UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

IN THE MATTER OF:

Federal Acknowledgment of Indian Tribes
Proposed Rule 25-CFR-83
Consultation and Listening Session

TRIBAL LEADERS
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 1:12 o'clock p.m.

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MR. WASHBURN: We will go ahead, get started.

We're going to ask that you -- that everybody come forward as much as you can, just because there's a fairly small group of us, and we do still ask everyone to use the microphone.

Welcome to our formal government-to-government tribal consultation on the proposed federal acknowledgement regs.

It looks to me like everybody that's present in the room was also here this morning and has already seen the power point, so I can go through that again, but I think it's probably not necessary to spend, you know, twenty-five minutes doing that.

So I think that what we'll do is begin by going around the room and asking everybody to introduce themselves and who they represent.

And, again, this is a formal government-to-government consultation and so everybody in the room needs to be representing an Indian tribe or an Indian Tribal organization, and that is the only people that should be in the room.

So I'm Kevin Washburn, Assistant
Secretary for Indian Affairs at the U.S. Department of the Interior.

MS. KLASS: I'm Kaity Klass. I work in the solicitor's office.

MS. APPEL: Liz Appel, I'm the director of the office of regulatory affairs, and the Office of the Assistant Secretary for Indian Affairs.

MR. CROMWELL: I'm Cedric Cromwell, Chairman and President of the Mashpee Wampanoag Tribe.

MR. WASTON: Charles Waston, Tribal Council for the Wampanoag Tribe.

MS. BAIRD: Yvonne Baird (phonetic), Tribal Council member, Mashpee Wampanoag Tribe.

MS. STONE: Good afternoon, again, I'm Marie Stone, tribal secretary, Mashpee Wampanoag Tribe.

MR. PETERS: John Peters, Junior, member of the Mashpee Wampanoag Tribe.


MS. SHAPIRO: Judy Shapiro. I'm a lawyer for the Mashpee Wampanoag Tribe.
MS. CORONADO: Elizabeth Coronado, a member of the Picayune Rancheria Chukchansi Indian Tribe.

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

MR. WILLIAMS: Joe Williams, and I'm here on behalf of the Mississippi Band of Choctaw Indians.

MS. TERRY: Good afternoon everyone, my name is Terry Henry, and I'm Chairwoman of the Eastern Band of the Cherokee Tribal Council.

MR. RANDOLPH: Richard Randolph, Wampanoag Tribe of Gay Head.

MR. WASHBURN: Okay. By the way, we're going to have comments from each of you. Please, articulate your name slowly and clearly so that our court reporter can get it properly. And getting the substance of these comments down is very, very important to us, so we have a clear record for amending or changing or going forward, so --

So, is there another step or -- we'll just start to receive comments? Okay.

Well, first, I want to thank everybody
for being here and for traveling all this way, and, once again, to thank the Mashpee Wampanoag for such a gracious welcome, and for providing us with such a wonderful space to do this in. We're really grateful to you all.

We are now, sort of, open for business, for comments from Indian tribes and tribal organizations, so, as you wish, please, identify yourselves and present us with your comments.

And to the court reporter, because it would be helpful to the court reporter if you would present those comments at the podium.

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REVEREND NORWOOD: My name is Reverend John Norwood and I'm hear representing the National Congress of the American Indians task force on federal; acknowledgment.

We've been working with the Bureau of Indian Affairs on these changes, and I would like to thank Secretary Washburn for all of his efforts, and the entire team, for all you've been doing.

I want to thank, once again, the
Wampanoag Nation for hosting us in this wonderful building.

The official position of the National Congress of American Indians is that they are in favor of the -- there have been several resolutions dealing with trying to change the process, making it more fair, the most recent, which is reflecting all of them, is that the national congress is in favor and supports changing the process, making it more transparent and urges the BIAG to swiftly implement the regulations.

The task force has made comments previously and will do so again regarding the issue of the third-party veto.

No tribe that meets the criteria should be held hostage by those who may for political reasons seek to detract from that ability to become acknowledged by the Federal Government, and also, certain issues in regard to the way that descent could be determined prior to 1900, not changing the rule as posed, but adding additional language that will be submitted in order to further clarify how to apply that.
This is a matter of justice. It is the reason that NCAI formed originally, to ensure that the sovereignty of tribes was protected during the determination.

The way that the rules have been applied over the past decade and a half, maybe twenty years or so, has increasingly become a new form of termination for worthy tribes, and we're excited about the opportunity to see that change and put that in place and made more fair.

Thank you.

MR. WASHBURN: Thank you, Reverend Norwood. We appreciate your comments.

And we have been joined by Hiawatha Brown from the Narragansett Indian tribe.

(Discussion off the record.)

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MS. STONE: Thank you.

I really think that it is only fair, as sovereign nations, and, actually, members of two nations, the United States, that there has to be a cap. To allow an open-ended process is just -- it's
just not fair.

We have a lot of requirements, the tribes do, in order to meet that, and some of the ownership, too, should go back on the department.

And when you think of the average turnaround in D.C., being a four-year cycle, something is going to take thirty years to get through, it's a flip-flop, socially, depending on who is in office.

So if we -- you know, we get a Republican in office, a lot of people go, oh, I might as well not do anything right now because nothing is going to change until the face of the office changes.

And it would seem to me to be more consistent if everyone were held to the same standard of meeting a four-year term, then you're not running the risk of, you know, everyone for thirty years having different opinions, different attitudes, and also political influence, which is probably the biggest issue that I have.

But, if we have to pay our taxes by April 15th, why doesn't the department of interior have to be mandated to provide an answer to a tribe
within four years; if you can't get all your stuff
together in four years, that tells me, or that reeks
of something else.

Four years is still a long time, but
thirty years is just -- it's almost like when -- the
Chief is my uncle -- when we got so tired of waiting
and sent the chief down for the year, it's, like --
we shouldn't have had to badger people over the head
because of the thirty years, you know, but, I feel
like we -- we got through it.

We broke the barrier because we put a
limit on the DOI, and we said, listen, we expect an
answer in a year. If we don't get it in a year, then
we need to take other actions, and so that's when we
got it in another year.

So it would seem to me, a regulation
that would include a cap of four years, based on that
being the average term of any senator or congressman,
whatever, or the president, should be seriously
considered and upheld.

Thank you.

MR. WASHBURN: Thank you for that
comment, Marie.
Let me say that, you know, we're attempting to put a process in place that will govern -- I mean, it will govern this process and -- it would be the law that governs this process, and so it shouldn't depend on who is in office as to what the outcome is in these cases.

If we have good, clear rules that can, you know, can be followed and they're transparent, then we should get the same rule, no matter -- get the same outcome no matter who is in office, and ideally, that's the way it would work.

Let me say this: If we had a strict timeline, say, four years, I think that a lot of tribes would be denied because they didn't get their information in on time, because it's a bit of an iterative process, going back and forth with the tribes, and with us saying, look, we've got, you know, criteria A and B, but we need a little more on C, and that sort of thing. Can you give us more information, and that's a back and forth process.

And, you know, again, certainly, some people write letters of intent. We've got, you know, well over a hundred letters of intent. I mean -- so,
you know, you face the question of --

    We've got a staff, and we don't want it to devote all of our Indian affairs staff that are doing good things for the federally recognized tribes, but we don't have to hire, you know, to take away from that money to hire a bunch of new FTEs just to do this process.

