The Honorable John C. Coughenour
The Honorable Michelle L. Peterson

1
2
3
4
5
6
7

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 ELILE ADAMS,
9 Petitioner,
10 v.
11 RAYMOND DODGE, RAJEEV
12 MAJUMDAR, BETTY LEATHERS,
DEANNA FRANCIS, NOOKSACK TRIBAL
13 COURT, and NOOKSACK INDIAN TRIBE,
14 Respondents.
15

Case No. 2:19-cv-01263 JCC

RESPONDENT JUDGES DODGE AND MAJUMDAR'S RETURN TO SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS UNDER 25 U.S.C. § 1303

NOTED FOR CONSIDERATION: DECEMBER 20, 2019

16
17
18
19
20
21
22
23
24
25
26
27
28

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

Respondents Nooksack Tribal Court Chief Judge Raymond G. Dodge, Jr., and Pro Tem Judge Rajeev Majumdar ("Respondent Judges"), by and through their counsel of record, hereby file this Return to the Second Amended Petition for a Writ of Habeas Corpus pursuant to 25 U.S.C. §§ 1301-1303 and the Court's Order for Service and Answer (Dkt. No. 22). As explained below, Respondent Judges do not believe an evidentiary hearing is required as the claims against them can be resolved as a matter of law. *See Ford v. Wainwright,* 477 U.S. 399, 410–11 (1986) (resolution of factual disputes requires an evidentiary hearing); *Townsend v. Sain*, 372 U.S. 293, 312 (1963) (discussing six situations where a hearing is mandatory, none of which are present here).

Petitioner's Second Amended Petition should be dismissed and/or denied as to Respondent Judges on the following grounds: (1) judges are generally not proper respondents in a habeas corpus action; (2) Chief Judge Dodge has recused himself and, as such, is not a proper respondent; and (3) Respondent Judges are entitled to judicial immunity. In addition, Respondent Judges believe the Petitioner has engaged in harassing litigation and failed to disclose pertinent facts to this Court. The writ as to Respondent Judges should be denied.

MEMORANDUM IN SUPPORT OF RETURN

INTRODUCTION

This case is the latest in a long line of harassing litigation (not to mention bar complaints, *see* 2d Amended Pet. ¶ 22) filed against the Nooksack Indian Tribe and/or its Tribal officials and/or its employees and/or its legal counsel designed to undermine the Tribe's sovereignty and punish those who work for the Tribe, including, but likely not limited to the following cases:

Adams v. Elfo, et al. – Case No. 2:19-cv-01263-JCC-MLP (W.D. Wash.)

Adams v. Dodge, et al., Case No. 19-2-01552-37 (Whatcom Sup. Ct.)

Adams v. Whatcom County, et al., Case No. 2:19-cv-01768-JRC (W.D. Wash.)

Tageant v. Ashby – Case No. 2:19-cv-1082-JLR (on removal) (W.D. Wash.)

Rabang, et al. v. Kelly, et al. – Case No. C17-0088-JCC (W.D. Wash.)

Doucette, et al. v. Bernhardt, et al. (Zinke) – Case No. C18-0859-TSZ (W.D. Wash.)

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

St Germain, et al. v. US DOI, et al. – Case No. C13-945-RAJ (W.D. Wash.)

Galanda, et al. v. Nooksack Tribal Court – Case No. 16-2-01663-1 (Whatcom Sup. Ct.)

Rabang, et al. v. Gilliland, et al. – Case No. 17-2-00163-1 (Whatcom Sup. Ct.)

Tageant v. Smith, et al. – Case No. 09-2-01821-5 (Whatcom Sup. Ct.)

