

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

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IN THE MATTER OF:

Federal Acknowledgment of Indian Tribes
Proposed Rule 25-CFR-83

Consultation and Listening Session

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PUBLIC SESSION
CONSULTATION AND LISTENING SESSION

Held at the Mashpee Wampanoag Tribe Community and
Government Center Gymnasium, 483 Great Neck Road,
Mashpee, Massachusetts, on July 29, 2014, commencing
at 8:37 o'clock a.m.

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1 MR. WASHBURN: Thank you,
2 Chairman Cromwell, and, Chief, for being here today,
3 in his nineties, and thank you for the wonderful the
4 beautiful drum group. What was a wonderful way to
5 start. Thanks to all of you for that, and my thanks
6 to the whole Tribe for giving us such a proper
7 welcome.

8 Let me now, in turn, welcome all of
9 you here, who are here to participate in this public
10 meeting this morning and tribal consultation this
11 afternoon.

12 Let me tell you how I anticipate this
13 going today. I have a power point presentation to
14 make that will last around twenty minutes or so, and
15 after twenty minutes, we will open it up to public
16 comments.

17 And when we do, I will ask everyone to
18 limit their comments to about three minutes or so in
19 the beginning, until we've had the chance to hear
20 from everybody who wants to speak, and then those
21 that have more to add, and I know that some of you
22 may, can give us more after that.

23 I have a couple of members of my staff

1 here. Kaity Klass, who is with our Solicitor's
2 office is here. Kaity is a member of the Wyandotte
3 Indian Nation of Oklahoma, it's really great to have
4 her on the team, along with the rest of the
5 Solicitor's Office.

6 And Elizabeth Appel, who runs all of
7 our regulatory affairs back in Washington, D.C., and
8 she'll be back there running the power point for now,
9 but she'll also be up here to answer questions.

10 Both of these young women know more
11 about this than I do, because they've lived it almost
12 every day as we've worked on this important
13 regulatory reform process.

14 So, we will have a public meeting this
15 morning. This afternoon, we will have a formal
16 government to government consultation with federally
17 recognized Indian tribes, and that will be closed
18 to -- it would be open to only leaders of federally
19 recognized indian tribes, and so it won't be open to
20 the public or to the press.

21 And so I would ask that any members of
22 the public or petitioning groups or others who would
23 want to speak, this morning is your opportunity and

1 we're anxious to here from you.

2 So, let me proceed, to give you some
3 background information about the acknowledgement
4 process and how we got started with this.

5 There are three ways that American
6 Indian tribes have been recognized by the United
7 States Government: One of them is judicially,
8 through the federal court decision. That's one
9 route.

10 Another one is through the
11 congressional route, congress has enacted a law or a
12 settlement that recognizes the Tribe formally.

13 And then, finally, it's the
14 administrative process, and that's the process that
15 we run, and it involves a determination by my office,
16 by the Assistant Secretary for Indian Affairs, and
17 that's the process we're focusing on here today, the
18 process that we are looking to reform.

19 The history of this process was
20 really -- before 1978, it was an ad hoc process.
21 There was no formality to it. There was not
22 necessarily a regular regulated way to do this.

23 Petitions were filed on a ad hoc basis

1 before the assistant secretary and the assistant
2 secretary acted on those petitions; but, in 1978, the
3 department created this federal acknowledgement
4 process with regulations under Part 83 that really
5 formally defined the process and establishes law, in
6 essence, for us to use in looking at these petitions.

7 Those regs were established in 1978
8 and they were revised in 1994, and they've been
9 revised, not -- not "revised" but we've had
10 additional guidance added in 2005, 2000, and 2008.

11 Of the five hundred sixty-six
12 currently recognized federal Indian tribes, seventeen
13 have been recognized by the Part 83 process, and
14 during that time, more than thirty have been denied
15 recognition through that process, and so it has been
16 a very active process since 1978.

17 We have been told, and as you've just
18 heard from Chairman Cromwell, the process is broken
19 and needs to be fixed, and Chairman Cromwell has
20 echoed something that many people have said now for
21 many years.

22 More than ten years, people have said
23 that the process is broken and it's -- it's been in

1 the United States Senate, senators from both sides of
2 the aisle, and people throughout the public and the
3 government that have made that assertion. The notion
4 is that it takes too long.

5 Chairman Cromwell just said, it took
6 Mashpee thirty years to get recognized, and that
7 certainly -- is certainly too long. No government
8 process should take thirty years, for sure.

9 Also, we've heard that it's too
10 burdensome; that it demands too much, and that's why
11 it takes too long, in part, and it's also why it's
12 expensive.

13 So what we would like is a process
14 that's a little bit more efficient and a little less
15 expensive, but not less rigorous.

16 We think that rigor is very important
17 because we don't want to have anyone have doubt when
18 we recognize a tribe, that they are legitimate, and
19 that they should be legitimate. It is a very
20 rigorous process and it should remain that way.

21 It should not be an unpredictable
22 process, too, and that's the other thing that we've
23 heard.

1 We've heard that the criterion has
2 been interpreted in different ways, depending on the
3 different petitioners, petition groups, and we need
4 to take a look at that, and to make sure we are not
5 arbitrary; that we apply the same rule to each
6 pistonning group.

7 There needs to be a little more
8 clarity about what proof is sufficient to meet the
9 criteria.

10 And we've also been criticized for not
11 being transparent enough.

12 So those are the kinds of things that
13 we've heard about the process being broken, and we
14 aim to try to introduce some changes that will fix
15 that.

16 So, this process, in this
17 administration, which really started in 2009, when
18 the then secretary of the interior, Ken Salazar, said
19 that we will fix this process; that we need to be
20 committed.

21 When he first began as the secretary,
22 and he's now gone, and we now have a new secretary,
23 Secretary Sally Jewell, but he committed, on behalf

1 of the administration that we would work to fix this
2 process.

3 And, indeed, in 2010, some draft
4 revisions were begun to start the 83 process, and it
5 was -- and they were worked on, and they were
6 promised; they weren't ever produced.

7 But, in 2012, a representative of my
8 office, Bryan Newland, identified several guiding
9 principals that should guide this sort of reform, and
10 those are: Transparency, timeliness, efficiency,
11 flexibility, and integrity.

12 And around 2013, the summer of 2013,
13 about a year ago, we released the discussion draft,
14 to -- giving people an idea of what we thought might
15 need to be changed, and we asked for comments on that
16 discussion draft.

17 Now, that's an unusual activity.
18 Usually, we start a regulatory format with a notice
19 of proposed rule making, but we started one step
20 earlier than that, because we wanted to be
21 transparent. We wanted to give views to people even
22 before we started the formal process, and so we
23 started this informal process where we received

1 comments from people on our discussion draft.

2 And over the past year, we have worked
3 with those comments, the discussion draft and the
4 comments into a proposed rule, and it is the proposed
5 rule we are here to talk about today.

6 Let me say, though, that we
7 distributed the discussion draft in June of 2013. We
8 held public comment and public hearings and public
9 consultations on the discussion draft, as well, so we
10 have utilized a lot of process in working on this
11 rule.

12 Part of the reason for that is because
13 we need the public and tribes to be educated on what
14 we're doing so that they have the intelligence, the
15 information, to comment wisely and thoughtfully on
16 our proposal.

17 And Reverend John Norwood is here, who
18 we've worked with, with the National Congress of
19 American Indians to help us with these efforts.

20 And we're really honored to have that
21 partnership with a large group of Indian tribes to
22 work on this process, because, frankly, we need
23 guidance, and that's why we're here, we're here to

1 get guidance. It helps to have people here who are
2 really expert on the process and thoughtful about the
3 process.

4 We have received more than three
5 hundred fifty comments to our discussion draft, so,
6 again, we have gotten a lot of guidance already, and
7 that was in over two thousand, more than two thousand
8 comments.

9 Some of them were letters signed by
10 more than one person or form letters, we got two
11 thousand comment letters and three hundred fifty
12 comments.

13 So, as I said, we have worked those
14 comments into a proposed rule.

15 Now, the way we did that is, we had a
16 team of people at the department, and Kaity was a
17 member of the team, and Liz was a member of the team,
18 and I was a member of the team, at some points, to go
19 through the comments, and really look carefully
20 through the rules, to see what we should change.

21 And they met for weeks at a time
22 before the discussion draft was released and they had
23 met for weeks at a time after we got the comments in,

1 and they came up with these proposals, and we are now
2 ready to talk about them.

3 We reviewed all those comments and we
4 made some changes to the draft rule, the discussion
5 draft, before the proposed rule.

6 We also have written a rule that is --
7 that speaks in much more plain language than the
8 existing Part 83 regs. We think that's important.

9 And we've also submitted this rule to
10 the OMB for document management and budget for
11 review. They have looked at a variety of things, but
12 not the least of which is how much paperwork, what's
13 the paperwork burden that this imposes on the public
14 and the petitioners.

15 So, we published our first rule in the
16 Federal Register, on May 29th, 2014 at the beginning
17 of the summer.

18 Comments were originally due on
19 August 1st, but we had extended that period for sixty
20 days, so comments to the rule will be due at the end
21 of September, September 30th.

22 We had requests from all over the
23 country for an extension of that time period and so

1 we're being responsive to those requests, and so we
2 would -- we've opened that up for another two months,
3 in essence, for people to comment on those rules.

4 So, let me now give you an overview of
5 the proposed rule itself. We have revisions to the
6 process.

7 We've got minor revisions and
8 clarifications to criteria.

9 We have clarification to some of the
10 terms, including previous federal acknowledgement.

11 We've clarified the burden of proof
12 that's required in a petition.

13 We have clarified or provided for
14 re-petitioning, under very limited circumstances, and
15 we've also added notice requirements to the rule.

16 And I'm going to discuss each of those
17 in detail, to give you a sense of the overall
18 context.

19 So, first of all, one of the things
20 that we have heard is that it takes too long for a
21 tribe to get -- to petition, to get through the
22 recognition process.

23 And one of the reasons, from our

1 perspective, we do have a team of hard working
2 people, people that -- with graduate degrees in
3 History and Ethnology and Genealogy who work on these
4 petitions, but often what we get is a letter of
5 intent from a petitioning group and then actually
6 don't get further evidence from them for many, many
7 years.

8 And then they complain: Well, we
9 filed our letter of intent many years ago, but it
10 wasn't really sufficient to get the whole team
11 working.

12 So we have basically eliminated the
13 letter of intent process and we will now start the
14 application when we've got a complete petition, and
15 that way, we'll get more of a -- sort of, a real
16 understanding of how long it takes to get one of
17 these petitions through, because we aren't going to
18 start the process until we have a complete petition.

19 And we are going to start with a
20 phased review, and we're going to look at certain
21 criteria first, and one of those is the descent
22 criteria, criteria E.

23 And the reason is -- that criterion

1 requires descent from a historical tribe; in other
2 words, you have to be an Indian people. If you're
3 not Indian people, then you're not going to be able
4 to petition to become an Indian tribe, and so that's
5 very, very important, and, frankly, if you can't meet
6 that criteria, we don't need to look at any others.

7 If you can't meet that criteria, we
8 can do a denial, a fast denial, an expedited negative
9 decision in that circumstance, and just get that
10 resolved and off the table, and we think that's
11 important because we need to speed up the processes.

12 We will next, after we've reviewed
13 criteria, criteria E, we will next review other
14 important criteria, criteria, criteria: A, E, F and
15 G before we go any further.

16 Those are also criteria, and all the
17 criteria, of course, are important, but we feel like
18 if we can stage our phase of review process, we can
19 get to quicker decisions.

20 So we will look at each of the
21 criteria, roughly, in the order of the importance of
22 those criteria and make decisions.

23 So, the other thing we are going to

1 do, those are the discussion -- brief discussions
2 about some of the processes.

3 And another big part of the process is
4 that we're going to change the way we perceive after
5 a proposed finding, so we will issue a proposed
6 finding and then ask for comments, and there will be
7 a brief comment period.

8 If there are no negative comments, and
9 if the proposed finding is positive and no one
10 comments in a negative way or objects, then there's
11 no reason to do a lot process, I think, is the way we
12 feel.

13 And at that point, we would
14 automatically turn that proposed positive finding
15 into a final positive findings, again, without a lot
16 of additional process; on the other hand, if the
17 proposed finding is negative, we will then give the
18 petitioner an opportunity for a hearing, if they want
19 one, so that they have due process.

20 And at that hearing -- and that
21 hearing would occur before an office appearing,
22 before an appeals judge and will give the petition
23 group an opportunity to make their case before a

1 judge that is utterly -- well, judicial. It's highly
2 objective and they've got that place to make that
3 case.

4 And third parties, other tribes or
5 cities or local governments or others that are
6 interested will be able to participate in that
7 hearing.

8 That judge would issue a proposed
9 finding that would then be issued by my office, by
10 the assistant secretary, a recommended decision and
11 the final decision would be issued by my office.

12 And that decision issued by my office
13 would be final by the department and would not be an
14 additional stage of administrative review at that
15 point.

16 If someone was unhappy with the
17 decision, at that point, they can take that decision
18 to court, but there would not be another review
19 process at the department.

20 So we think that this portion of this
21 will expedite the process and portions of it will add
22 greater due process to the people seeking
23 recognition.

1 Now, we do need your input on some
2 things, and so one of them is the nature of the judge
3 who would preside over the hearing and issue the
4 recommended decision to my office.

5 And there are various different kinds
6 of judges that exist in the department of interior
7 process. One of those is the administrative law
8 judge, and this is the one who has, sort of, the
9 maximum kind of independence, because they have no
10 supervision. They were considered to be an
11 independent decision-maker and they routinely conduct
12 hearings about -- on other matters before the
13 department.

14 The second type of judge is the
15 administrative judge, and the administrative judge is
16 also an objective decision-maker, but does have a
17 supervision in the office of hearing appeals. The
18 director of the office of hearing appeals.

19 And this kind of judge routinely
20 serves on an appellate court, does not serve as the
21 single judge at a hearing.

22 And then, finally, the other
23 possibility would be an attorney designated by the

1 office of the hearing appeals director, and this --
2 having an attorney do this work would be possible, as
3 well.

4 That person is, sort of, the least
5 independent of these three options, and that attorney
6 may not have the same kind of experience conducting
7 hearings as these other actors would.

8 So those are some of the things that
9 we're trying to put through, is what kind of judge to
10 be used in this process.

11 Secondly, if there's a question about
12 whether the judge's decision should be limited to the
13 hearing record or should be able to consider other
14 information.

15 And just to -- some background, hiring
16 the administrative law judge is a lot more
17 complicated than hiring a mere attorney. There's a
18 lot more in the process, because they are so
19 independent, these ALJs get a lot more scrutiny for
20 hiring, so that's what -- part of where the
21 independence comes from.

22 So, more revisions to the process. We
23 have -- we are -- we currently have a rule that the

1 petitioner can not withdraw if their petition is
2 under active consideration, and we are considering
3 changing that, to allow a petitioner to withdraw the
4 petition at any time before the proposed finding is
5 published, to give them a chance to -- you know, to
6 develop more evidence, or whatever they think that
7 they need to do.