    So we have a fixed number of staff that we devote to this process, and it's a good staff, but it is time-consuming and pains-taking work, and so there is, sort of, some resource issues.

    And as head of all Indian affairs at the department, I don't want to rob from Peter to pay Paul. I don't want to take a whole bunch of FTEs that are serving Indian tribes and move them over into the office of federal acknowledgment or something, and if we had to do all those hundred plus petitions all at once, you know, that might be the outcome.

    The fact of the matter is, we usually only have -- more like a dozen petitions that are actually complete and ready to go, and we don't focus on all of them all at once, and we do divide them up
among the teams.

We have three teams operating at any given time at the office of federal acknowledgement and they do -- you know, they work, you know, very hard, but they also work in a meticulous fashion, and it takes time, so --

I don't know, do either of you want to add anything to that?

MS. KLASS: I want to add, under the proposed rule, after OFA, once it's on active consideration, there are pretty strict time frames for each step.

And we haven't plotted out exactly what that adds up to, but there are specific time frames for each step going forward.

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

MS. STONE: Is that all the material I can have, that I can you figure out the entire timeline based on the steps and how long each takes?

MS. KLASS: Yes. If you trace through the regulations and add them out, you can figure it out, but we can also do that ourselves.
MS. STONE: And One last question, how many -- aside from the dozen that might be standing in a ready status, when something is in a ready status, how long before it goes through? How long do I have to stay ready before it's actually acknowledged? And then -- I think that's what I wanted to ask.

MS. KLASS: The order that OFA gives consideration to petitions is in the order that the documented petition comes in, so it just depends on how many petitioners are ahead of you, basically.

MS. STONE: So, again, there's no time frame that says, okay, this one is ready now and we have, like -- we have posted it in the Federal Register for so long, and -- so do you --

I guess it's becoming even more concerning that you don't have these parameters around, that, like, I can't just say, okay, it's ready.

MS. KLASS: A time frame for the ready and waiting is a helpful comment. Thank you.

MS. STONE: And then, after the dozen that are waiting, can you tell me, or just to give me
an idea, what's in the pipeline beyond the dozen?

MR. WASHBURN: Do we have that list?

I was trying to find it here and I

don't think I've got it in front of me, but they are

in line.

Thank you, Marie.

MS. KLASS: According to OFA, thirteen
petitioners, their total workload, that probably also
includes those under active consideration.

MS. STONE: Thank you.

MR. WASHBURN: Hiawatha.

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MR. BROWN: Greetings once again,

Hiawatha Brown, Narragansett --

THE COURT REPORTER: I'm sorry.

MR. BROWN: Hiawatha Brown,

Narragansett Tribe from Rhode Island.

I think that there needs to be some
distinctions. I do recognize that there's a team
that works towards this effort, but I think the
distinction needs to be between the historical part
of what the team does and who they evaluate for
historical records in history as opposed to the legal part of it.

    I would say that you folks are the legal part of it, which is good, because you need that, and we sit -- we sit with you in the many venues and have some chance to have some ongoing dialogue on a regular basis, so there's a commonality here, even though it's not literally written, you understand what our views are and we understand somewhat and accept what your views are.

    But the people who do the historical work, the archeologists, anthropologists and some of these other research people, in my opinion, they should be sitting right in this forum, right before us so they can be questioned and challenged as to what they perceive as accurate history.

    I can tell you -- and I can tell you this from my own tribe's experience, that the information that we put forth, much of it was never even used in our process of defense thirty years later.

    So when -- if you go back and look at the decisions that come out of federal court, been in
the federal courts for over thirty years now, my
tribe did very well in the first twenty years within
the federal court system here in region one.

We didn't bear up too well at the
district level, but we pretty much prevailed at the
appeals level.

Well, the last ten or twelve years,
the very cases that we defended and honored at the
court level has now been overturned or challenged.
Something is wrong with that picture.

And, frankly, the hope was is that if
we could get through this Cherokee situation and
Indian country prevailed, then we'd get a chance --
that my tribe would get a chance to get a federal
court review as to changes in their position from the
standpoint of law.

Frankly, my tribe has not been dealt
with from a standpoint of law. It's politics that
has manipulated my tribe in this state, and I'll use
two examples.

In 1996, when we was knocked out of
the Indian Gaming Regulatory Act by Chaffee, a former
senator, we defeated him on the -- at the court level
and defeated him on the congressional floor.

He had to pull a back door on us, which was -- which was an attachment to the appropriations bill in 1996, and it was again ambiguous in his -- it its outcome.

He said, for the purpose of gaming, the Narragansett land is not considered Indian country. That was probably the less truthful statement you ever wanted to state.

I mean, we've been in the federal system for twenty years and received an excess of six million dollars a year for the federal system, you know, to meet the requirements.

Our cadastral survey was completed and a host of other requirements to allow our region to be Indian country, and so that was a lie.

You come around to this Carcieri issue, which, again, was an issue pertaining to thirty-two acres of land going for Trust to housing.

Again, this was -- the land was put into a Trust, eleven fifty-one, eleven fifty-two jurisdiction, which was not the settlement agreement, and the State of Rhode Island lied out of their
teeth, and the Town of Charlestown lied out of their teeth.

And, of course, they had the juice, so to speak, they had the political clout, as well as the economic clout to bring in a former supreme court justice to work against the tribe for the State of Rhode Island, and the these lies just continued on.

Nowhere does it state in IGRA that we cannot have gaming. The law does -- does nowhere say (sic) that we can't have gaming. Again, it was -- it's political. There's nowhere in the law that says that our land cannot be put in Trust under a different jurisdiction.

The State of Rhode Island tried everything under the sun to block us, and they've been successful. It ended up before the Supreme Court.

And now we're dealing with this issue, that now -- that now has an affect on every tribe in this country, under every aspect of our sovereignty, and it's a lie. It's clearly a lie, but congress is not willing to take a position to correct this problem that's affecting every aspect of every tribe
in this country. There's -- something is wrong with this picture.

So if -- if you're going to go back to where we are today, I will just reiterate what I said earlier: We need to police our own issues here in this area.

The history that you folks have isn't even close to the history that we have; furthermore, the United States Government, if you go beyond the boundaries of the United States, and there's greater history of our tribes in England and in France and in Germany than here, here, in the United States.

Because, if we go to the archives, and I'm talking thirty years ago, you could go in there and there -- and there's volumes of information, anyone could go down in the deep crevices of rooms that you couldn't even open the doors unless you had the wherewithal, to ask to get in there, and once you get in there, there's some valuable history of the New England tribes.

Much of that stuff has been removed today, because when you get down to the bowels of these buildings, there's nothing down there now
pertaining to us.

Well, that's a big lie, and so it's my opinion that the United States Government, in this case, the department of interior, to research and open up every avenue you can, to be able to define who we are here, East of the Mississippi.

We are unique, and I'm not saying we should get any preferential treatment, but I do think that there needs to be a greater level of -- a balance, to put us on the same page as these tribes West of the Mississippi.

You know, I look around this (indicating) room, there's ten tribes in region one, ten tribes. There's ten of us. There's three or four tribes here today.