Belmont, et al. v. Kelly et al. – Case No. 2014-CI-CL-007 (Nooksack Tribal Court)

Tageant v. Kelly – Case No. 2016-CI-CL-003 (Nooksack Tribal Court)

Alexander v. Kelly – Case No. 2016-CI-CL-004 (Nooksack Tribal Court)

Doucette, et al. v. Acting NW Regional Director, BIA – Decision No. 65 IBIA 183

Belmont, et al. v. Acting NW Regional Director, BIA – Decision No. 65 IBIA 283

Germain, et al. v. Acting NW Regional Director, BIA – Decision No. 66 IBIA 201

The instant case arises out of the same transactional nucleus of fact as a Whatcom County case against Chief Judge Dodge and various Nooksack Tribal Police Officers, which is stayed pending resolution of this case, alleging various state law torts arising out of the alleged unlawful detention of Petitioner. *Adams v. Dodge, et al.,* Case No. 19-2-01552-37 (Whatcom Sup. Ct.). Likewise, a case filed October 31, 2019 against Whatcom County officials for torts arising from the alleged unlawful detention of Petitioner, appears largely factually identical to this action. *Adams v. Whatcom County, et al.,* Case No. 2:19-cv-01768-JRC (W.D. Wash).

This litigation against the Tribe and Tribal officials and Tribal employees continues apace despite the actions of the United States to recognize the Nooksack Tribal Council and by extension the Nooksack Tribal Court, and rulings of this Court which poke giant holes in the allegations of corruption and illegality of the Nooksack Tribal Court that Petitioner has ginned up to support this current action.[1] Despite Petitioner's bare claims to the contrary, it is an

---

[1] Petitioner's personal and professional attacks on Respondent Chief Judge Dodge also continue unabated on social media. For example, on August 8, 2019, Petitioner's father George Adams re-posted a Facebook post from Petitioner's counsel stating "Pretend Judge Ray Dodge cancelled 'court' today….." Days later, on or about August 13, 2019, the website Last Real Indians (www.lastrealindians.com) published an article about the Whatcom County lawsuit related to this case, which included scathing comments by Petitioner in which she states, "[Judge] Dodge has made my life a living nightmare…So much so that I have sought asylum and protection from

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

unassailable fact that the Tribal Court is properly functioning, the Respondent Judges are appropriately appointed, and there is a tribal court process that should have been, but was not, exhausted by Petitioner before filing this action. *Necklace v. Tribal Court of Three Affiliated Tribes*, 554 F.2d 845, 846 (8th Cir. 1977) (concluding that the absence of any meaningful forum militates strongly in favor of a flexible application of the tribal exhaustion rule) (quoting *O'Neal v. Cheyenne River Sioux Tribe*, 482 F.2d 1140, 1144–48 (8th Cir. 1973)).

FACTUAL BACKGROUND

Respondent Judges join and incorporate by reference the factual recitation of the case provided by the other Respondents in their Return. Respondent Judges provide additional relevant facts below.

I. This Court Has Twice Recognized the Tribal Government and Tribal Court

Although the name on the petition may be new, the allegations at the heart of this case are well-known to this Court. Despite well-known facts and rulings from this Court to the contrary, Petitioner artfully uses quotation marks to suggest that Chief Judge Dodge is somehow not a real judge and that the Tribal Court is also somehow illegitimate. 2d Amended Pet. p. 3, 5. However, this creative use of quotation marks cannot hide the very inconvenient truth that the Petition as to the Respondent Judges is utterly baseless.

Importantly, Petitioner conveniently stops her discussion of actions involving the United States and the Nooksack Tribe on December 23, 2016. *Id.* ¶ 20. This wholesale disregard of salient facts over the last three years is no accident. Indeed, the omission of the following factual details and the discussion of two cases from this Court that are directly on point from the Second Amended Petition is particularly shocking for, if included, the Court would see that the entire

---

him in the Lummi Nation." *See also* https://newsmaven.io/indiancountrytoday/the-press-pool/state-court-rejects-nooksack-judge-ray-dodge-s-jurisdiction-g26zYnIXZEOArXz8CcPKdA/?fbclid= IwAR3YJMb2z54-ObzkyBysA1APq3glWS4YFOoA44s7PaazU_siQvk49857qVk (quoting Mr. Galanda, "Dodge made no effort to confer with the Superior Court—because he was never concerned about the young girl's best interests," . . . "His assertion of jurisdiction was for ulterior purposes. He was just being cruel, using a five-year-old Indian child as a political pawn.").

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

1 premise of this litigation – the illegitimacy of the Nooksack Tribal Court and its judges – has
2 been squarely and repeatedly rejected by the United States and two judges of this Court.

