

*Honorable John C. Coughenour*

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

MARGRETTY RABANG, et al.,  
  
Plaintiffs,  
  
v.  
  
ROBERT KELLY, JR., et al.,  
  
Defendants.

**Case No.: 2:17-CV-00088-JCC**  
  
**DEFENDANT CHIEF JUDGE  
RAYMOND G. DODGE JR.'S  
SUPPLEMENTAL BRIEFING**  
  
**NOTE ON MOTION CALENDAR:  
APRIL 19, 2017**

Defendant Chief Judge Raymond G. Dodge Jr. (“Judge Dodge”) hereby provides supplemental briefing pursuant to the Court’s Minute Order. Dkt. # 55.

**A. There is No “Clearly Valid Statute or Case Law Expressly Depriving” Judge Dodge of Jurisdiction**

Judicial immunity is lost where a judge knows that (s)he lacks jurisdiction, or where the judge acts in the face of “clearly valid statute or case law expressly depriving” the judge of jurisdiction. *Rankin v. Howard*, 633 F.2d 844, 849 (9th Cir. 1980), *overruled on other grounds by Ashelman v. Pope*, 793 F.2d 1072 (9th Cir. 1986). The question posed by the Court is whether the October 17, 2016 decision<sup>1</sup> from the Department of Interior (“Interior”) constitutes:

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<sup>1</sup> Judge Dodge maintains that Interior’s communication is not a final or binding “decision” or a final agency action. “Decision” is used in deference to the Court’s Order using the term. Dkt. # 55.

1 (1) a clearly valid statute or case law which (2) expressly deprives Judge Dodge of jurisdiction.  
 2 It does not. The decision is not a statute or case law, and it contains no language which  
 3 expressly deprives Judge Dodge of jurisdiction. Judge Dodge retains absolute judicial immunity.

4 **1. Interior’s Decision is Neither Statute Nor Case Law**

5 A statute is defined as “[a] law passed by a legislative body; specif[ically], legislation  
 6 enacted by any lawmaking body, such as a legislature, administrative board, or municipal court.”  
 7 Black’s Law Dictionary (10th ed. 2014). “Case law” is defined as “[t]he law to be found in the  
 8 collection of reported cases that form all or part of the body of law within a given jurisdiction.”  
 9 *Id.* Courts strictly construe the “clearly valid statutes or case law” requirement, and have  
 10 declined to abrogate immunity except where an actual statute or case deprives a judge of  
 11 immunity.<sup>2</sup> *Mills v. Killebrew*, 765 F.2d 69, 72 (6th Cir. 1985) (finding no statute or case law  
 12 expressly depriving the mediators of jurisdiction); *Borsotti v. California*, CV1504112JAKAFM,  
 13 2016 WL 2865361, at \*7 (C.D. Cal. Mar. 25, 2016) (where plaintiff failed to cite to any clearly  
 14 valid statutes or case law expressly depriving the court of jurisdiction, finding that plaintiff failed  
 15 to set forth any factual allegations in the complaint which would show that judicial defendant  
 16 acted in the clear absence of jurisdiction).

17 Interior’s October 17, 2016 decision directed to Chairman Kelly is not a “statute” or  
 18 “case law”. The decision was not made by a legislative or any other lawmaking body, but by an  
 19 official from a federal agency; thus, it does not qualify as a “statute.” It also is not found in a  
 20 collection of reported cases, nor is it “part of the body of law within a jurisdiction;” thus, the  
 21 decision is not “case law.” In fact, Interior’s decision is not a law at all, and does not even rise to  
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23 <sup>2</sup> Courts have declined to abrogate judicial immunity even where the judge has failed to follow  
 24 the law, so long as it was not a law expressly depriving jurisdiction. *See O’Neil v. City of Lake*  
 25 *Oswego*, 642 F.2d 367, 369–70 (9th Cir. 1981) (pro tem municipal judge’s convicting defendant  
 26 of contempt was in excess of jurisdiction, but not in clear absence of all jurisdiction, so judge  
 27 was immune from liability); *Pace v. Williams*, CIV.A. 15-0157-WS-B, 2015 WL 3751405, at \*3  
 (S.D. Ala. June 16, 2015) (finding that “contraven[ing] state or even constitutional law does not  
 override [judge’s] protections under the doctrine of absolute judicial immunity.”).

1 the level of being a “final agency action.”<sup>3</sup> The decision is AS-IA Roberts’s opinion that the  
 2 Nooksack Tribal Council lacks a quorum to conduct tribal business.<sup>4</sup> Judge Dodge is never  
 3 mentioned, and while the decision may impact Tribal elections and federal funding, it falls far  
 4 short of constituting a “clearly valid statute or case law”.