We're never going to get anywhere if we keep to changing -- having divisive rules against ourselves, and this time, I put the finger down on the tribes. We need our people here so we can defend what we believe in, what our beliefs are as opposed to what somebody else's interpretation of what their beliefs are.

And I'm now referring to the -- what
the Department of the Interior -- I don't like the position you folks are taking, as far as doing your reviews and drawing your conclusions. It's not accurate, folks, and that needs to change.

But we have to change amongst ourselves first and put the trust amongst ourselves, and work with us so we can provide that additional information, so you guys could make a more informative decision affecting our future generations.

It's easy right now for me to stand up here, thirty years after we first came here to this federal system, what "should have, would have, could have" -- that's getting us nowhere.

The only thing we can do now, or I can do, as tribal leader, is to try to pick up the pieces and move forward, to make sure that the future generations of all of our nations here on the East Coast are going to be protected.

Just a couple of points (indicating) --

I really don't see how the Interior can put a final determination until this Carcieri
issue is resolved. Carcieri has affected everything we do now as Indian people within this federal system, and the laws have now -- that once were provided for us, to be able to have equal footing is now questioned and challenged under this Carcieri determination, and it is a major catastrophe, as to what the outcome is going to be.

I just see that this whole federal recognition issue is going to end up being a snowball, simply because of the inabilities, for some of these other laws to be upheld.

In my mind, and I'm certainly no attorney, no lawyer, but by no means am I a fool, either, and I know what -- I know more than more lawyers will ever know, because I've lived being an Indian all my life, but I don't see how you can turn around and get some type of a balance as to what and how the laws are supposed to be applied to protect our rights as indigenous people, or as people of the United States falling under Indian federal law.

There's hundreds of precedent cases that should supercede Carcieri, because the Carcieri ruling is from the Supreme Court, and it's not
happening.

The closest we ever got to any of that challenge was coming out of the solicitor's office, and all that did was to generalize what we potentially could do. It defined nothing. It opened -- it gave great hope to the tribes, as to how we may be able to resolve this problem, but there's nothing definitive.

So I think we need to get to the base of this issue before we can -- before this particular issue could have a final determination.

You know, it's interesting, that -- in our lifetimes, things change, but thirty, forty, fifty, a hundred years ago, when tribes first started -- whatever the timeline was, when tribes first started this process of federal recognition and acknowledgment, their desire, their dreams and their goals are no greater than the goals of the Indian people pursuing it today.

Some of us have been fortunate enough, because of our documented history; not the Indian history, not the Native American documented history, the White man's documented history. That's how we
proved who we are, because much of our unwritten law
is never requested or even asked, and when it is
asked, it has to be substantiated, and it's something
that's been passed on for generations. It's very
hard to substantiate.

And even though there may be a process
for an elder to come in and give an affidavit, that
document is cast aside. I've seen it happen numerous
times.

And maybe it weighs a little bit, but
it certainly doesn't weigh in in comparison to
someone else's, a non-Indian written history that's
documented and used as a format of law, something to
that level.

But the cause yesterday is no greater
than the cause today, and the tribes that are coming
on board, or potentially coming on board, they should
have the same rights and privileges as -- that was
afforded us twenty years ago, thirty years ago, or
fifty years ago.

And maybe that's what this process is
attempting to do. Maybe that's what this proposed
rule is attempting to do. I don't know if it is yet,
until we see the final outcome.

But just to follow up with a comment earlier, it's very hard for us to take a position when we don't know what our brothers and sisters are doing across this country.

That stuff needs to be provided to -- it needs to be copied and provided to every level you go to; every level you go to, that stuff should be on the back table so we can review it, so we're not stepping on each other's toes, or crossing over on each other, or defeating the purpose of one region versus another, and that's a tactic that the Federal Government has always, always (sic) applied against the Indian country: Divide and conquer.

Now, fortunately, standing in front of me is a favorable administration. You've done some marvelous work, in my mind, in your short time as Assistant Secretary, but under this administration, there was two others, so -- at least in this eight year period, there's a potential, there's going to be three assistant secretaries. It doesn't always mean each administration is transferring to the next, the same level and degree.
Fortunately, right now, you're carrying the torch, hopefully, towards the end of this administration, and you're going to carry that message forward, but who the hell knows what we're going to end up with in the next presidency, in the next administration.

All the good work that's been done under this administration will be in the back drawer, put in the back room until -- just until somebody else sees it from the same point of view.

So that's why it's very important for us to unify as tribes and drive this message home, regardless of who sits in and under what administration.

Marie's point is exactly right: If we end up with a Republican, Indian Country is dead in the water for another four to eight years. It's just the way that the system works. If we're fortunate enough to end up with a Democrat as a -- as the president, some of these things may carry forward.

But, for us, it's a tremendous chance. It's a leap of faith, that we have to, kind of, instill within us from administration to
administration, and, unfortunately, the administration is not -- has not always stood up to what their requirements are, to uphold our trust and to their fiduciary responsibilities.

So, with that being said, I think there's a lot to be desired in the paths that we choose as Indian people; but, most importantly, the path that was provided to us, we have limited choices, so economics controls the Indian country today.

It's not about the protection of tribal rights of sovereignty, as it was fifteen, twenty years ago, when we had a common goal. Now what drives us is money and politics, and that's -- to me, that is a detriment to our future.

Last but not least, this is -- in my opinion, this is exactly what the federal system has been waiting for, waiting for us to assimilate back to the mainstream, so there's no such thing as a distinct group of people such as we are.

I was always taught this: The only thing that separates an Indian tribe from any other ethnic group is our tradition and culture, and when
you turn around and put that on the back burner for
the almighty dollar, that's precisely what this world
has been waiting for, especially in this country,
just waiting for us, so that we could be cast aside
as just another ethnic group of people.

Thanks for the opportunity to speak.

MR. WASHBURN: Thank you, Hiawatha.

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MR. WILLIAMS: Good afternoon. My
name is Joseph Williams and I'm here on behalf of the
Mississippi Band, Choctaw Indians, Choctaw,
Mississippi.

I'm a tribal member and I'm an
attorney with a practice in Okmulgee, Oklahoma. It's
O-k-m-u-l-g-e-e.

I also served as chief justice for the
Sac and Fox Nation located in Stroud, Oklahoma.

Let me begin by saying thank you to
the Wampanoag Tribe for hosting this consultation
session.

I'm honored to be here on behalf of my
tribe, the Mississippi Choctaws for this important
consultation regarding proposed changes to regulations regarding federal acknowledgment 25 CFR-83.

The Tribe does intend to submit written comments in full by the deadline, and I thank you for extending that deadline. It was much needed for us.

But, I just wanted to say a few words today. The tribe understands that the single reason cited by the Department of the Interior for the proposed changes is to address criticism that the Part 83 process is too slow, it's expensive, ineffective, and less than transparent; however, the unique relationship between the United States Government and the Indian Nations and tribes in this country demands that the federal acknowledgement process be stringent and to be conducted with integrity. The process is supposed to be stringent and lengthy in order to help ensure that only meritorious petitions are submitted and considered under the Part 83 process.

It is not in the best interest of both the United States and the current federally
recognized tribes or petitioners to avoid an arduous process designed to provide critical examination and evaluation based on the well-established criteria to achieve federal acknowledgment.

