Administrative Assistant, emailed a copy of the NTCA Order to  
14 Petitioners, Mr. Gilliland and others that same day. Dkt. No. 6, Ex. A.

15 On September 23, 2016, Petitioner Gabriel S. Galanda informed the Nooksack Tribal  
16 Court of Appeals and Mr. Gilliland that Petitioners intended to enforcement the NTCA Order in  
17 this Court. *Id.*, Ex. B.

18 Shortly after learning that the Petitioners would seek to register the NTCA Order with  
19 this Court, the Nooksack Tribal Council professed to appoint themselves as the new "Nooksack  
20 Supreme Court," along with two other Nooksack members whose seats on the Tribal Council  
21 expired on March 24, 2016. Dkt. No. 18, Exs. E, F. The "Nooksack Tribe" then moved the  
22 "Nooksack Supreme Court"—*i.e.*, themselves—to emergently review and vacate over a dozen  
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1 orders issued by the Nooksack Tribal Court of Appeals between March of 2016 and September  
2 of 2016, including the NTCA Order.<sup>1</sup> Dkt. No. 26, Ex. E.

3 On September 30, 2016, the Tribe filed suit in the Nooksack Tribal Court against the  
4 Nooksack Tribal Court of Appeals *qua* Northwest Intertribal Court System (“NICS”), for breach  
5 of contract, injunctive relief, and specific performance. Dkt. No. 6, ¶10. Petitioners are not a  
6 party to that action; neither is Mr. Gilliland.

7 Critically, as with the “Tribe’s” motion, Mr. Gilliland fails to address the fact that on  
8 October 17, 2016, Lawrence S. Roberts, Principal Deputy Assistant Secretary of Indian Affairs  
9 for the United States Department of the Interior (“AS-IA”), issued a decision to Nooksack Tribal  
10 Chairman Robert Kelly and the “remaining Council members,” confirming that they have no  
11 authority to act as or in any way represent themselves as the Nooksack Indian Tribe:

12 [The United States Department of the Interior] will only recognize those actions  
13 taken by the [Nooksack Tribal] Council prior to March 24, 2016, when a quorum  
14 existed, and **will not recognize any actions taken since that time . . . This**  
15 **includes actions by you and two Council members to enjoin the authority the**  
16 **Northwest Intertribal Court System (NICS) . . . we will continue to recognize**  
17 **judicial decisions issued by the NICS**

18 Dkt. No. 12, Ex. A (“AS-IA Order I”).

19 AS-IA Roberts, the highest ranking federal Indian affairs official in the Nation, is the sole  
20 authority responsible for “maintaining the Federal-Tribal government-to-government  
21 relationship” and determining who is and is not allowed to carry out acts on behalf of tribal  
22 governments. U.S. Dep’t of Indian Affairs, Assistant Secretary - Indian Affairs, Brief Summary  
23 of the Office of the Assistant Secretary-Indian Affairs, <http://www.bia.gov/WhoWeAre/AS-IA>  
(last accessed Dec. 2, 2016); *Newtok Traditional Council v. Acting Ak. Reg’l Dir.*, 61 IBIA 167,  
169 (2015).

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24 <sup>1</sup> The “Nooksack Tribe” filed its Petition for Review with the Nooksack Supreme Court on September 30, 2016.  
25 Dkt. No. 26, Ex. E. The Nooksack Tribal Council did not create the “Nooksack Supreme Court” until October 7,  
2016. Dkt. No. 18, Exs. E, F. The “Nooksack Supreme Court” neglected to vacate the Appeals Court’s August 15,  
2016 contempt Order that gave rise to the NTCA Order. Dkt. No. 11, Ex. 2  
PETITIONERS’ RESPONSE TO NOOKSACK POLICE CHIEF’S MOTION  
TO VACATE ORDER DOMESTICATING FOREIGN JUDGMENT AND  
QUASH EXECUTION AND ENFORCEMENT EFFORTS - 4

1 Later that same day, on October 17, 2016, Chairman Kelly and the “remaining Council  
2 members”—holding themselves out as the “Nooksack Supreme Court” and ignoring the AS-IA  
3 Order I—granted their own emergency motion to “vacate,” *inter alia*, the NTCA Order. Dkt.  
4 No. 11, Ex. 2.

