

**Omnibus Reconsideration Request for
Nooksack Tribal Members Purportedly Disenrolled
by Nooksack Holdover Tribal Council**

HAND DELIVERED, EMAILED, AND U.S. MAILED

December 5, 2016

Nooksack Indian Tribe
Nooksack Tribal Council¹
P.O. Box 63
Deming, WA 98244
meeting@nooksack-nsn.gov
c/o Connie Sue Martin
Partner-in-Charge
Schwabe Williamson & Wyatt
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Without waiver of any argument that the Holdover Nooksack Tribal Council “lacks a quorum to conduct tribal business” or “take any official action”³: The enrolled Noxwsá7aq-ólh-chan (Nooksack) Tribal members who were purportedly disenrolled on or about November 22, 2016 (“Purported Disenrollees”), hereby seek reconsideration of Resolution #DE16-001, *et seq.* per the “Important Legal Notice—Notice of Involuntary Disenrollment” that some, but not all, of them have since received.⁴ In those “Important Legal Notices,” you cite provisions of Nooksack Title 63, including that prescribing

¹ At this time, the Nooksack Tribal Council is defunct, and unable to convene any meeting or “take any official action . . . because of the lack of a quorum.” Nooksack Bylaws, art. II, § 4; Letter from Lawrence Roberts, Principal Deputy Assistant Secretary – Indian Affairs, U.S. Department of the Interior to Robert Kelly, Jr., Nooksack Tribal Chairman (Oct. 17, 2016) [hereinafter “First Roberts Letter”], at 1; *Winnemucca Indian Colony v. U.S. ex rel. Dep’t of Interior*, No. 3:11-CV-00622-RCJ, 2011 WL 3893905, at *5 (D. Nev. Aug. 31, 2011) (citing *Goodface v. Grassrope*, 708 F.2d 335, 338 (8th Cir. 1983)). See also Letter from Lawrence Roberts, Principal Deputy Assistant Secretary – Indian Affairs, U.S. Department of the Interior to Robert Kelly, Jr., Nooksack Tribal Chairman (Nov. 14, 2016) [hereinafter “Second Roberts Letter”]; Letter from Dean M. Seyler, Director, Indian Health Service-Portland Area, U.S. Department of Health & Human Services to Robert Kelly, Jr., Nooksack Tribal Chairman (Nov. 21, 2016) [hereinafter “Seyler Letter”]; collectively “Federal Decisions”. The Nooksack Tribal Council is herein referred to as “Holdover Tribal Council.”

² This is the only email address to which we have been able to transmit emails for the Holdover Tribal Council without yielding “Delivery Status Notification (Failure)” notices.

³ First Roberts Letter, at 1.

⁴ Contrary to former Tribal Councilperson Katherine Canete’s November 10, 2016, letter to Gabriel S. Galanda indicating that per purported Nooksack Resolution No. 16-149, his “privilege to practice law and/or engage in business activities within the Nooksack Indian Tribe has been revoked,” neither he nor Anthony S. Broadman or Ryan D. Dreveskracht are prohibited from practicing law at Nooksack. *In re Gabriel S. Galanda, et al. v. Nooksack Tribal Court*, Nos. 2016-CI-CL-001 & 002 (Nooksack Ct. App. Sept. 21, 2016) (restoring Galanda Broadman, PLLC’s right to practice law at Nooksack); see also First Roberts Letter, at 1 (affirming *In re Gabriel S. Galanda, et al.* and rejecting Nooksack Resolution No. 16-149); Second Roberts Letters, at 1 (generally doing the same). Ms. Canete otherwise possesses no rightful authority whatsoever.

reconsideration, although Title 63 is not even law, as a matter of both federal and tribal law.⁵ Knowing this, you nevertheless insisted on “fast-tracking the disenrollment process” to your desired conclusion.⁶

The Purported Disenrollees hereby fully incorporate by reference the November 14, 2016, Omnibus Written Response of Nooksack Tribal Members Proposed for Disenrollment, particularly insofar as Purported Disenrollees were told during their 10-minute telephonic “hearings” on November 16, 17 and 18, 2016, that you, the Holdover Tribal Council, had not even received or read that 83-page Omnibus Written Response. For your ease of reference, that response is available for reading here: <https://turtletalk.files.wordpress.com/2016/10/omnibus-written-response-of-nooksack-tribal-members-proposed-for-disenrollment.pdf>. Please at least take the time to read it.