While the tribe applauds, in general, the efforts of the Interior to improve its responsibilities, the tribe does not believe that lowering the standards on the subsequent criteria of the Part 83 process is the answer.

This would have the effect of minimizing the significance of a historical relationship between tribes in the United States. Any attempt to lower the standards of the federal acknowledgement process would open the door to invite various groups to submit non-meritorious petitions, resulting in an even more backlog at Interior.

This would also offend the integrity of the process. It can be seen as offensive to those tribes who are able to fulfill the stringent requirements required by the current regulations.

As I said, the tribe intends to submit its comments in full, but one thing that I wanted to point out today is, the tribe questions the need to
change establishing 1934 as the starting year for
evaluation of community and political authority.

    Even though this starting year
coincides with the Indian Reorganization Act, the use
of this date is simply due to the favorable shift of
U.S. policy for its Indian tribes and should not be
used to lower the standards required to establish
community and political authority.

    The petitioners who are truly able to
establish community and political authority should be
able to do so regardless of the state of the U.S.
policy at any particular time.

    We know there are real budgetary
concerns at Interior; however, it would seem that one
resolution is to address the concerns of the
burdensome and lengthy process that is the Part 83
process; would be to have better staffing at
Interior; to provide clearer guidelines so that
petitioners are fully capable of submitting petitions
without having to go back and forth between Interior
and petitioners.

    It would seem that providing better
guidelines for the petitioners, in order to have a
proper, complete application submitted, would be a better solution than actually addressing the substantive criteria and make it more easier (sic) for those petitions to be submitted.

Again, the tribe will submit its written comments, and I thank you today for the time to speak.

MR. WASHBURN: Chairwoman Henry.

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MS. HENRY: Good afternoon again everyone.

First of all, I would like to say to the Mashpee Tribe, thank you so much for this wonderful hospitality, for the lovely lunch. The lobster was definitely quite delicious.

And, again, thank you, Kevin, Assistant Secretary Washburn, for coming here and making your staff available to this process.

As many of you probably know, the Eastern Band has participated in every single consultation in this series that has been available.

We have a very rigorous, I guess,
position on this issue of federal acknowledgement and
for a very specific reason. For many of you
listening, first of all, let me just say, I was very
taken aback by some of the things that I heard in
this morning's comments.

One of the things that particularly
struck me -- and, Hiawatha, you were, kind of,
pointing at it in your comments this morning, and
that was, the difference between how tribes are
treated in the North and in the South.

And, I guess, I've never -- because
I'm not from here, I wouldn't have known; but, it
seems like the bulk of the comments were that the
states are actually against the tribes, and that
that's really the biggest burden that has to be
overcome with respect to third-party interventions,
if you will.

In the South, we don't have that
issue, in my understanding. We have states that have
no standards at all for recognizing Indians and they
want to recognize any group of people that comes to
it; and so, subsequently, as a result of the history
and the removal period, in particular, we have over a
hundred groups in the South claiming to be Cherokees, and, of course, we have a very specific issue with that.

So I just wanted to make those preliminary comments, just to, kind of, try to give you some understanding, I guess, of the reason why the Eastern Band has the position that we do, and with all due respect to our hosts, I'm going to begin my official comments.

My name is Terry Henry, and I am the Chairwoman of the Eastern Band of Cherokee Indians Tribal Council. I'm very happy to be here at this event.

Our reservation is located in --

THE COURT REPORTER: I'm sorry?

MS. HENRY: Our reservation is located in Western North Carolina where most of our over fifty thousand tribal members live and have lived since time in memoriam.

The Eastern Band of Cherokees have a written language, a culture, history and ways that have survived wars, treaty making, the removal period, the allotment period, and other federal
actions that tried to eradicate our government and
turn our Cherokee people into non-Indians.

Through those hard times, we have
struggled, we have fought, and we have -- and in the
effort, many of our people have died to preserve our
separate identify as Cherokees.

We hold our separate Cherokee language
and culture to be sacred and our people are still
willing to fight to preserve it.

As many of you know, we hear all the
time that people -- from people who claim a Cherokee
princess as a grandmother or greatgrandmother, and
we've heard everyone from Cher to Johnny Cash to
Beyonce have Cherokee ancestry.

While we understand that it's a
beautiful thing to be a Cherokee, we, as tribal
leaders, feel strongly that we must protect our
Cherokee identity from those who would take it, water
it down or destroy it.

And so, with that introductory piece,
I'm going to go ahead and get into the substantive
comments.

We believe that the federal
acknowledgement process needs to be reformed. We don't disagree with that at all. The fact that it takes thirty years for a tribe to be recognized is an awful long time, and I can't imagine my own tribe, how we would have handled that, and so my heart goes out to those who have.

We believe that the process does need to be more transparent and more efficient for the petitioners who are seeking acknowledgement as Indian tribes.

We also agree with the fundamental policy statement about federal acknowledgement that tribe leaders made before the establishment of the 1978 regulation to the present. A petition group should have to demonstrate and a tribe should demonstrate a continuous history of tribal relations in order to receive federal acknowledgement.

It is restated again as a present day policy imperative and we continue to believe the central question of federal acknowledgement has maintained tribal relations. We agree again.

We are concerned that the proposed rule would amend this policy and require the
petitioning group to demonstrate tribal relations from 1934 to the present, at a single point in history, before 1900. Even more to the point, that the single point of history would only require a brief narrative with evidence. We believe this is a major departure of federal Indian policy.

Now, having heard your presentation, I understand that you are seeking specific recommendations as to the time frame.

I guess, what I was thinking was, is there an outline that could be provided to a petitioning tribe, an outline, because if you've got acknowledgers that are doing this work for years, they pretty much know what the outline should look like -- right?

And, not to say that it should be a treatise, but at least give a petitioning group an outline of what you're looking for, with some guidelines, as to how they should respond to that, and I think that might address Mr. Williams' comments, as well, about some guidance. I know that's not the only idea out there, but it's just one that I had.
We believe that the proposed rule which lowers the policy bar and the current rule that reflects the policy supported by the tribal leaders, to -- this is the piece about the brief narrative, and we understand that you're trying to work on that.

That's the point that I was trying to make there, but we do believe that evidence of a group's existence at some point in time during historical times, as late as the 1900s; that that would point to your current proposed rule which would no longer require petitioners to account for more than a century more of history that is essential to a determination to -- of continuous existence.

We understand that federal acknowledgement issues can be emotional and controversial.

As the Eastern Band of Cherokees, we do have a living language and culture and history. We are also concerned that -- about the rule that would, we believe, water down the requirement that a petitioning group demonstrate that its individual members have ancient ancestry.

So most tribal governments today
establish membership based on a descent from a base roll of Indians prepared for allotment purposes, in addition to other criteria, such as blood quantity.

For most established tribes, all or nearly all of the persons on the base roll are Indians from that particular tribe. Under the proposed rule, eighty percent of the petitioner's group members would have to demonstrate ancestry from the historical tribe; the other twenty percent would not have to demonstrate any Indian ancestry whatsoever. That concerns us.

Further, the proposed rule would -- we believe, could clarify what the required Indian ancestry would be met by providing a roll prepared by the department at the direction of congress or -- at the direction of congress, or even if the roll is demonstrably inaccurate.

