

October 16, 2013

VIA EMAIL AND FEDERAL EXPRESS

The Honorable Sally Jewell
Secretary
U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Re: Disenrollment of 306 Nooksack Tribal Members

Dear Secretary Jewell:

We, [the nearly 900 undersigned enrolled Nooksack tribal members and other Washington State tribal citizens](#), write to you on behalf of 306 enrolled Nooksack tribal members (“the Nooksack 306”) of the devastation they are facing by a wrongful disenrollment procedure taking place on the Nooksack Indian Reservation in Washington State, in violation of various federal and state laws. This disenrollment matter is not merely “internal to the Nooksack Indian Tribe” or “a matter of tribal self-governance.” It is one of federally protected voting and civil rights, and international human rights.¹ Accordingly, we implore your intercession as the Secretary of the Interior through an immediate federal inquiry. Please consider these heartfelt stories of the Nooksack 306:

- Sonia Lomeli is 74 years old and lives in a house that she owns on Nooksack land. She is a diabetic, depending on the Tribe for medical care, including transportation to a kidney dialysis center three times a week. Sonia has stated “I am afraid I will die if they disenroll me.” Sonia also cares for a daughter with cerebral palsy, who lives with her in her house and who, likewise, depends on her Nooksack membership for medical care. They are now at risk of being evicted from their only home, and losing all medical care. In all, 28 members of the Nooksack 306 face losing the homes they own, and 37 Nooksack elders face termination from their Tribe.

- Lee Carr, age 18, was enrolled by the Nooksack Tribal Council thirteen years ago as a part of a settlement of the Tribe’s liability associated with his physical abuse while in Nooksack tribal foster care at age 5. Lee was “repeatedly kicked in the stomach will lose three-quarters of his intestine,” which resulted in “permanent injuries [that] will require a special diet the rest of his life.” *Boy Who Was Kicked Suffered Lasting Damage*, SEATTLE TIMES, Oct. 5, 2010. His Tribal Council now seeks to breach the enrollment promise that they made to him when they settled the Tribe’s part in his permanent injury.

- Nooksack school children Giovanni Coleman, Alexandra Coleman, Kaleiolani Jefferson and Miana Rabang were each denied school supplies stipends by the Tribal Council in August because they are “proposed for disenrollment.” As Giovanni wrote the Nooksack Tribal Council: “I am 8 years old and I am sad because I have no supplies for my 1st day of school. I

¹ Akilah Kinnison, *Fighting Disenrollment: The Nooksack 306*, INDIAN COUNTRY TODAY MEDIA NETWORK (Oct. 8, 2013), <http://indiancountrytodaymedianetwork.com/2013/10/08/fighting-disenrollment-nooksack-306> (“For the Nooksack 306, as they have come to be known, this struggle encompasses more than tribal citizenship – it is about their most fundamental human rights as indigenous peoples.”).

want you to know that it was wrong to do that to all of us kids.” According to Miana: “I don’t understand why we couldn’t get school supplies for school because we are all still enrolled. About this whole disenrollment I feel so rejected.” If the withheld monies are Johnson O’Malley funds, Interior should be alarmed. In all, 64 Nooksack children face termination from their Tribe.

- Terry St. Germain is a father and Nooksack fisherman. He explains: “Fishing is the only profession I have ever known. . . . If I am disenrolled, I am very worried that I will not be able to put food on the table for my current family of eight as I have for the last 27 years as a Nooksack Treaty fisherman and the last few years as a Nooksack Treaty subsistence hunter as well.”

- Nooksack Tribal Councilpersons Michelle Roberts and Rudy St. Germain have already both been fired from their day jobs, as have several other members of the Nooksack 306. Michelle was the Human Resource Manager at the Nooksack River Casino for six years, before she was abruptly fired “at will” on August 21. Rudy was the Landscape Manager and had done landscaping for the Tribe for seven years, before he was also fired in August, without any cause whatsoever. In all, 11 members of the Nooksack 306 have either been fired, or forced to resign, from their employment with the Tribe or its enterprises this year.

Lives have already been ruined. Elders, children and families are being harmed, in very real ways. We ask that you now do what you can to help stop this human rights travesty.

We have provided below for your consideration a legal analysis of the federal and state laws that have been violated throughout this wrongful disenrollment process. But first, please understand that the Nooksack 306 are who they say they are – Nooksack Indian – as even Interior and the BIA have recognized historically through federal Indian heirship records.