5 Mr. Gilliland cites to a November 17, 2016 Order curiously issued by Nooksack Tribal  
6 Court “Judge Pro Tempore” Milton G. Rowland the day before this Court’s last proceeding, in  
7 *Nooksack Indian Tribe v. Northwest Intertribal Court System*. Mr. Gilliland claims that “Judge”  
8 Rowland’s “ruling” “affirmed the voidness of the [Foreign Judgment Order].” Dkt. No. 37, at 2-  
9 3. That case does not involve the Foreign Judgment Order at issue before this Court. Neither  
10 Petitioners nor Mr. Gilliland are parties to that action. At Most “Judge” Rowland’s comments  
11 amount to dicta. Most significantly, Mr. Gilliland fails to inform this Court that the “remaining  
12 members” of the Nooksack Tribal Council purportedly appointed “Judge” Rowland after March  
13 24, 2016—likely in September or October of 2016—at which time they lacked a quorum in order  
14 to legally do so. AS-IA Order I; Declaration of Bree R. Black Horse in Support of Petitioners’  
15 Response to Nooksack Police Chief’s Motion to Vacate Order Domesticating Foreign Judgment  
16 and Quash Execution and Enforcement Efforts (“Black Horse Decl.”), Exs. A-B.

17 Mr. Gilliland also further fails to inform this Court that on November 18, 2016, Indian  
18 Health Service Portland Area Director for the Department of Health and Human Services Dean  
19 M. Seyler informed Chairman Kelley by letter that it too would not recognize the actions of the  
20 Holdover Tribal Council and would continue to recognize the orders of the Nooksack Tribal  
21 Court of Appeals “until the Tribe has a sufficient quorum . . .” Black Horse Decl., Ex. C (“HHS  
22 Order”). Director Seyler relied upon AS-IA Order I, giving it the deference Petitioners continue  
23 to urge this court to give AS-IA Order I.

1 Mr. Gilliland also fails address the fact that on November 14, 2016, AS-IA Roberts  
2 issued a second decision to Chairman Kelley, which in pertinent part provides:

3 I want to reiterate that pursuant to our Nation-to-Nation relationship, the  
4 Department of the Interior (Department) **will not recognize actions by you and**  
5 **the current Tribal Council members without a quorum** consistent with the  
6 Nooksack Tribe's (Tribe) Constitution and decision issued by the Northwest  
7 Intertribal Court System . . . As I stated in my October 17, 2016 letter, the  
8 **Department will only recognize those actions taken by the Tribal Council**  
9 **prior to March 24, 2016**, when a quorum existed, and **will not recognize any**  
10 **actions taken since that time because of the lack of quorum.**

11 Dkt. No. 31, Ex. A ("AS-IA Order II"). In addition, AS-IA Roberts cited only decisions issued  
12 by NICS, and by the Trial Court before late March 2016<sup>2</sup>, as Nooksack judicial decisions  
13 "recognized by the Department." *Id.*

14 Both decisions issued by AS-IA Roberts, as well as the HHS Order (by reference to AS-  
15 IA Order I), recognize the decisions of the Nooksack Tribal Court of Appeals, by and through  
16 NICS, and refuse to recognize any actions taken by the Nooksack Tribal Council or its hand-  
17 plucked "Judges" after March 24, 2016. *Id.*

### 18 III. LAW AND ARGUMENT

#### 19 A. Mr. Gilliland Is Not Entitled To Relief Under CR 60(b)(5).

20 Like "the Tribe" did, Mr. Gilliland claims that the Foreign Judgment Order is void under  
21 CR 60(b)(5), appearing to argue that this Court entered that order without subject matter and  
22 personal jurisdiction. Dkt. No. 37, at 4-5, 7. Conflating the subject matter jurisdiction of this  
23 Court with that of the Nooksack Tribal Appeals Court, Mr. Gilliland also misapprehends the

