

UNITED STATES DEPARTMENT OF THE INTERIOR
INDIAN AFFAIRS

PART 83 LISTENING SESSION FOR PRESENT,
FORMER, AND PROSPECTIVE PETITIONERS

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1 P R O C E E D I N G S

2 (3:01 p.m.)

3 MS. WILBERT: Thank you all for your
4 patience. You have now been placed into the
5 listening session. This is a listening session
6 for present, former, and prospective petitioners
7 hosted by the Department of the Interior, Office
8 of the Assistant Secretary for Indian Affairs, on
9 whether it should reconsider its prior decision to
10 ban re-petitioning under 25 C.F.R. Part 83, the
11 regulations establishing the process and criteria
12 for how the Department administratively
13 acknowledges Indian Tribes. This listening
14 session is closed to the press. If you are a
15 member of the press, please sign off at this time.

16 This listening session is scheduled to
17 last two hours. For optimum audio quality, please
18 ensure your microphone remains on mute unless you
19 would like to speak. Please take a moment to add
20 your title and affiliation to your name in Zoom.
21 To do this, click on the participant list, find
22 your name, click on the blue more button next to

1 your name and choose Rename.

2 This session will be recorded. If you
3 do not consent to being recorded, you may
4 disconnect at this time. Closed captioning is
5 available in real time at the link in the chat.

6 I will now turn it over to the Senior
7 Counselor to the Assistant Secretary.

8 MS. SFIRIDIS: Thank you, Claire. Thank
9 you, everyone, for joining today's listening
10 session on Part 83. My name is Stephanie
11 Sfiridis. I am a member of the Mashpee Wampanoag
12 Tribe and I am a Senior Counselor to the Assistant
13 Secretary of Indian Affairs. So we'll get started
14 shortly, but in order to start things off in a
15 good way, I'd like to open with a moment of
16 prayer. We don't have anyone lined up to give a
17 prayer today, so I'd like to ask that we take a
18 moment for everyone to reflect in their own way.

19 (Moment of silence)

20 MS. SFIRIDIS: Okay. So this is the
21 first and only listening session that we are
22 holding for present, former, and prospective

1 petitioners. We also held two consultations for
2 Federally Recognized Tribes. Those were on June
3 2nd and June 6th.

4 As housekeeping, you can find the Dear
5 Tribal Leader Letter posted on the Indian Affairs'
6 consultation website and the link will also be
7 dropped in the chat box. I do want to remind
8 folks this session is closed to the press. If you
9 are a member of the press, we would ask that you
10 please drop now.

11 So, we are here today to hear comments
12 on the Part re-petitioning ban. As background,
13 since 1994, the Part 83 regulations have included
14 an express ban on re-petitioning. In a 2014
15 Notice of Proposed Rulemaking, the Department
16 proposed giving previously denied petitioner an
17 opportunity to re-petition subject to several
18 conditions. However, in a 2015 Final Rule
19 revising Part 83, the Department ultimately
20 decided to retain the ban. In 2020, in litigation
21 initiated by two previously denied petitioners,
22 two Federal District Courts in Chinook Indian

1 Nation v. Bernhardt and Burt Lake Band of Ottawa
2 and Chippewa Indians v. Bernhardt, held that the
3 Department's stated reasons for retaining the ban
4 as articulated in the 2015 Final Rule were
5 arbitrary and capricious under the Administrative
6 Procedure Act. Both courts remanded the ban to
7 the Department for further consideration. The
8 Department now proposes continuing the previous
9 ban on re-petitioning under Part 83 and seeks
10 input on this matter.

11 At this time, I'd like to open the floor
12 to those who would like to provide comments. For
13 those joining us on Teams, please raise your
14 virtual hand to get in a queue and for those
15 joining via telephone, please press *9 to raise
16 your virtual hand and *6 to unmute yourself.

17 Okay, we have the first person in the
18 queue and I apologize if I pronounce names wrong,
19 Dean Tonenna? You can go ahead and unmute
20 yourself.