We think that there should be some historical accountability, and we believe that the genealogists, historians and -- you know, we don't have -- I don't know how many you have. I don't know how many of those folks that you have at the department, but -- and I don't know how many
applications you have before you, either, so given
the fact that the unknown, to me, is the workload, it
would seem to me that making sure that you have those
professional folks on your staff is very important,
and should be, and continue to be important as a part
of the process.

Because, some of this is -- it, kind
of, is feeling like -- the way the proposed rule is
written, some of it feels like it could be left to a
political decision, and so -- perhaps, I'm wrong in
my reading of that, but we certainly want to make
sure that these are merits based standards and that
they are to be followed very purposefully.

And, finally, I would like to thank
you for the extension of time. I know that we had
requested it and had worked with some folks to see if
we could make that happen.

We will be providing some more
specific written comments by the deadline and I took
some -- I took some pretty good notes from this
morning's session to help me understand the various
viewpoints, of what's going on.

So I thank you very much.
MR. WASHBURN: Thank you, Madame Chairwoman, and thanks for the very substantive comments.

Do we want to address (indicating) any of that?

Let me say, to start with the last, which is that you're worried that it might be more like a political decision, we have worked to make that less so under these regs, and so that's the inclusion of the judge, whether the administrative law judge or administrative judge, or an attorney for that review process.

That's one thing that we've created, another objective decision-maker in there, to lessen the role of a, sort of, political actor, so that's one example, where we are actually trying to go in the other direction; which is, make it more objective rather than political.

MS. HENRY: And at that point, that's where you have the additional deadline, of September. Those are the additional pieces of the regs which are new; right?

MR. WASHBURN: Yes, ma'am.
MS. HENRY: Okay. All right, thank you.

MS. KLASS: In our proposed rule, section 83.6B, the proposed rule directs OFA to create an example, documented petition, and to make it available for petitioners.

But, if you have a more specific idea of what that should look like, please, let us know.

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MS. LITTLE DOE BAIRD: Thank you folks for coming and for the opportunity to speak, and welcome to everybody, if I haven't said so.

Just a few comments. One quick comment was, if people aren't aware, you can get on to OFA's website, and maybe we should put up -- put it up (indicating) on the -- well, it's kind of late now.

But, if you put up the web address, there are actually some really great documents that you can find.

I check it out periodically. You can see the petitioners by state, and you can see all the
letters of intent submitted, and you can see the final determinations, and you can also see examples.

So I've noticed, over the last seven years or so, the website is giving a lot more direction to people, so that when it says you should submit a letter of intent, there's an example there of a letter of intent.

So there are, in a sense, some guidelines for people that are applying in that there are some examples on the website that people can look at, and you may be augmenting that; but, certainly, I felt that was great.

And, again, as I stated in Maine, and I'm stating it here, I agree, one hundred percent, with the reduction of time for documentation from first sustained contact to early in the 19th Century for the reasons I already stated.

It is unreasonable to expect people to be able to document themselves every ten years: In 1650, 1660, 1670, 1680, et cetera, and it is completely unfair to try to do that East of the Mississippi, so pushing it to 1900, 1934 -- but, I would prefer 1900, it's so much more reasonable, and
giving people some latitude for a larger gap in time.

I remember a specific tribal meeting where the tribe was discussing that we didn't feel like we had enough documentation in one ten year period, which was making everybody insane, and I was thinking, there's something wrong with this then.

So asking people to document from 1900 forward actually means that for at least a hundred and fourteen years, we've had a recognizable community and government.

I don't think that's just yesterday; it's over a hundred years, and it certainly is prior to the inception of any tribal gaming, which is always everybody's big complaint.

You've got tribes that are complaining that their neighbors shouldn't be recognized, when everybody really feels like the complaint is sometimes down to gaming, the potential of gaming, and the potential loss of economic development of their neighbors, and we need to talk about that openly.

If we use documentation, and I've been saying this for a good twenty years now, if we use
documentation of recognition of one tribe by another
tribe and weighed it more heavily -- so right now,
it's not excluded; a tribe can submit something that
shows that their neighbor recognized them and
interacted with them, and it's not -- it's not
precluded.

People can certainly submit that as
evidence of existence and interaction, but if it gets
more weight, and it gets more weight prior to the
inception of tribal gaming, then, certainly, I think
it's helpful, because what OFA is trying to do is to
apply objective standards to a very subjective topic,
and so we're trying to apply concrete evidence to
abstract things, like existence and culture.

So any time that we can assist people
outside of a particular tribal group in meeting that
test, we should try to do that.

I certainly know that -- and I could
talk about things; for example, that a research team
might want to look for in tribe A, if we were talking
about tribe A being from this region.

But, there are things that I'm -- as
an Indian person, I am not going to know about some
tribes in the Midwest. I don't even know the
question, nevermind the answer, and I'm another
Indian person.

So I think it's hard to ask people to
come up with evidence for -- empirical evidence for
standards that are so -- we're trying to be so
objective about some material that is so subjective.

And so, I think, that if we weight the
recognition of one Indian community recognizing
another Indian community, as I said, prior to gaming,
then it eliminates anybody's argument that any of
this is about politics, or gaming or money.

And I think that's basically all I had
to offer. Thank you.

MR. WASHBURN: Thank you, Vice-chair.

MS. KLASS: I would add, in the
political authority criteria right now, evidence of
the government-to-government relationship between the
petitioner and another federally recognized tribe is
a formal suggestion right now.

MS. LITTLE DOE BAIRD: Okay, but it's
not formally weighted as it should be. Thank you.

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MS. SHAPIRO: My name is Judy Shapiro and I'm a lawyer for the Mashpee Wampanoag Tribe.

I've had the honor to work with this tribe before recognition and after, and to work with other tribes in the Northeast before recognition and sometimes after --

THE COURT REPORTER: I'm sorry.

MS. SHAPIRO: I'm sorry.

I'll go back to, I've had the honor of working with the Mashpee Wampanoag Tribe both before its recognition and after, and in that context, I have become familiar with the very brutal reality that the recognition process is, at its heart, the exposure of the federal failure to pay its due, to observe its duty to Indian tribes in various parts of the country, more so in the Northeast, more so than other fringe areas of the country, who have had the longest period of contact, and that this process needs to correct that failure.

It needs to be attended to, the fact that there are errors that have cost tribes dearly over a period of hundreds of years.
The Mashpee Wampanoag Tribe awaiting federal recognition watched its land base disappear.

Every tribe working on recognition sees its elders die; it sees that there is almost never a tribe whose recognition team at the beginning lives to see the end.

I understand that you are very mindful of that, and I applaud the attempt to change that process and to make it more transparent and efficient, and I believe that Mashpee also believes that.

I believe that the process that you're trying to put in place within the department will do enough to maintain the rigor of this process; those set of criterion cannot be met by just a tip-toe through the archives. It's hard work.

Mashpee has survived it and other tribes have survived it, but no one should have to go through what the last several tribes who have survived the process have had to do.

So, please, keep doing it, and thanks for trying to fix that mistake.

MR. WASHBURN: Thank you, Judy.
THE COURT REPORTER: I'm sorry, I cannot hear you.