3 **A. Rabang RICO Litigation**

4 On July 31, 2018, this Court dismissed *Rabang et al. v. Kelly et al.,* Case No. C17-0088-
5 JCC (W.D. Wash.), a federal Racketeer Influenced and Corrupt Organizations Act (RICO)
6 lawsuit brought by Nooksack tribal members, represented by Petitioner's counsel, against
7 various Nooksack officials, including Chief Judge Dodge, because "[t]he DOI recognized the
8 Nooksack Tribal Council as the Tribe's governing body, following the agency's validation of the
9 December 2017 special election." *Rabang,* Dkt. No. 166, Order of July 31, 2018, at 4. In so
10 doing, this Court reviewed and conisdered various pertinent federal actions that had taken place
11 since the filing of the *Rabang* lawsuit that warranted dismissal for lack of subject matter
12 jurisdiction.

13 In particular, this Court discussed the August 28, 2017 Memorandum of Agreement
14 ("MOA") with the Acting Assistant Secretary – Indian Affairs, on behalf of the DOI. *Rabang,*
15 Dkt. No. 117-1 at 8–12. The Court noted that, under the MOA, the DOI agreed to recognize the
16 Nooksack Tribal Council as the governing body of the Nooksack Tribe, if the Tribe conducted a
17 special election within a specified period. *Rabang,* Dkt. No. 166 at 3. Pursuant to that MOU, the
18 Court acknowledged that the Nooksack Tribe had conducted two elections, the first of which
19 took place on December 2, 2017, in which the Tribe held a special election to fill four seats on
20 the Tribal Council. *Rabang,* Dkt. No. 145-1. On March 9, 2018, the DOI concluded that the
21 election results were valid and, pursuant to the MOA, once again recognized the Tribal Council.
22 *Id.*; *Rabang,* Dkt. No. 162-2 at 2–6. The Court then noted the second election on May 5, 2018,
23 which was a general election to select a Chairman and fill three seats on the Tribal Council.
24 *Rabang,* Dkt. No. 162-4 at 2. Finally, the Court acknowledged that, on June 11, 2018, the DOI's
25 Principal Deputy Assistant Secretary – Indian Affairs wrote a letter to the Tribe's new Chairman
26 acknowledging his election and the election of the new Tribal Council members. *Rabang,* Dkt.
27 No. 160-1 at 2.
28

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

Based on the foregoing facts (seemingly intentionally omitted from the Petition with the exception of a passing reference to the June 11, 2018 decision at 2d Amended Pet. ¶ 23), the Court correctly concluded that this was a matter for the Nooksack Tribe to address, not the Court. *Ravbang,* Dkt. No. 166 at 8. The Court properly accorded deference to the decisions by DOI to recognize the current Tribal Council. *Id.* The case is now on appeal, with a decision stayed pending resolution of another related case, discussed below.

B. The *Doucette* Litigation

On April 5, 2018, four unsuccessful candidates to the December 2017 Special Election, also represented by Petitioner's counsel, filed an appeal with the Interior Board of Indian Appeals seeking review of the BIA Regional Director's March 7, 2018 memorandum endorsing the validity of the Special Election. *Robert Doucette, Bernadine Roberts, Saturnino Javier, and Tresea Doucette v. Acting Northwest Regional Director*, *Bureau of Indian Affairs*, 65 IBIA 183 (2018) (Dkt. #162-3). The Board dismissed the appeal on April 17, 2018 for lack of jurisdiction.[2] Subsequently, Robert Doucette, Bernadine Roberts, Saturnino Javier, and Tresea Doucette filed a Federal lawsuit against the United States alleging that endorsing the results of primary and general elections conducted by the Tribe was arbitrary and capricious under the federal Administrative Procedures Act. *Doucette et al. v. Bernhardt et al. (Zinke*) – Case No. C18-0859-TSZ (W.D. Wash.).