As you know, this disenrollment “process” is a farce. That was not more obvious on November 16, 17 and 18, 2016, when on each of those days, counsel for Purported Disenrollees called into the teleconference “hearing” line in order to represent and advocate on behalf of Purported Disenrollees. As you were contemporaneously notified by email through your outside counsel, Connie Sue Martin, because emails of counsel for Purported Disenrollees to specified @nooksack-nsn.gov addresses were all rejected via “Delivery Status Notification (Failure)” notice:

- On Wednesday, November 16 at 10:00 AM, counsel for Purported Disenrollees were left “on hold listening to guitar music, but not . . . allowed into [the] closed call.” Mr. Galanda was “disconnected three times.” “At 10:30 AM, Anthony [Broadman] was allowed into the room. He announced himself as ‘counsel for Maxina Rabang,’ before Bob Kelly audibly hung up the phone on him.”
- On Thursday, November 17 at 10:00 AM, counsel for Purported Disenrollees, specifically Mr. Broadman, “attempted to appear on behalf of our clients at [the] purported hearings held by the holdover council,” explaining: “We were not allowed to appear again. I am standing by to appear in this pretend proceeding if allowed; please let me know if I can call back in and advocate on behalf of our clients. I can explain procedurally why the hearings have no legal effect and also present the substantive evidence regarding our clients’ membership in the Nooksack Tribe. Our appearance is required under Nooksack Law; let us know at once whether you will comply.”

⁵ 25 C.F.R. §§ 2.6(a), (b); 43 C.F.R. § 4.314(a); *St. Germain v. Acting Northwest Regional Director*, IBIA No. 16-022; *Roberts v. Kelly*, No. 2013-CI-CL-003, at 9 (Nooksack Ct. App. Mar. 18, 2014).

⁶ *Lomeli v. Kelly*, No. 2013-CI-APL-2013-002, at 8 (Nooksack Ct. App. Aug. 27, 2013).

- On Friday, November 18 at 10:00 AM, counsel for Purported Disenrollees, again through Mr. Broadman, “attempted to appear on behalf of our clients at today's purported hearings held by the holdover council,” further explaining: “We were not allowed to appear again. If someone with control over the 1-800 number changes his or her mind, complies with the law, and allows us to participate in today's events, please let me know via email or phone.”
- Throughout the three days, Purported Disenrollees “invoked [their] right to representation, to which there was never any response” from you.⁷

Purported Disenrollees’ most fundamental due process rights, the right to civil counsel of their choosing in particular,⁸ were completely dishonored, rendering the 1-800 hearings, like the entire process, a farce. Several Purported Disenrollees did not even get notices of their hearings. There was neither notice nor any opportunity to be heard.⁹

On November 14, 2016, U.S. Department of the Interior Principal Deputy Assistant Secretary for Indian Affairs Lawrence Roberts advised you that the Interior Department “will not recognize any ‘referendum election’ . . . claiming to disenroll current tribal citizens or any other [disenrollment] action inconsistent with the plain language of the Tribe’s laws,” including six orders from the Nooksack Tribal Judiciary that currently enjoin *any* disenrollment from occurring at Nooksack.¹⁰ Likewise, on November 21, 2015, Indian Health Service Portland Area Director Dean Seyler explained that any

⁷ Email from Anthony S. Broadman to Connie Sue Martin, Rickie Armstrong and Charity Bernard (Nov. 18, 2016) (including emails sent, or attempted for email transmission, to them on November 16, 17 and 18).

⁸ See *supra* n.3.

⁹ *Roberts v. Kelly*, 12 NICS App. 33, 41 (Nooksack Ct. App. Mar. 18, 2014) (“prohibiting a [person] from being represented at the proceeding violates due process” and noting “the right to representation is crucial”) (citing *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970); *Goldberg*, 397 U.S. at 267 (holding that the “fundamental requisite of due process of law is the opportunity to be heard,” which “would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel”); *Id.* (an individual “must be allowed to retain an attorney if he so desires”).

¹⁰ Second Roberts Letter, at 1; *Belmont v. Kelly*, Court No. 2014-CI-CL-007, Order (Nooksack Tr. Ct. Feb. 26, 2015); *Roberts v. Kelly*, No. 2013-CI-CL-003 Order Enjoining Disenrollment Proceedings (Nooksack Tr. Ct. Mar. 31, 2014); *Belmont v. Kelly*, No. 2013-CI-APL-001, Order Regarding the Petition for Writ of Mandamus Nooksack Ct. App. June 18, 2016), at 3; Order Denying Motion To Expand Jurisdiction, at 1 (Nooksack Ct. App. Aug. 29, 2016); Order Granting Requests to Join April 15, 2016 Motion and Be Subject to June 28, 2016 Order (Nooksack Ct. App. Sept. 21, 2016); Second Amended Order Granting Requests to Join April 15, 2016 Motion and Be Subject to June 28, 2016 Order (Nooksack Ct. App. Sept. 22, 2016); see also *supra* n.5

“actions to disenroll these members by the Nooksack Tribal Council lack[] a sufficient quorum and [are] done in violation of the Tribe’s own Constitution and Bylaws.”¹¹

Despite each of the Federal Decisions, despite both a federal and tribal stay of disenrollment, and despite numerous legitimate¹² tribal court and appellate injunction orders,¹³ you proceeded anyway to purportedly disenroll the Purported Disenrollees on November 22, 2016.