21 MR. TONENNA: Thank you. My name is
22 Dean Tonenna. I am an Elder with the Mono Lake

1 Kootzaduka people here in Eastern Sierra. Our
2 people are very concerned. We are petitioner
3 number 21 and we definitely would like to see and
4 support the agency do all within its power to
5 ensure that our people are recognized.

6 I think, you know, we as Native people,
7 we all have a very similar, excuse me, heritage
8 about our lands and our waters and our culture
9 being taken from us and really this is what this
10 is about. It's to bring our Tribal people back in
11 a way that we're recognized. And I think part of
12 it is there's just very much an uncertainty about,
13 you know, how the Bureau operates. And I'm
14 speaking in general, I don't mean to target any
15 particular person or anything like that, but it's
16 just we don't -- we see the BIA acting
17 differently.

18 For example, our people, you know, we
19 were given Tribal allotments in the 1920s and then
20 as our Tribal government reached out to request
21 for assistance in the 1950s, that was during the
22 termination policies and we weren't considered.

1 And then in 1977 our relatives, we got a BIA
2 allotment. So we've had this on and off, I guess,
3 relationship with the BIA where the BIA seems very
4 supportive of us, we get Tribal allotment lands,
5 and then, you know, and then it's just this
6 off-and-on that I think is disconcerting. We just
7 don't know what the final decision would be.

8 We're putting our petition together, of
9 course, but, you know, as we see the BIA -- I
10 mean, just recently we've seen that the BIA was
11 going to take back land from one of the eastern
12 Tribes, and then Secretary Haaland came in and
13 then she did a reversal and that Tribe on the East
14 Coast was given land. So it's just this back and
15 forth of, you know, the support that makes us
16 uncertain about the outcome of our petition as
17 well as the petitions of other people.

18 And so I think having the opportunity to
19 come back if our petition isn't what it should be
20 for an affirmative decision, to have that
21 opportunity to come back is really important
22 because, like I said earlier, this is about

1 addressing an injustice from the past. And we
2 need, as a collective, as Tribal people, as an
3 agency, we need to make that happen in whatever
4 way that we can because that's the ultimate goal,
5 is to bring back that justice to our Tribal
6 people. So I just wanted to share those things
7 and give our support for having the opportunity to
8 come back again if we need to. Thank you.

9 MS. SFIRIDIS: Thank you. I appreciate
10 your comments. Anyone else who would like to
11 speak, please raise your hand to be placed in the
12 queue. Chairwoman Lopez.

13 MS. LOPEZ: Hi. (Speaks in Tribal
14 language.) Thank you. I would also like to know
15 in regards to this position that BIA stands, where
16 is the affirmative action where it lists that they
17 want to keep this on here for the ones that are
18 applying for petitioning, where they can no longer
19 petition if, like the Elder before me stated, you
20 know, this -- just, you know, just addressing the
21 injustices, there's just so many things,
22 especially here in California. Us California

1 Tribes, our situations are unique to California.
2 And we -- you know, trying to put us in a position
3 to apply and then be denied and then apply and not
4 being able to apply again is wrong on so many
5 different levels because some tribes here in
6 California, and I speak on behalf because I am a
7 California tribe, we're the last tribe in Butte
8 County to become federally recognized. Our Elders
9 are buried on Forest Service land. We did have
10 the same thing where we have BIA allotments, we
11 have, you know, a unique relationship with the
12 state. But these regulations and the way that
13 this petitioning process for some of the Tribes
14 here in California is unfair, it's unjust, because
15 of the unique relationship that California Indians
16 have differently from Indians in other states.

17 So I would strongly say that that needs
18 to be removed. The Tribes should have the
19 opportunity to, you know, be able to re-petition
20 if their petition has been denied for whatever
21 reason, especially because some of the Indians
22 down in Southern California, I'm in Northern

1 California, some of the Indians in Southern
2 California are part of the Mission System. They
3 don't have the same California judgment rules that
4 we have here in Northern California. You know, we
5 have the California judgment rules that the
6 Indians here in California were a part of,
7 especially here in Northern California. My
8 ancestors, my mother is one of them, my
9 grandmother is another one who is listed on those
10 judgment (inaudible) rules. And it's just, again,
11 California is different and we should be -- or
12 have some type of a different format set up for us
13 to be able to petition to become federally
14 recognized because we don't fall under the same
15 criteria as other Tribes. And we may not have the
16 documented history because we were misplaced and
17 taken to other -- around, you know, reservations
18 where our ancestors were not from.