24 <sup>2</sup> The former Tribal Council (*see* AS-IA Order I), terminated Tribal Court Chief Judge Susan Alexander on March  
25 28, 2016, before purportedly replacing her with Nooksack Tribal Attorney Ray Dodge on June 13, 2016.  
Memorandum from Hon. Susan M. Alexander, former Nooksack Tribal Court Chief Judge, to Samantha Wohlfeil,  
Reporter, the Bellingham Herald (Apr. 21, 2016), *available at*  
<http://media.bellinghamherald.com/static/downloads/AlexanderMemo.pdf> (explaining how she was fired "as [she]  
was preparing a final draft of [her] ruling" to compel a Tribal Council election); Nooksack Tribal Council  
Advertises for Chief Judge (Apr. 27, 2016), *available at* <https://turtletalk.wordpress.com/2016/04/27/nooksack-tribal-council-advertises-for-chief-judge/>. AS-IA Roberts does not appear to recognize the "rulings" of "Judge"  
Dodge either, as he was also not duly appointed. *See* AS-IA Order II.

1 proper inquiry under Civil Rule 60(b)(5). Here, the proper inquiry is whether *this Court*, in  
2 entering the Foreign Judgment Order, possessed subject matter jurisdiction—not whether the  
3 Nooksack Tribal Court of Appeals possessed subject matter jurisdiction to issue the NTCA  
4 Order. *See* CR 60(b)(5).

5 Mr. Gilliland likewise seems to claim that tribal sovereign immunity was at issue in the  
6 underlying proceeding before the Nooksack Tribal Court of Appeals. Dkt. No. 37, at 8-9. By  
7 failing to appear before the Nooksack Tribal Court of Appeals in response to the Nooksack  
8 Tribal Court of Appeal’s June 28, 2016 or July 25, 2016 contempt orders, or Petitioners  
9 September 7, 2016 fee accounting, Mr. Gilliland waived any sovereign immunity objection to the  
10 NTCA Order. In any event, CR 60(b)(5) does not task this Court with analyzing tribal law as it  
11 applies at Nooksack. State law instead tasks this Court with analyzing whether the NTCA Order  
12 was proper for registration under Washington’s Uniform Enforcement of Foreign Judgments Act  
13 (“UEFJA”), Chapter 6.36 RCW. The bottom line is that this Court possessed subject matter  
14 jurisdiction to undertake that task, the Court undertook that task, and tribal sovereign immunity  
15 is irrelevant. The Foreign Judgment Order therefore is not void for the purposes of CR 60(b)(5).

16 CR 60(b)(5) provides that the court may relieve a party from a final judgment or order if  
17 the “judgment is void.” A judgment is void if the court entering the final judgment lacks  
18 jurisdiction over the parties or subject matter, or lacks the inherent power to make or enter the  
19 particular order involved. *Summers v. Dep’t of Revenue for State of Wash.*, 104 Wash.App. 87,  
20 90 (2001). This Court possesses personal jurisdiction over Petitioners and Mr. Gilliland—all  
21 Washington residents and the only parties to the Foreign Judgment Order. *See* Dkt. No. 5.  
22 UEFJA, RCW Chapter 6.36, confers subject matter jurisdiction over the NTCA Order. The  
23 Court thus has both personal and subject matter jurisdiction. The Foreign Judgment Order is  
24

1 therefore not void, and Mr. Gilliland is not entitled to vacature. *Powell v. Sphere Drake Ins.*  
2 *P.L.C.*, 97 Wash.App. 890, 899 (1999).

3 **B. The Tribe Is Not Entitled To Relief Under CR 60(b)(6) Either.**

4 Mr. Gilliland likewise also claims that he is entitled to relief from the Foreign Judgment  
5 Order per CR 60(b)(6), asserting that the NTCA Order has been vacated by subsequent orders of  
6 the “Nooksack Supreme Court” and the Nooksack Tribal Court. Dkt. No. 37, at 4-6.