8 They would, however, lose their spot
9 in line if they withdraw. If they withdraw, they go
10 back to the back of the line, the end of the queue
11 and start over again, in essence, in that respect.
12 This gives them more flexibility, but it also imposes
13 some costs on them.

14 Now, we also would like to improve
15 transparency, and the way we have is to post to the
16 Internet, those portions of the petition and proposed
17 finding and reports that are releasable under federal
18 law.

19 Some things are not releasable. Some
20 things would violate the Privacy Act to release
21 because they've got, you know, very personal
22 information about genealogy and those sorts of
23 things, about individuals and their families, and so

1 we wouldn't post that.

2 We would post the things that we can
3 do appropriately under federal law, and, again, in
4 order to be more transparent.

5 Okay. Now, let's go into the
6 criteria. We currently have seven mandatory
7 criteria. We propose to continue to having seven
8 mandatory criteria, but we are changing them
9 slightly.

10 The current criteria A requires that
11 external observers identify the petitioner as Indian,
12 and we generally require external identification from
13 1900 to the present, every decade.

14 Well, we've had complaints about this
15 criteria and we've had people say that, you've asked
16 us to get external proof of our existence at the time
17 when some of us wanted to be underground because we
18 would be discriminated against or violence might be
19 committed against us if we were -- you know, if we
20 were public about our identities, so it's not fair to
21 require external identification at the time when
22 there are so many forces encouraging us to be
23 secretive.

1 So, what we propose instead is that a
2 group, a petitioning group provides a narrative of
3 their existence as a tribe prior to 1900.

4 They can still provide external
5 identification, if they wish to, but they won't be
6 required to provide that external identification.

7 The idea here is that we get a
8 narrative. It certainly is -- and a legitimate tribe
9 will be able to tell us its history, and we need to
10 know its history, and they should not just tell us
11 the history, but they should include evidence of that
12 history.

13 We feel like this is a criteria that
14 is very easy for a legitimate tribe to meet, but it
15 will be difficult for someone who is not a tribe to
16 meet.

17 We don't -- and we're not asking for a
18 treatise necessarily, but we're not asking for a
19 ten-page book report, either. We need something more
20 than that.

21 We'd love to have your thoughts and
22 guidance, you know, about what -- some better ways,
23 to state or give us more guidance as to what that

1 should be.

2 Now, the second criteria is B; that
3 the group show -- demonstrate their community, that
4 they have been a community.

5 Currently, the analysis is from 1934
6 to the present, they show that they demonstrate their
7 community. At least thirty percent must show a
8 distinct community for each time period and just --

9 So one of the pieces of evidence would
10 be attendance of students at Indian boarding schools.
11 That would be the kind of thing that would be
12 acceptable evidence to show that they're -- that
13 these people came from a distinct community, which --
14 and this is just evidence of their existence as a
15 community, but this criteria would be met.

16 This would be more than evidence; in
17 other words, the criteria would be met if a state
18 reservation has been maintained since 1934 or the
19 U.S. held land at any point for the tribe since 1934,
20 and so that's a modification to the community
21 criteria.

22 Criterion C is that the tribe be able
23 to show political influence and authority, and,

1 again, this -- this criteria is from 1934 to the
2 present.

3 And this, also, would be met with the
4 state reservation being maintained since 1934, or the
5 U.S. held land at any point since 1934.

6 And it also defines -- and the idea,
7 by the way, of both of these criteria, is that
8 community must be demonstrated, political influence
9 and authority must be demonstrated continuously,
10 without substantial interruption.

11 That part of the criterion has existed
12 in the past, though we are told that we have not been
13 always clear in how we apply that, and sometimes, we
14 have gotten an interrupted period for ten years, and
15 in some cases, up to twenty-seven years.

16 What we're defining is that there
17 cannot be a substantial interruption for more than
18 twenty years in this process.

19 So, those are the criterion that are
20 -- the suggested changes to criterion B and
21 criterion C.

22 Another criterion that I would like to
23 talk about is criterion E and this is descent from a

1 historical Indian tribe.

2 A current rule of thumb that the
3 office of federal acknowledgement, the office that
4 runs this process, is that eighty percent must
5 descend from the tribe that existed in historical
6 times; that is, before 1900.

7 We think this should continue to be
8 the rule, but we wanted to state, it's not actually
9 in our regulations; that we're creating this rule,
10 making it clear that it is a regulation, and, again,
11 been used informally as a rule for the office of
12 federal acknowledgement.

13 And this criterion allows the descent
14 to be traced from the role prepared by the department
15 or at the direction of congress; otherwise, if they
16 don't have one of those things, we would require the
17 most recent pre-1900 evidence to demonstrate that
18 that criterion is met.

19 Criterion F is membership, and this
20 criterion ensures that the petitioners who file by
21 2010 and then had members join another federally
22 recognized Indian tribe are not penalized by that.

23 One of the things we heard from people

1 is that they were in a petitioning group and they
2 were waiting to be recognized but they were eligible
3 to be enrolled in other tribe, and some of them
4 ultimately just said, I'm just going to enroll in the
5 other tribe, because I can't wait any longer for
6 recognition. I can't wait thirty years.

7 So some people have that option
8 available to them. This rule would not penalize them
9 for doing that.

10 Those people could still be considered
11 as part of the membership of the petitioning group
12 again, and that's because they have -- they shouldn't
13 have to have left their petitioning group because of
14 the slowness of our process, and so as long as they
15 -- the petition group had been filed by 2010, then
16 they will not be penalized if they join another
17 federally recognized tribes.

18 Now, criterion G is congressional
19 determination. Criterion G is, basically, if
20 congress has terminated an Indian tribe, our
21 administrative process cannot restore them. They can
22 basically only go back to congress, and so --

23 And so criterion G shifts the burden

1 to us, the department, to show that a petitioner was
2 terminated by congress. That should be a fairly
3 simple showing, and it would be up to us to determine
4 whether that criterion exists.

5 It won't be a burden -- we won't be
6 asking the petition group to prove a negative. We
7 will take on the responsibility if we believe that
8 they have -- they are a group that's been terminated;
9 we will prove that out.

10 So, we also have the question on the
11 proposed rule about previous federal acknowledgment,
12 and the current rule is kind of unclear as to how we
13 treat previous federal acknowledgement.

14 And we aren't making substantive
15 changes to this rule, but what we are doing is trying
16 to clarify how it will be applied and adopt a rule
17 that will reflect what we have been doing in
18 practice.

19 And so the idea is that, a group has
20 to meet the criteria A, D, E, F and G, but not the
21 community or political influence or authority, but
22 can establish previous unambiguous federal
23 acknowledgement, and either meet the community

1 criterion at present and the political authority
2 criterion from their last acknowledgement to present
3 using authoritative knowledge of third parties or
4 governing bodies and one other item of evidence; or,
5 meet community and political authorities since the
6 last acknowledgement.

7 This will ensure that if we have
8 previously recognized a group as a tribe, they only
9 have to prove that, since that last formal federal
10 acknowledgement that they have -- that they are a
11 tribe to get recognized under the ruling.

12 Now, we are also proposing to clarify
13 the burden of proof. The burden of proof remains a
14 reasonable likelihood, but we are clarifying that,
15 reasonable likelihood is based on a supreme court
16 case and the supreme court explanation and so that
17 gives people greater guidance in where to go to
18 understand what it means.

19 It requires more than a mere
20 possibility, but it does not require more likely than
21 not.

22 Again, this is -- by making clear that
23 this is the same standard that's used in case law, it

1 will give people a real frame of reference for what
2 that means.

3 Now, we are also -- we have also
4 proposed a limited rule on re-petitioning. The idea
5 is, we aren't changing the criterion very much at
6 all. We are largely clarifying what the criterion
7 are.

8 We don't really anticipate that any
9 group that has been denied recognition will
10 necessarily be able to obtain recognition because
11 we've changed the criteria, because we really haven't
12 that much; however, we are changing them moderately,
13 and so the question becomes, should we allow
14 re-petitioning.

15 Given, that we are not changing it
16 very much, some people have said, well, you shouldn't
17 allow any re-petitioning at all.

18 And there are several groups that have
19 already had their chance and they didn't get
20 recognized and have been denied.

21 The other possibility, the other end
22 of the scale, would be to allow re-petitioning by
23 anyone, and it's already been decided. There's

1 thirty-one groups that have already been denied,
2 allowing anyone to come back and re-petition.

3 What we've decided is not to -- to
4 adopt neither of those, neither shutting down
5 petitioning or opening it up completely, but it
6 offers a very narrow opportunity for re-petitioning.

7 One of the things we've heard is that
8 the people who have opposed a petition group have
9 said, look, we spent thousands of hours, and maybe
10 tens of thousands or hundreds of thousands of dollars
11 fighting a petitioning group and we were successful,
12 and you can't pull the rug out from under us. We
13 won, fair and square, and if you allow open
14 re-petitioning, then that's not fair, because we
15 spent all that money and all that time, you know, on
16 this process.

17 So, what we have done, again, created
18 a very narrow rule, they would recognize those third
19 parties that have participated in that process.

20 So, if a third party has participated
21 in that process, the proposed rule, if they've been
22 involved in an IBIA, interior board of appeals,
23 administrative appeal, or have gone to federal court

1 to appeal, then they will be able to demand their
2 consent to be obtained for re-petitioning, and so
3 that they will have a voice in the matter.

4 Secondly, we aren't going to allow
5 anybody to re-petition as a matter of course. They
6 will have to first establish to an appeals judge
7 that, by a preponderance of evidence, that the change
8 in the regulation has warranted the reconsideration
9 or if there was a misapplication in the burden of
10 proof in their case that warrants reconsideration.

11 So there's a pretty high burden for
12 re-petitioning, and we are certainly willing to
13 entertain your views on that, but we think that there
14 should be a high bar, because we aren't changing the
15 subsequent criteria very much.

16 Now, we also have to change the office
17 of hearings and appeals regulation to allow for the
18 processes that we have changed with regard to the
19 office of hearing and appeals.

20 And since the secretary's office does
21 not run the office of the office of hearing and
22 appeals, we have a separate rule-making process
23 that's related to this bigger rule-making process to

1 deal with the office of hearing and appeals issues.

2 All right. And the last thing that I
3 want to talk about, one of the changes of the rules
4 is that deals with transparency, and it will increase
5 the notice that we give to the public and other
6 interested parties regarding the petitioning groups.

7 So when the office of federal
8 acknowledgement receives a petition under our
9 proposed rule, it will acknowledge receipt to the
10 petitioner within thirty days. Within sixty days, it
11 will publish another receipt in the Federal Register;
12 it will post the petition's narrative and other
13 information on the office of federal acknowledgement
14 website.

15 It will notify the governor and
16 attorney general in the state in which the petition
17 group is located. It will notify any federally
18 recognized tribe within the state or within a
19 twenty-five mile radius, and it will also notify any
20 other recognized tribe and any petition that appears
21 to have a historical relationship with the petitioner
22 or that may otherwise be considered to have a
23 potential interest in acknowledgement determination.

1 And the requirements on this slide
2 that are bolded are new. They are not part of the
3 current process. They are additional notice that we
4 are providing.

5 And, again, the idea is that, we don't
6 want to run a secretive process. We want to run one
7 that people understand and that public is aware of,
8 and so we want maximum transparency in our work.

9 Now, the notice to -- we will provide
10 notice to petitioner and informed parties at several
11 different points in the process. One of those is
12 OFA, the office of federal acknowledgement, begins
13 review of the petition.

14 When OFA issues this proposed finding,
15 and we also publish our notice of availability of
16 that finding in the Federal Register and on the OFA
17 website, we will grant notice any time -- and this is
18 the secretary for Indian affairs, grants any time
19 extensions or begins review of a petition or issues a
20 final determination, and that will also be published
21 in the Federal Register, or at least the notice of
22 appeal availability will be published in the Federal
23 Register, and so those are the notice provisions.

1 We are just about done here, but let
2 me talk about the comments. Comments on the proposed
3 rule from the assistant secretary for Indian Affairs
4 will be due at the end of September, September 30th,
5 and comments on office of hearing appeals related to
6 the rule will also be due on September 30th, 2014.

7 We would -- we prefer that you submit
8 your comments by email, because that's the easiest
9 for us, Consultation@bia.gov.

10 And the next step, once that comment
11 period closes, we want to hear from as many of you as
12 have subsequent comments to make, the next step would
13 be to review those comments, make changes, as
14 appropriate, and, ultimately, publish the final rule
15 in the Federal Register.

16 Final rules don't become effective for
17 at least thirty days after publication, so if someone
18 has really got a problem with the rule, they can --
19 you know, they can litigate, or they can seek to go
20 to court before it takes effect.

21 And there's always opportunity for
22 judicial review after we've adopted the rule if
23 people don't like the rule that we've adopted.

1 So that concludes my presentation, and
2 so the next step is to hear from people who want to
3 speak.

4 And just a couple of things, also, we
5 have a court reporter here and it's -- the words that
6 you have give us today are very important to us, and
7 we want to get this down carefully, and so it's very
8 important that the court reporter be able hear
9 everyone that speaks and be able to take down their
10 words, so she needs to be able to both hear you and
11 see you.

12 We have mics and we ask you to speak
13 into the mic and to arrange yourself so that she --
14 so that our court reporter can see you when you
15 speak, and I may ask you to start over if I get a
16 signal from her that she didn't get your name or
17 something like that.

18 Again, to repeat, we will give
19 everyone three minutes for their initial comments,
20 and once we've gotten through that, everybody that
21 wants to speak, I will allow repeat speakers to speak
22 for longer at that point, as long as we've had a
23 chance for everyone to speak already.

1 Okay. We're just getting set up here.
2 I'll wait for a signal.

3 We are ready, so if anyone would like
4 to be heard, step up to the podium and speak into the
5 microphone.

6 * * * * *

7
8 CHIEF ADAMS: Good morning, I'm
9 Chief Kent Adams of the Upper Mattaponi Tribe,
10 King William, Virginia.

11 Of course, we did file a letter of
12 intent in 1979 and we were one of those that didn't
13 follow up for quite some time, but we're now in both
14 the legislative process and the administrative
15 process.

16 I would like to ask a few questions
17 about the administrative process.

18 Number one, you said that you start
19 the application when the petition is complete with
20 the proposed findings. How do you determine when a
21 petition is complete? That's my first question.

22 I'll give you a list of questions and
23 you can respond as you desire.

1 The second comment I would like to
2 make is on expediting findings. You said, in order
3 to go into the expedited finding process, when there
4 was a negative ruling after comments, you made that,
5 in order to use that negative ruling, that the office
6 must determine that the petitioners are Indian
7 people, which, that's what we're going through, so if
8 you can order an expedited ruling on a negative
9 finding, and I think it may be possible to order an
10 expedited ruling on a positive finding. I would like
11 to make that comment.

