NO. 19-35743

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBERT DOUCETTE, et al.
Plaintiffs-Appellants,

v.

DAVID BERNHARDT, JR., et al.
Defendants-Appellees,

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON
No. 2:18-cv-00859-TSZ

NOTICE OF RULE 62.1 MOTION FOR INDICATIVE RULING ON PLAINTIFFS' RULE 60(b) AND 15(a)(2) MOTIONS

Gabriel S. Galanda
Anthony S. Broadman
Ryan D. Dreveskracht
GALANDA BROADMAN PLLC
P.O. Box 15146
8606 35th Avenue NE, Ste. L1
Seattle, WA 98115
PH: 206-557-7509
FX: 206-299-7690
Attorneys for Plaintiff-Appellants

Plaintiff-Appellants notify this Court that today they filed a Rule 62.1 Motion for Indicative Ruling On Plaintiffs' Rule 60(b) and 15(a)(2) Motions with the lower court. In contravention of the Administrative Procedure Act, 5 U.S.C. § 706, the U.S. Department of the Interior ("DOI") Defendants omitted from the Administrative Record four email exchanges that reveal how and why Principal Deputy Assistant Secretary ("PDAS") John Tahsuda came to recognize the new Nooksack Tribal Council on March 9, 2018.

According to those newly discovered emails—which were sent from February 15, 2018, to March 8, 2018, between DOI's brand new Nooksack special election point-person and the holdover Tribal Council's Washington, D.C. private lobbyist—PDAS Tahsuda's decision "occur[ed] by then" to avoid the possibility "that a federal court could find duly elected Tribal officials liable for RICO claims."

PDAS Tahsuda issued the decision by March 9, 2018 because up until that moment, a "lack of DOI recognition" could have "mean[t] that the Tribe's officials [we]re acting ultra vires, and thus operating a 'racket' under RICO" according to the Ninth Circuit Court of Appeals in a pending appeal, *Rabang v. Kelly*, No. 17-35427 (9th Cir.). DOI also entertained some form "Nooksack Draft Resolution/Proposal" from the holdover Council prior to PDAS Tahsuda's decision, the proof of which DOI also omitted from the AR.

Consistent with prior behavior of the holdover Council,[1] the four withheld email exchanges indicate that both the Bureau of Indian Affairs ("BIA") Regional Director's, March 7, 2018, Endorsement Memorandum and PDAS Tahsuda's March 9, 2018, recognition decision were rendered in haste at the lobbyist's urging—to aid the holdover Tribal Councilpersons **as civil RICO defendant-appellants** in an appeal hearing before this Court in *Rabang v. Kelly*, No. 17-35427, **on the very same day of PDAS Tahsuda's decision: March 9, 2018.**

This Court has instructed the Parties to promptly inform it "if the case has become moot, settlement discussions are pending, or relevant precedent has been decided since the briefs were filed." FRAP *Court Structures and Procedures* E(7). Plaintiff-Appellants pending Rule 62.1 could make this appeal moot.

Plaintiff-Appellants will promptly notify this Court of the outcome of their Rule 62.1 Motion.

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[1] On March 9, 2018, Ninth Circuit Court of Appeals Senior Judge Richard B. Clifton called the holdover Council's "record" dating back to early 2016 one that a "tin-pot dictator of a banana republic might be proud of." *Rabang v. Kelly*, No. 17-35427 (9th Cir. Mar. 9, 2018), Dkt. # 32, at 0:55. Nobody should think that the holdover Councilpersons would deviate from their despotic scheme when it came to the December 2, 2017, special election.

DATED this 29th day of January 2020.

GALANDA BROADMAN PLLC

/s/ Gabriel S. Galanda

Gabriel S. Galanda, WSBA #30331
Anthony S. Broadman, WSBA #39508
Ryan D. Dreveskracht, WSBA #42593
P.O. Box 15416,
8606 35th Avenue NE, Suite L1
Seattle, WA 98115
PH: 206-557-7509
gabe@galandabroadman.com
anthony@galandabroadman.com
ryan@galandabroadman.com
Attorneys for Plaintiff-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document, **NOTICE OF RULE 62.1 MOTION FOR INDICATIVE RULING ON PLAINTIFFS' RULE 60(b) AND 15(a)(2) MOTIONS,** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 29, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system to the following parties:

Brian C. Kipnis
Assistant United States Attorney
Office of the United States Attorney
5220 United States Courthouse
700 Stewart Street
Seattle, Washington 98101-1271
Phone: (206) 553-7970
Fax: (206) 553-4073
E-mail: brian.kipnis@usdoj.gov
Attorney for Federal Defendants

Signed under penalty of perjury and under the laws of the United States this 29th day of January 2020.

/s/ Gabriel S. Galanda
Gabriel S. Galanda, WSBA #30331