(Discussion off the record.)

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MS. STONE: I wonder if you could just give us a summary of what the technical assistance is about. Who does it serve? How does it serve, and --

MS. KLASS: So the technical assistance starts, if the petitioner wants it to, it can start before the documented petition.

The petitioner can reach out to OFA to ask for guidance and help, and it's sprinkled throughout different steps in the process.

And the whole point is basically for the petitioner and OFA to, sort of, work together to figure out where the holes or weaknesses are and patch those up, basically.

MS. APPEL: And the proposed rule adds that -- basically, that all the information that OFA has will be given to the petitioners so that the petitioner knows what OFA is thinking in making its
decision.

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MR. PETERSON: Good afternoon. My name is John Peterson and I'm from the Mashpee Tribe --

THE COURT REPORTER: "John"?

MR. PETERSON: -- one of the issues that I've seen --

MR. WASHBURN: John Peterson.

MR. PETERSON: -- is we've spent a lot of time, according to this process, and it's very expensive, and unless you're a gaming tribe, or something like that, I have -- it's a sum, heavy, heavy money, something like that, you won't be able to do this process, and I have a number of state groups that are trying to do something here, and are probably unable to meet that financial need in order to go through this process.

And I don't know whether it's through technical assistance, or whatever, what other process, whether they would actually be able to bear the cost of meeting the requirements for the federal
I don't know whether you have any suggestions, or anything like that, in order to -- for this process.

MR. WASHBURN: Thank you, Council member Peterson.

That is certainly one of our concerns, that it not be so expensive; that -- you know, so that a petition group has to mortgage its future to get recognition, so that's one of the things that we are trying to address with this rule.

So, thank you for your comments.

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

MR. WASHBURN: Certainly.

MS. LITTLE DOE BAIRD: -- sorry, I forgot -- I meant to ask a question I saw in my notes, just for a clarification on the descendency issue, are you saying that eighty percent of those on a petitioning roll have to tie back to an individual on a particular census that the tribe is using as
their base roll, and that the other twenty percent can be non-Indian? Or, are you --

I mean, I just want that clarified, because I didn't think that was the case --

MR. WASHBURN: Yes. Sorry to interrupt you, but I think that's important, and thank you that you brought it up.

It's not that twenty percent can be non-Indian. It's that you have to absolutely verify eighty percent?

There's always a problem with a handful of people, and maybe you can't get quite the right documentation. It's just something that -- you know, it's really hard to get absolute perfection with these things.

So, basically -- and this is not a new rule, and they've been doing it this way within OFA already, if eighty percent of the people are absolutely verified, you know, that's good enough.

It's not that those other twenty percent are non-Indian; it's just that we might not have been able to get the certainty of every single person, and so that allows just a little bit of
wiggle room, not very much, but a little bit of
wiggle room, so that we don't absolutely have to have
every single person that's in the petition to be
absolutely bullet proof.

MS. LITTLE DOE BAIRD: Thank you.
That was my reading of it prior, but when the
Chairwoman made the statement that (indicating)
they -- so that's why I wanted to clarify that, with
respect to that.

Thank you.

MR. WASHBURN: Should we take a ten
minute break and then come back and see if anybody
has additional comments at that point?

(No response).

MR. WASHBURN: We certainly don't have
to use the whole afternoon. We've got more time, but
why don't we take a ten minute break, until 2:30, and
then we'll resume, if necessary.

And I do want to thank everybody so
far for these wonderful comments that you're engaging
in, because we appreciate it. Thank you.

(Whereupon, a recess was taken at
2:12 p.m., and resumed at 2:31 p.m.)
MR. WASHBURN: Ladies and gentlemen,
let's gather again and get any additional comments
that you folks would like to make.
I've decided to give back to people
their afternoon, but if there are any -- I,
obviously, don't want to leave if people have
important points to make.
So, is there anyone that would like to
make further comments?
So we can get what you say on the
record -- go ahead, Reverend, whenever you're ready.

REVEREND NORWOOD: Just one or two
comments. I wanted to make a couple of comments
based on some of the information provided earlier and
to give some level of response based on the
information that has come before our task force and
some of my own personal studies and dealings with
some of the tribes across the country.
And the first thing is that -- and
that I think it needs to go on record, why many of the federal tribes have a problem with or a trepidation of changes in the process, is suddenly opening the flood gates for groups with questionable histories. A couple of points need to be made about that.

The fear is that the post-regulations, which actually still have the bar high enough that a recently-organized ethnicity, a group or heritage club would not qualify, that aren't historic tribes, and, to my knowledge, that are not federally recognized.

That, for the most part, and it's been my experience in dealing with people through the task force, that many tribes that come to the task force meetings and state their cases, that those that have a verifiable history and for one reason or another are not currently listed, are even more enraged by groups claiming histories that are not there; that were -- or are recently coming together, that do not have continuing community, that they are outraged at the claims of those groups, and are actually more harassed locally than if -- than tribes that are
within federal protection locally, and so I think there's a bit of misunderstanding in regard to that. The second thing is, because the criteria still requires proof of continuing community and from the time period where folks weren't trying to be anything, you know, didn't have a whole lot of groups forming around an Indian identity, and suddenly, wanting to be pursued by those wanting to be Indian, that was -- wasn't typically the case, because you were maintaining community, maintaining community at a level of pushing back that proof for approximately a century.

I think that the standard is higher than a lot of people think when they have simply looked at a 1930 date or 1940 date.

We have to remember what was happening in the country, happening to the American Indians at that point in time, if anybody can point back that far, it is because they have a history of a legitimate community, and that community is one that should be enjoying a government-to-government relationship, and denying that is actually a travesty.
Another statement that was made, that I think needs to be commented on, and I don't mean to disrespect the Honorable Chief that made the comment, that there are states recognizing without criteria.

That may be what is happening in some states, but some states, to provide some level of protection to their tribes and nowhere near federal acknowledgement, and many of them do have criteria that are either in the law itself or have been adopted by committees, and that is something that a quick study of the different states that have criteria will show.

There may be states that don't. One of the positions that several regional organizations have taken is that those tribes that lack federal acknowledgement for one reason or another, and believed to be historic, are deserving of some level of protection, some services provided by the Federal Government, encourage that those states have a process, that they have some level of verifiable histories of those organizations and to know the difference between groups that recently come together and groups that have histories going back for
centuries.

There was a comment about coming to grips with the fact that it's already political; as a matter of fact, right now, it's far more political than the effort of reform is aiming at in trying to re-do the politicalization of this particular process.

Right now, states have already, within the past decade, interfered with the process, caused reversal of the worthy application, and right now, there are states that interfere with tribes and cause them to lack the resources to be able to even do some of the steps.

It's already a political process, very political, even between tribes, where we've seen one tribe attack another tribe simply because of concerns over economics.

It's already a political process, and the claim that it's going to suddenly digress into something political is not really being honest about what it right now, and we are hoping to take it out of the process.

There was a question about how arduous
the process should be, how difficult, how high the bar, and are we currently lowering the standards.

I think that when Mr. Secretary came and made a presentation to the task force, one of the things that you indicated was that your goal was not to make it easier but to make it more fair, more just. These efforts at reforming the process are truly heading in that direction, are doing that.