12 And if that's possible, that would be
13 a great thing, to make a positive ruling, positive
14 expedited ruling, especially on some of those who
15 have been in the process for an extended period of
16 time and gone through multiple hearings and before
17 congress and have been approved by the senate Indian
18 affairs committee and approved by the House of
19 Representatives but yet still fail to get positive
20 rulings.

21 A couple more comments. On page five
22 of the proposed changes, the proposed rule and
23 criteria, you mention community, and on line three,

1 at least thirty percent must show distinct community
2 for each time period.

3 Can you explain and specify what a
4 "specific time period" is in that particular
5 criteria.

6 And if you go to the previous proposed
7 rule, in the section above that one, page five, it
8 requires a narrative of the petitioner's existence as
9 a tribe pre-1900.

10 I was under the assumption, and I may
11 be wrong, that we're looking at more of -- more
12 indications from 1934, so if we're talking about 1934
13 in one block, talking about 1934 and 1900 in another
14 block, it seems to be a bit confusing.

15 And then, likewise, if you go down to
16 the bottom block of -- on that particular page, page
17 five, it says "criteria," descent, eighty percent
18 descent -- must descend from tribe that existed in
19 historical time.

20 Again, pre-1900, so each of the three
21 have a part in this, the specifics of the criteria.

22 I would think that 1934 should apply
23 for all three.

1 And then, likewise, it says, in the
2 next portion of that, "allows descent to be traced
3 from," and this was also confusing as you presented
4 it, "roll prepared by the department or at direction
5 of congress."

6 None of the Mattaponi Indians, for
7 instance, has any roll prepared by congress, of
8 course, otherwise -- and most recent, pre-1900
9 evidence, again, pre-1900, so if you had a roll
10 prepared in 1901, does that apply to meet this
11 particular portion of the criteria?

12 So, again, we have these different
13 years: 1934, 1900, pre-1900, in 1934, back and forth
14 between the different criteria. I think that's a
15 little bit confusing.

16 That's the extent of my comments on
17 the particular criteria.

18 MR. WASHBURN: Chief, your time is
19 just about up, so if you want to make a concluding
20 comment, but I'll let you come back, you can come
21 back up if you have more to say.

22 CHIEF ADAMS: Thank you very much for
23 your presentation.

1 MR. WASHBURN: Should we address any
2 of those? Okay, we'd like to proceed.

3 MS. APPEL: Sure.

4 I think the first question, about when
5 we let you know that the petition is complete, and
6 the regulation, as written, doesn't specifically say
7 when the petition will have a way to figure out when
8 the petition is complete.

9 You can assume that when materials are
10 submitted in support of each of the criteria, it
11 would be considered complete, but if that should be
12 clarified in the rule, please, let us know, and we
13 can -- and if you have a suggestion for how to
14 clarify it, when a petition should be considered
15 complete, please, submit comments on that.

16 MS. KLASS: And the proposed rule
17 provides for technical assistance leading up to your
18 documents, and you can correspond with us and get an
19 understanding where your document in the petition
20 stands.

21 MR. WASHBURN: Let me talk about that
22 issue, because you discussed -- actually, we did --
23 we do have an expedited negative.

1 We do have an expedited positive, and
2 that is, if we get a proposed finding that's
3 positive, we don't give you negative comments, but we
4 turn that into a final finding of positive, so that's
5 how we expedite the positives.

6 It's harder -- it is easier to
7 expedite the negative, because the tribe has to meet
8 all the criteria.

9 And what we propose is to -- is to
10 start to work with the most important one. If you
11 can't show that you're historically descended from a
12 historical Indian tribe, then you can't get the
13 recognition, so it's -- but we can expedite a
14 negative based on that.

15 But a tribe has to meet all the
16 criterion, and so we do have to go through each of
17 the criterion.

18 We still intend it to be a very
19 rigorous process, and the way we worked on it was
20 backing up the process after proposed findings, and
21 we think that's important and that's the best way
22 that that would work.

23 MS. KLASS: Additionally, when a

1 petitioner has a state revision, since 1934 or the
2 United States has held land for the petition, it sort
3 of expedites the community and political influence
4 criteria.

5 MR. WASHBURN: And let me just make
6 one final comment, I guess, and that is, this 1934
7 date is -- it's not our anticipation that a group
8 that just effected -- came into existence in 1934 or
9 1933, something like that, is an Indian tribe, and
10 that's part of the reason for the narrative.

11 We think that the evidence from 1934
12 to the present is good, because that's eighty years
13 and a good proxy for all of history, in essence, but
14 we anticipate what people will be able to show, that
15 as of 1934, they were an Indian tribe; that they did
16 have an organization and had a government and a sense
17 of community that didn't - wasn't created in 1934,
18 but was preexisting 1934.

19 And so that period from 1934 to the
20 present is really just a proxy for looking at all of
21 history, but we anticipate that the tribe, you know,
22 needed to preexist in 1934, and that's partly where
23 that narrative issue comes in.

1 They need to tell us their history
2 well before 1934, so --

3 Is there anything else that you wanted
4 to address from the Chief's comments?

5 MS. APPEL: Sure.

6 You had a question about the thirty
7 percent in the community, and what it means is for --
8 is requiring to show at least thirty percent for each
9 time period, and, basically, that means without
10 substantial interruption, so without more than twenty
11 year gaps. That's what that is.

12 MR. WASHBURN: Chief, I'll invite you
13 back up. We've got more comments.

14 Who's next? Yes, sir, please, step up
15 to the microphone, please, and identify yourself.

16 * * * * *

17

18 MR. MOORE: Hello, my name is Alan
19 Moore -- legally, my name is Alan Moore and I'm a
20 direct descendent of the Massasoit family and Royal
21 member of the Wampanoag.

22 The paperwork that I gave you is the
23 same paperwork that I gave to walk the halls of

1 congress last year.

2 I have since spoke to Mr. Triccy
3 (phonetic) at the Bureau of Indian Affairs and we
4 were discussing the reservations that exist here in
5 Massachusetts.

6 That paperwork that you have in front
7 of you is for Freetown, to follow the state forest,
8 which was an original part of our original
9 reservation in Freetown, is a total of four thousand
10 two hundred twenty-seven acres of land.

11 Mr. Triccy had done a determination
12 because the tribe, the Mashpee tribe was claiming
13 reservations, and he determined that the Massasoit
14 family, when my family owned the reservations and
15 that there are also three other reservations that are
16 in trust with the BIA and interior department.

17 And even with the letter from
18 Congressman Keating stating the Massasoit's family
19 name to help me to to build a house there, four
20 hundred years after the United States becoming --
21 becoming to the United States, to this day, I still
22 have not been able to build a house on my own
23 property.

1 And there's another paragraph, the
2 state determining a reservation, saying the state is
3 acting as stewardship.

4 I don't need the state to act for
5 stewardship for my property, nor would I act as
6 stewardship for anybody else's property.

7 This just -- and he just seems so
8 repetitive to me that -- and my family sat at the
9 original Thanksgiving that started the United States
10 of America.

11 Me and the Chief sat together in Chief
12 Cromwell's office, and he told -- the BIA told the
13 councilman, straight out, that the only reservation
14 in the country that even has the same condition as
15 this property is one by the nation and that's owned
16 by a nation not by individuals; and, therefore, the
17 federal government has no treaties with individuals
18 whatsoever; and, therefore, the only real sovereign
19 corporation in the United States of America.

20 But, to this day, I can not live on my
21 own reservation, and it's just -- I don't understand,
22 and --

23 And even with letters from congress,

1 and I worked for Governor Romney, and I'm going to
2 actually attempt to get a hold of President Putin to
3 see if he can help me resolve this matter.

4 And that's the reason I'm here today,
5 and even the newspapers didn't want to publish it.
6 They were spending two hundred million dollars to --
7 trying to achieve recognition and reservations on
8 land we already own.

9 Every deed in this state was signed by
10 my family, for the whole state, every single deed,
11 and it just -- even with the recognition and all
12 that, they want you to file a lawsuit and do all
13 these things, and everybody shuns you, rejects you,
14 and pushes you to the side.

15 And, you know, Mr. Washburn, the Chief
16 speaks very, very highly of you, and I appreciate
17 everybody coming out.

18 The reason I'm here is, I want to go
19 public, and to live on our lands. We have
20 established reservations, deemed and owned by certain
21 families, members of federally recognized tribes, and
22 deserve the same rights as any other American.

23 Thank you.

1 MR. WASHBURN: Thank you, Mr. Moore.
2 Who is next? Who else would like to
3 speak?

4 * * * * *

5
6 MR. ADKINS: Good morning, my name is
7 Stephen Adkins, and I'm Chief of the Chickahominy
8 Tribe from Virginia.

9 I would like to thank you all for
10 holding this session and the meeting here today.

11 I trust that, from what I heard, the
12 comments, the comments you've gathered today and
13 additional comments through the mail, they will use
14 to inform us of your decisions.

15 I also thank you for what you've done
16 thus far, but I do have a couple of observations.
17 You mentioned those folks in the review process who
18 have these credentials. It seems kind of duplicating
19 the tribe who had tribes with impeccable credentials
20 present the documentation to you, and then you go
21 over those again.

22 It seems to me to be some kind of way
23 to work together to reduce the duplication of records

1 and of evidence.

2 You mentioned the criteria E, and if
3 that's met, then you can assume there's an Indian
4 tribe, so it looks like, as you go through those
5 other criteria, it wouldn't take so long.

6 I worked for a Fortune One Hundred
7 company for forty years and in the thirty-six years
8 that I've dealt with the office of federal
9 acknowledgement, has been rendering decisions and
10 findings, you only have forty-seven in thirty-six
11 years. I couldn't have kept my job.

12 So -- and so I think you're very
13 astute in your observation that the current process
14 is broke.

15 Well -- and these -- will these
16 proposed regs expedite that process, and I'll be
17 sixty-nine in December, and I've been working on this
18 since the early nineties, so I would love to see you
19 recognize my people, and I would love to see it
20 before the grim reaper takes me.

21 So I would -- I made the observation,
22 when I went to the office of federal acknowledgement,
23 that -- the meetings I had there, it felt like an

1 adversarial relationship, and it shouldn't be that
2 way.

3 I'd like to think that those folks
4 within that office would understand that they're
5 there to help and not to prove that people are not
6 Indian tribes.

7 And I would like to comment, also,
8 with the idea that we're on the same page. We're
9 here to help you to do those things that you need to
10 do to establish that you're a legitimate Indian
11 tribe.

12 So, again, I hope, as -- that these
13 proposed regulations -- these proposed regulations do
14 occur, and that it can speed up the process.

15 I would hate to think that if I walked
16 in here today fresh off the streets, it would take
17 thirty years to render a decision.

18 I have -- I've often said, if I worked
19 for the bureau of Indian affairs and someone walked
20 in on my first day of the job, I'd say, well, here's
21 my thirty year career. It just shouldn't be that
22 way.

23 But, again, thank you for what you're

1 doing.

2 And this question is kind of flipped,
3 but -- and as you look at your crystal ball, do you
4 think that the these proposed regulations will pass?

5 MR. WASHBURN: Thank you for the
6 questions and the comments.

7 MR. ADKINS: Thank you for your time.

8 MR. WASHBURN: And we thank you for
9 your time and comments.

10 We certainly hope that, and as we plan
11 to go forward, we have heard over and over and over
12 again that the process is broken, and so we know that
13 we need to do something.

14 You know, I can't tell you if we're
15 going to be enacting in their current form or
16 proposed form, but we will do something. I'm
17 confident that we will go forward to do something.

18 So many people have asked us to fix
19 these regulations, and so my crystal ball is a little
20 bit cloudy, but I am confident that we will move
21 forward with changes.

22 MR. ADKINS: Just barely one decision
23 in thirty-six years doesn't speak very well for the

1 process.

2 MR. WASHBURN: Well, let me just say,
3 just to address a couple of things that you just
4 said, there's a lot of collaboration, between our
5 social scientists and the petitioner groups social
6 scientists.

7 And we have -- we've got teams that
8 work on these and each team tends to have a
9 genealogist, a historian, and an anthropologist, and
10 sometimes other, and lawyers, lawyers, too, to get us
11 to -- when we review some of these things.

12 And so, we're getting -- frankly, most
13 of the information we get comes to us from the
14 petitioning group social scientist.

15 We are certainly trying to speed up
16 the process, because it -- everybody agrees, it
17 shouldn't take thirty years.

18 On the other hand, though, you know,
19 when our scientists don't have anything to work with,
20 we shouldn't be criticizing them for taking thirty
21 years to review a petition when it clearly didn't
22 have all the information they needed, except for the
23 last five years, or it's something like that.

1 And so -- and so we're trying to make
2 it more clear, more transparent, more clear when a
3 petition is ready to be considered and when it's
4 complete.

5 And just to be fair to them, because
6 they do work really, really hard on these, these
7 petitions.

8 And I can tell you, they -- you know,
9 they find it very rewarding when they can recognize a
10 tribe. Those people work really hard on these
11 processes and find it very rewarding when they do,
12 and a lot of them, they find that they can't
13 recognize, but that's part of the process, too.

14 Thank you for the comments.

15 * * * * *

16
17 MS. SAVATTERE: My name is
18 Elaine Savattere and I'm here today from the Northern
19 Cherokee Nation.

20 First, the Cherokee would like to
21 thank the Bureau of Indian Affairs as a whole for
22 what they -- for the work you're doing, and a special
23 thank you for Mr. Larry Roberts for being the

1 principal representative for the BIA and who is
2 taking most of the flack.

3 Our Chief Ken Grey Elk sends his
4 regrets that he could not attend today's meeting
5 personally, but sends his warmest regards to all
6 those participating today.

7 We want to thank the BIA for
8 responding to the needs of the indigenous people of
9 the United States and to thank you -- to applaud your
10 efforts to review the 25 CFR 83.

11 We wish to revisit the continued
12 third-party involvement. This issue can not be
13 hammered on enough.

14 In our research going back to the
15 start of the federal recognition, all such
16 involvement usually turned out badly for the
17 petitioner.

18 This third-party involvement was
19 biased, arbitrary, discriminatory, self-serving and
20 unfair and for the most part continues this way to
21 the present.

22 As we have seen, just because it has
23 always been this way, gives no justification that it

1 should continue to be done in this manner.

2 If a tribe's bid for recognition is
3 successful based on historical data, then any
4 failures should be based on the same criteria and not
5 arbitrary statements by a self-serving third-party.

6 We do have just a couple of more
7 questions to address. We acknowledge that the eighty
8 percent descendent requirement from pervious
9 documents is mostly acceptable for going through the
10 recognition process for those tribes that were
11 fortunate enough to have records.

12 We maintain, however, that if we are
13 recognized as a sovereign nation, should we not
14 already be an acknowledged sovereign nation in realty
15 and, therefore, entitled to determine our own
16 citizenship requirements, as we have done so since
17 our beginning.

