



DEC 13 2016

Indian Health Service  
Rockville MD 20857

Mr. Robert Kelly, Jr.  
Chairman  
Nooksack Indian Tribe  
P.O. Box 157  
Deming, WA 98244

Dear Chairman Kelly:

I received a courtesy copy of a November 11, 2016-dated letter to Mr. Lawrence S. Roberts, Principal Deputy Assistant Secretary, Indian Affairs, U.S. Department of the Interior, from Mr. Gabriel Galanda, on behalf of the Nooksack Tribe. The letter includes a complaint alleging the Nooksack Tribe's refusal to provide health care services for up to 331 enrolled members of the Nooksack Tribe.

As indicated in the November 18, 2016, letter from the Portland Area Director, the Indian Health Service (IHS) and the Nooksack Tribe entered into a Title I contract, as authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended, which requires the Nooksack Tribe to provide services to all eligible beneficiaries. It is our understanding that on March 22, 2016, the Northwest Intertribal Court System issued an order ruling that the 331 members in question are still enrolled members of the Nooksack Tribe. Furthermore, it appears that subsequent actions to disenroll these members by the Nooksack Tribal Council lacked a sufficient quorum and were done in violation of the Tribe's own Constitution and bylaws. See enclosed November 14, 2016, letter from Principal Deputy Assistant Secretary Roberts.

The IHS must ensure that all eligible beneficiaries receive health care benefits in accordance with both Federal law and the Tribe's ISDEAA contract with the IHS. Under 25 U.S.C. § 5324(g) (formerly 450j(g)), tribes operating IHS health care programs through an ISDEAA contract must comply with applicable Federal regulations related to eligibility. Under 42 C.F.R. § 136.12, services must be made available, "to persons of Indian descent belonging to the Indian community." This regulation requires the IHS and Tribal contractors to serve all persons of Indian descent, regardless of Tribal affiliation.

The IHS has long-adhered to an "open door policy," by which direct care services are provided to any person who can prove they are of Indian descent who seeks treatment at a facility. Accordingly, even if the Nooksack Tribe disenrolls members in accordance with the Tribe's Constitution and bylaws, those individuals may still be eligible for health care services under the above-referenced eligibility regulations, because Tribal membership is not the sole determinant of eligibility.

In response to the Nooksack Tribe's recent actions, I am requesting evidence supporting the position that the disenrolled members are not eligible beneficiaries as defined above. Please provide this information directly to the Portland Area Director by December 19, 2016.

Page 2 - Mr. Robert Kelly, Jr.

If the Nooksack Tribe continues to deny IHS services to individuals who were not properly disenrolled and/or may still be eligible regardless of Tribal membership, the IHS will take necessary measures to ensure health services are provided in accordance with applicable Federal law. This may include an audit to determine non-compliance with the Nooksack Tribe's ISDEAA contract and may result in deductions from from the Tribe's ISDEAA contract to ensure those eligible beneficiaries receive health care benefits.

Finally, I would ask that a meeting be scheduled between the Tribal Council and the Portland Area IHS to give us an opportunity to discuss the position of the Nooksack Tribe. It is our hope to resolve this matter amicably. I have asked the Portland Area staff to make arrangements to meet with you at Nooksack Tribal offices, or if you prefer, in the Portland Area Office.

If you have questions regarding this letter, please contact Mr. Dean M. Seyler, Director, Portland Area IHS, by telephone at (503) 414-5558.

Sincerely,

A handwritten signature in cursive script that reads "Mary Smith".

Mary Smith  
Principal Deputy Director

Enclosure

cc: Tribal Council members, Nooksack Indian Tribe  
Mr. Lawrence S. Roberts, Principal Deputy Assistant Secretary, Indian Affairs



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

NOV 14 2016

The Honorable Robert Kelly, Jr.  
Chairman, Nooksack Tribe  
P.O. Box 157  
Deming, Washington 98244

Dear Chairman Kelly:

I have received your letter dated October 25, 2016. I want to reiterate that pursuant to our Nation-to-Nation relationship, the Department of the Interior (Department) will not recognize actions by you and the current Tribal Council members without a quorum consistent with the Nooksack Tribe's (Tribe) Constitution and decisions issued by the Northwest Intertribal Court System.

As I stated in my October 17, 2016 letter, the Department will only recognize those actions taken by the Tribal Council prior to March 2016, when a quorum existed, and will not recognize any actions taken since that time because of the lack of a quorum. Accordingly, until a Council is seated through an election consistent with tribal law and the decisions of the Northwest Intertribal Court System, we will not recognize any "referendum election" including the purported results posted on the Tribe's Facebook page on November 4, 2016, claiming to disenroll current tribal citizens or any other action inconsistent with the plain language of the Tribe's laws. This further includes any election results from the Tribal Council Primary Election scheduled for December 17, 2016, or the Tribal Council Regular Election scheduled for January 21, 2017, according to the notice found on [www.nooksacktribe.org](http://www.nooksacktribe.org).


As I stated in my earlier letter, the Bureau of Indian Affairs stands ready to provide technical assistance and support to the Tribe to carry out elections open to "all enrolled members of the Nooksack Tribe, eighteen years of age or over," regardless of county residency, to vote to fill the vacant tribal council seats. As the Nooksack Court of Appeals' order dated March 22, 2016, clearly stated:

The trial court found that to date the Respondents are enrolled members of the Tribe. Order Denying Defendants' Motion for Reconsideration at 16. Under the Nooksack Constitution, an enrolled member of the Tribe is eligible to vote in elections. Const. Art. IV, Sec. 1. Although Respondents may eventually face disenrollment proceedings—they are currently enrolled members. Neither the Constitution nor the Nooksack election code prohibits an enrolled member from voting even where the member is the target of disenrollment proceedings.

I reiterate that elections or actions inconsistent with 1) the Court of Appeals' Order of March 22, 2016, in *Belmont v. Kelly*; 2) the trial court's decisions of January 26, 2016, and February 29, 2016; and 3) Nooksack law will not be recognized by the Department.

Finally, with regard to your request to meet, I have asked my staff to make arrangements to meet with you at Nooksack tribal offices or in the Regional Office in the near future. Please feel free to contact me if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Lawrence S. Roberts", written in a cursive style.

Lawrence S. Roberts  
Principal Deputy Assistant Secretary – Indian Affairs

cc: Regional Director Speaks  
Northwest Intertribal Court System  
Nooksack Tribal Council members