On August 9, 2019, the Honorable Judge Zilly of this Court issued an order rejecting plaintiffs' continued challenge to the legitimacy of the Tribe's government. Judge Zilly's thorough 21-page order is particularly instructive to this case, as it documents the validity of the

[2] Undaunted, on June 12, 2018, another group of Nooksack Tribal members, also represented by Petitioner's counsel, filed another appeal to the Interior Board of Indian Appeals, seeking review of the May 21, 2018 letter from the BIA acknowledging Chairman Cline claiming that they were unlawfully disqualified from voting in the May 5, 2018 General Election and that Regional Director Poitra's decision to recognize Chairman Cline was arbitrary and capricious. *Belmont*, 65 IBIA at 283. The IBIA once again dismissed the appeal for lack of jurisdiction finding that the appeal was "at its core, a tribal enrollment dispute."

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

elections at the Tribe and the efforts of the United States to ensure that such elections were fair. *Doucette,* Dkt. No. 41. The Court held that "the Court is persuaded that Interior more than satisfactorily discharged its duty to ensure that the Nooksack Tribal Council recognized by PDAS Tahsuda, in his role as Acting Assistant Secretary, was 'duly constituted' and represented the Tribe 'as a whole.'" *Id.* at 21. The ruling is presently on appeal.

These two decisions from this Court remove any doubt about the veracity of the United States' decisions to recognize the Tribal Council, and the legitimacy of the Tribal Council itself. It is misleading, to say the least, that these cases and facts were omitted from the Second Amended Petition, which relies instead on the now superseded three 2016 letters of Assistant Secretary Roberts upon which Petitioner hangs her entire case. *See, e.g.,* 2d Amended Pet. ¶ 28.

II. The Tribal Council Has Confirmed Chief Judge Dodge's Appointment

On March 15, 2018, following DOI's decision to recognize the validity of the Tribal Council, the Tribal Council passed Resolution #18-15 to ratify the previous appointment of Chief Judge Dodge to the Nooksack Tribal Court. *Rabang v. Kelly, et al,* No. 18-35711 (9th Cir.), Dkt. No. 11 at 18 (citing ER 68). The stated purpose of the Resolution was to "eliminate all doubt and resolve the issue of the validity of Resolution #16-92 by adopting Resolution #16-92 as its own through this current ratification of the previous action." *Id.* (citing ER 68-69). On May 29, 2018, the Nooksack Tribal Council ratified a number of phone polls which occurred between July 2017 and May 2018. Among the polls was Resolution #18-15, in which the current federally-recognized Tribal Council ratified Chief Judge Dodge's 2016 appointment to the Nooksack Tribal Court. *Id.* (citing DSER 328-29).

Most recently on September 18, 2019, the United States ***again*** reiterated that: "[t]he BIA does recognize the Tribe's system of governance"; "The Department of the Interior recognizes the actions and operations of the duly elected Tribal Council"; and "[t]here are no findings by the BIA that the Tribe's system of governance is invalid or unconstitutional in 2019." Dkt. No. 13 at 50-51.

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Contrary to Petitioner's incomplete factual statement, the status of the Tribal Council was not encased in amber as of December 2016. The United States' multiple actions since that time, coupled with the Tribal Council Resolutions to ratify its prior actions, remove any doubt as to the authority of the judges of the Nooksack Tribal Court.[3] Petitioner simply seems to be attempting to re-litigate prior defeats through this case and use the habeas process as a means to collaterally attack those decisions, as well as decisions of the Nooksack Tribal Court, with which Petitioner disagrees.

ARGUMENT

As the party invoking this Court's jurisdiction, Petitioner has the burden of proving the existence of subject matter jurisdiction. *Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir. 1996). In reviewing a habeas petition, this Court "first determine[s] if [the named respondent] is a proper respondent." *Padilla v. Rumsfeld*, 352 F.3d 695, 707 n.16 (2d Cir. 2003), *rev'd, Rumsfeld v. Padilla*, 542 U.S. 426 (2004) (vacating judgment of the Court of Appeals and remanding the case for entry of order of dismissal without prejudice). It is axiomatic that a petitioner must bring a habeas corpus claim against the person/entity responsible for their custody and who can end the restraint on liberty.

The fundamental flaw here is that neither of the named Respondent Judges are actually detaining Petitioner, nor are they subject to suit for their purely judicial actions. The failure to do so warrants dismissal of the writ on jurisdictional grounds. *Stanley v. California Supreme Court,* 21 F.3d 359, 360 (9th Cir. 1994).