18 Just one more item: We greatly
19 appreciate the decision to extend the comment period
20 for sixty days, which provides an opportunity for a
21 few more public venues such as this.

22 We have noticed, however, that all the
23 previously held meetings were at the perimeters of

1 the United States boundaries. While Keshena,
2 Wisconsin was stated as the Midwest, we do not
3 consider that to be entirely correct.

4 In the states of Kansas, Nebraska,
5 Missouri, Arkansas, Tennessee and Kentucky, there are
6 in excess of five million non-federally recognized
7 indigenous people. This represents more individuals
8 than all previously held meetings combined and these
9 people should be represented.

10 As such, we feel that some serious
11 thought be given to at least having one or more
12 meetings held for their consideration in or near the
13 center and the actual Midwest areas of America.

14 Believe me when I state that,
15 literally, millions of Western and Midwestern
16 indigenous people wait for the news of these meetings
17 in the near future.

18 Wado, and, with respect, the Northern
19 Cherokee Nation.

20 MR. WASHBURN: Thank you for your
21 comments.

22 It's always difficult to figure out
23 where to hold consultations, but let me say, this

1 process we're doing is largely to effectively
2 recognize Indian tribes, and because we have
3 obligations under President Obama to consult with
4 Indian tribes when we make decisions.

5 We're at public meetings largely
6 because petition groups would not be able to
7 communicate with us if we didn't do that, and other
8 members of the public.

9 But, most rulings like this don't have
10 any public hearings. Most of them are done on paper
11 back in Washington, D. C, and so -- and we simply
12 can't go everywhere.

13 No one is happy about where we've
14 been. There are five hundred sixty-six recognized
15 tribes who would like to host us, and I'm not sure
16 that they would all do as good a job as Mashpee has
17 done, but there are a lot of places that would love
18 to have us, and there are places, obviously, off of
19 Indian reservations where we would like to go.

20 So what we've decided to do is to do
21 teleconferences for the additional consultations, and
22 that way, anybody, you know, can speak to us from
23 their own living rooms if they like, and we would get

1 maximum participation that way, because all you need
2 is a telephone to participate in those further
3 meetings.

4 And so we will have further
5 opportunities for discussions, but they will be
6 telephonic, and anybody from anywhere in the country
7 can participate, for that matter, probably in the
8 world, can participate.

9 Let me push back a little bit here on
10 this idea about third-party information, because we
11 do need to have a rigorous process.

12 And, you know, we've got scientists,
13 social scientists that sift between good information
14 and bad information, as to whether it's substantive
15 or it's just rumor or something like that.

16 But, we do need the information and we
17 have a rigorous process, and we will process
18 evidence, and we need to get evidence from reliable
19 sources, and we need to have an open process to keep
20 people -- for people to provide that for us.

21 In addition to us, we actually
22 encourage third-party participation, so that we've
23 got, you know -- so anybody interested in providing

1 information can feel like they've been heard, and
2 that's -- and we know that people don't always like
3 it, but that's the American way, is to get input from
4 a broad swath of the public and get their viewpoints
5 on things.

6 And, certainly, if they've got
7 evidence to provide, we'll decide whether it's good
8 evidence or whether it's not substantive, but we
9 encourage people to provide that evidence in any of
10 our processes, so -- and that needs to be a part of
11 what we need to do moving forward.

12 Thank you very much for your comments.
13 I appreciate that.

14 * * * * *

15
16 MR. JENKINS: Good morning, my name is
17 Dennis Jenkins. I'm the Chairman of the Eastern
18 Pequot Tribal Nation in Connecticut.

19 And, first off, I want to thank you
20 for conducting these hearings and what you're doing
21 to change the regulations. We really appreciate it.

22 I'm not going to ask a lot of
23 questions because I want to get my statement on the

1 record in my three minutes of allotted time, so I'm
2 going to read that statement, and I will also give
3 you a copy.

4 The Department of the Interior, DOI,
5 took a positive step forward by acknowledging in the
6 draft that the existence of a historical reservation
7 is tantamount to the existence of a tribal nation.

8 This change is consistent with Cohen's
9 thinking in the mid 1900s and reflects the practical
10 result of maintaining tribal territory. Such
11 reservations sustain a tribal homeland and allow the
12 tribes to continue culturally and ethnically.

13 When a people live together on a
14 particular land base, they are bound to have
15 important community ties. This is particularly so
16 when they are ethnically and culturally different
17 from the surrounding community; when the area is
18 fairly isolated; and when the inhabitants of the
19 community have a common foe or overseer. This is the
20 case of the Eastern Pequot Tribal Nation.

21 With the change in the regulations,
22 the DOI took the additional step to allow those to
23 meet the changed regulations to review their requests

1 for recognition. This was necessary; otherwise,
2 tribal nations who have not yet petitioned could be
3 recognized while other nations have gotten through
4 the acknowledgement process would not be recognized.

5 However, in the proposed regulations,
6 DOI additionally allows states and local government
7 to decide whether tribal nations can reapply for
8 recognition. DOI has given states and others a veto
9 over federal decision-making.

10 We know that the decision-makers of
11 DOI, particularly Assistant Secretary Washburn and
12 Deputy Secretary Roberts are people of honor and
13 integrity, taking great pride to be doing the right
14 thing rather than what is politically expedient;
15 therefore, you can imagine our shock and dismay that
16 they abandoned the support of the old tribes to
17 declare as a matter of equity they owe a higher duty
18 to state and local governments who have done all they
19 can no decimate tribes.

20 In 2003, the National Congress of
21 American Indians issued a resolution, the title, to
22 support the Eastern Pequot Nation.

23 I would like to read two of those

1 paragraphs:

2 "Whereas, less than ninety days
3 following the recognition, the attorney general of
4 Connecticut and twenty-nine towns filed an appeal
5 with the IBIA asking that the assistant secretary's
6 final decision be reversed; and the State of
7 Connecticut and other appellants appear driven not by
8 concerns of compliance with recognition regulations,
9 but instead, by the desire to stop the expansion of
10 Indian gaming and to prohibit future acquisition of
11 federal Trust land in Connecticut to ensure that the
12 Eastern Pequot Tribal Nation can never bring a claim
13 for land against the state.

14 The action of the State of Connecticut
15 in appealing the federal recognition of the Eastern
16 Pequot Tribal Nation is an attempt to undermine the
17 process of federal recognition of Indian tribes, and
18 it hurts all of us.

19 NCAI further urges the State of
20 Connecticut, its representatives and its towns to
21 recognize legal, historical and political
22 relationship with the tribes within Connecticut, the
23 tribal, social, and political structures that predate

1 the Constitution of the United States, to respect the
2 inherent sovereignty of those tribes and to engage in
3 good-faith bargaining regarding land acquisition,
4 gaming compacting and other issues of mutual concern,
5 and to refrain from the Bureau of Indian Affairs in
6 the process to the courts to declare legitimate
7 federal tribal recognition decisions, unquote.

8 This decision is not only morally
9 reprehensible, it is also arbitrary, capricious and
10 not in accordance with the laws of the United States.

11 The proposal which delegates the
12 authority to third-parties without any recourse of
13 the tribal nations violates the Constitution's
14 Appointment Clause, Supremacy and Commerce Clauses,
15 and the Fifth Amendment Due Process and Fourteenth
16 Amendment's equal protection as applied by the Fifth
17 Amendment, and, finally, and most importantly, the
18 Department's trust responsibility for Indian tribes.

19 The Appointment Clause, Article II,
20 Section two, Clause two of the U.S. Constitution
21 requires that any person who exercises significant
22 authority under the laws of the United States is
23 considered an officer of the United States and must

1 be appointed by the president with the advice and
2 consent of the Senate.

3 Buckley versus Valeo, it also permits
4 the appointment of inferior officers to make
5 decisions.

6 Congress, however, must delegate the
7 authority to the department to appoint those inferior
8 officers.

9 The decision to recognize an Indian
10 tribe is a significant decision, second to none for
11 tribal nations that are not federally recognized, and
12 consequently, any provision that delegates the
13 authority to third-parties to veto the federal
14 recognition, especially when the tribes are entitled
15 to such recognition, violates the Appointment Clause.

16 I'm going to try to get through these
17 things here, so bear with me.

18 The Supremacy Clause, Article Six,
19 clause two of the U.S. Constitution and the Commerce
20 Clause as it applies to Indians completely preempts
21 the field of tribal commerce including recognition.

22 Congress has implemented this
23 authority by delegating authority to DOI to interact

1 with tribal nations through 25 USC one and nine and a
2 number of other congressional acts.

3 Rarely does congress grant
4 jurisdiction to states; moreover, the power of the
5 Federal Government to manage its affairs has led
6 courts to treat as presumptively invalid under the
7 Supremacy Clause local enactments which attempt to
8 impede or to control the Federal Government.

9 In the instant case, congress must
10 clearly and specifically express any delegation of
11 state jurisdiction over tribal nations. Having taken
12 no such action, DOI does not have the authority to
13 delegate state and local government jurisdiction over
14 decisions affecting tribes without congress's
15 approval.

16 The Due Process Clause of the Fifth
17 Amendment guarantees that the Federal Government will
18 not deprive a person of his life, liberty or property
19 without a reasonable opportunity to challenge the
20 agency's actions.

21 The United States Supreme Court held
22 that it was improper to withhold welfare benefits to
23 applicants who meet the requirements for entitlement

1 to those benefits, Goldberg versus Kelly.

2 The individual welfare benefits at
3 issue in Goldberg are minor in comparison to the
4 benefits to which tribes are entitled as a result of
5 the government-to-government relationship; therefore,
6 tribes that meet the regulatory requirements are also
7 entitled to due process. They cannot be precluded
8 from challenging an agency's decision not to
9 recognize them by the arbitrary and political
10 decisions of third parties.

11 Further, the Fifth Amendment Due
12 Process clause incorporates the concepts of the
13 Fourteenth Amendment's Equal Protection as it applies
14 to the Federal Government. When the government
15 discriminates based on race and national origin, as
16 it does in the proposed regulations, the standard of
17 review is strict scrutiny.

18 Any arbitrary process that allows
19 political operatives, who are known as Indian
20 fighters, to decide whether a tribal nation may enjoy
21 the government-to-government relationship with the
22 Federal Government does not pass the express strict
23 scrutiny standard of review.

1 Finally, and most importantly, the
2 proposed regulation bows to political pressure and
3 abandons the Department's trust responsibility for
4 tribes.

5 The purpose of the regulations is to
6 carry on the special trust relationship between the
7 United States and the tribal nations.

8 The DOI took on that responsibility
9 when congress and DOI determined that it should be
10 the agency responsible for deciding who will receive
11 the benefit of the government-to-government
12 relationship.

13 Having taken on that responsibility,
14 any Indian tribe that meets the requirements for
15 recognition is entitled to the benefits of the
16 government's trust responsibility. That entitlement
17 trumps any so-called equitable third-party
18 considerations.

19 There is simply no scenario that
20 allows the department to recognize some tribes while
21 not recognizing other tribes that are equally tribes
22 under the same criteria.

23 This proposal is the worst type of

1 modern day genocide. While we are all aware that
2 there are tribes that are the haves versus the have
3 nots, this proposal would establish the most
4 egregiously unfair classification recently devised by
5 the Federal Government. It would allow states,
6 counties, cities and others that do not want tribes
7 in their neighborhoods to prevent recognition.

8 In our other comments section, we
9 would like to support these new provisions that are
10 proposed.

11 We agree that the department's
12 proposal to define historical as 1900 or earlier.

13 We agree that the ASIA should make the
14 final decision for the department, that any IBIA and
15 OFA ruling should be advisory, and that the IBIA
16 reconsideration process should be deleted.

17 We agree that the thirty percent of a
18 tribal community may represent a predominant portion
19 of the community.

20 We agree with using the 1934 as a
21 starting point for proving community under (B) and
22 (C).

23 We agree that third-party comments

1 should be provided within a specific, limited time
2 period.

3 We agree that the ASIA should
4 establish a method for providing expedited decisions
5 for some petitioners; however, we believe that the
6 process proposed in the preliminary draft is a
7 better, more useful process.

8 I want to thank you for your time, and
9 I'll hold my questions to later, sir. Thank you.

10 MR. WASHBURN: Thank you,
11 Chairman Jenkins.

12 I think what we'll do, because a lot
13 of you have been sitting a very long time, so I think
14 what we'll do is to take about a ten minute break,
15 while I digest all those cases that Mr. Jenkins just
16 talked about, and we'll get re-started at 10:25.
17 Thank you.

18 (Whereupon, a brief recess was taken
19 at 10:10 a.m. Proceedings resumed at 10:27 a.m.)
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UNIDENTIFIED SPEAKER: Thank you for being here today. I would like to start by thanking Cedric Cromwell and the Mashpee Wampanoag Council, and I appreciate us being here today. Thank you.

MR. WASHBURN: Chief, please introduce yourself for the record.

* * * * *

MR. VELKY: My name is Richard Velky and I'm the Chief from the Schaghticoke Tribal Nation, located in Kent, Connecticut.

The Schaghticoke Tribal Nation chooses not to submit any written testimony today because of the sixty day continuance, which I appreciate very much, that you notified us instead of tomorrow, because then, everybody else has a chance to look at -- look our work over, for and against it, so that was timely on our part. Unfortunately, for the other four formums, it wasn't; but, we do appreciate it.

We would like to state -- the position I was going to end with, but instead, I think I'll begin with, because the Chairman from the Eastern

1 Pequot Tribe did such a good job in covering quite a
2 bit on this veto power, that I don't have to hit on
3 the same comments.

4 But, up there (indicating) you have
5 comments on the proposed rule, it's September 30th,
6 2014. Last year we testified or gave testimony in
7 the Nascot Reservation (phonetic) and that closing
8 period on comments was supposed to be in August, and
9 then it was extended until September, which is fine.
10 Everybody had a chance to rebut.

11 But, four months after that, the
12 governor from Connecticut, Governor Dannel Malloy,
13 walks a letter into the White House. His letter was
14 basically demands on how he wanted to see this
15 process handled; that it was affecting the State of
16 Connecticut and his citizens, which we are not any
17 of, and that had to be changed to his liking.

18 Now, I'm not saying that you're
19 department, Mr. Washburn, you know, bowed to any of
20 his changes, but I will say, they mirrored a lot of
21 what he had in his letter.

22 And, when they also -- when they came
23 out in print, it seemed to be that the people who

1 were being interviewed for the State of Connecticut,
2 that represented the State of Connecticut as
3 congressional leaders, they said that they were
4 working behind the scenes on this for nine months in
5 Washington, D. C, and I bring that up because that's
6 exactly what happened to the Schaghticoke Tribal
7 Nation back in 2005.

8 In 2004, we were granted our federal
9 recognition and then we were attacked by the State of
10 Connecticut, literally attacked by the State of
11 Connecticut, an onslaught that never stopped and it
12 still continues today.

13 And it seems every time these
14 politicians from our state, this little state gets
15 involved, all the good work that you've been doing
16 has a change in it and the change is always against
17 the Indians.

