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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELILE ADAMS,

Petitioner,

v.

RAYMOND DODGE, et al.,

Respondents.

NO. 2:19-cv-1263 JCC

**PETITIONER’S MOTION FOR
RECONSIDERATION**

NOTED FOR HEARING
OCTOBER 16, 2020

Petitioner Elile Adams moves for reconsideration of the Court’s September 23, 2020, Order of Dismissal and Judgment. Dkt. # 54; Dkt. # 55.

The Court committed manifest error by (1) concluding that the Nooksack Tribe’s “jurisdictional rights to trust lands before Public Law 280 would, indeed, survive Public Law 280”; and (2) overlooking Petitioner’s third objection, that the bad faith exception to the tribal exhaustion doctrine applies. Dkt. #54 at 3-4; Dkt. # 48 at 3.

As to the first error, the Court misapprehended that Nooksack Tribal jurisdictional rights over the Suchanon Allotment predated Public Law 280 vis-à-vis RCW 37.12.010. Dkt. #54 at 3-4. Both the federal and Washington State versions of Public Law 280 were passed in 1963. *State v. Clark*, 308 P.3d 590, 593 (Wash. 2013). The Nooksack Tribe was not recognized by the United States until 1973. *State v. Cooper*, 928 P.2d 406, 408 n.5 (Wash. 1996). The Court, therefore, strayed in considering whether RCW

1 37.12.010 divested Nooksack from criminal jurisdiction over that off-reservation allotment—there was no
2 Nooksack criminal jurisdiction to divest in 1963. Dkt. #54 at 3.

3 As of 1963, individual “Indians . . . on their . . . allotted lands” that were beyond “an established
4 reservation” were subject to exclusive state criminal jurisdiction.¹ RCW 37.12.010; AGO 63-64 No. 68
5 (Nov. 8, 1963). Ten years later, the “establishment of the Nooksack Reservation d[id] not vitiate the
6 State’s pre-existing assumption of jurisdiction over Indian lands outside the Nooksack Reservation.”
7 *Cooper*, 928 P.2d at 410. The state’s **pre-existing jurisdiction** over Indians on the Suchanon Allotment
8 remained—and still remains—exclusive. *See id.*; AGO 63-64 No. 68. Controlling state authority is
9 neither “mixed,” “unclear,” nor “conflicting.” Dkt. #54 at 3. AGO 63-64 No. 68 and *Cooper* are quite
10 clear: Washington State jurisdiction over the Suchanon Allotment is exclusive.

11 As to the second error, the Court failed to apprehend Petitioner’s third objection that the bad faith
12 exception to the tribal exhaustion is inapplicable on these facts. Dkt. # 48 at 3 (“Petitioner renews her
13 alternative claim that Respondents’ bad faith eliminates any need for her to exhaust Tribal Court
14 remedies.” (citing *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196, 1201 (9th Cir.
15 2013); *Aces v. Blue Lake Rancheria*, No. 16-5391, 2017 WL 733114, at *3 (N.D. Cal. Feb. 24, 2017));
16 *see also* Dkt. # 29 at 15-17; Dkt. #36 at 7.

17 The Ninth Circuit Court of Appeals instructs that when a tribal court “that acts . . . to avoid the
18 requirement to exhaust tribal court remedies,” exhaustion is not required under the bad faith exception.
19 *Grand Canyon Skywalk Dev.*, 715 F.3d at 1201. The Nooksack Tribal Court has foreclosed any
20 opportunity for Petitioner to exhaust her remedies there.² After rejecting Petitioner’s *habeas corpus*
21 application and *mandamus* petition and denying Petitioner her right to counsel—all in clear violation of
22 Nooksack common law³— Respondents have:

23 ¹ To illustrate, the state had exclusive criminal jurisdiction over George Swanaset while on his allotted lands in the
24 late 1950s, even though the Nooksack Tribe was not recognized. RCW 37.12.010; Dkt. # 37-5.