19 So, this whole, you know, taking it off
20 but BIA wants to keep it on is unjust. And you
21 represent Indians and it feels like BIA is against
22 Natives in a sense because you're doing an unjust

1 to our children, you're doing an unjust to our
2 Elders when it comes to goods and services. So I
3 would just strongly recommend that -- and oppose
4 that opposition being added back on here, and it
5 should be removed. So, that's all I have to say.
6 Thank you.

7 MS. SFIRIDIS: Thank you for your
8 comments. If anyone else would like to make
9 comments, you can raise your hand to be added into
10 the queue. I know I'm on camera, if I'm looking
11 down or if I have my head down, it's because I'm
12 taking notes and we also have other folks from
13 team DOI on here taking notes as well.

14 Ted Herrera. Sir, you can unmute
15 yourself.

16 MR. HERRERA: Thank you very much. My
17 name is Ted Herrera and I'm the principal speaker
18 of our Tlaxcalteca Nation and Affiliated Tribes of
19 Texas and I'm really hoping to catch up.

20 We started our efforts back in 2010 and
21 it was a very difficult time. There had been some
22 anthrax letters coming into different agencies

1 into Washington, D.C., and so for security
2 purposes it became very difficult to communicate.
3 I think they started up a different agency to
4 receive all correspondence for all agencies and it
5 was just very, very slow coming and going.

6 So we started our petition in 2010. We
7 did provide a partial and then we really needed
8 help and then communication got worse and we kind
9 of faded away. But we never heard of these other
10 events, especially the 2015. And so I really am
11 hoping to understand the proposals on hand as far
12 as the ban because I don't know what exactly that
13 is, but we are still interested in pursuing
14 recognition and we're hoping that there will be
15 more help available to us.

16 We are a small group of people with
17 limited resources, but we've been here in South
18 Texas starting in 1748. Our people came to help
19 settle New Spain in this area and they brought 700
20 families of Tlaxcalteca Indians. And so now many
21 of the so-called Tejanos were really our
22 descendants of those 700 families and we still

1 have our Nahuatl language. Some of us still
2 practice our traditional peyote religion and we
3 still have many of our cultural traditions
4 observed, such as Dia de los Muertos. And so
5 we're still intact, we're still here, and I'd
6 really like to learn more about the ban and so I
7 can understand it, because right now I'm just
8 trying to play catch-up. But thank you so much
9 for this opportunity to talk.

10 MS. SFIRIDIS: Sure. Thank you for your
11 comment. And just to try to answer your question
12 on the ban, so I stated in the beginning and I'm
13 not sure if you had joined at that point, but so
14 this ban has been in place since 1994 in the Part
15 83 regulations, and it's been a ban on re-
16 petitioning. And so the consultation today is
17 just the Department trying to get input in this
18 listening session and we had two sessions with
19 Federally Recognized Tribes as well to determine,
20 you know, comments about the ban. The ban applies
21 only to previously denied petitioners and not
22 those who never received a final determination, so

1 just a clarification there.

2 MR. HERRERA: Thank you so much. And
3 we're definitely in favor of not pursuing that ban
4 because we would like to continue, even if we have
5 to start all over again, we would like to continue
6 with our petition for recognition. Thank you so
7 much for your explanation.