18 I need to recognize -- (applause)
19 recognized the two tribes that have been federally
20 recognized in our state, and that's great, and that's
21 the way it should be and that's the way it should be
22 for the other three indigenous tribes that were
23 recognized by the State of Connecticut, but we can't

1 seem to get that message across to them.

2 The State of Connecticut, along with a
3 few other states, I'd say, at least the senators -- I
4 believe there was fifty senators that signed on to a
5 letter to do away with the name Washington Red Skins,
6 which I thought was powerful on their behalf, but I
7 don't stand here today in front of you trying to
8 defend it.

9 I didn't understand how a name,
10 Washington Red Skins, offends them and they want to
11 be politically correct, but yet, they can hold
12 genocide against residents of our State and nobody
13 says a damn thing about it (applause).

14 The State of Connecticut has a
15 fiduciary responsibility, not just to its citizens,
16 which we are, but they had outstanding fiduciary
17 duties to protect the tribes in the State of
18 Connecticut.

19 We understand that the attorney
20 general's first job is to oversee for the citizens
21 that he considers a right to be in his state, but
22 we're not to be left behind.

23 The fiduciary duty cannot be upheld by

1 the people who oversee the tribes in their state,
2 should be removed and it should be handed to another
3 state or another jurisdiction that can properly
4 represent us and we can have our voice heard. It's
5 not happening.

6 I'd ask you today to see that it does,
7 because it's not a fair system for the tribes in the
8 state. We're constantly being attacked by them.

9 You know, what's going on here today
10 is a sad thing with this veto power. To think, after
11 thirty years of fighting with these guys, to be in
12 the State of Connecticut, after three hundred years
13 of them holding our documents, our information, our
14 overseers, on our land, and our people, to help us
15 not one bit to get to this federal recognition
16 process, but today, we have to ask their consent in
17 order to move forward, because we would -- what you
18 consider to be re-petitioning.

19 I don't look at this as a
20 re-petitioning; I look at this as restoring what was
21 rightfully ours and stripped away by another
22 government, and that we had (applause).

23 One last thing, if I can, because I

1 know I'm over my three minutes, we have five hundred
2 sixty-six federally recognized tribes, all deserving
3 of their recognition. If every one of them (sic)
4 tribes had to resubmit and get the consent from
5 people who were against them, I wonder today if we
6 would have a dozen. Don't allow it to happen.

7 I ask you, Kevin, and I ask your
8 staff, stand strong with us. You're our protection.
9 You're our Indian agency, not the State of
10 Connecticut or any other state. Let them go get
11 their own outside help.

12 And, you know what, for the money
13 they've put into it, each and every tribe had to
14 triple that money to fight, whatever they did put
15 into it.

16 And yet, we're still going to give
17 them the right to give us their consent? No. We
18 were here. They came later.

19 Thank you.

20 MR. WASHBURN: Thank you,
21 Chairman Velky.

22 Reverend Norwood.

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REVEREND NORWOOD: Reverend John Norwood, and I am here speaking on behalf of the National Conference of American Indians Task Force on Federal Acknowledgement.

I want to thank the Secretary for being here, holding these consultations. I congratulate you on your efforts and will formally state, that you are a man who has kept your promise to the task force and the Indian country.

I also want to congratulate my brothers and sisters in the Mashpee Wampanoag Nation. I am thrilled to be standing in this wonderful edifice. I thank you for all your good work and congratulate you on all your progress. Thank you for hosting this event.

I want to just simply formally state on behalf of the NCAI task force that the resolution portions that were read by the Chief of the Eastern Pequot, mentioned again in the comments by the Chairman for the Schaghticoke, that these comments are still in place; that the resolutions were neither changed nor rescinded, so they are still a policy of

1 the National Congress of American Indians.

2 And while, at the time, the concept of
3 a third-party veto was not even considered, given the
4 current presentation, the task force has discussed
5 this on several occasions, and we've even discussed
6 it with you, sir.

7 You are aware that we are of the
8 position that any tribe that meets the criteria
9 should not be derailed by the comments of any third
10 party.

11 And in the event that a tribe can show
12 that there was inappropriate activity with a
13 third-party participation in the decision to decline
14 or rescind their recognition, that they should have
15 the opportunity to appeal, yet again, under the new
16 rules, under the new spirit of the regulations.

17 And that would be more consistent with
18 the intent and the spirit of the United Nations
19 Declaration of Rights of Indigenous People, which has
20 been embraced by this nation, with the Obama
21 administration; that, indeed, the rights of
22 indigenous people need to be preserved and respected.

23 And their status within their

1 countries has to be observed and respected in a
2 spirit of having a third-party veto when certain
3 criteria obviously were abused in the process. I
4 think that that is unfair and I ask you to reconsider
5 the wording.

6 Although we understand why there
7 should be, perhaps, some comment with third parties,
8 we do not believe they should be the decision-makers,
9 as to whether a tribe has the opportunity to have
10 their material reviewed.

11 While I would like to reserve the
12 ability to comment at another time, one of the things
13 that I just wanted to mention, also, is you listed
14 the issue of boarding schools in criteria B, using
15 that for proof of community, which is quite
16 appropriate, at least in the spirit of the rules, and
17 has always been the case.

18 We've seen evidence that it hasn't
19 always been the case in the way that the criteria has
20 been applied; however, we would like to state that it
21 should clearly be shown, and should be added to the
22 descent criteria, in E; that a tribe shouldn't
23 suddenly become Indian simply because the children

1 are enrolled in a federal boarding school.

2 Obviously, it was known to have been a
3 community of Indian descent prior to that, and in
4 many instances, the registration in boarding schools,
5 which happened in the middle of the last century,
6 were with tribes that may not have had any
7 enrollments done by the department in the years of
8 the enrollment period.

9 We think that Indian boarding school
10 attendance, those types of things, in addition to
11 studies listing family names should be included to
12 show Indian descent, even if subsequent to 1900, if
13 that same tribe can demonstrate its unique existence
14 prior to 1900.

15 I thank you for being able to make
16 these comments at this time.

17 MR. WASHBURN: Thank you,
18 Reverend Norwood.

19 * * * * *

20
21 DR. AUSTIN: I'm Steven Austin, and I
22 am an anthropologist, have worked with federal
23 recognition, and I also worked for six years for the

1 office of federal acknowledgement, and so I've had
2 experience from both the government's point of view
3 and with working with petitioners.

4 Normally, I'm the guy who is
5 recommending to everyone to stay calm and cool and
6 rational and to keep everything focused on the
7 evidence. If you're going to present a case to the
8 federal government, they're going to hear it
9 objectively.

10 I have to say, however, I'm going to
11 step outside of my role as an anthropologist for a
12 moment and say that, in terms of the third-party veto
13 that's provided for in the current version of the
14 proposed regulation, that this presents a real
15 problem for me and for some of the folks that I have
16 worked for in the past.

17 I'm thinking of your comment,
18 Mr. Washburn, about groups that have opposed certain
19 tribes are saying that -- that these groups should
20 not be allowed to re-petition because they've lost
21 and we've won fair and square, as you put it earlier.

22 There's a great difference between
23 "fair and square" and being loud and flaunting your

1 power, and that's what we faced in the State of
2 Connecticut, as you've just been hearing from the
3 tribal chairmen of both the tribes there.

4 I've worked very hard on the cases in
5 Schaghticoke Pequot. They're not paying me to make
6 my comments today. I'm doing this of my own
7 freewill.

8 But then, the idea that they're ever
9 going to get the State of Connecticut to give consent
10 for them to re-petition is ludicrous. That's never
11 going to happen. It's just not going to happen.

12 (Applause) so this provision, in particular, seems to
13 me to be aimed at the Connecticut tribes in
14 particular.

15 Getting back to the "fair and square"
16 idea, we presented the cases for Eastern Pequot and
17 the Schaghtecoke Tribal Nation, and those cases were
18 both approved by the office of federal acknowledgment
19 professionals, the researchers that you were talking
20 about earlier, as well as by the assistant secretary
21 for Indian Affairs.

22 They both received final
23 determinations that were positive, only to have them

1 overturned on the basis of political opposition, not
2 because of the facts of the case.

3 The idea then that you're going to
4 allow the State of Connecticut and its non-Indian
5 citizens to stand in the way of the Schaghticoke
6 Nation and the Pequot to have their petitions heard
7 fairly, on the basis of the facts of the case is very
8 upsetting, and I think that it would be really
9 well-received if you would please reconsider the
10 third-party veto.

11 I may not like third-party
12 participation in these things, but I understand it,
13 and, for me, as far as an individual scholar is
14 concerned, I'm not -- I'm okay with it. I'll deal
15 with it, but it should be based on the facts of the
16 case, not based on the disparity of power between
17 several million non-Indian citizens and a few hundred
18 Indians.

19 This is part of your responsibility,
20 to weed through some of the comments that come in
21 from third parties when they're in opposition, which
22 may not be based on anything having to do with the
23 facts of the case and have everything to do with

1 people who don't want to see another casino go up in
2 their neighborhood.

3 And I'm here to tell you, I'm just
4 reminding you, because I know that all of you know
5 this, the Indian Gaming Regulatory Act makes gaming
6 legal in this country. If people want to oppose
7 Indian gaming, let them oppose it as gaming. Federal
8 acknowledgement is about so much more. (Applause)

9 And there are -- there are plenty of
10 groups in this room today that have no particular
11 designs on gaming, so that this proposition, that
12 this opposition is based on this, political position,
13 and not on the facts of the case.

14 The same thing would be true in terms
15 of someone deciding whether or not the two tribes in
16 Connecticut get to re-petition or not. It's going to
17 be based -- if it continues on this basis, of having
18 third parties have a veto power over whether somebody
19 gets to re-petition or not, justice is not going to
20 be done, and I think it's really important that you
21 please consider that.

22 I'm fine with allowing a judge to
23 decide in the case whether somebody should be allowed

1 to re-petition or not. I think that's fine.

2 I don't have, ultimately, any trouble
3 with third parties participating in the
4 acknowledgement process, but to give them veto power,
5 I think, is just unjust, and I think that it needs to
6 be reconsidered.

7 Thank you.

8 MR. WASHBURN: Thank you, Dr. Austin.

9 Who else would like to make a
10 statement?

11 * * * * *

12
13 MS. COUREY TOENSING: My name is
14 Gale Courey Toensing, and I just want to tell you how
15 I feel --

16 THE COURT REPORTER: I'm sorry, I
17 can't hear you.

18 MS. COUREY TOENSING: -- Gale,
19 G-a-l-e, C-o-u-r-e-y, Toensing, T-o-e-n-s-i-n-g.

20 I'm a reporter, but I'm not here
21 speaking as a reporter, I'm speaking as someone who
22 deals with --

23 UNIDENTIFIED SPEAKER: Speak up, Gale.

1 Speak up a little bit.

2 MS. COUREY TOENSING: I'm not here
3 speaking as a reporter, I'm here speaking as a person
4 who lives in Connecticut.

5 I just want to say that the
6 politicians who spent all that money in Connecticut
7 opposing the Schaghticoke and Pequot Tribe spent my
8 tax dollars without my permission.

9 And the other thing I want to say is,
10 I spoke to my selectman last night --

11 THE COURT REPORTER: I can't hear you.

12 MS. COUREY TOENSING: -- my board of
13 selectmen in Connecticut refused to sign onto a
14 letter opposing your daft, your proposed reformed
15 regulations, because this letter was distributed by
16 the Schaghticoke Tribal Nations, and my Board of
17 Selectmen said it was full of lies, lies about what
18 would happen if the Schaghticoke Tribal Nation were
19 to be recognized, lies about what would happen to my
20 town.

21 And they said it was untrue, but they
22 refused to sign it, and I felt that -- thanked them
23 for doing that; unfortunately, that's not true of the

1 other towns.

2 (Discussion off the record).

3

4 MR. WASHBURN: You may proceed.

5 Please, introduce yourself.

6 * * * * *

7

8 MR. RODRIGUEZ: I'm Scott Rodriguez.

9 I want to comment on the draft
10 proposal for establishing procedures, establishing an
11 Indian as a sovereignty and being entitled to a
12 government-to-government relationship with the United
13 States.

14 A tribe's sovereignty is established
15 by the ability to meet or exceed a stringent criteria
16 and intended to be a clear demonstration of the
17 historical career, not merely a group of Indians
18 proud of their heritage.

19 The current rules, as they stand,
20 protect the nature and intentions to inherent
21 sovereignty. The proposed rules will make it
22 impossible to distinguish between recently formed
23 groups of individuals of Indian descent and

1 long-established tribal entities existing as
2 governmental bodies.

3 Since the time of first contact,
4 changes to the current requirements do little more
5 than allowing a recently formed group to circumvent
6 the long-established principles followed by the
7 indigenous people who are currently recognized as
8 Native American Indian tribes.

9 I'm asking you, do not diminish the
10 meaning of the sovereignty for the tribes that have
11 achieved that status.

12 The current process of federal
13 recognition ensures that only tribes with inherent
14 sovereign rights enjoy a government-to-government
15 relationship with the United States.

16 The proposed rule eliminates the
17 requirement that a tribe exist as a social and
18 political entity; in fact, the new ruling favors
19 tribes already identified, and when you create new
20 rules for groups previously named, you affect the
21 foundation of sovereignty, what it means to be a
22 tribal government.

23 A better, a most needed change would

1 be the ones that add transparency to the process of
2 recognition and an updated manual or explanation of
3 the tribes undergoing federal recognition coupled
4 with a timely review would have satisfied the need
5 for a change in this process.

6 This change is unnecessary and hurtful
7 to historical Native Americans. I ask that you defer
8 in adopting this.

9 Thank you for allowing me to speak.

10 MR. WASHBURN: Thank you,
11 Mr. Rodriguez.

12 Chairman -- wait just a moment. Are
13 you coming up to the mic? No?

14 Thank you for your patience.

15 * * * * *

16
17 UNIDENTIFIED SPEAKER: Thank you for
18 having this public hearing and thank you to the
19 Mashpee Wampanoag Tribe, to welcome us to your lands.
20 It's a beautiful building --

21 MR. WASHBURN: Please, introduce
22 yourself.

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MS. LITTLEFIELD: My name is Michelle Littlefield. I'm a resident of the State of Massachusetts.

It has long been departmental policy to prove that a tribe exists as a government and as a social culture at the time of first contact. This supports the belief that the tribe sovereignty predates the United States Government and exerts political control over its members. Many tribes today are recognized due to the fact that they have lived as a distinct culture.

In the proposed rules, the historical evidence is in a relaxed and liberal manner. This change to the current process will damage the entitlement of the tribal sovereignty by devaluing the historic nature of the tribes that have continuously existed in the United States.

It will also undermine the true sovereignty of the Native American Indian and change the political landscape for tribes that have proved their sovereignty since first sustained contact.

It is because of this threat of the

1 historical tribes of the United States that I ask
2 that you not to change the rules for federal
3 recognition.