[3] As a result, and as briefed by the other Respondents, Petitioner was required to, but has not, exhausted tribal court remedies. Petitioner's highest hurdle to maintaining this action arises from the total-exhaustion jurisprudence developing under the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq*. ("ICRA"). Federal courts have therefore generally recognized that a petitioner must fully exhaust tribal court remedies before a federal court can review challenges to detention. *Boozer v. Wilder*, 381 F.3d 931, 935 (9th Cir. 2004). As made clear by the other Respondents' brief, none of the exceptions to exhaustion apply. In order to assert her rights under the ICRA, Petitioner must first exhaust the tribal remedies available to her in Nooksack Tribal Court before pursuing federal habeas relief. Petitioner has refused to do this and this Court therefore has no jurisdiction.

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. The Writ Should Be Dismissed For Lack of Jurisdiction

A. The Respondent Judges Are Not Proper Respondents

In *Rumsfeld v. Padilla*, 542 U.S. at 438-41, the Supreme Court endorsed the majority view that "there is generally only one proper respondent to a given prisoner's habeas petition" involving a challenge to the prisoner's present physical detention – namely, the petitioner's custodian. The Ninth Circuit has explained that the proper respondent is the person with "day-to-day" control over the petitioner. *Brittingham v. United States,* 982 F.2d 378 (9th Cir. 1992); *Belgarde v. Montana*, 123 F.3d 1210, 1213 (9th Cir. 1997) (petition must name the officer having custody of the petitioner as the respondent). In the context of bail or parole, the proper respondent is often the probation officer, another official in charge, or the state correctional agency, as appropriate. *Ortiz-Sandoval v. Gomez,* 81 F.3d 891, 894 (9th Cir. 1996).

A judge is not a petitioner's custodian for habeas purposes because a judge never has actual physical custody and control of a petitioner, and is not able to produce her in court, even when the petitioner is out on bail. *Hubbs v. Houser,* CV 10-1318-PHX-GMS, 2010 WL 4607399 (D. Ariz. Nov. 4, 2010) (dismissing habeas petition case naming Superior Court Judge as respondent because proper respondent was the State Attorney General); *see also Peyton v. Nord*, 78 N.M. 717, 719, 437 P.2d 716, 718 (1968) (dismissing habeas case under state law against judge because judge is not the petitioner's custodian). The reason that a judge is not an appropriate respondent is plain: if a petitioner could simply sue judicial officers, then every habeas petitioner (either in custody or out on bail) could always maintain a habeas petition—all but swallowing the jurisdictional rule that a proper respondent is required.

Petitioner cites to *Reimnitz v. State's Attorney of Cook Cty.*, 761 F.2d 405 (7th Cir. 1985) as support for naming her respondents. 2d Amended Pet. ¶ 84. However, this thirty-four year-old out-of-Circuit case does not apply to the Respondent Judges. *Reimnitz* does not hold that specific judges are ever proper respondents. Rather, Judge Posner only held that "***the circuit court of Cook County is the proper respondent***" under the facts of that case. *Reimnitz*, 761 F. 2d at 409 (emphasis added) (citing *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973) (implying that

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

court is proper respondent) and *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484 (1973) (noting state courts frequently named as respondents in federal habeas actions)). No judge was specifically named in the *Reimnitz* habeas petition. Respondent Judges are also aware of no Ninth Circuit case favorably citing *Reimnitz* for the proposition that judges are ever the proper respondents in a federal habeas action.

As such, neither Chief Judge Dodge nor Judge Majumdar are proper respondents and, other than naming them as such (2d Amended Pet. ¶¶ 3, 4), Petitioner fails to indicate how the Respondent Judges could be her actual or even nominal custodian. That the prior Whatcom County respondents, in an effort to dodge this suit, fingered the Tribal Court generally and Chief Judge Dodge specifically does not amount to evidence that the Respondent Judges are actual custodians of Petitioner. *Id.* ¶ 85. The writ should be dismissed as to Respondent Judges.

1. Chief Judge Dodge Is Not a Proper Respondent Because of His Recusal

Chief Judge Dodge is also not a proper respondent because, even if he could be considered a proper respondent in this case, Chief Judge Dodge can no longer be considered to have any role in Petitioner's case.