8 MS. SFIRIDIS: Thank you. Thank you for
9 your comments.

10 Up next in the queue we have Nancy
11 Carnley. Nancy, you are on mute.

12 MS. CARNLEY: How about now?

13 MS. SFIRIDIS: Yup. I can hear you now.

14 MS. CARNLEY: Okay. My name is Nancy
15 Carnley. I'm the Vice Chief of the Ma-Chis Lower
16 Creek Indian Tribe of Alabama. We are one of the
17 Tribes that is affected by the ban. And my
18 concern is, and I voiced this concern back years
19 ago, regarding the fact that the person who worked
20 primarily on our petition for the BIA, the
21 consultant's name was Dr. Anthony Paredes
22 (phonetic), and he worked primarily on the Poarch

1 Creek, who did get federally recognized.

2 And he wrote a book, he was the editor
3 of the book called Indians of the Southeastern
4 United States in the Late 20th Century. It's from
5 the University of Alabama Press. And on page 124
6 he states, I'm going to just paraphrase it, states
7 that he at times did not know if he was a
8 participant or an observer of the Poarch Creeks.
9 And he did not mention the Alabama Indian Affairs,
10 he did not mention any of the other Creek Tribes
11 in the State of Alabama, Georgia, or Florida
12 except for the Pedro Tribe. And the Pedro Tribe,
13 they in Florida basically taught the Poarch Creek
14 their history, the cultures, and the traditions of
15 what they do.

16 He did not mention the pow-wow that we
17 had in the summers down at Lake Jackson or Lake
18 Florala, which one you want to call it. And I
19 just feel like when a person writes a book and he
20 doesn't thoroughly investigate everything nor
21 should he have been consulted because of him
22 writing the book and having (inaudible) with the

1 Poarch Creek.

2 And that also it -- if you're having a
3 court order, what I'm basically reading with this
4 court order, that you're being told you have got
5 to reconsider. Well, what's going to happen if
6 you do not follow this court order? Are you going
7 to be in contempt of court? Is that going to open
8 up a class action lawsuit? Is that going to start
9 other problems with this system?

10 And we had no guidance back when we went
11 through it. Nobody could give you a straight
12 answer. They have even spoken, said, oh, you had
13 the best petition. Uh-huh. And we have no doubt
14 you're going to be recognized. That came out of Bud
15 Shepherd's own mouth. And you couldn't tell
16 Anthony Paredes nothing and several things that
17 he got wrong, exactly like de Soto did come into
18 Alabama; he did cross over the Chattahoochee River
19 near the state of -- city of Columbia, just a few
20 miles below the current Farley Nuclear Dam, which
21 he said that did not happen, which it did. We
22 have been documented by another famous Spanish

1 explorer that we were here in this area, which he
2 did not document. And in the petition you all
3 cite that undocumented evidence. Well, what's an
4 undocumented evidence? Nobody's ever explained
5 that situation.

6 I strongly oppose you all banning this.
7 I feel like you should follow the court order and
8 allow Tribes to re- petition and give us the same
9 technical assistance that's been provided since
10 you all developed the plan and the guides that we
11 none never had prior to 1994. Thank you.

12 MS. SFIRIDIS: Thank you. I appreciate
13 your comments and I also want to remain focused
14 that we can -- we are accepting written comments
15 until July 6, so I would encourage you to write in
16 on those comments, especially regarding the
17 historical details that you just described.

18 MS. CARNLEY: Thank you. I intend to.

19 MS. SFIRIDIS: Okay. Next in the queue
20 we have Tony Johnson.

21 MR. JOHNSON: (Speaks in Tribal
22 language.) I am going to try to cut this short

1 because there's more to say than I could probably
2 say in two hours. My name is Tony. That's my tax
3 name, Naschio is my Tribal name. I am making this
4 statement as the elected Chairman of the Sovereign
5 Chinook Indian Nation and representing 3,146
6 members here at the mouth of the great Columbia
7 River.

8 I am here in solidarity with all of my
9 brothers and sisters on this call who have been
10 abused by these broken regulations that were
11 promised to be a fair and timely process for
12 acknowledging Indian Tribes. To say it, my wife
13 and I are both descendants of hereditary leaders
14 who negotiated and signed treaties with the United
15 States at Tansy Point in 1851.