The process, right now, is unfair and unjust, and it is not just Indians that have said that, not just the folks going through the process complaining about that, the government itself has researched, has studies on the official record -- you can pick it up -- that indicate how ridiculous the process has become.

Some of these studies are fourteen years old. If you look at the history of acknowledgement, what compares to what, what it took to be acknowledged in 1980 compared to 2014, it's extremely clear that the way the standards are being applied has changed.

Instead of being the venue for tribes to get a good hearing of their evidence, it has
become the stumbling block; that you need a battering ram, with millions of dollars, with attorneys, and with court cases to get through.

So the concept of the standard being fair now, really, it's disingenuous, not what's happening around you, and it's not only non-federal tribes saying it's unfair.

There were many federal tribes saying it's unfair; BIA saying it's unfair; the Federal Government has reported that it's unfair.

If the rules were applied today in the same way that they were in the early eighties, many of the tribes that have been denied might have -- potentially, would have gotten through, which is part of the reason that there was an inclusion, my assumption, as -- part of the reason that there was an inclusion, that tribes previously denied feel that they would get a fairer hearing, at least under the regulations, to try to go through the process again if they met some of the criteria.

Even within the regulation, there's an acknowledgement that some things went wrong for some tribes. You have worthy historic tribes that should
be granted acceptance that are -- that, instead, were
denied.

We need to understand, there are
regional realities, that many tribes are unfamiliar
with. Five hundred sixty-six tribes and only
seventeen have gone through the process. One of the
things that that figure does not acknowledge is how
many tribes go through the process once it starts
going awry, the majority of the seventeen occurred
prior to complaints in federal court, and
resolutions, political organizations.

Really, when you get right down to it,
the denial of regional realities, you should have
been enrolled in some enrollment done by the federal
government, it might make it easier for some tribes,
but if it was not the history of your tribe, then it
wouldn't. If you have tribes that have a colonial
history, that have colonial treaties, federal
studies, federal services, you can show all of that,
and in some of these documents, it actually cites
individuals, areas, have proven that these are the
same people; yet, these very tribes find it difficult
to get through the process.
It is -- it is unjust, not to call that process broken and desperately in need of repair.

I needed to address those things, and I'm glad you're in the process of addressing them. I just wanted to get on record, I think what we're trying to do is to bring integrity to a process that has long abandoned integrity.

MR. WASHBURN: Thank you, Reverend. We're going to start charging you.

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MS. STONE: You know, just -- we can't make up for lost time and lost family, people no longer here, but we are still trying to advocate for the future, but in those thirty years, we saw the majority of our land base gone, and so when I looked at the thirty year mark -- I'm still on the thirty years -- it just seems that there should be some way to recoup a loss that we had no control over -- okay? And so, we've got land that we can't build on, and we've just, kind of, been surrounded by outsiders.
We've grown up here, and they've infiltrated this land, and what is the -- what is the responsibility of the Federal Government for such a loss, that occurred under a thirty year waiting period?

It would seem like the -- I think that Chairman Cromwell calls it reactualizaion or reacknowledgement, reaffirming --

UNIDENTIFIED SPEAKER:
(Unintelligible).

MS. STONE: I'm sorry, if we're reaffirming, does that mean you're telling us, yes, you are who you say that you are?

But, there doesn't seem to be any accountability economically, to -- for all we've lost while we've waited for you to catch up, waiting for you to know who we are.

Is there any comment about that?

MR. WASHBURN: Well, the rule today is not going to right every injustice in the Indian Country, that's for sure.

Maybe we're not being ambitious enough, but -- so, no, you know, this rule has
limited scope, and it is -- I think that it's --

I don't know. I find it frustrating sometimes. This job is tough, because there's several centuries of wrongs that deserve to be righted, and we can only do a few of them at a time.

And we've got some ideas, so we're trying to push forward with this rule, hopefully, to make a more just and fair world as we go forward, and a more accurate world, but we won't necessarily be able to address some of the wrongs that have happened for -- we certainly acknowledge those wrongs; that the United States has rarely lived up to its responsibilities as well as it should, absolutely, and that's one of our -- I think, all of our (indicating) frustrations in this area.

And we know this, because we hear about it a lot, and we -- and we're trying to make an improvement, a small improvement to the subjects you've raised, and that's what we'll try to get this done, beginning with this process.

Those other issues you identified are very good ones, but we probably won't be able to satisfy those through this process.
MS. STONE: Without having our land, there's so much we can't -- we can't really benefit from them, these regulations, and we -- and we can't regulate the domestic violence on our territories, the Carcieri ruling, the Bower (phonetic) ruling.

Back in 2005, my assistant was Alice Lopes (phonetic). She recognized that our tribal members were leaving, leaving even the Cape, and our members have been leaving the Cape, because it's hard to make a living and raise a family here, but she was able to. She applied for the housing funds, and that was the start of our first housing program.

But, there are a lot of laws out there for -- protecting us that we simply can't get protected under; and, it all has a cost applied to it, so -- I just thought that I would ask.

Thank you. And I won't come up again.

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MS. CORONADO: And I tried not to, but I have more questions about this.

The appeals going to the Federal
District Court instead of going through the IBAA, so I know -- I work with a judge right now in Boston, Greater Boston area, so when we get a decision from the department of unemployment, the judge is not a fact-finder when they're reviewing the appeal, but -- they're simply just going over the facts, and the decision decided whether or not there's evidence that supports those facts that they find. Is that the same type of laws, that apply to these types of cases in Federal Court?

MR. WASHBURN: In this case, it would be the Administrative Procedures Act, Federal Administrative Procedures Act, Title 28 of the U.S. Code, which has a standard in there similar to that one.

But, I believe there are four or five different bases on which someone could appeal: One, if it's arbitrary or capricious or not in accordance with law; and, there is one about evidence, whether the "facts" are substantial evidence to support the termination, something like that.

There is a series of them. They're basic ABA standards, administrative standards that
you may have or will perhaps study, under
administrative law, basically, and those would be the
standards that the Federal Court would apply.

MS. CORONADO: So when these appeals
come to State court, the department of unemployment
is a party in the lawsuit -- would that be this case?
Would the BIA be a party in the lawsuit?

MS. KLASS: Basically, what happens,
the ABA entity challenges us, the Federal
Government's decision, and it goes to Federal Court,
and depending upon what process was involved in
making the decision, there are different levels of
deferece, so the Federal ends up giving deference in
a situation like that.

MS. CORONADO: Would the BIA have
attorneys representing them on their behalf in the
lawsuit?

MS. KLASS: When -- at the time when
the Federal Government gets sued, it's the department
of justice that steps in and represents the
government in litigation.

MS. CORONADO: Before, when they
appeal to the IBA, would it be a similar appeals
process, rather than going through the federal courts?

MS. KLASS: It's actually called reconsideration. The IBIA hasn't reached the step of federal court, or any court, really, at that point.

MS. CORONADO: Have there been very many tribes that appealed that process, or not?

MS. KLASS: That's on the OFA website. I don't know it off the top of my head.

MS. CORONADO: That's it. Thank you.

MR. WASHBURN: Thank you for your questions and comments.

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MR. BROWN: Hiawatha Brown, Narragansett Tribe.