As alleged by Petitioner, Chief Judge Dodge "recused" himself in October after he filed counterclaims against Petitioner in the state tort case she initiated against him arising out of this same arrest. 2d Amended Pet. ¶ 51. A recused judge can, under no set of facts, be considered the current custodian of a habeas petitioner. *E.g., Braden v. 30th Jud. Cir. Ct. of Kentucky*, 410 U.S. 484, 494-95 (1973) (noting "[t]he writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody.").

Chief Judge Dodge, after his acknowledged recusal, lacks any power or authority to release Petitioner from her custody, and continuing to name him as a respondent after recusal appears designed to harass. The writ should be dismissed a to him on this basis as well.

B. Chief Judge Dodge Retains Judicial Immunity From Suit

Even if the judges named here were proper respondents, they are nonetheless entitled to judicial immunity for their judicial actions. *Grisby v. Thomas*, No. 14-cv-1579, 2014 WL 4661195,

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

at *2 (D.D.C. Sept. 19, 2014) (dismissing habeas petition filed against judge because the judge was not a custodian and, in any event, was entitled to judicial immunity). Judicial immunity extends to habeas corpus proceedings because, as discussed above, judges are generally not proper respondents. In *Cade v. Carpenter*, 367 F.2d 572 (5th Cir. 1966), the court held that, "Construed as liberally as the rules permit and require, Appellant's petition cannot be interpreted as a petition for writ of habeas corpus because it is not directed against the person holding Appellant in custody, but rather against the District Judge. As so construed, appellant fails to state a ground on which relief can be granted, since the actions of the District Judge are protected by the bar of judicial immunity." *Id*. at 572 (internal citations omitted). "A seemingly impregnable fortress in American Jurisprudence is the absolute immunity of judges from civil liability for acts done by them within their judicial jurisdiction." *Gregory v. Thompson*, 500 F.2d 59, 62 (9th Cir. 1974).

Judges have long enjoyed absolute immunity from personal capacity claims and liability in damages for their judicial or adjudicatory acts. *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1156 (10th Cir. 2011); *Forrester v. White*, 484 U.S. 219, 219 (1988) (judges have absolute immunity in order to protect judicial independence). Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Tribal court judges are entitled to the same absolute judicial immunity that shields state and federal court judges. *Penn v. United States*, 335 F.3d 786, 789 (8th Cir. 2003).

There are two limited exceptions to judicial immunity. *Mireles*, 502 U.S. at 11. First, a judge is not immune from liability for nonjudicial actions (i.e., actions not taken in a judicial capacity). Second, a judge is not immune from actions, though judicial in nature, where they are taken in the "complete absence of all jurisdiction." *Id.* at 12. Neither exception applies here and Chief Judge Dodge remains immune from suit.

1. Chief Judge Dodge Acted In a Judicial Capacity

There can be no factual dispute that Chief Judge Dodge acted in a judicial capacity when he issued the bench warrant in a case over which he was presiding, and when he issued the other

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

1 orders complained of throughout the Petition. Issuing orders is an objectively unremarkable,
2 commonly executed judicial task well within the scope of a Tribal Court Judge's authority.
3 Indeed, there are few actions more routine than issuing orders. *See Jenkins v. Kerry*, 928
4 F.Supp.2d 122, 134 (D.D.C. 2013) ("[A] judge acting in his or her judicial capacity— i.e.,
5 performing a function normally performed by a judge—is immune from suit on all judicial
6 acts.") (citations and quotations omitted).

7 **2. Chief Judge Dodge Did Not Act in the Clear Absence of Jurisdiction**

8 Similarly, Chief Judge Dodge did not act in the clear absence of jurisdiction. At the time
9 of the bench warrant, as discussed above, the Nooksack Tribal Council had been recognized by
10 the United States and the Tribal Council had ratified Chief Judge Dodge's appointment.