16 I also want to remind that the Bureau of
17 Indian Affairs' mission is to enhance the quality
18 of life, to promote economic opportunity, and to
19 carry out the responsibility to protect and
20 improve the trust assets of us Native people.
21 Chinook Indian Nation members were given
22 allotments, are the majority landholders on a

1 large neighboring reservation, have IIM accounts,
2 were forced to Indian boarding schools for
3 generations, and were issued blue cards to hunt
4 and fish as Indians. These are just a few
5 examples of our relationship with you all.

6 Ultimately, this broken process for
7 recognition, your rescinding of our recognition
8 after 18 months, and your daily neglect of your
9 trust responsibility to us as folks that have
10 trust lands, IIM accounts, and I'll say especially
11 the scars of your boarding school system, fly --
12 you know, those facts just fly in the face of your
13 mission as the Bureau of Indian Affairs.

14 My father was the Chairman at the time
15 that Assistant Secretary of Indian Affairs Kevin
16 Gover recognized us under these regulations in
17 2001. At that time, he apologized for the past
18 actions of the United States Government, and he
19 told us on behalf of your agency that the BIA
20 would be from that day forward our home in
21 Washington, D.C. My father was also the Chairman
22 when he was a guest of President George W. Bush at

1 the White House 18 months later in July of 2002,
2 where they were celebrating our important
3 contribution to the survival of the Lewis and
4 Clark expedition during their long winter in our
5 territory.

6 During that visit on July 5, 2002, he
7 received a call from a previously unknown BIA
8 staffer notifying us that your agency was
9 rescinding our hard-won recognition. That news
10 devastated our community and ultimately became
11 another item on a long list of lies that have been
12 told to us by the United States Government.

13 As a reminder, Kevin Gover has
14 repeatedly testified to the fact that this system
15 is broken and that the Chinook Indian Nation
16 should still be a Federally Recognized Tribe
17 today. Please also remember that he is an
18 acknowledged expert in Indian law, who felt
19 compelled to hire an outside consultant to review
20 our petition because of his concern that this
21 broken system was preventing a fair analysis of
22 it. And also, I ask you not to forget that the

1 Interior Board of Indian Appeals found his actions
2 in the Chinook case were appropriate.

3 So, I'm speaking to you today to
4 strongly oppose the ban on re-petitioning and want
5 to make a few points about the Part 83 process
6 generally as well as about your proposed rule
7 change.

8 The statutes providing for the
9 recognition of Tribes do not authorize you to ban
10 re-petitioning. It's irrational and unfair to
11 change the standards for recognition while at the
12 same time refusing to apply the new standards to
13 Tribes that have been denied. The result of that
14 action can only be that different standards will
15 have been applied to different Tribes and this
16 violates the fundamental principle of equal
17 treatment under the law.

18 It is unfair to bar re-petitioning
19 forever while recognizing that the system under
20 which Tribes were initially denied was
21 "inconsistent, cumbersome, expensive, slow, and
22 broken." The new and improved system should be

1 available to all. As the Western District of
2 Washington Court said in its decision declaring
3 the rule arbitrary and capricious in our case,
4 "There is no reason why new petitioners should be
5 entitled to consistency while past petitioners are
6 not."

7 The new rules do, in fact, change the
8 standards for recognition, especially with the
9 changes to accepting evidence that shows a
10 "reasonable likelihood" that a fact is true rather
11 than the "preponderance of the evidence." That
12 was the previously required verbiage. And in
13 requiring the showing of Tribal identification,
14 community, and political control from 1900 rather
15 than from first contact. Again, those are real
16 substantive changes.

17 The agency says that its intent to
18 promote consistency in recognition decisions but
19 setting in stone previous decisions made under a
20 "broken" and "inconsistent" system does just the
21 opposite. The underlying policy of the
22 recognition statutes are to assist Indian Tribes,

1 to promote their existence, economic welfare, and
2 self-determination. Prohibiting re-petitioning
3 stands in the way of those policies.

4 The argument that re-petitioning harms
5 existing petitioners that are now in the system
6 fails to recognize that re-petitioning Tribes
7 could be sent to the back of the line. This ban
8 also fails to consider alternatives such as
9 limiting re-petitioning to a more narrow set of
10 Tribes. One of those options, and I do want to
11 say I think this is probably wholly unfair to some
12 of the folks on this call, would be to reconsider
13 Tribes such as ours, the Chinook, that were once
14 recognized, but then later deprived of that
15 recognition due to the opposition of third
16 parties.

