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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELILE ADAMS,

Petitioner,

v.

RAYMOND DODGE, RAJEEV MAJUMDAR, BETTY LEATHERS, DEANNA FRANCIS, NOOKSACK TRIBAL COURT, and NOOKSACK INDIAN TRIBE,

Respondents.

Case No. 2:19-cv-01263 JCC

RESPONDENT JUDGES DODGE AND MAJUMDAR'S RESPONSE TO PETITIONER'S OBJECTIONS TO MAGISTRATE'S APRIL 13, 2021 REPORT AND RECOMMENDATION

NOTED: MAY 21, 2021

INTRODUCTION

Respondents Nooksack Tribal Court Chief Judge Raymond G. Dodge, Jr., and Pro Tem Judge Rajeev Majumdar ("Respondent Judges"), pursuant to the Magistrate's April 13, 2021 Report and Recommendation, Dkt. 69, hereby respond to Petitioner Elile Adams' Objections to Magistrate's April 13, 2021 Report and Recommendation, Dkt. 70.

Petitioner's Objections are the latest in a seemingly endless number of challenges using the same, well-worn arguments that have been thoroughly considered and rejected by the Court. In particular, Petitioner's challenge on the basis of jurisdiction has been briefed and analyzed at length, with the repeated determination that the Tribe did not "plainly" lack jurisdiction over the Suchanon Allotment. Dkt. 35 at 8; Dkt. 45 at 10; Dkt. 54 at 4; Dkt. 69 at 10. The issue of Respondent Judges' immunity has similarly been briefed several times, with the Magistrate twice recommending that Judge Dodge and Judge Majumdar be dismissed from suit. Dkt. 45 at 12–17; Dkt. 69 at 3, n.1. As neither the facts nor the law relating to these issues have changed, continued

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re-litigation is futile. Finally, with respect to the issue of comity, Petitioner's baseless accusations are contradicted by the underlying facts of her Tribal Court case, and show that she has not been denied due process; therefore, the Tribal Court is entitled to comity as found by the Magistrate.

The Court should decline Petitioner's invitation to review—yet again—the same issues of jurisdiction, immunity, and comity, and should adopt the Report and Recommendation of the Magistrate in its entirety, and deny Petitioner's Objections and request for a writ of habeas corpus.

ARGUMENT

A. The Magistrate Correctly Found That the Tribe Did Not Plainly Lack Jurisdiction

Petitioner, Respondents, and Respondent Judges have briefed the issue of the Tribe's concurrent jurisdiction at length. Dkts. 56, 65, and 66. After reviewing those arguments, the Magistrate issued a thorough analysis of the law and her findings, culminating in the determination that "the Nooksack Indian Tribe did not plainly lack jurisdiction over the allotted lands." Dkt. 69 at 10. This is consistent with the previous determination of this Court. Dkt. 54 at 4. Unwilling to accept this conclusion, Petitioner now seeks to re-litigate the identical issue of the Tribe's jurisdiction over the allotted Suchanon Parcel, setting forth much of the same authority previously provided to the Magistrate. She should not be permitted to do so. *See Palmer v. Fraker*, C09-5703 RJB, 2010 WL 1850795, at *1 (W.D. Wash. May 7, 2010) (adopting magistrate's report and denying habeas corpus where petitioner's objections were "simply a restatement of the argument that has been exhaustively and thoroughly analyzed by the Magistrate Judge.").

For example, Petitioner continues to cite to a 1963 opinion from the Washington Attorney General as dispositive evidence of the State's exclusive jurisdiction. Dkt. 70 at 3–4. However, both the Magistrate and the Court have previously found that opinion unpersuasive, explaining that while courts sometimes defer to Attorney General opinions, they "are not bound by Attorney General opinions," and "such opinions are not controlling." Dkt. 45 at 10–11, Dkt.

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54 at 3. Petitioner also continues to have misplaced reliance on *State v. Cooper*, 928 P.2d 406, 408 (Wash. 1996), ignoring the Court's earlier determination that there, "the question before the court was not whether the *tribe's* jurisdiction extended to off-reservation trust lands, but whether the *state's* did." Dkt. 54 at 3 (emphasis original). And, although Petitioner now argues that the Magistrate "overlooked 18 U.S.C. § 1162(c)," Dkt. 70 at 1, the Magistrate directly cited to that statute in the discussion of Public Law 280, and nonetheless concluded that "the Nooksack Indian Tribe did not plainly lack jurisdiction over the allotted lands." Dkt. 69 at 6–7, 10.

Moreover, Petitioner misstates the applicable jurisdictional standard by asserting that "Respondents do not and cannot cite any controlling black letter law establishing that Nooksack enjoys concurrent criminal jurisdiction there." Dkt. 70 at 5. As it relates to whether tribal exhaustion is required, however, the standard is whether the Tribe was ***plainly lacking*** jurisdiction over the allotted lands. And, as the Magistrate correctly determined, "[n]othing in the language of P.L. 280, RCW 37.12, or any relevant amendments appears to have divested the Nooksack Indian Tribe of concurrent jurisdiction." Dkt. 69 at 10. As aptly noted by the Magistrate, "[t]hat this jurisdiction issue is still before the Court after several motions for reconsideration and supplemental briefing supports the finding that tribal jurisdiction was not *plainly* lacking." *Id.* at 11 (emphasis original). This is consistent with the Court's earlier determination that "the issue of jurisdiction is far from *plain*, even under Washington law." Dkt. 54 at 4 (emphasis original). Petitioner cannot establish either that the State's jurisdiction over the Suchanon Parcel is exclusive or that the Tribe was plainly lacking jurisdiction. The Court should adopt the Magistrate's Report and Recommendations, and deny Petitioner's Objections and writ of habeas corpus.