A. The Ancestry and Genealogy of the Nooksack 306

All of the Nooksack 306 descend from Chief Matsqui George. According to Interior Department administrative Indian probate records, Matsqui George was Nooksack. *See Order Determining Heirs, In re Louis (Louie) George*, No. IP-PO-61K-71 (U.S. Dept. Interior, OHA Sept. 28, 1972) (identifying Matsqui George as “Nooksack (Unal) [unallotted]”). Matsqui George was the biological father of Annie George. Annie’s biological mother was Marie Siamat, who died to days after giving birth to Annie. Matsqui George was remarried, to Madeline Jobe, also a Nooksack Indian. *See* Bruce Miller, University of British Columbia, Ph.D., Letter (June 11, 2013) (unpublished expert opinion: “The evidence shows that Madeline Jobe (George) and Matsqui George were Nooksack.”). Through adoption, Madeline became Annie’s mother, as reflected on an 1881 census.

Annie George went on to marry Andrew Mack James, and they were the biological parents of six children. Three of those children, Emmy Rosie James, Louise Mary James, and Elizabeth Lizzie James, are the matriarchs of the modern day Narte-Gladstone, Rapada and Rabang Families – the Nooksack 306. Each of those three sisters married migrant Filipino farm/cannery workers during the Great Depression. Today, each of the Nooksack 306 indisputably has *at least* 1/4 Indian blood and Nooksack ancestry, as well as Filipino lineage; each descends from those three matriarchs, whose Nooksack mother was Annie George and Nooksack grandfather was Matsqui George.

Consistent with Interior's Indian probate records, two Ph.D. anthropologists confirm that because at least Matsqui George was Nooksack, so was Annie George, and thus so were her three daughters, and in turn so are the Nooksack 306. See Jay Miller, University of Washington, Ph.D., Nooksack Pedigrees Re: Annie George (May 7, 2013) (unpublished expert opinion: "In all, it is my informed professional opinion that because at least Matsqui George was Nooksack by blood, his biological daughter, Annie George Mack James, was too.")² Yet the prevailing Nooksack Tribal Council faction will hear none of this proof.

B. Violations of U.S. Constitution's Fifteenth Amendment and Equal Protection Clause, and Indian Civil Rights Act

On March 1, 2013, the prevailing six-person faction of the Nooksack Tribal Council proposed an amendment to the Nooksack Constitution "to remove § 1(h)." According to the Tribal Council Chairman, the change was designed to prevent "losing control of the cultural identity of the Nooksack Tribe" by targeting "large groups or families that have much weaker ties to Nooksack than the rest of us." The change, via a federal mail-in election, specifically targets the Nooksack 306 that are currently scheduled for disenrollment, in violation of **the Fifteenth Amendment and the Equal Protection Clause of the U.S. Constitution as well as the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(8)**, and as incorporated into the Constitution of the Nooksack Indian Tribe.

The Nooksack Tribal Court has thus far offered little relief pursuant to the Indian Civil Rights Act. The Court's single Judge reports directly to, and gets paid by, the Tribal Council. The Tribal Court has thus far denied all of the Nooksack 306's requests for substantive relief in one suit, which disputed the propriety of initiating disenrollment against an identifiable class and other related grievances. The Judge has otherwise shown her outright allegiance to the prevailing faction of Tribal Council. The dismissed suit is currently before the Nooksack Court of Appeals, which has stayed all disenrollment proceedings until the merits are heard. Barring a reversal of the stay, it is expected to last until at least December.

A second Indian Civil Rights Act suit – disputing the propriety of disenrollment procedures promulgated by the Tribal Council and against the Nooksack 306 in August – is currently before the Tribal Court, as is a pending motion to dismiss filed by the Tribal Council. Those procedures would only allow a disenrollee a ten-minute "hearing," via teleconference and 1-800 number, in order to defend against their disenrollment. A disenrollee would have no right to confront their accuser, or even address them face-to-face and eye-to-eye. Even worse, those procedures disallow a disenrollee from being represented by legal counsel or assisted by any family, during the hearing. The procedures are designed to hasten the Nooksack 306's disenrollment. Given the Tribal Court Judge's summary dismissal of the first suit, there is little hope that this suit will survive the Council's latest dismissal motion. Federal intercession is needed, and warranted given the federal implication of this particular disenrollment controversy.

C. Violations of Indian Reorganization Act and Freedom of Information Act

On March 20, 2013, the BIA Acting Northwest Regional Director purportedly completed the BIA's "technical review" of the proposed constitutional amendment and authorized the BIA

² The Order Determining Heirs in *In re Louis (Louie) George*, and expert opinion of Dr. Jay Miller, are available at: <http://turtletalk.files.wordpress.com/2013/06/second-declaration-of-gabriel-s-galanda.pdf> (Exhibits A and B). The expert opinion of Dr. Bruce Miller, which has already been offered in litigation, is available upon Interior's request.