17 Then just a few notes about the proposed
18 rule change. Despite the fact that our court case
19 was a substantial part of the agency's requirement
20 to reconsider this re-petitioning ban, my
21 community received no notice of the early 2021
22 comment period or hearings. As a reminder, during

1 that comment period a majority of the comments
2 received by the agency opposed this ban.

3 I also want to say on the Dear Tribal
4 Leader Letter that went out, that you folks found
5 the link attached to, that link did not work for
6 me. I had to manually enter the link. The link
7 that was electronically connected there did not
8 work and I'm afraid that will result in a limited
9 number of folks on this call or expressing their
10 opinions.

11 But the first reason given for the ban
12 is that the agency's previous decisions were
13 substantially sound. That contradicts the
14 often-repeated acknowledgement that the
15 recognition process has been broken. It was not
16 only expensive and inefficient, it was
17 inconsistent, treating similarly situated Tribes
18 differently over time. The agency claims the
19 problems with the systems or the system has only
20 been procedural, but the court in our Chinook case
21 found the problem was with the substantive
22 consistency of decisions on the merits.

1 The change to a 1900 start date for the
2 identity, community and political authority
3 criteria would make a real and important
4 difference to our Chinook community because of our
5 clear ongoing representation of our people with
6 respect to the illegal taking of our lands. We
7 hired our first attorneys in the 1890's and sought
8 compensation that Congress responded to with a
9 failed bill in 1905 and with recognition and
10 compensation for us in both 1912 and 1925. I
11 swear I'm getting close, folks.

12 The new provisions providing that
13 evidence or a methodology will be sufficient to
14 satisfy one of the seven criteria if it was
15 sufficient in a prior decision is an assurance of
16 consistency. The DOI argues that this is not an
17 admission of prior inconsistency, but it's
18 indisputably a new rule requiring consistency
19 that's favorable to petitioners and addresses the
20 main defect of the broken system. That rule was
21 not available to us when our recognition was taken
22 away in 2002 and it needs to be made available to

1 us via a re-petitioning option.

2 The Department relies on legal doctrines
3 of res judicata and collateral estoppel to argue
4 that its prior decisions should be final, not
5 subject to re-petition. But those legal doctrines
6 require that the legal rules be the same for the
7 prior decision and the present decision. This is
8 not true in this case. The rules now have
9 changed, and this is exactly why re-petitioning
10 must be allowed.

11 As an important reminder, we Native
12 people are not just any legal parties. Reminding
13 everybody on this call, the Federal Government has
14 a special duty to us Native people whose lands
15 were appropriated from us by force.

16 I'm going say (speaks in Tribal
17 language). That's the end of what I have to say.
18 I wish I could say thank you for the hearing, but
19 instead I'm going to just close with my respect
20 for past, current, and future petitioners, and
21 with a sincere hope that the new Native leadership
22 of the Department of Interior and Bureau of Indian

1 Affairs will finally assure that the BIA lives up
2 to its mission and its obligations to Indian
3 country and to our Chinook Indian Nation members.

4 MS. SFIRIDIS: Mr. Johnson, thank you
5 for your detailed comments and I would encourage
6 you to put those in writing as well and submit
7 those before the July 6 deadline and we do read
8 all of the written comments that come into the
9 Department.

10 So, in the queue here I got a message
11 from someone. So, first we have Mr. Brian
12 Buchanan and then I have a message from Mr. Stupak
13 from a while ago to be placed in the queue and
14 then we'll go to Mr. Coon after.

15 So, Mr. Brian Buchanan, you can unmute
16 yourself.

17 MR. BUCHANAN: Yes, can you hear me?
18 Yes, my name is Brian Buchanan. I'm the Principal
19 Chief for the Miami Nation of Indians of the State
20 of Indiana. I reside in Huntington, Indiana. I
21 have three points that I would like to touch base
22 on and be very short.