B. The Respondent Judges Are Immune From Suit

Petitioner also objects to the Magistrate's Report and Recommendation, in part, on the alleged basis that Judge Majumdar "does not enjoy immunity." Dkt. 70 at 7. Petitioner contends that because Respondent Judge Majumdar has not been sued in his personal capacity, he is not entitled to judicial immunity. *Id.* Like jurisdiction, this argument is not new, having been

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previously raised by Petitioner and addressed by the Respondent Judges in earlier pleadings. Dkt. 46 at 6; Dkt. 52 at 2–3. This time, however, unlike in her previously filed objections, Petitioner makes no allegations with respect to Respondent Judge Dodge, instead alleging only that Respondent Judge Majumdar is not immune. *Compare* Dkt. 70 at 7 *with* Dkt. 46 at 6 (asserting that "judicial immunity is unavailable to judicial respondent judges."). By excluding Judge Dodge from this argument, Petitioner appears to finally concede that Judge Dodge's recusal renders him an improper respondent in this matter. *See* Dkt. 52 at 2. Unwilling to accept total defeat on this issue, however, Petitioner continues to allege that Respondent Judge Majumdar does not enjoy immunity. As long articulated by Respondent Judges, this argument fails.

The doctrine of judicial immunity centers on whether the actions complained of were taken in a judicial capacity. The United States Supreme Court has made clear that judicial immunity is overcome in only two sets of circumstances: where the judge is liable for nonjudicial actions (i.e., actions not taken in the judge's judicial capacity), or where the judge takes action which was taken in the complete absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11–12 (1991). Judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). There is no dispute that the conduct of Respondent Judge Majumdar complained of here was judicial. *See* Dkt. No. 45 at 16-17. Moreover, the actions which underlie the allegations against Judge Majumdar—presiding over the legal matter involving Petitioner— were not taken in the absence of all jurisdiction. *See* Dkt. 21 at 10; Dkt. 45 at 17. As neither exception applies, Respondent Judge Majumdar remains immune from Petitioner's suit.

Further, even if being named in his official capacity were enough to preclude the application of judicial immunity, as alleged by Petitioner, Judge Majumdar would nonetheless be shielded by the Tribe's sovereign immunity as official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). The Ninth Circuit has repeatedly recognized that "when

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tribal officials act in their official capacity and within the scope of their authority, they are immune" from suit. *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991); *United States v. Oregon*, 657 F.2d 1009, 1012 n.8 (9th Cir. 1981); *Snow v. Quinault Indian Nation*, 709 F.2d 1319, 1321 (9th Cir. 1983), *cert. denied*, 467 U.S. 1214 (1984). Indeed, at least one court has specifically barred a suit against a tribal court judge in his official capacity on the basis of tribal sovereign immunity. *Laforge v. Down*, CV-17-48-BLG-BMM-TJC, 2018 WL 826380, at *2 (D. Mont. Feb. 9, 2018) (ordering dismissal with prejudice because "[t]he tribe's sovereign immunity covers its judicial branch, the Crow Tribal Court, as well as the judges of that court acting in their official capacity.").

Artful pleading cannot circumvent the broad protections of judicial immunity and sovereign immunity. As was previously found by the Magistrate, Dkt. 45 at 16–17, Judge Majumdar is immune from suit and the Court should reject Petitioner's continued effort to make him a party to this case. The Magistrate's Report and Recommendation recommending dismissal of Petitioner's habeas petition should be adopted.

C. This Matter Should Be Dismissed on the Basis of Comity

Finally, Petitioner argues that the Nooksack Court is not entitled to Comity, because she "was not afforded due process of law." Dkt. 70 at 6. Petitioner implies that the Nooksack Court has asserted jurisdiction in bad faith, and/or that she has lacked the opportunity to challenge the court's jurisdiction. *Id.* at 7. As set forth in the Nooksack Respondents' Response, however, the Court has previously provided the Petitioner with a public defender at no cost, and she has strategically consented to repeated continuances of her criminal case during the pendency of this litigation given its potential impact on the Court's jurisdiction. Dkt. 72 at 4; Dkt. 72-2 at 2 (expressly referencing "defendant's request for additional time to allow Federal litigation re: jurisdiction to proceed."). Petitioner has not been denied due process, the Magistrate correctly concluded that this matter should be dismissed in the interest of comity. Dkt. 69 at 11.

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CONCLUSION

For the foregoing reasons, Respondent Judges respectfully request that the Court adopt the Magistrate's Report and Recommendation, grant their Return and dismiss Petitioner's habeas petition.

DATED this 11th day of May, 2021.

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