## 5 **2. The Decision Does Not “Expressly Deprive” Judge Dodge of Jurisdiction**

6 A “clearly valid statute or case law” must also “expressly deprive” the judicial officer of  
 7 “jurisdiction” to abrogate judicial immunity. To be “express,” information must be “clearly and  
 8 unmistakably communicated” and/or “stated with directness and clarity.” Black’s Law  
 9 Dictionary (10th ed. 2014). As with the statute and case law requirement, courts strictly construe  
 10 the “express deprivation” requirement because “fearless decision-making is fostered by granting  
 11 judges immunity . . . even when they fail to comport with procedural niceties necessary to give  
 12 the court power over the particular matter.” *O’Neil*, 642 F.2d at 369–70 (distinguishing the  
 13 situation in which a judge violates a rule of law expressly depriving it of jurisdiction (no  
 14 immunity), from the case where a court merely fails to “comply with all the [procedural]  
 15 requirements of a statute conferring jurisdiction,” in which case the judge is still immune).

16 Nowhere in Interior’s October 17, 2016 decision does AS-IA Roberts make a finding  
 17 which would expressly deprive Judge Dodge of jurisdiction. In fact, the decision never mentions  
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19 <sup>3</sup> To be “final,” an action “must mark the consummation of the agency’s decision-making  
 20 process . . . [and] not be of a merely tentative or interlocutory nature.” *Bennett v. Spear*, 520  
 21 U.S. 154, 178 (1997). The United States agrees that the October 17, 2016 decision does not  
 22 constitute “final agency action.” See Dkt. # 26 at p. 22, filed on April 3, 2017 in *Nooksack*  
 23 *Indian Tribe v. Zinke, et al.*, No. 17-0219-JCC. Because the decision was not addressed to him  
 24 and not published in the way a case or statute would be, it is also the case that knowledge of  
 25 Interior’s decision cannot reasonably be imputed to Judge Dodge in the same way as might a  
 26 statute or case law.

27 <sup>4</sup> Interior has authority to make an interim determination of tribal leadership pending final tribal  
 resolution of a dispute. *Goodface v. Grassrope*, 708 F.2d 335, 338–39 (8th Cir. 1983). AS-IA  
 Roberts’s October 17, 2016 decision was therefore limited to recognizing a tribal governing body  
 and to ensure proper distribution of federal funds. The decision was not intended to, and could  
 not by itself, deprive Judge Dodge of jurisdiction.

1 Judge Dodge, let alone “clearly and unmistakably communicate” an absence of jurisdiction to  
2 Judge Dodge. The decision instead addresses only actions by the Tribal Council after March 24,  
3 2016; at best, the decision might be said to impliedly deprive Judge Dodge of jurisdiction  
4 because he was appointed after that date. However, jurisdictional deprivation by implication is  
5 not the standard. There is no language in the decision which expressly deprives Judge Dodge of  
6 jurisdiction, and the decision therefore fails to establish that he acted in the face of a “clearly  
7 valid statute or case law expressly depriving him of jurisdiction”.

8 **a. Judge Dodge Did Not Act Outside of His Subject Matter Jurisdiction**  
9 **and, Therefore, Did Not Act in the Clear Absence of “Jurisdiction”**

10 “The term ‘jurisdiction’ refers to a decision-maker’s ‘power to decide a case or issue a  
11 decree.’” *Johnson v. Thompson-Smith*, 203 F. Supp.3d 895, 903 (N.D. Ill. 2016) (internal  
12 quotation omitted). Thus, “[a] judge acts in the clear absence of all jurisdiction only when the  
13 matter upon which he acts is clearly outside the subject matter of the court over which he  
14 presides.” *Flanagan v. Shamo*, 111 F. Supp.2d 892, 897 (E.D. Mich. 2000) (citing *King v. Love*,  
15 766 F.2d 962, 965 (6th Cir. 1985)); *Berry v. Seeley*, 2:10-CV-162, 2010 WL 5184883, at \*5  
16 (E.D. Tenn. Dec. 15, 2010) (even where a judge act in error, (s)he does not act in the clear  
17 absence of jurisdiction as long as (s)he has the power to decide the issue and enter an order).