7 As noted above, though, the actions of the purported “Nooksack Supreme Court” and  
8 Nooksack Tribal Council after March 24, 2016, including the creation of the “Nooksack  
9 Supreme Court” and appointment of “Judge” Rowland to the Nooksack Tribal Court have no  
10 legal effect, particularly on the orders issued by the Nooksack Tribal Court of Appeals via NICS.  
11 *See generally* AS-IA Order I, AS-IA Order II, HHS Order. Based on the AS-IA Orders—and  
12 any semblance of how legitimate governments operate—the acts of three Councilpersons and  
13 two “has-beens” do not constitute valid governmental action. *See* AS-IA Order I, at 1 (“[T]he  
14 [Tribal] Council must have five duly elected officers to take any official action.”); AS-IA Order  
15 II, at 1 (“the Department will only recognize those actions taken by the Tribal Council prior to  
16 March 2016, when a quorum existed, and will not recognize any actions taken since that time  
17 because of the lack of a quorum.”); *see also, e.g., Mulder v. Lundberg*, 154 Fed.Appx. 52 (10th  
18 Cir. 2005); *Delorme v. United States*, 354 F.3d 810, 814 n.6 (8th Cir. 2004); *State ex rel. Bd. of*  
19 *Univ. & Sch. Lands v. Alexander*, 718 N.W.2d 2, 5 (N.D. 2006). There exists, therefore, no  
20 legitimate legal basis for Mr. Gilliland’s challenge to the Court’s entry of the Foreign Judgment  
21 Order.

22 Petitioners again urge this Court to accord substantial deference to the decisions of, now,  
23 multiple federal agencies that do not recognize the actions of the “Nooksack Supreme Court” and  
24 the actions of the Nooksack Tribal Council or its “Judges” after March 24, 2016; and instead



1 recognize decisions like the NTCA Order. *See* AS-IA Order I, AS-IA Order II and HHS Order;  
2 *Winnemucca Indian Colony v. U.S. ex rel. Dep't of Interior*, No. 3:11-CV-00622-RCJ, 2011 WL  
3 3893905, at \*5 (D. Nev. Aug. 31, 2011) (citing *Goodface v. Grassrope*, 708 F.2d 335, 338 (8th  
4 Cir. 1983)).

5 Again, substantial judicial deference to agency views is appropriate when an agency  
6 determination is based on heavily factual matters, especially factual matters that are complex,  
7 technical, and close to the heart of the agency's expertise. *Hillis v. Dep't of Ecology*, 131  
8 Wash.2d 373, 396 (1997); *see also Port of Seattle v. Pollution Control Hr'g's Bd.*, 151 Wash.2d  
9 568, 595 (2004) ("It is well settled that due deference must be given to the specialized  
10 knowledge and expertise of an administrative agency."). This is the case here, as the question of  
11 who is and is not allowed to act on behalf of a tribal government falls within the specialized  
12 knowledge and expertise of AS-IA Roberts. U.S. Dep't of Indian Affairs, Assistant Secretary -  
13 Indian Affairs, Brief Summary of the Office of the Assistant Secretary-Indian Affairs,  
14 <http://www.bia.gov/WhoWeAre/AS-IA> (last accessed Dec. 2, 2016); *Newtok Traditional*  
15 *Council*, 61 IBIA at 169.

16 Deferring to the AS-IA Order I, AS-IA Order II and HHS Order, this Court should reject  
17 Mr. Gilliland's request for vacature vis-à-vis any order of the "Nooksack Supreme Court" or the  
18 Nooksack Tribal Court.

#### 19 IV. CONCLUSION

20 Mr. Gilliland is not entitled to any of the relief he seeks. The Foreign Judgment Order is  
21 not void. No action carrying any legal effect has been taken that reverses or vacates the NTCA  
22 Order, upon which the Foreign Judgment Order is based. Instead, this Court must affirm its  
23 October 21, 2016 Order granting the Petitioners' unopposed Petition for Entry of Foreign  
24 Judgment, and dismiss Mr. Gilliland's challenge *in toto*.

1 A proposed Order accompanies this latest Response.

2 DATED this 2nd day of December 2016.

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