“to call and conduct the secretarial election.” The BIA did so without ensuring that the proposed amendment does not violate federal law, in violation of **the Indian Reorganization Act, 25 U.S.C. § 476(d)(1)**. See 25 U.S.C. § 476(d)(1) (“the Secretary shall approve the constitution and bylaws or amendments thereto . . . unless the Secretary finds that the proposed constitution, and bylaws or any amendments are contrary to applicable laws.”); see also 76 Interior Dec. 353 (D.O.I.), 355, 1969 WL 11489 (1969) (mandatory policy against IRA constitutional amendment that creates impermissible, exclusionary classes of tribal membership); 25 C.F.R. § 81.2-.3 (same). Indeed, one leading Indian law professor has rightfully called the secretarial election a “disenrollment election.”³

Meanwhile, the BIA has refused to produce 1,000 pages of records regarding the disenrollment election in response to a request under the **Freedom of Information Act, 5 § U.S.C. 552**, unless the Nooksack 306 pay \$10,000 – an astonishing \$10 a page – for those records. In response to a fee waiver request, the BIA Regional Director deemed the request to be one of “commercial interest,” explaining: “This request concerns individuals that would derive benefits from being enrolled in a specific tribal government and disclosure provides specific information on how individual tribal members voted. As such, your commercial interest in these disclosures is your primary interest and clearly outweighs any public interest” in disclosure. It is astonishing – and indeed offensive – that records of federal disenrollment via election would be deemed for “commercial” purpose and further, would not be produced absent a \$10/page payment by a group of taxpaying Indians who can ill afford to pay that much money. And the BIA also stands in violation of the federal common law, which requires the agency, as federal Indian trustee, to freely produce to tribal beneficiaries “government documents prepared in aid of trust administration.” *Osage Nation v. U.S.*, 66 Fed.Cl. 244 (Fed. Cl. 2005) (“the requirements of FOIA serve different policies and interests” than does the execution of the trust duty).

Pending before the U.S. District Court for the Western District of Washington is a suit that disputes the BIA’s approval of the changes to the Nooksack Constitution, other related federal action, and the BIA’s refusal to turn over key documents related to disenrollment and related federal election to two Nooksack Tribal Councilpersons who are among the Nooksack 306. An emergency motion to enjoin the BIA from holding the election to change the Nooksack Constitution was denied by the Court within a week of filing the lawsuit. The federal suit is currently in pre-discovery stages.

D. Violations of Native American Housing Assistance and Self-Determination Act

Many of Nooksack 306, like Sonia Lomeli, have been paying for, if not paid off, their homes over the last few decades pursuant to **the Mutual Help and Occupancy Agreement, a Tribal housing program funded by the Department of Housing and Urban Development**. Disenrollment would make them ineligible for the MHOA program, in violation of the Tribe’s housing plan and thus 25 U.S.C. § 4112. What is more, at least one targeted Nooksack has already been denied low-income housing that she is guaranteed pursuant to **the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. §§ 4101-4243**. The prevailing faction of Tribal Council have expressed their intent to kick the Nooksack 306

³ Matthew L.M. Fletcher, *Federal Court Denies Motion for TRO to Enjoin Nooksack Disenrollment Election*, TURTLE TALK (June 21, 2013), <http://turtletalk.wordpress.com/2013/06/21/federal-court-denies-motion-for-tro-to-enjoin-nooksack-disenrollment-election/>.

out of their homes on the Reservation, including those elders who outright own their homes through the MHOA program.

E. Violations of Johnson O'Malley Act and Federal Tribal TANF Program

The **Johnson O'Malley Act, 25 U.S.C. §§ 452-57**, created a federally funded program that provides supplemental assistance with the unique educational needs of all Native American students. In implementing this program, the Nooksack Indian Tribe receives federal funding for **all** eligible Native American students attending a public school or attending one of the Tribes' schools within its service area. 25 C.F.R. §§ 273, *et seq.* On August 20, 2013, the Nooksack Indian Tribe announced that children Giovanni Coleman, Alexandra Coleman, Kaleiolani Jefferson and Miana Rabang who are between ages 3 and 19 and “subject to Nooksack disenrollment proceedings” — but not yet disenrolled — are ineligible to receive \$275 in “Back to School Support for the 2013-2014 school year.” Any Nooksack student with proof of educational enrollment (e.g., Head Start, K-8, high school or GED), but who was not targeted for disenrollment, was declared “eligible for a \$275 check.” Any discriminatory use of Johnson O'Malley funds should not be sanctioned by the Department of Interior.