1 First of all, thank you to the Bureau
2 and the Department of the Interior for having this
3 listening session. I find it very important and
4 it's interesting to see so many that are affected
5 by it. The Miami Nation has admittedly enjoyed
6 federal recognition by treaty in 1854. The status
7 was illegally terminated in 1897, and in our
8 lawsuit challenging the denial for the first
9 petition there were no third parties. This is
10 between the United States and the Miami Nation of
11 Indiana only. The Nation is entitled to expect
12 more from its trustee.

13 The Department of the Interior, point
14 number two, has not given appropriate regard to
15 the status of previous recognition for certain
16 Tribes and its rationale for prohibiting
17 re-petitioning. There is no calculation on the
18 number of such Tribes and the administrative
19 burden for reconsidering such petitions in the
20 proposed rule that the Department of the Interior
21 published for its comment.

22 And the third point I'd like to make is

1 the Department of the Interior's basic rationale
2 was that in 2015 regulations did not substantively
3 change the criteria so that there would be no
4 different outcome for any other petitioners is
5 just not true for previously recognized Tribes
6 like ourselves. The Department of the Interior
7 does not address in its proposed rule that clear
8 changes that were made for previously recognized
9 Tribes in 2015. The Miami Nation of Indiana
10 believes that there would be a different outcome
11 for a new petition under the new 2015 regulations.

12 That about wraps it up for us and I hope
13 that they can do the right thing. I really do.
14 We've waited long enough. Thank you.

15 MS. SFIRIDIS: Thank you for your
16 comments. As I stated before, we are going to go
17 to Mr. Stupak next.

18 MR. STUPAK: Thank you, just found the
19 unmute button. I am Bart Stupak. I'm the
20 attorney for the Burt Lake Band, one of the ones
21 who initiated the lawsuit to challenge the 2015
22 rules for the ban on re-petitioning. There are

1 many reasons, but let me first talk to or discuss
2 what Chairman Johnson of the Chinook Nation
3 (inaudible) your attorney (inaudible), and
4 I've been trying to get ahold of him. Would you
5 please ask him to get ahold of me so we can
6 coordinate some more strategies on these 2015 rules
7 and regulations?

8 Re-petitioning (inaudible) find out why
9 we should be allowed to re-petition. There is
10 just something real illogical. Your rules have
11 been in effect since 2015. In 2017, the courts
12 ruled that Native American Tribe members can be a
13 member of more than one Tribe. So like in the
14 Burt Lake case when you denied their petition, you
15 said 32 percent of the members of Burt Lake were
16 part of another Tribe and they could not be part
17 of two Tribes, but only one Tribe. But the courts
18 ruled in 2017 that they can be involved in both
19 Tribes, one as an ancestral Tribe, another as a
20 ceremonial Tribe or (inaudible) Tribe. So if the
21 courts change their rules such as a Tribal member
22 can be part of two Tribes, why can't a petitioner

1 like Burt Lake then come back and re-petition?
2 How do you take that into consideration when the
3 law changes, not through Congress but by the
4 courts' ruling? If the courts rule your past
5 decisions improper, why would you not allow people
6 to come back and say, hey, the courts have ruled,
7 please review our case? That's why we should
8 always have a chance to re- petition.

9 So just one example, I've got many more
10 of them, and we will submit our written questions,
11 or I should say our written comments, but the
12 McGirt case, U.S. Supreme Court case, 2019. There
13 is another one where -- 2020, sorry, the McGirt
14 case was 2020. There is another one in which we
15 enumerated Native American rights, which, quite
16 frankly, if you ban re-petitioning, would be
17 detrimental to the Tribes. And the 2020 ruling of
18 McGirt certainly says Native Americans have
19 certain rights that your 2015 rules and
20 regulations would not honor at all.

21 So, we will submit our comments. Thank
22 you for the time.

1 MS. SFIRIDIS: Thank you for your
2 comments. Mr. Jim Coon.

3 MR. COON: Thank you, Stephanie. I
4 appreciate it. I am counsel for the Chinook
5 Indian Nation following the comments of Naschio
6 Tony Johnson, who is the Tribal Chair. He
7 certainly laid out the substantive arguments and I
8 have just these brief comments.

