

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

MARGRETTY RABANG, *et al.*,

Plaintiffs,

v.

ROBERT KELLY, JR., *et al.*,

Defendants.

Case No. 2:17-cv-00088-JCC

**NOTICE OF RULE 62.1 MOTION  
FOR INDICATIVE RULING ON  
PLAINTIFFS’ RULE 60(b) AND  
15(a)(2) MOTIONS IN *DOUCETTE V.  
BERNHARDT***

Plaintiffs notify this Court of a Rule 62.1 Motion for Indicative Ruling On Plaintiffs’ Rule 60(b) and 15(a)(2) Motions filed with the lower court today in *Doucette v. Bernhardt*, No. 2:18-cv-00859-TSZ (W.D. Wash.). 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.”

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

8 Consistent with prior behavior of the holdover Council,<sup>1</sup> the four withheld email  
 9 exchanges indicate that both the Bureau of Indian Affairs (“BIA”) Regional Director’s, March 7,  
 10 2018, Endorsement Memorandum and PDAS Tahsuda’s March 9, 2018, recognition decision  
 11 were rendered in haste at the lobbyist’s urging—to aid the holdover Tribal Councilpersons **as**  
 12 **civil RICO defendant-appellants** in the appeal hearing before the Ninth Circuit arising from this  
 13 case **on the very same day of PDAS Tahsuda’s decision: March 9, 2018.**

15 As Plaintiffs’ Rule 62.1 Motion in *Doucette* could give rise to a similar motion here,  
 16 Plaintiff will promptly notify this Court of the outcome of the Rule 62.1 Motion in *Doucette*.<sup>2</sup>

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 21 <sup>1</sup> On March 9, 2018, Ninth Circuit Court of Appeals Senior Judge Richard B. Clifton called the holdover Council’s  
 22 “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.

23 <sup>2</sup> Plaintiffs would also ask this Court to cause Defendants’ counsel to show cause as to why they should not be  
 24 sanctioned for violating Washington Rule of Professional Conduct 3.3 by failing to disclose—in candor towards to  
 25 this Court in July of 2018—their own influence of PDAS Tahsuda’s March 9, 2018, recognition decision while. *See*  
 Dkt. # 162. The newly discovered emails disclose that “Counsel for the Tribe” urged that “the timing” of PDAS  
 Tahsuda’s decision coincide with the March 9, 2018, Ninth Circuit oral argument. The Court will recall that around  
 that same time, the Washington State Bar Association admonished defense counsel for having “assisted her client, the  
 Nooksack Tribe, in structuring a ‘justice system’ that is probably not worthy of that description,” explaining that her  
 representation of the Tribe “is not a project that a lawyer should be proud of, no matter how much revenue it may  
 generate.” Dkt. #160-2 at 4. That reasoning now extends to counsel’s role in PDAS Tahsuda’s decision.

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DATED this 29th day of January 2020.

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CERTIFICATE OF SERVICE

On January 29, 2020, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF System, which will send electronic notification of such filing to the following parties:

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

/s/Wendy Foster  
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