4 The current process of acknowledgement
5 protects the integrity of the historical -- the
6 history of the Native American Indian that proved
7 they continuously existed since the year 1789.

8 Many tribes in the United States
9 existed long before the process of acknowledgment
10 did. These tribes have had an honored place in our
11 nation's great history.

12 The rules eliminating that a tribe
13 existed before the federal government did would wipe
14 away Indians who have always lived with their culture
15 and that of their ancestors.

16 The current process was not -- the
17 intent is not to prove tribal existence where none
18 had previously existed. The proposed rule is based
19 on ethnicity rather than historical fact.

20 I ask that you do not change or relax
21 the rules for federal recognition.

22 Thank you.

23 MR. WASHBURN: Thank you,

1 Miss Littlefield.

2 Chief Adams? Gone away? No?

3 Chief Adams.

4

5 * * * * *

6

7 MR. ADAMS: I just want to say a few
8 more words. I'll only talk for two and a half
9 minutes. I saw people up here for about ten
10 minutes -- oh, that's okay.

11 On the third-party veto, I knew a
12 little bit about it, and I wasn't totally informed
13 about it, but from just a few things I read, if
14 third-party veto is going to carry the weight, it's
15 going to be presumed that --

16 THE COURT REPORTER: I'm sorry --

17 MR. ADAMS: -- it's going to carry the
18 weight of whoever the third-party is.

19 Third-party affirmations should carry
20 the same weight. If someone wants to affirm that
21 this tribe exists, it should carry the same weight as
22 third-party veto.

23 I also wanted to mention something

1 about the beginnings of the session. We have two
2 separate sessions, a federal tribal consultation
3 session and a public session. I'm disappointed. I
4 came six hundred miles to be here for this half day,
5 and at this point, I can't be in on that.

6 These federal tribes -- federal tribes
7 have direct access to the Federal Government all the
8 time. We have it just a very little bit of the time.
9 They should not have any more access than we have as
10 citizens of the United States.

11 I totally agree that the changes need
12 to be made, in spite of opposition, and I totally --
13 I do agree, because I've gone to a dozen or more
14 hearings in the United States, in the senate Indian
15 affairs committee, the house of representatives
16 resources committee, been going to hearing after
17 hearing, after hearing, where all the panel members
18 on those particular committees agreed in the United
19 States Congress that the process is broken, totally
20 broken.

21 And if it wasn't broken, why would it
22 take thirty years to go through it? That's insanity,
23 right there, to take thirty years to go through it.

1 I want to go back a little bit to try
2 to clarify, if I can, something on the boarding
3 schools that Pastor Norwood mentioned.

4 He mentioned that the folks that came
5 to attend the Indian boarding schools would get a
6 step ahead in the line, so to speak, would have a
7 little more opportunity for having that, to carry
8 some weight in the process. I want to add something
9 to that, if I may.

10 Private Indian boarding schools, such
11 as Batewell College (phonetic), and Indian boarding
12 schools run by the federal government -- Batewell
13 College was very similar in that it -- a government
14 boarding school, because it catered to educating
15 Indians; as a matter of fact, Batewell College, in
16 it's mission statement, was chartered to educate
17 American Indians.

18 How do I know so much about it? I'm
19 the chairman of the board. A private boarding school
20 such as Batewell College somehow got connected with
21 that statement about boarding schools. I don't know
22 how you can fit that in, but it's a major -- and at
23 one time, of course, Hampton Institute (phonetic),

1 which is now a public institution, was also educating
2 American Indians, so there are a few things in there.

3 Once again, this process certainly
4 needs to be changed, and the sooner the better.

5 MS. APPEL: Thank you. Just to
6 clarify, the proposed rule, it also says, other
7 Indian educational institutions, so I think that
8 would capture your concern.

9 MR. ADAMS: Thank you.

10 * * * * *

11

12 REVEREND NORWOOD: I was actually
13 rising to support the chief's statement, that in no
14 way was I trying to exclude those closely affiliated
15 Indian boarding schools, which actually received
16 federal dollars under federal law in the 1800s. I
17 apologize if my comments appeared to exclude those
18 closely affiliated Indian schools.

19 I would also like to respond to a
20 comment with regard to whether the process as
21 currently being proposed harms sovereignty.
22 Actually, the process, as it is, currently being
23 carried out and conducted harms sovereignty.

1 There are historic tribes in this
2 country, tribes of first contact, tribes that have,
3 to this very day, treaties with colonial powers
4 clustered on each of the coasts, and even on the
5 Southern seaboard, and who, because of accidents of
6 history imposed upon them, find it difficult to go
7 through the process as it is currently being applied.

8 The interesting thing is, NCAI, the
9 organization I represent, assisted in the development
10 of the current rules with the intention of assisting
11 worthy tribes.

12 Studies being done show that many
13 tribes were denied their rights, inherent sovereign
14 rights when the process was put in place, and the way
15 that it was managed is very different from the way
16 it's managed today.

17 The problem is not necessarily just
18 the criteria; it is the way that the criteria has
19 become a stumbling block for worthy tribes.

20 The last two tribes through the
21 process required the federal courts and millions of
22 dollars to get the office of federal acknowledgment
23 to do the right thing.

1 There were many tribes that don't have
2 that kind of access and should not be subjugated and
3 persecuted because of a history designed to destroy
4 the Indian people in this country.

5 It is important that we acknowledge
6 the fact that all historic tribes are inherent in
7 sovereignty, whether they're judged to be so, whether
8 they're listed by the Bureau of Indian Affairs or
9 not, but all the historic tribes deserve to be able
10 to be acknowledged and have their rights protected by
11 the bureau.

12 If I didn't say it before, the
13 official policy of NCAI is in support of the positive
14 form changes being proposed.

15 MR. WASHBURN: Thank you.

16 Sir?

17 * * * * *

18
19 MR. LITTLEFIELD: Good afternoon. My
20 name is Dave Littlefield and I'm from East Taunton.

21 It's a pleasure to meet you,
22 Mr. Chairman, and I'm looking forward to meeting in
23 you in the future.

1 Clearly, I'm not an Indian, and I --
2 I've come to this process trying to learn as much as
3 I can. It's very overwhelming, to say the least, and
4 it's very interesting.

5 It's a lifestyle, a culture that I
6 probably just touched the surface of learning about
7 and I'm very impressed with it.

8 I have been following in this country
9 the -- some of the hearings, and I've had -- have put
10 together some real quick -- is that (indicating)?

11 Basically, Western tribes object to
12 the new proposals, and I'll read (indicating) what I
13 wrote, everything about the federal acknowledgement
14 fulfills, what is Indian tribes.

15 There have been tribes around since
16 formation of the United States government. They have
17 existed as an Indian tribe in continuity, have a
18 strong tribal character in the communities in which
19 they live, and they are much more than a defined
20 racial group living among us. Tribes enjoy
21 sovereignty as a historical and legal fact.

22 Is relaxing the determination of the
23 Indian tribe's sovereignty, creating tribes of racial

1 and ethnic and social entities is contrary to case
2 law in every aspect, so we go from inherent
3 sovereignty to a tribe's sovereignty being determined
4 by the federal government.

5 The proposal to loosen up the
6 standards for recognition is well intended, but the
7 current process serves the undisputable facts for
8 tribal recognition, nor do these reasons align with
9 the department, to the proposed rule.

10 My concern is that this goes into a
11 possible racial issue, to civil rights. Who knows?
12 Where does this go, who sovereignty protects (sic)
13 and will come, at what point, to civil rights
14 violations.

15 So, thank you for your time. I
16 appreciate it and I look forward to seeing you.

17 MR. WASHBURN: Thank you,
18 Mr. Littlefield.

19 * * * * *

20
21 MS. CORONADO: My name is
22 Liz Coronado, and I'm --

23 THE COURT REPORTER: I can't hear you.

1 MS. CORONADO: -- Liz Coronado,
2 Picayune Rancheria Chukchansi Indian tribe in
3 California.

4 This summer, I found the opportunity
5 to work with the Mashpee Wampanoag court experience,
6 and, so far, my comment is about revisions to the
7 process. After final, there is a remedial review of
8 reports; however, I feel like if -- tribal courts are
9 ill-equipped to deal with these issues and brings
10 Mashpee to a lawsuit in federal court. The Court
11 attempts to find what a tribe is.

12 It also is shown by the Supreme
13 Court's misunderstanding of Indian tribes after their
14 recent decision a couple of years ago. We have
15 Justice Scalia and Thomas, hard core annihilists, and
16 do not understand these complex Indian issues.

17 Instead of utilizing federal courts,
18 we should utilize tribal courts. We have the ability
19 to set up tribal courts. Why not have these tribal
20 courts decide what the tribe is dealing with, the
21 complex administrative issues, the tribal issues on a
22 daily basis.

23 If the BIA is not up to that, we

1 should have more conferences, conventions with
2 federal judges, and helping them to understand the
3 Indian tribes and how different they are.

4 Also, if -- a review seen by
5 (unintelligible) criteria A, that is clearly seen as
6 hearsay, as -- and as federal courts see as one of
7 the basic evidence things, we learned in law school
8 that that would be a huge issue the federal court is
9 facing, what is hearsay and what is completely Indian
10 culture. Everything is told, narrative, not
11 necessarily written down.

12 Thank you.

13 (Discussion off the record.)

14 * * * * *

15
16 MR. VELKY: Okay?

17 Richard Velky, Chief of the
18 Schaghticoke Tribal Nation.

19 What he's talking about, I have a
20 question, not directed to you, Mr. Washburn, but to
21 all Indians. I was wondering if anybody was here to
22 represent any third parties or the State of
23 Connecticut?

1 MR. WASHBURN: Chairman, I --
2 actually, the purpose of this was for us to get
3 comments from you, so I think that I'll just stop you
4 there --

5 MR. VELKY: You know -- I understand.
6 I appreciate that, Mr. Washburn, but the point is,
7 being it's a two and a half hour drive, it is too far
8 for the State of Connecticut? For a third party to
9 have an interest, when all they have to do is sit
10 down, wait a minute, and not give consent to trying
11 to get the federal regulation.

12 Thank you.

13 MR. WASHBURN: Thank you, Chairman,
14 your point is taken.

15 * * * * *

16
17 MR. WHITE: Greetings. Thank you,
18 Mashpee Tribe, for having us here to speak before you
19 today.

20 My name is David White, Vice-Chairman
21 and spokesperson (unintelligible).

22 I would like to speak about the
23 third-party veto. We could not support any inclusion

1 of a third-party veto within this process because,
2 from our perspective, it's always designed to be a
3 two-party relationship, government to tribe. I don't
4 know where the third-party came from, but we have
5 suffered greatly at the hands of the State of
6 Connecticut, as well.

7 But, just a couple of questions on
8 that note, some of the language you used, sir,
9 earlier, the American way and fair and square, and I
10 believe that one gentleman spoke earlier, if things
11 were fair and square, we wouldn't be here, for sure.
12 Maybe your perspective, "the American way," is not
13 the same as ours.

14 You use it as a positive thing. Our
15 experience has not been so positive with America,
16 honor, integrity, but it seems that honor/integrity
17 has not been returned to us.

18 Also, with all the integrity you've
19 spoken of, your academic teams, and the integrity of
20 the teams working within the tribes, it seems you
21 would not need -- with all these resources, you need
22 to make a decision, why would this third-party be
23 necessary?

1 Also, there seems to be some clarity
2 needed on some of the other criteria, on what is
3 considered evidence. Is it one page? Is it one
4 hundred pages? Is it a picture? It seems always to
5 be arbitrary and capricious and still unclear with
6 us. What is the evidence and what is the standard
7 for that?

8 Because we've been back and forth for
9 thirty years, like Lennon (phonetic) here,
10 (indicating) and it seems not to be enough.
11 Standardizing that requirement might be a good idea.

12 And, also, definitions for things like
13 "community," the way you define community and the way
14 we do it is different. What does that mean? A
15 certain number of families, that makes the
16 "community"? Interaction for a certain number of
17 years? It's unclear, again, what is -- what
18 sufficient evidence is.

19 And going back to the more than twenty
20 years clause, I'm not sure where that number came
21 from. Who came up with that? But -- and that's not
22 even one generation.

23 We've been suffering for generations

1 here, hiding in the dark more than twenty years, been
2 quiet for a long, long, long time, more than twenty.
3 I don't know why that number was used, but a
4 clarification on that might be good.

5 Also, we support the changes that you
6 suggest. Some of the changes are positive; but, we
7 question, what -- that looks good on paper, but
8 what's to hold you to those words on paper?

9 For years and years and years, all
10 kinds of good things have been said, put on paper;
11 you don't follow what you write. What's to assure us
12 that's going to happen this time?

13 Thank you for letting me speak.

14 * * * * *

15
16 MR. BROWN: Greetings to all. I want
17 to thank the Wampanoag Mashpee Nation for holding
18 this, a very important issue that impacts all
19 indigenous people and to thank the Bureau for Indian
20 Affairs for their presence, at least at this point,
21 lending an ear to some very home-hit issues (sic)
22 that we need to discuss and resolve.

23 Just a little background. I'm

1 Hiawatha Brown, a councilman for over thirty years,
2 and I have been through the system, here, standing in
3 front of you, trying to defend what we believe is
4 right in honoring our ancestors, carrying forth their
5 dreams and ideals, which is going to be a very
6 important part of our future, of our nations.

7 With that being said, I just want to
8 share this point with the tribes that are here,
9 represented. I don't make a distinction between
10 federal and non-federal tribes, through the process
11 of history, whether it's our criteria or federal
12 criteria or the state's criteria, that's probably the
13 mechanism.

14 But, I can tell you, we've been in the
15 system for over thirty years, and let me tell you
16 now, we're in a system and still being challenged by
17 the State of Rhode Island every step of the way.
18 Once you get in the system, it's twice as hard to
19 hold on to what you have.

20 Don't think you're being overshadowed
21 or overlooked in your process, because it's happened
22 to all of us. You're talking to Mashpee, who it took
23 them over thirty years to acquire their federal

1 status.

2 Everything we do today is just a
3 footprint, as to what we'll have to do in the future,
4 bear that in mind, and never, never overlook that.
5 That's an important part of who we are as indigenous
6 people of this Northeast continent.

7 For many years, going back to 1978, we
8 filed our petition, over thirty years ago. That is
9 going to require each and every one of us to support
10 one another, and just because we have made the grade,
11 five hundred sixty-six federally recognized tribes
12 made the grade, a federal entity doesn't make us any
13 better than a tribe attempting to get to that same
14 status.

15 We should be able to define who our
16 Indian relatives are and neighbors are, and we know
17 there are a few groups perpetrating, who can't prove
18 anything in history.

19 It is through an act of congress and
20 through the secretary's approval, as to how we become
21 a federally recognized tribe, very strict; in fact,
22 that's where we'll -- why we're here today, to define
23 what is necessary and isn't necessary; however, I

1 don't agree with the Federal Government, certainly
2 don't agree with the State. It's up to us to
3 determine who we are, through our own histories.