11 A judicial officer acts in the clear absence of jurisdiction only if he "knows that he lacks
12 jurisdiction, or acts despite a clearly valid statute or case law expressly depriving him of
13 jurisdiction." *Mills v. Killebrew*, 765 F.2d 69, 71 (6th Cir. 1985) (citing *Rankin v. Howard*, 633
14 F.2d 844, 849 (9th Cir.1980)). The scope of a judge's jurisdiction is construed broadly where
15 judicial immunity is at stake. *Penn*, 335 F.3d at 789–90. Thus, courts have held that judges enjoy
16 judicial immunity even when there are procedural defects in their appointment where they are
17 "discharging the duties of that position under the color of authority." *White by Swafford v.*
18 *Gerbitz*, 892 F.2d 457, 462 (6th Cir. 1989); *see also Wagshal v. Foster*, 28 F.3d 1249, 1254
19 (D.C. Cir. 1994).

20 This Court has already ruled once that Chief Judge Dodge is entitled to the protections of
21 judicial immunity. *See Rabang,* No. C17-0088-JCC, Dkt. No. 63 (Order of May 2, 2017). The
22 same is more true now, given the more recent United States' affirmations of the Nooksack Tribal
23 Council's authority and the Tribal Council's subsequent ratification of Chief Judge Dodge
24 appointment. No matter the salaciousness of the allegations in the Petition (*see, e.g.,* 2d
25 Amended Pet. ¶ 33 (alleging "persecution")), judicial immunity applies – even to an alleged
26 "malicious or corrupt judge" – because "judges should be at liberty to exercise their functions
27 with independence and without fear of consequences." *Bradley v. Fisher*, 80 U.S. 335, 349
28

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

(1871). This is because "[w]ithout insulation from liability, judges would be subject to harassment and intimidation . . . ." of exactly the type seen in this case and on Petitioner counsel's social media feed. *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994).

In *Bradley*, the Supreme Court illustrated the distinction between lack of jurisdiction and excess of jurisdiction with the following examples: if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction, and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction, and would be immune. *Bradley*, 80 U.S. at 352. Importantly for this case, disagreement about a judge's actions does not warrant depriving him of his immunity, and the fact that "tragic consequences" may ensue from the judge's action also does not deprive him of his immunity. *Stump v. Sparkman*, 435 U.S. 349, 350 (1978). Put differently, neither alleged ill-motive nor correctness of a judge's actions can undermine application of judicial immunity.

Chief Judge Dodge's immunity from suit remains intact and warrants dismissal of the writ.

C. Judge Majumdar is Also Entitled to Judicial Immunity

Judge Rajeev Majumdar is a pro tem judge at the Nooksack Tribal Court. 2d Amended Pet. ¶ 51. As the Second Amended Petition makes clear, Judge Majumdar was appointed on October 10, 2019, well after the arrest. 2d Amended Pet. ¶ 51. Nevertheless, for all the same reasons discussed as to Chief Judge Dodge, Judge Majumdar is entitled to judicial immunity.

Dismissal of the writ as to the Respondent Judges is warranted.

II. The Court Should Consider An Order to Show Cause on Sanctions

As discussed above, counsel for Petitioner and Petitioner are engaged in what can best be described as campaign of harassing litigation against the Nooksack Indian Tribe and its officials, with a particular unhealthy fixation on Chief Judge Dodge. Compounding this, Petitioner and her counsel have misled the Court by failing to disclose relevant facts and cases subsequent to December 2016 that are directly relevant to the claims in this Petition and completely undermine

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

Petitioner's theory of the case. *See supra* at 3-6. This conduct, collectively and individually, is greatly concerning and Respondent Judges urge the Court to consider issuing an order to show cause on whether to impose sanctions under the Court's inherent or statutory powers.

Statutorily, 28 U.S.C.A. § 1927 provides: "[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." District courts also have a " 'well-acknowledged' inherent power ... to levy sanctions in response to abusive litigation practices." *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 765 (1980). "A primary aspect of that [power] is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers v. NASCO, Inc.,* 501 U.S. 32, 44–45 (1991). "[T]he inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct." *Id.* at 49. The Court also has inherent authority to sanction a party or her attorney where either "has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y,* 421 U.S. 240, 258–59 (1975) (internal quotations omitted).