18 All that is required, then, is for Judge Dodge to have acted within the scope of the Tribal  
19 Court’s subject matter jurisdiction. *Shamo*, 111 F. Supp.2d at 897. Jurisdiction is broadly  
20 construed in the judicial immunity context. *Stump v. Sparkman*, 435 U.S. 349, 350, 356 (1978).  
21 Merely exceeding one’s judicial authority does not abrogate immunity; rather, “only a clearly  
22 inordinate exercise of unconferrred jurisdiction by a judge [ ] so crass as to establish that he  
23 embarked on it either knowingly or recklessly subjects him to personal liability.” *Turner v.*  
24 *Raynes*, 611 F.2d 92, 95 (5th Cir. 1980). The standard will therefore be met only in “unusual  
25 cases” where, for example, a judge authorized to hear only probate cases conducts a criminal  
26 trial. *Stump*, 435 U.S. at 357, n. 7; *Faulkner v. Otto*, 15 C 3344, 2016 WL 1381795, at \*5 (N.D.  
27 Ill. Apr. 5, 2016).

1 Here, plaintiffs have not asserted that the Tribal Court lacked subject matter jurisdiction  
2 over the eviction proceedings. In fact, plaintiffs admit in their complaint that the Tribal Court  
3 “exists separate and apart from the [alleged] pattern of racketeering activity for the legitimate  
4 governmental business purpose of providing a forum for the Tribal community to resolve  
5 disputes,” and that Defendants—including Judge Dodge—“have had and do have legitimate  
6 governmental business plans outside the pattern of racketeering activity related to NTC.”  
7 Dkt. # at p. 7, ¶ 78. In fact, Judge Dodge has presided over numerous cases, entering no contact  
8 orders, parenting plans, guardianships, and handling criminal matters. Plaintiffs also availed  
9 themselves of the jurisdiction of the court. *Id.* ¶ 49. Thus, the pleading confirms that Judge  
10 Dodge has subject matter jurisdiction over actions for the purpose of resolving disputes in the  
11 community—which would include resolving an unlawful detainer matter brought by the  
12 Nooksack Indian Housing Authority against a tenant. Plaintiffs have not presented the “unusual  
13 case” where a judge acts with complete absence of subject matter jurisdiction. Judge Dodge’s  
14 immunity remains intact.

### 15 CONCLUSION

16 Judge Dodge maintains absolute judicial immunity, and plaintiffs’ claims against him  
17 should be dismissed with prejudice.

18 DATED this 14th day of April, 2017.

### 19 Kilpatrick, Townsend & Stockton LLP

20 By: /s/ Rob Roy Smith

21 Rob Roy Smith, WSBA # 33798

22 Email: [RRSmith@kilpatricktownsend.com](mailto:RRSmith@kilpatricktownsend.com)

23 Rachel B. Saimons, WSBA # 46553

24 Email: [RSaimons@kilpatricktownsend.com](mailto:RSaimons@kilpatricktownsend.com)

25 Kilpatrick Townsend & Stockton LLP

26 1420 Fifth Ave, Suite 3700

27 Seattle, WA 98101

Telephone: (206) 467-9600

Fax: (206) 623-6793

*Attorneys for Defendant Chief Judge*

*Raymond G. Dodge, Jr.*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 14, 2017, I electronically filed the foregoing **DEFENDANT CHIEF JUDGE RAYMOND G. DODGE JR.'S SUPPLEMENTAL BRIEFING** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Gabe Galanda  
[gabe@galandabroadman.com](mailto:gabe@galandabroadman.com)  
Bree R. Black Horse  
[bree@galandabroadman.com](mailto:bree@galandabroadman.com)  
Galanda Broadman, PLLC  
8606 35th Ave NE, Suite L1  
PO Box 15146  
Seattle, WA 98115

*Attorneys for Plaintiffs*

Connie Sue Martin  
[csmartin@schwabe.com](mailto:csmartin@schwabe.com)  
Schwabe Williamson & Wyatt  
1420 5th Ave, Suite 3400  
Seattle, WA 98101

*Attorney for Plaintiffs Defendants Robert Kelly, Jr.,  
Rick D. George, Agripina Smith, Bob Solomon,  
Lona Johnson, Katherine Canete, Elizabeth King  
George, Katrice Romero, Donia Edwards, Rickie  
Armstrong*

DATED this 14th day of April, 2017.

**Kilpatrick Townsend & Stockton LLP**

By: /s/ Rob Roy Smith

Rob Roy Smith, WSBA # 33798  
[rrsmith@kilpatricktownsend.com](mailto:rrsmith@kilpatricktownsend.com)  
*Attorneys for Defendant Chief Judge  
Raymond G. Dodge, Jr.*