As we move forward with this, and I mentioned earlier about the parallels that -- some of the other laws that are affecting the Indian Country and the Indian Nation, do you have any kind of feedback whatsoever as far as the final rule versus what's happening on that particular level, because it affects everything we do?
MR. WASHBURN: Well, let me just say that -- I think, what I understood you to say, Hiawatha, is that you would like us not to move forward on this until we get this clearly fixed. If that's what you said, I think that we need to keep the rest of it -- keep moving forward on all fronts. We do need to get Carcieri fixed in congress, but also, to make progress in other areas. We intend to move forward with this rule, and I --

Again, I do think that we have to do something here, the process is broken, and what we do might not look like our rule, will have additional tweaks and changes, but it probably will be based on all the feedback we've gotten from the public, and we do intend to move forward.

What the timeline looks like for that, I can't tell you. It depends how many comments we ultimately -- and we have two more months of comments. We got more than three hundred fifty more comments in our first discussion draft, so it takes a long time to digest those comments, so it will take us a while to get this rule in place, where it could be a final rule, but I do think we will proceed with
something, and to, sort of, remain firmly committed to that. We are still very open as to what that might look like.

MR. BROWN: That's a fair assessment; however, I do see that there's going to be problems with the final rule, because the problem with -- the other things impacting us in Indian Country is -- Carcieri, just one of them.

I also have a question dealing with the two-part procedure you have in place. The first part, you're dealing with the non-federal tribes and the second session, you deal with the federal tribes (sic).

I have a problem with that, also, because we've been through this system. Any recognized tribe has been through this, although we identify to you what our problems may have been, as far as past problems over a timeline, these tribes that are coming into the system, I think, have a more direct issue at hand, because they're -- they're now confronted with the past, and, potentially, what happens in the future.

And, again, I think it's -- for us to.
Resolve this amicably across Indian Country, I think it requires all of us, although I realize there are distinctions, as far as federally recognized and acknowledged state tribes, there needs to be some kind of parallel here.

You all need to step up, deal with state tribes, at least entities that have proven themselves through their thresholds or requirements.

You guys need to step up. That's what this really is about. It's not about the tribes that have come through the system; it's about the tribes coming into the system.

At least the way I see it, to me, there needs to be a more open-book policy, to accept the testimony from all sides.

And, again, I'll reiterate, Indians are Indians. Just because we're federally recognized Indians, attested to that, because we all know, in every state, there were perpetrators. We've all experienced that. It's part of the conversation from a number of people. We can divine who the perpetrators are and the legitimate groups are. They need to be recognized almost to the same degree as we
are.

But, when we start adding divisive rules of separation, again, that's just what the outsiders want us to do, divide and conquer. It's been applied to us for thousands of years; in fact, it's one of our own attack strategies, a strategic planning in battle, in war, divide and conquer; it works.

If you want to put a handle on this, resolve the issues, put a plan in place for everyone's needs. In this case, everyone needs to be involved, almost on an equal level.

When we was (sic) in Maine last year, the second session was open to the non-federal tribes, so it wasn't imposed up there. I have a little problem if -- with my back door (indicating), -- because some of these folks sitting over there (indicating), I've known them all my life, and some of them are older than me; some are younger than me; and, to me, if I have to turn my back to them because of somebody's interpretation, as to who should be in the room or shouldn't be, I take offense to that. In my mind, Terry (phonetic) shouldn't be setting the
criteria. Maybe you should be at a regional level, as to who can participate.

Some of these things, if you want to do it right, you need to think about it, consider it.

Last but not least, when you deal, again, with the Northeast tribes, you have to be very considerate of the history, and when you deal with the Northern tribes up in Maine and their problems with the State of Maine -- you know, and you come on down the line, to Rhode Island, to Massachusetts, Connecticut, so forth and so on, all of our issues are common with the people in control, people in the government.

The governments of these states, you have to realize that these folks refer to themselves as blue blood, blue bloods, quote/unquote, they've come across on the Mayflower and some of the other boats, and for us, that don't mean nothing, because three hundred years, or four hundred years ago, we -- has nothing to do with three, four thousand years, thirty thousand years -- a drop in the bucket, but it seems like the history, for three hundred years, is superceded or taking precedence over the three
thousand year old history.

I said this earlier: These are some of the things that you folks really need to take a look at. Whatever your relationships are with these states, where the problems exist, the Interior needs to handle that in the states, provide the information, the history, this documented history, and that can make a big difference in the outcome, in the plight of the tribes that are trying to gain this status.

To me, these are critical issues.

When you talk about what's written in the law, what you folks follow, as far as guidelines; it's wonderful stuff for you guys, not so wonderful as I stand. Much of it, I don't agree with, much of it is a process that -- and maybe you have to find these things in place so there is a degree of continuity and a record, but this stuff is toilet paper to me, frankly, and stuff you put in the fire, to start your fire.

However, we understand that we have to live within the perimeters of the laws of this country. Whether they're acceptable or not, we still
have to live within the law.

But, the last point I would say today is that, stay on your path; but, please, take the time to involve some more of these tribes and get our history and use that as your gauge rather than some of the documented history that really has nothing to do with our tribe.

Much of the stuff in the books, we don't agree with. It's somebody else's history. That's why they call it history.

We have a documented history, and in Rhode Island, that is used over the years as a point of reference in the history. Two of them are really accurate, two of them are somebody else's interpretation of it, but these are the things that my tribe -- and there's no question of that, our historical standpoint, who we are, as swell as the rest of these Northeast tribes.

So the -- so there are things that are just as important as the other issues we discussed, and there's volumes of knowledge out there; but, still, many elders are left. That's really where you get your resource of information. Make it more
logical and an honest decision.

MR. WASHBURN: Thank you, Hiawatha.

I think that rather than respond to Hiawatha on that, I'll let him have the last word.

Any last comments before we stop for the afternoon?

(No response).

MR. WASHBURN: Well, let me repeat, once again, on behalf of my colleagues and I, how grateful we are to the Mashpee Wampanoag Tribe for being such wonderful hosts for this session, and to all of you for taking the time, taking the better part of a day, and for some of you, even longer, more time, because you've traveled to get here, to make this a successful session and to give us your viewpoints.

We heard a really lot of good views and thoughts, and some, hopefully, helpful, and we've heard some hopeful things, and -- so, as we go forward, to figure out what our next draft should look like, or final rule, if we're ready for that, and we do appreciate that.

We've got two more months for you to
file comments, and we encourage you to do so. We would love to have your considered thoughts on how we should move forward.

Once again, I want to thank the tribe and all its staff who have helped to make this successful, and, of course, our court reporter, who was with us all day and must be getting tired.

Thank you to everyone.

MR. CROMWELL: Kevin, I want to say again, as I've said in the opening remarks, thank you to you and your staff.

I think it's very important for you to personally be here as Assistant Secretary, and that shows leadership, strong leadership, and under your leadership, the focus has been Indian Country self-determination. It's well received, personally, for me, and for the Wampanoag Tribe.

Thank you for coming to the territory and our land, and, also, to the tribal leaders that came here, as well, and all who helped to put this on, Patricia, and Lou, thank you.

(The proceedings were adjourned at 3:07 o'clock p.m.)
CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS )
COUNTY OF BARNSTABLE ) ss.

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 1:12 o'clock p.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.
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