4 Undoubtedly, we know who are neighbors
5 are through time and memoriam, and we know who the
6 tribes are, who have been part of our local wars, our
7 local support, and, currently, who we are dealing
8 with, our ceremonial requirements, dealing with a
9 very important part of who we are.

10 I have a -- have serious problems with
11 the position that the Federal Government has taken
12 for the a number of years dealing with tribes west of
13 the Mississippi, including all of us. There has to
14 be a different criteria.

15 We are the aboriginal tribes of this
16 particular continent, at least in this region. No
17 question about the tribes west of the Mississippi;
18 however, they're about a hundred years behind us, the
19 major cities on the East Coast. They were just
20 starting the war on the plains. Taking nothing away
21 from the -- their history, but what has been taken
22 away is our history, and other things that need to be
23 addressed and focused on.

1 I'm making this a personal issue, and
2 I'm not personally concerned with the department of
3 the interior, or justice, because it's a conflict of
4 what our histories are. We are a people of oral
5 traditions, oral tradition passed down through
6 generation to generation. We learned long ago, it's
7 -- once put on paper, it's open for interpretation.

8 We better be wise to the games and
9 tricks and issues that we have to confront on a daily
10 basis, to defend the people of the Northeast
11 continent.

12 And I'll say it again, if we do not
13 work together, collectively, none of us are going to
14 succeed, because we've assisted for thirty years, and
15 they're trying, still, trying to knock us out, under
16 the state's control or the federal government, and
17 not standing up to the fiduciary responsibility to
18 us.

19 There's many, many issues at the
20 forefront, and two of the issues right now at the
21 forefront of the Indian countries are legal
22 questions, dealing with Carcier, which started out
23 in Narragansett, two hundred acres for the purpose of

1 housing, a fundamental issue which we all need, and
2 this ended up before the United States Supreme Court,
3 have been fighting for five years to overturn this
4 issue, although the Federal Government.

5 And, certainly, this administration is
6 supportive, but we can't get the issue to the table
7 and have logical discussion through congress, and so
8 at one stage or another, we are either going to have
9 the support of congress or the support of the courts.
10 It appears to me, at least, in the last four or five
11 years, neither one support the issue.

12 Tribal sovereignty is being eroded as
13 we speak. Every time we take a little chink off the
14 armor, it crumbles, and I can tell you, I'm sixty-one
15 years old, and I'll guarantee, in my lifetime, many
16 lifetimes, there will be no federal status of Indian
17 tribes, probably end up going back to the same
18 situation we dealt with prior to this, coming to the
19 East Coast thirty-five years ago, forty years ago.
20 The problems that exist with the Northeast tribes are
21 unprecedented.

22 There's no other region in this
23 country that's run into the same conflicts and

1 problems that the Northern tribes are having, from
2 Maine all the way down to Rhode Island; specifically,
3 Massachusetts, Connecticut, all having major
4 problems.

5 The Southern tribes, they have a
6 little different responsibility -- I won't say
7 "responsibility," a little different methodology, how
8 they're dealt with. I'm not quite sure why there's a
9 distinction between the North and South or the West,
10 or Southwest. I'm not quite sure why. These things
11 are apparent.

12 But, clearly, with this generation,
13 it's identified that, certainly, there are two
14 classifications of Indian tribes, and when you speak
15 of Indian federal law, and there's much law out
16 there, a precedent to defend self- determination,
17 defend who we are as an independent sovereign nation;
18 however, the federal agencies, in my mind, have not
19 stepped up to defend us. It ends up being political.
20 I'm always under the assumption the Federal
21 Government supercedes the states and there's
22 something is wrong with the picture.

23 Last but not least, I'm just

1 reiterating once again, we need to all work together.
2 My tribe has supported a number of tribes over a
3 thirty year period that have come about, come into
4 the system, a federal system, and we will continue to
5 do that, because we've done our research and we know
6 who the aboriginal tribes are as well as the next
7 person.

8 It's in our history, in our
9 documentation, and it's part of who we are as
10 Narragansetts, and the things we've done for
11 thousands of years in support of these other nations,
12 and we will continue to support that.

13 I do agree, also, this rule needs to
14 be changed within the federal recognition process,
15 but I think that the -- ultimately, the
16 responsibility of the Federal Government is to make
17 the final determination, and I think that we
18 determine it right in this room. We're the ones to
19 determine this in other venues in this country.

20 And I would strongly recommend that
21 the consultations that have happened throughout
22 Indian country to date, that -- and every time you go
23 to consultation, and that stuff (indicating) needs to

1 be available.

2 We need to review it, make sure we're
3 not stepping on others' toes and put more continuity
4 into this, the effort we're putting forth.

5 Thank you.

6 MR. WASHBURN: Thank you, Councilman.

7 Anybody else?

8 * * * * *

9

10 MR. MANNING: My name is
11 Charles Manning, and I'm from Falmouth, MASS, and the
12 reason why I've come here, and I talked to the
13 chairman in beginning, and I realized that, after my
14 talk with him, that if -- if it isn't recorded by
15 this young lady, he's not going to remember what we
16 said in our conversation, and so --

17 So I raised this question with him:
18 If the -- I have a friend who I came here with, who
19 has a different problem than what this conference has
20 been called to, and that is, as many of you know, the
21 American Indian, which is the term that was used by a
22 previous (indicating), and that at one time meant
23 that anyone who lived in the United States or Canada

1 was an American Indian and could travel back and
2 forth in one track.

3 And then, all of a sudden, a queen of
4 England, former Queen, Queen Elizabeth, decided to
5 draw a line, said that the Indians who lived in
6 Canada be called the Canadian Indian and those living
7 in the United States would be called the American
8 Indian.

9 My question to him is this: Is the
10 United States of America being controlled by a
11 Europeans? If a tribe was in Canada originally and
12 the people who were a member of that tribe immigrate
13 to the United States, aren't they still a tribe?

14 And I asked him to answer that, and he
15 said that -- I said that to him, Chairman, that I
16 understand that this is not the purpose of this
17 meeting, and -- because he made it a very clear in
18 his presentation that you do not have a government in
19 the United States; you do not have a tribe, but --

20 So, I asked him, planted a seed, and I
21 would like to come back, just suggest that you take
22 this back and discuss this problem.

23 I'm saying this now so that it's being

1 recorded by this young lady, so that when he gets
2 back and listens to the tape, that he'll be reminded
3 that he agreed to raise this question.

4 Thank you.

5 MR. WASHBURN: Thank you, Mr. Manning.

6 Yes, ma'am. Step forward.

7 * * * * *

8
9 MS. SOUZA: My name Dawn Blake Souza,
10 and I'm a Wampanoag.

11 In the first place, I came to listen,
12 had no intention of speaking, but I have listened to
13 two previous speakers, and the young lady -- I don't
14 remember your (indicating) name, the Suffolk law
15 student, her remarks about the importance of tribal
16 courts in the process, and then Hiawatha Brown's
17 remarks really moved me to speak, because he
18 addressed the issue, he spoke of it, also, of the
19 importance of oral tradition, and I don't see
20 anywhere, in any of the regulations, anything about
21 the importance of oral tradition.

22 If I remember, I believe, in 1976,
23 when Mashpee was undergoing the trial for federal

1 recognition in Boston, and I was present, and they
2 were addressing the issue of proving long-term
3 maintenance of laws, tribal laws, and the issue came
4 up about -- regarding written laws as opposed to oral
5 laws, and I remember specifically listening to the
6 elders talk about why they did not get the hearing
7 after they had got to a higher -- moved on higher in
8 the herring run.

9 It was very clear to the Court that
10 there was an unwritten law that everybody in the
11 tribe obeyed; whether a child, adult, elderly person.
12 There was no need for written law because the tribe
13 had all the laws, laws that were not broken.

14 These were laws of nature, but -- the
15 laws to govern, to protect future generations. I
16 don't know if anyone here remembers that. That
17 struck me as a -- as very important, going to the
18 importance of oral tradition, and I don't see it
19 here, oral tradition.

20 I'm seventy years old, and, to me, at
21 my point in my life, at this point in my life, I
22 understand that.

23 I understand that what my grandmother

1 told me and what her grandmother told her is much
2 more important than any proof on paper that I might
3 be able to present.

4 So I want to thank Mr. Hiawatha Brown
5 for his remarks, and, also, for this (indicating)
6 young lady. I know it's a long shot, tribal court
7 participation, but I think that she was right about
8 tribal courts understanding a lot more than the
9 federal courts.

10 Thank you.

11 MR. WASHBURN: Thank you.

12 * * * * *

13
14 MR. LION HEART (Phonetic): My name is
15 Lion Heart of the Royal House of the Weekanoket
16 Wampanoag Nation.

17 The reason I'm called Royal is
18 because -- (unintelligible) twenty-two years, first
19 christened in Charlestown seventy-eight years ago.

20 God shows us signs as we walk the
21 earth and the sign that he shows us is for direction,
22 four moons and four seasons, and, also, the letter L,
23 L-O-V-E, and this is four, this is the love he has

1 for each and every one of us as we walk the earth.

2 Over the years, we have gotten away
3 from the spiritually that the creator has used among
4 our people.

5 In the fifties, everything was going
6 well, but all of a sudden, people came in, tried to
7 change what was taught from ancient times.

8 The Native Americans I spoke to, they
9 don't want to worship the son of God. In
10 Revelations, Chapter twenty-two, verse sixteen, it
11 tells us that the Son of God is the bright morning
12 star. How old is your Bible?

13 My godmother was Princess Red Wing and
14 it was her who shared this. We never had a Bible,
15 never had time to learn to read the Bible, but we
16 knew how to communicate, and the communications we
17 had and shared was, our God was alive and here for
18 each and every one of us.

19 As we walk the earth today, he shares
20 with us the hand of God. God gives you the gift of
21 time, a lifetime to walk upon the earth. He gives us
22 a mind: Yes, no, maybe.

23 So, God/no God? But, the greatest

1 things he gives with each and every one of us, he
2 takes us, and through his love, he chooses your
3 mother and are -- your father and your mother, and
4 your father, that's the -- a gift from God, but he --

5 Also, he put you in the family, the
6 greatgrandmothers and greatgrandfathers, brothers,
7 cousins, sisters, and also includes the in-laws, but
8 the fifth gift that he gave each and every one of us
9 as we walk the earth, he gave each and every one of
10 us a soulmate.

11 He loves you, forgives you, he teaches
12 you; but, most important, if you believe in his son,
13 some day he will receive you.

14 Think now, God, and (indicating) ten,
15 ten, ten, the native people came together to arise, a
16 miracle comes out of the Colony of Virginia, from
17 Florida, all the way up to New York, and also
18 involved the first natives.

19 And so God, the creator, is moving,
20 and now is the time for every one of us, even you who
21 don't understand, to look in the scriptures,
22 circumscribed, your heart has to be circumscribed
23 before you go any further.

1 The gift he's given each and every one
2 of us is the spirituality and you have to connect
3 with him. If you don't connect with him, we're going
4 to have another time then of denial, delay and
5 discourage.

6 Ah-ho.

7 MR. WASHBURN: Thank you, sir.

8 Is there anybody else who would like
9 to be heard?

10 * * * * *

11

12 MR. AUSTIN: My name is
13 Stephen Austin. I spoke earlier. I'll try to do it
14 quickly.

15 I was concerned I wasn't going to get
16 my point in in three minutes, and now I've got a
17 couple of seconds.

18 It's easy to complain about things
19 when they're not going right. Sometimes we don't
20 stop and say thank you, express gratitude, and I want
21 to do that right now. I want to say thank you for
22 all the hard work you've put in working on these
23 proposed regulations.

1 And I remember, when I was a staff
2 member at OFA, we tried many times to make revisions,
3 change the ways in which we interpreted regulations,
4 things like that, and to make it more simple, the
5 process, and always, almost always, to no avail.

6 And when I heard about this latest
7 attempt to revise the regulations, I was very
8 skeptical, that it was probably never going to go
9 anywhere, they'd tried it so many times before.

10 I'm here to say, I'm not as skeptical
11 as I once was, and I appreciate the work that's gone
12 into this.

13 And after taking into consideration
14 the comments being made, that this proposed
15 regulation does move forward, in some form, if not
16 exactly like it is now, that at least some of the
17 changes that have been proposed will actually take
18 effect.

19 I thank you.

20 MR. WASHBURN: Thank you, Dr. Austin.

21 Anyone else?

22 * * * * *

23

1 MS. STONE: Marie Stone, tribal
2 secretary for the Mashpee Wampanoag Tribe.

3 Thank you for coming, and welcome to
4 God's country.

5 My question is specific to the thirty
6 year matter. Could you help to -- could you help me
7 to understand, out of the proposed recommendations,
8 which one is -- how will it reduce or prevent someone
9 from having to wait thirty years? And how do you set
10 your own goal, from start to finish of that cycle, so
11 it's better managed from a time standpoint?

12 MR. WASHBURN: Sure.

13 First, let me say that I'm a mere
14 mortal, so I won't promise you any specific time
15 frame.

16 And one of the reasons -- as I said,
17 one of the reason is that it's taking -- it has taken
18 thirty years, that people are encouraged to write
19 letters of intent, but the evidence wasn't
20 forthcoming for many years after that, and so people
21 shouldn't have an expectation that they're getting an
22 answer if all they provide is a letter of intent.
23 We're clarifying this, that you need a complete

1 petition before the clock can start running. That's
2 one of the aspects.

3 We've got several things to, sort of,
4 expedite the process, and I talked about a couple of
5 them in the very beginning, one of which is, if we
6 get a positive proposed finding for a group,
7 additional group, we don't get comments about that
8 when you put it up for public comment, that should be
9 determined -- a final determination should be
10 produced quickly, but a positive determination,
11 rather than waiting for a statutory period, and, you
12 know, for more time, so that's one of the things.

13 Certainly, the negatives will be even
14 more -- can be more expedited under the new process,
15 and we propose, if there's going to be a negative
16 finding, and as we've seen, there are more negative
17 findings in the past than positive, overall, the
18 adjudicated petitions we've had, and so it's a
19 rigorous process, which can sometimes be lengthy.

20 And we've taken away a process such as
21 the IBIA piece but added an opportunity for a hearing
22 before a judge. That also has the potential of
23 lengthening the process in certain ways; however, we

1 do believe that if we clarify what the rules are, I
2 would think that -- did we make that clearer, you
3 know, and that would be easier for petitioners, and
4 so that -- and we believe that will help to move
5 things along a little more quickly.

6 Liz or Kaity, would you like to add
7 anything?

8 MS. APPEL: Sure.

9 We have tightened the time frames for
10 the time that the department begins the review and
11 petitions, and so from the time it begins a review of
12 a petition, I think it's a year, to issue the
13 proposed findings, and the proposed rule would cut
14 that back to six months.

15 And there's also time frames for the
16 assistant secretary and the office of hearings and
17 appeals, a separate rule governing the hearing
18 procedures and has very stringent time frames on the
19 hearing itself, which they base on their experience
20 with other types of hearings.