25 ² The Court has not yet corrected the Magistrate’s misapprehension that Petitioner can “move for acquittal on the
grounds the Nooksack Parenting Action is void or . . . to strike the warrant and return of bail.” Dkt. # 35 at 11; *see*
also Dkt. # 25-2; Dkt. # 36 at 4. Petitioner still has not received a Summons or Complaint for the alleged Failure to
Appear violation for which she was falsely arrested and imprisoned on July 30, 2019. Dkt. # 53 at 2.

³ The Court was also mistaken in suggesting that Petitioner’s counsel “cannot practice before the Nooksack Tribal
Court” for want of “a business license issued by the Nooksack Indian Tribe.” Dkt. # 43 at 5. Any business license
PETITIONER’S MOTION FOR RECONSIDERATION OR, ALTERNATIVELY,
OBJECTIONS TO MAGISTRATE’S REPORT AND RECOMMENDATION - 2

- 1 • Refused to indicate whether her *pro se habeas corpus* application has even been accepted by the Tribal Court (Dkt. # 47 at 2);
- 2 • Refused to either consider her application or issue any writ to allow service of process upon Respondents “without . . . delay” (*Id.*; Dkt. # 13 at 91; Dkt. # 49 at 2); and
- 3 • Conspired *ex parte* with defense counsel of record to deny Petitioner any consideration of her application or issuance of any writ (Dkt. # 49 at 2; Dkt. # 49-1).

4 The Court appears to be unconcerned with any of these egregious due process and ethical violations—
 5 violations that would not occur or be tolerated before this Court; violations that justify the Ninth Circuit’s
 6 instruction regarding the bad faith exception and the U.S. Supreme Court’s instruction regarding the need
 7 for Indian *habeas corpus* under 25 U.S.C. § 1303.

8 *Habeas corpus* remains the only federal remedy afforded to Indigenous persons like Petitioner,
 9 whose liberty interests and due process rights have been assailed by tribal bad actors. *See Santa Clara*
 10 *Pueblo v. Martinez*, 436 U.S. 49, 67 (1978) (“Congress apparently decided that review by way of *habeas*
 11 *corpus* would adequately protect the individual interests at stake while avoiding unnecessary intrusions on
 12 tribal governments.”). That narrow remedy is intended to redress precisely the type of “arbitrary and
 13 unjust actions” that are before this Court. *Id.*

14 In the interest of justice, Petitioner respectfully requests that the Court reconsider.

15 DATED this 5th day of October 2020.

16 GALANDA BROADMAN, PLLC

17 s/Ryan D. Dreveskracht

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21
 22 requirement imposed upon Galanda Broadman, PLLC, was challenged before the Nooksack Judiciary on a *pro se*
 23 basis and invalidated by the Nooksack Court of Appeals on September 21, 2016. Declaration of Gabriel S. Galanda,
 24 Exs. A, B; Dkt. # 30-3 (*In re Gabriel S. Galanda, et al. v. Nooksack Tribal Court*, No. 2016-CI-CL-001 & 002
 (Sept. 21, 2016), Order Regarding Plaintiffs’ Second Motion for Show Cause Order Re: Partial Summary Judgment,
 Contempt, or Mandamus); *see also* Dkt. # 37-8. There are no licensing or conditions to the firm’s practice of law at
 Nooksack. Dkt. # 30-3 at 2.

25 PETITIONER’S MOTION FOR RECONSIDERATION OR, ALTERNATIVELY,
 OBJECTIONS TO MAGISTRATE’S REPORT AND RECOMMENDATION - 3

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CERTIFICATE OF SERVICE

I, Wendy Foster, declare as follows:

1. I am now and at all times herein mentioned a legal and permanent resident of the United States and the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to testify as a witness.

2. I am employed with the law firm of Galanda Broadman PLLC, 8606 35th Avenue NE, Ste. L1, Seattle, WA 98115.

3. Today, 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.

Signed at Seattle, Washington, this 5th day of October 2020.

s/Wendy Foster

Wendy Foster