The Nooksack Indian Tribe also receives monies for and administers a Temporary Assistance for Needy Families (“TANF”) program that uses state funds to help tribal families in need. The Tribe has submitted a Tribal TANF Family Assistance Plan to the Department of Health and Human Services that does not discuss the impending of dozens of Nooksack families. Yet the Tribal Council majority used TANF resources to carry out the illegal Secretarial election discussed above, **in violation of its approved plan and federal and state law.** *See* 42 U.S.C. §§ 601, 604, 612; 45 C.F.R. § 286; Wash. Rev. Code § 74.08A; Wash. Admin Code § 388-315.

F. Interior Department and BIA Intervention Is Possible

The Nooksack 306 need the intercession of the United States and its Interior Department, given the BIA and its Puget Sound Agency's direct involvement in the threatened genocide. It is undisputed that on February 5, 2013, the BIA and Tribal Council were specifically aware of Interior probate records that confirm that the Nooksack 306 are properly enrolled Nooksack Indian by way of Matsqui George. Yet this federally assisted witch-hunt of the Nooksack 306 and their ancestors, Annie George and her three daughters, was commenced. It is now time for the United States and its Interior Department to begin acting like the Trustee for the Nooksack 306. Should Interior continue to turn a blind eye these federal voting and civil rights issues, and international indigenous human rights violations, we hope Congress will do something about it.⁴

On August 26, 2013, an appeal of an August 2, 2013, decision of the BIA Pacific Northwest Regional Director was sent to Mr. Kevin Washburn, Assistant Secretary of the BIA. The appeal discusses and touches upon much of the issues discussed above. That appeal was also sent to the Interior Board of Indian Appeals on September 27, 2013. Pursuant to 25 C.F.R. § 2.20, you have until Thursday, October 17, to either issue a decision in the appeal, or to assign

⁴ Jared Miller, *Disenrollment Is Bad For the Bottom Line*, INDIAN COUNTRY TODAY MEDIA NETWORK (Sept. 28, 2013), <http://indiancountrytodaymedianetwork.com/2013/09/28/disenrollment-bad-bottom-line> (“Disenrollment is a business matter. That's because tribal governments abandoning members en masse will harm their own bottom line by engendering negative media and investor perceptions. More critically, they threaten the bottom line of Indian businesses everywhere.”).

responsibility to issue a decision in the appeal to a Deputy to the Assistant Secretary — Indian Affairs. We respectfully request that you do so.

We understand and appreciate the Assistant Secretary’s own belief that “tribes have the right, like other governments, to make good decisions, bad decisions, and decisions with which others may not agree.” *Aguayo v. Acting Pacific Regional Director*, AS-IA Decision, at 1 (June 12, 2013). But this is not a situation where a tribe has made a decision and the BIA is simply fulfilling its obligations. Rather, this is a situation where the BIA has failed to fulfill its fiduciary duty to over three hundred enrolled members of the Nooksack Tribe by sanctioning the unlawful acts of a rogue Tribal Council majority – and by acting in furtherance of those acts **under color of federal law**. The collaboration between the Puget Sound Agency and Nooksack Tribal Council faction, and this entire matter of tribal cultural genocide, must be put to an end.

G. Another Interior Department and BIA Solution

Another simple solution is to correct the federal census now used by the Nooksack Tribe, dated January 1, 1942. See *Stookey v. Wilbur*, 58 F.2d 522, 523 (D.C. Cir. 1932) (“[T]he Secretary’s power and authority to correct the rolls where mistake or inadvertence appears is well settled.”) (citing *Lowe v. Fisher*, 233 U. S. 95 (1912)). Annie George was undoubtedly Nooksack, again, as verified by Interior Indian probate records, and her omission from the 1942 census was clearly in error. See Order Determining Heirs, *In re Louis (Louie) George*, No. IP-PO-61K-71; Jay Miller, Ph.D., Nooksack Pedigrees Re: Annie George (May 7, 2013) (concluding that “Annie George Mack James . . . was Nooksack by blood” and that “Annie was entitled to be on t[he 1942] federal census”). If the Assistant Secretary chooses to take this route, we can provide further evidence of the mistake and inadvertence, as needed.⁵

In short, there are options available for your intercession to halt the termination of the Nooksack 306. In other words, where there’s a will, there’s a way – to keep them all American Indian. Should you need any further information or explanation for that purpose, please do not hesitate to contact us. Thank you kindly for your time and inquiry into this travesty.

Very truly yours,

[The undersigned Nooksack Indian Tribal members
and other concerned Washington State tribal citizens](#)

cc:

The Honorable Kevin Washburn
Assistant Secretary
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

⁵ If the Assistant Secretary refuses to take this route, we ask that he, at minimum, issue a response stating the reasons for his refusal.

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