21 MS. KLASS: In section 83 point
22 thirty-two of the proposed rule, there is a specific
23 breakdown of the time frames for OFA's review, and

1 that's pretty helpful.

2 MS. STONE: My second question -- and
3 I do agree, that it seems to be easier West of the
4 Mississippi, have you taken a look at doing a sample,
5 to say, would it -- is every tribe West of the
6 Mississippi -- is the turn-around time half of what
7 it is for East of the Mississippi? What type of
8 problem solving are you doing to get to the root
9 cause of what -- outside of delays of information,
10 papers and letters and comment period, all of that,
11 how have you analyzed the process itself to make sure
12 that what you're proposing is going to have a
13 positive impact? Have you gone through the pros and
14 cons and impact of those?

15 MR. WASHBURN: Well, let me say this:
16 We attempt to apply the same standard to any petition
17 that comes before us, no matter where they live.

18 Hiawatha is correct, though, there are
19 differential treatments. I'll explain partially why
20 that is. Under the existing rule, and we're trying
21 to change that, part of the reason is, we
22 typically -- if we view the tribe's history from the
23 time of first contact, that's a much earlier period

1 for Eastern tribes than Western tribes, so, you know,
2 Western tribes, it might be 1850 or '60; whereas, the
3 Eastern tribes might predate it by two centuries.
4 That's difficult evidence to gather.

5 So our new rule will alleviate that
6 disparity to some degree. Every tribe will have to
7 give us a narrative of its history, but some of the
8 most important criteria, they have to show that
9 criteria from 1934 to the present rather than
10 historical times or first contact to the present, and
11 that, to some degree, levels that playing field.

12 Having said that, we don't actually
13 believe any of the tribes that we have -- that have
14 failed, have gotten a negative finding out of the
15 process, there were none that could pass the 1934
16 forward period that would have failed based on time
17 from that point, and that's why we think the 1934
18 period going forward is a good proxy for all of
19 history.

20 We have not found the case where a
21 group failed the earlier period but succeeded in the
22 post 1934 period.

23 We have -- and we actually think this

1 new approach is sound; in other words, still rigorous
2 and still substantive, and it's the same information
3 we need without the expense of looking two centuries
4 earlier, hiring all the anthropologists and
5 historians to do that, but -- and it's a rigorous
6 petition, process, but a lot less expense and less
7 time consumed in trying to prepare that petition.

8 MS. STONE: I understand the
9 "rigorous," but put a cap on that time. It's
10 frustrating. Thirty years is a long, long time, and
11 many of us would like to be alive and get our land
12 back, but -- and I would suggest, strongly, a cap on
13 the time, because we're also taxpayers, and we also
14 believe that you guys need accountability in that
15 regard, and -- because of the turnover of
16 administrations and personnel, and people picking up
17 where others left off.

18 I want to -- last and least, I want to
19 endorse that, they should participate with tribal
20 courts, in that perspective, as the woman from
21 Suffolk said.

22 My own old English high school teacher
23 said, as Dawn said -- oral tradition, we will need to

1 do a better job collaborating directly with the
2 tribes on this, just as we're doing today; that
3 should be part of the material, and included, because
4 we probably have more of that, but -- but how do you
5 define it?

6 That's all. Thank you.

7 MR. WASHBURN: Let me say that oral
8 tradition is not -- is alive and well in our
9 communities and certainly considered in anthropology
10 and by the historians, and we don't talk about paper
11 evidence, either; we didn't talk about that, and we
12 didn't describe all of the evidence in our rules. We
13 don't consider changing those things.

14 Oral tradition is relevant to the
15 social scientists doing the history, and, in my
16 experience, oral traditions are stronger than paper
17 traditions.

18 A lot of times, people write on paper,
19 stick it on the shelf and forget about it. Oral
20 tradition, the facts get repeated and remain more
21 deep-seated in people's memories and identities than
22 the paper, the written down history, and so -- -
23 that's my experience.

1 Let's (indicating) -- just for a
2 minute --

3 (Discussion off the record).
4

5 MR. WASHBURN: Would you say your name
6 for --

7 MR. GUY: William Guy.

8 MR. WASHBURN: Thank you.

9 * * * * *

10

11 MR. GUY: My particular question is on
12 the -- on page five, proposed rule, criteria G, where
13 it says congressional determination, the burden of
14 the government to show the recognition was determined
15 by congress.

16 How far back does that go? Does that
17 go back in colonial times?

18 One of the problems with the tribes up
19 here in the colonial Indian government, we were a
20 society long before the West was won; therefore,
21 there should be a separate criteria for the tribes of
22 the thirteen original colonies.

23 Now, I don't know if you take that

1 into consideration, because if you look at the
2 history of the English coming to -- going to Europe,
3 they did the same thing in Europe they did here, in
4 the United States of America, what their intention
5 was, to wipe the Indian race out here in New England;
6 therefore, if you're saying that the congress -- was
7 terminated by congress, the government at that time
8 terminated a lot of these tribes, because when they
9 came to this country, the Pokok Tribe (phonetic) had
10 sixty tribes in it. You're lucky if you can find
11 twenty of them. They don't know who they are. They
12 did their job well, and if you look at English
13 history, you married into the royal family to take
14 the land.

15 So, what I'm asking you is, why do we
16 have to prove who we are? The treaties of 1790, they
17 say we're a sovereign people. Why do we have to come
18 to you?

19 My parents made it perfectly clear to
20 me back in the forties, and I'm in my seventies, and
21 I can -- I'll tell you who I am. I can tell you who
22 was in it, my greatgrandfather, and where his son
23 came from, and my greatgrandfather, ten generations.

1 One of the Native Americans crossing the Delaware
2 with George Washington is my greatgrandfather, six
3 generations, that's the greatgrandson.

4 You people know the history. You're
5 keeping it from us. I know who I am because my
6 parents made it perfectly clear to us. I know who
7 the tribes are, and we are the tribes not being
8 recognized here.

9 So I want to know, what is the
10 criteria here? Just what is it the government wants
11 when they make this here statement (sic)?

12 MR. WASHBURN: Yes, Mr. Guy, there was
13 a period in the 1950s, the United States Congress
14 enacted specific legislation, I believe, around a
15 hundred tribes, by name, which are listed in the
16 legislation, and the issue here is if congress has
17 terminated the tribe. The executive branch, who we
18 work for, does not have the authority to resurrect
19 them. This is determined by congress, in essence,
20 this principle, when congress enacted -- where they
21 named a tribe, said it has been terminated.

22 There may be other instances, but the
23 principles -- this is where it's talking about

1 that -- not "talking about," sort of, in general,
2 actions resulting in termination of a tribe or the
3 dissipation of a tribe, but specific acts addressing
4 termination of a specific tribe.

5 Kaity.

6 MS. KLASS: I would just add, the
7 specific government-to-government relationship
8 between the tribe and the Federal Government, just
9 like Secretary Washburn said, it's not general
10 actions, a specific government-to-government
11 relationship.

12 MR. GUY: One other thing, you need to
13 take into consideration the fact that if it were not
14 the Pokanoket Tribe or Nation, when you came to this
15 country, pre-Pokanoket Nation or confederacy --

16 MR. WASHBURN: Mr. Guy, I have to
17 stop you -- I'm a member of the Chickasaw Nation of
18 Oklahoma. We're hearing from a different part --

19 MR. GUY: -- we're talking different
20 colonies, and Rappahannokcs down in Virginia,
21 Jamestown, Virginia, these are the first two colonies
22 in this country, and were it not for these two
23 tribes, there might not be a United States of

1 America. Think about that. You know it's true.

2 * * * * *

3

4 UNIDENTIFIED SPEAKER: I have one
5 point concerning the proposed regulations, I don't
6 know if it can be done, but perhaps there is a way to
7 have something in the rules to identify records in
8 some states or counties which were burned, to ensure
9 that -- for instance, in the county for my --

10 THE COURT REPORTER: Excuse me --

11 UNIDENTIFIED SPEAKER: -- in 1884, the
12 Civil War, the county records we almost totally
13 burned, so the records pertaining to all the people
14 were gone.

15 In 1884, the Courthouse was again
16 burned, and that happened in several cases in
17 Virginia and in other states. I wanted that to be on
18 the record, to say that, perhaps, there is a
19 possibility to identify those as specific problem
20 areas.

21 MR. WASHBURN: Thank you, Chief. That
22 is something that -- I think, that we do consider it,
23 as far as anthropology, even historians, much like

1 the Virginia case is especially true, certain
2 marriages were illegal and forms weren't always
3 filled out truthfully and accurately.

4 Our historians, anthropologists and
5 genealogists do take into account those issues in
6 reviewing things, and we support that. We think
7 that's necessary.

8 Thank you.

9 Madame Vice-Chairman?

10 * * * * *

11

12 MS. LITTLE DOE BAIRD: Jessie Little
13 Doe Baird, Mashpee Wampanoag Vice-Chairwoman.

14 Firstly, I want to make a couple of
15 comments about the public words here. I'm not sure
16 who is going to be able to share information this
17 afternoon, but -- and I am actually very thankful of
18 the -- for a lot of the changes that are being
19 proposed today.

20 And, I mean, just to put things in
21 perspective, when Mashpee applied for federal
22 recognition, I was fourteen years old and I ended up
23 working on the petition as an adult, so it was a long

1 and arduous process, but for tribes East of the
2 Mississippi, it was especially arduous.

3 We had, as you say, about two hundred
4 more years worth of documentation to provide. We
5 ended up with a petition that was fifty-four thousand
6 pages, fifty-four thousand pages in thirty-two years.

7 For tribes West of the Mississippi,
8 because their contact was so much later, the burden
9 was lower, and that gives us an uneven playing field,
10 so I think that that proposed change is very
11 reasonable.

12 I would agree with one commenter, that
13 moving the documentation date from 1934 to 1900 would
14 keep things consistent. I think it would be better.

15 My only concern, and I hear what
16 you're saying, Mr. Assistant Secretary, that no one
17 in the process has not been labile to meet the burden
18 since 1934, and my only concern are communities that
19 voluntary opted not to be included in the Indian
20 Reorganization Act, in IGRA, and somehow, some
21 documentation may give them gaps bigger than twenty
22 years, and I think that 1900 is more reasonable, and
23 it's not that big a deal, but --

1 And I want to make one other point --
2 two other points; one, is just a personal statement.
3 Someone earlier said that they felt like indigenous
4 people here, tribes, deserve their recognition and
5 that we as Indian people were living among them.

6 I want to state that we, as Indian
7 people, do not live among our neighbors; our
8 neighbors live among us. I just want to make that
9 point.

10 And, lastly, and I said this in an
11 earlier consultation, that I think it would be
12 helpful to the process and to our brothers and
13 sisters and to all the Indian country, neighboring
14 tribes, if we had more of a say in who is around us.

15 As Hiawatha said earlier, we know who
16 has been here. We get together during ceremonies and
17 pow-wow and support each other on political issues,
18 and we travel across the country as the Mashpee
19 league of sovereign nation, the conferences here.

20 I understand that, politically, it
21 could be a problem if your neighbor is not willing to
22 support you, but I also feel like, if you want to
23 know who is actually here and who has been

1 functioning as a tribe, ask the other tribes in the
2 neighborhood.

3 If the provision existed that
4 recognition from one tribe of another tribe were
5 accepted prior to the passage of IGRA, that would do
6 two things: One, that ensures that the tribe that's
7 saying, we were here prior to IGRA, prior to 1970, it
8 would eliminate the possibility of that happening.
9 The documentation would already exist prior to IGRA,
10 and also eliminate anybody from saying, you're just
11 supporting your neighbor so they can have Indian
12 gaming, so -- and that's one of the issues that seems
13 to crop up consistently, as a complaint, is whether
14 or not there's going to be another casino, and if we
15 look at the existence of a tribe by another tribe
16 prior to the inception of gaming, I could see that
17 this would eliminate the problem on both sides.

18 And I think that having a tribe in the
19 neighborhood identify their neighbor, even if it's to
20 complain about them, would be helpful in the process,
21 because we do know who's been here, and I can tell
22 you whose been here my whole life.

23 I'm fifty years old, not "old" by some

1 standards, but around long enough to have known who
2 was here when I was five, six, seven, ten years old;
3 and, certainly, people like our Chief, who is
4 ninety-two years old, can tell you who was here and
5 who wasn't here.

6 So that's all I have to say about
7 about that. Thank you.

8 MR. WASHBURN: Thank you, Madame
9 Vice-Chairman.

10 And that's all that -- we're right at
11 noon and we need to give everybody a break.

12 I do want to tell you all that I'm
13 grateful to every one of you for appearing, and
14 especially those of you who spoke, who have provided
15 some wisdom as we work on this process.

16 Some days, it feels like a thankless
17 task, I have to say, but I know it's important, and I
18 am grateful to all of you for traveling here, some of
19 you from great distances, to be here and be heard on
20 this rule.

21 We will resume at 1:00 o'clock, I
22 believe, at the same location. Thank you.

23 (The proceedings were adjourned for

1 luncheon recess at 11:59 o'clock a.m.)

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CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS)
) ss.
COUNTY OF BARNSTABLE)

I, Diane Kelly, Stenographer, and Notary Public, duly commissioned and qualified within and for the Commonwealth of Massachusetts, do hereby certify that on 7/29/14 at 8:00 o'clock a.m., at 483 Great Neck Road, Mashpee, Massachusetts, I appeared for the purpose of stenographically recording the CONSULTATION AND LISTENING SESSION; that the proceedings of the Consultation were reduced to typewriting by computer-aided transcription; that the transcript is a true record of the proceedings thereof.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken; and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, 2014.

Diane Kelly
Notary Public

My Commission Expires:
February 2, 2018.

I N D E XPAGE NO.

36	Kevin Washburn, Assistant Secretary
36	Kent Adams, Upper Matttaponi Tribe
43	Alan Moore, Massasoit Family, Mashpee Ma
47	Stephen Adkins Chickahominy Tribe, Virginia
52	Elaine Savattere, Northern Cherokee Nation
58	Dennis Jenkins, Eastern Pequot Nation, CT
69	Richard Velky, Schaghticoke Nation, CT
75	Rev. John Norwood, NCAI Task Force
78	Steven Austin, Anthropologist
85	Scott Rodrigues
88	Michelle Littlefield, East Taunton, MA
90	Kent Adams
95	Dave Littlefield, East Taunton, MA
97	Elizabeth Coronado, Picayune Rancheria, CA
99	Richard Velky
100	David White
103	Hiawatha Brown, Narragansett, RI
111	Charles Manning, Falmouth, MA
115	Lion Heart
118	Steven Austin
120	Marie Stone, Secretary, Mashpee Wampanoag Tribe, Mashpee, MA
127	William Guy
127	Unidentified Speaker
132	Little Doe Baird, Vice-Chairperson, Wampanoag Tribe, Mashpee, MA