Petitioner appears to be filing multiple cases in multiples venues, raising many of the same legal theories against some or all of the same actors, in an effort to dupe one court into ruling in Petitioner's favor in order to use that judgment against the defendants in other forums. *Adams v. Elfo, et al*. – Case No. 2:19-cv-01263-JCC-MLP (W.D. Wash.); *Adams v. Dodge, et al.,* Case No. 19-2-01552-37 (Whatcom Sup. Ct.); *Adams v. Whatcom County, et al.,* Case No. 2:19-cv-01768-JRC (W.D. Wash.). A prime example of this judicial manipulation is Petitioner's reliance on a recent Whatcom County Commissioner's decision purporting to exercise exclusive jurisdiction over Petitioner's parentage matter for the proposition that the Tribal Court actions involving Petitioner are somehow motivated by bad faith.[4] 2d Amended Pet. ¶ 54; *see De Long v.*

---

[4] Further evidencing intent, Petitioner's counsel immediately took to the media to celebrate the Commissioner's ruling and defame Chief Judge Dodge, "'For the last two and a half years Elile

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

1 *Hennessey*, 912 F.2d 1144, 1148 & n.3 (9th Cir. 1990) (noting that court must "'discern whether
2 the filing of several similar types of actions constitutes an intent to harass the defendant or the
3 court.'") (internal citation omitted).

4 The Federal Rules of Civil Procedure also provide the Court with a means to address
5 concerns with either abusive filings or filings that appear to show deliberate indifference to
6 relevant facts: Rule 11 sanctions. Indeed, "Rule 11's express goal is deterrence." *Warren v.*
7 *Guelker*, 29 F.3d 1386, 1390 (9th Cir. 1994). "[W]hen there is . . . conduct in the course of
8 litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on
9 the Rules rather than the inherent power." *Chambers,* 501 U.S. at 50 "District courts can use
10 Rule 11 to impose sanctions on any party that files … for an improper purpose or who does so
11 without a legal or factual basis." *Center for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092,
12 1102 (9th Cir. 2016) (citation and internal quotation marks omitted); *see Primus Auto. Fin.*
13 *Servs., Inc. v. Batarse*, 115 F.3d 644, 649 (9th Cir. 1997) (noting that "[t]he district court has
14 broad fact-finding powers with respect to sanctions") (citation and quotation marks omitted).

15 Respondent Judges urge this Court to consider issuing an order to show cause directing
16 Petitioner and her counsel to explain why it should not impose sanctions for vexatious litigation,
17 or in the alternative, litigation that shows a pattern of harassment, and for failure to disclosure all
18 relevant facts to this Court in the Petition.

19 **CONCLUSION**

20 For the foregoing reasons, Respondent Judges respectfully request that the writ be denied
21 as to them and dismissed without an evidentiary hearing.

22 DATED this 27th day of November, 2019.

23 By: */s/ Rob Roy Smith*
24 Rob Roy Smith, WSBA #33798

25

26 Adams has maintained that Ray Dodge abused his authority by asserting jurisdiction over her
child,' said her lawyer, Gabriel Galanda. … "He has made a mockery of Indian courts and justice
27 systems throughout the country.'" *See* https://lastrealindians.com/news/2019/10/21/state-court-rejects-nooksack-judge-ray-dodges-jurisdiction.

28

KILPATRICK, TOWNSEND & STOCKTON LLP
1420 FIFTH AVENUE, SUITE 3700
SEATTLE, WA 98101
(206) 467-9600

Email: rrsmith@kilpatricktownsend.com
Rachel B. Saimons, WSBA # 46553
Email: RSaimons@kilpatricktownsend.com
Kilpatrick Townsend & Stockton, LLP
1420 Fifth Avenue, Suite 3700
Seattle, Washington 98101
Tel: (206) 467-9600
Fax: (206) 623-6793

Attorneys for Raymond Dodge and Rajeev Majumdar

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2019, I electronically filed the foregoing with the clerk of the Court using the CM/ECF system which will send notification of such filing to the parties registered in the Court's CM/ECF system.

DATED this 27th day of November, 2019.

Kilpatrick Townsend & Stockton, LLP

By: */s/ Rob Roy Smith*
Rob Roy Smith, WSBA #33798
Email: rrsmith@kilpatricktownsend.com
Attorneys for Raymond Dodge and Rajeev Majumdar

72692989V.2