Your actions were, are, and will always be illegal. You must reconsider.

Submitted this 5th day of December 2016.



Gabriel S. Galanda
Noxwtsí7qen
Anthony S. Broadman
Ryan D. Dreveskracht
Attorneys at Law
GALANDA BROADMAN, PLLC

¹¹ Seyler Letter.

¹² The November 17, 2016, injunction order issued against the Northwest Intertribal Court System (NICS) by Nooksack “Pro Tem Judge” Milton Rowland, who you hand-picked and purportedly appointed this fall—and who was reportedly once “arrested after he punched a police officer in the jaw following an early morning car wreck” while drunk driving—is not legitimate. See First Roberts Letter, at 1; Second Roberts Letter, at 2; Adam Lynn, *Senior City Attorney Accused Of Punching Police Officer In Jaw*, The Spokesman Review, June 3, 1997, available at: <http://www.spokesman.com/stories/1997/jun/03/senior-city-attorney-accused-of-punching-police/>. Nor are your latest outside lawyers at Schwabe Williamson & Wyatt. Nooksack Constitution, art. VI, § 1(d); October 6, 2016 Letter from Stanley Speaks, Northwest Regional Director, Bureau of Indian Affairs, to Gabriel S. Galanda (confirming that dating back to January 1, 2008, the BIA does not possess any “Schwabe Williamson & Wyatt attorney, legal services or employment contract” with the Nooksack Tribe); Thomas P. Schlosser, “Why Doing Business On Reservations Is Unique,” (June 16, 2000) (Although “Pub. L. 106-179 amends the Indian Reorganization Act provision requiring that attorney contracts with Indian tribes must be approved by the Secretary . . . many tribal constitutions require secretarial approval of attorneys contracts. These statutory changes do not change the tribal constitutional provisions . . .”).

¹³ See *id.*

IMPORTANT LEGAL NOTICE

NOTICE OF INVOLUNTARY DISENROLLMENT

November 23, 2016

RE: Notice of Involuntary Disenrollment

Findings of Fact: Over 3 years ago you were notified that you were erroneously enrolled and are ineligible for enrollment with the Nooksack Indian Tribe. You were also provided a "basis" packet that demonstrated your family lineage and that you do not qualify for enrollment at the Nooksack Indian Tribe. You were also aware that no birth records could be located evidencing that you descended from an individual listed on one of the Constitutional rolls and have at least ¼ degree of Indian blood. From November, 2012 to the present, you could not or would not provide a valid birth certificate and/or baptismal for whom you claim to descend from. Without any birth records we are unable to determine that you are a Native American. We have found evidence that demonstrates that you have no right to claim a family tree that you, in fact, do not descend from. You were afforded a meeting opportunity to explain why you should not be disenrolled and you did not meet the burden of proof and are therefore involuntarily disenrolled.

Please be advised that in accordance with Title 63, section 63.04.001(B)(2), the Tribal Council officially removed your name from the roll book of currently enrolled members of the Nooksack Indian Tribe. Pursuant to Title 63, you requested and received a meeting with the Tribal Council to dispute the Notice of Intent to Disenroll. At that meeting, and based upon the evidence provided by the Tribe and you, the Tribal Council found that the Tribe met the burden of proof that you were erroneously enrolled in that you did not submit adequate documentation proving you met the constitutional membership criteria at the time of enrollment. Given the Tribal Council's finding, the Tribal Council passed the enclosed resolution, which involuntarily disenrolled you from the Nooksack Indian Tribe.

In accordance with Title 63, you are eligible to request reconsideration of the Tribal Council's decision. Your request for reconsideration must be received within thirty (30) calendar days of the receipt of this Notice in order to be considered. The date stamped on the receipt of the certified letter shall be considered the beginning of that 30 day period.

Your request for reconsideration, if any, must clearly state the grounds for the request, as well as any additional evidence or documentation you will present. Mail your request to: Nooksack Tribal Council, P.O. Box 63, Deming, Washington, 98244. You will be notified by the Tribal Council of its decision whether or not to grant reconsideration within fourteen (14) calendar days of receipt of the request. Alternatively, you may submit a new application for membership when adequate documentation of eligibility has been obtained.