9 Number one, it's worth bearing in mind
10 that there are some 574 Tribes now recognized by
11 the Federal Government and that only a very tiny
12 fraction of those have been recognized under this
13 administrative system which was enacted in 1978.
14 And the Tribes recognized before that were done so
15 by a process that varied widely over time, that
16 had no standards whatsoever. The one thing you
17 can say is that treaty Tribes are recognized and
18 there are, I believe, 368 of those, but hundreds
19 of Tribes were recognized in a haphazard, ad hoc
20 way. So to impose now a standard which we're
21 going to say is one time only and that's correct
22 and that lasts for all time makes no sense and

1 certainly grants no fairness to the Tribes
2 involved.

3 As I think is clear, it was our case
4 along with Mr. Stupak's case that sent this rule
5 back to the agency on the finding that it was
6 arbitrary and capricious. And I guess I would
7 point out that as to treaty Tribes, the Chinook
8 had a treaty, we signed a treaty at Tansy Point,
9 but Congress didn't ratify it. And if that's why
10 we're not recognized, I ask what it is that the
11 agency says about why that's fair. I suggest
12 there's no answer to that question.

13 The Chinook are somewhat ironically the
14 most recognized Tribe in the Pacific Northwest, if
15 you use the word "recognized" in its dictionary
16 sense. Their name characterizes the warm wet
17 winds that bring lifegiving water, the most famous
18 recognizable and tastiest salmon that swims in the
19 rivers of the Northwest, and the language, Chinook
20 Wawa. That was the lingua franca and still is for
21 those who speak the Native language up and down
22 the Northwest coast. Everybody knows who the

1 Chinook are except, apparently, the Federal
2 Government.

3 They're also, of course, the Tribe that
4 ensured the survival of the Lewis and Clark
5 expedition in the winter of 1805 and '06, without
6 which this whole thing would be a much different
7 scenario.

8 I want to address one of the agency's
9 rationales in the Federal Register, the
10 administrative convenience rationale. You know,
11 administrative convenience may be a reasonable
12 justification if the agency is confronting mining
13 regulations or allowable discharge under the Clean
14 Water Act, but we're talking about the original
15 people of this country. We're talking about
16 people to whom Congress, numerous presidents, and
17 the courts have repeatedly recognized, and I'll
18 use that word again, recognized a special
19 obligation. These are the people we owe the
20 beginning of this country and through which we
21 have incurred huge moral obligations. And not to
22 give them every consideration and to apply to them

1 and say your stuck with the results of a broken
2 system is simply not what this agency should be
3 doing.

4 We will, of course, if the agency
5 persists, be taking this back to the Western
6 District of Washington for another round of
7 litigation, but we urge the agency to do what it
8 should do, what I think many of its folks know
9 should be done in this case. I thank you very
10 much for your time.

11 MS. SFIRIDIS: Thank you. I appreciate
12 your comments.

13 If anybody else would like to comment,
14 if you're on Teams, please raise your virtual hand
15 to get in the queue. If you are joining via
16 telephone, please press *9 to raise your virtual
17 hand and then *6 to unmute yourself.

18 So, we scheduled the consultation for
19 two hours until 5 p.m. I am happy to stay on
20 until 5 if folks would like to continue to
21 comment. If there are no further comments, we can
22 end early if folks -- oh, it looks like somebody

1 has chatted. Steve Kelly. I can't see your hand,
2 but please unmute yourself.

3 MR. KELLY: I just unmuted myself.

4 MS. SFIRIDIS: Thank you, go ahead.

5 MR. KELLY: Hi. My name is Steve Kelly.
6 I am a retired educator. I am not Native
7 American. I hope to just -- I'm a learner. And
8 my impression from the conversations I had and my,
9 you know, limited learning on Native American
10 history, the U.S. Government has many flaws and
11 agencies are run by people, people have flaws.
12 And unfortunately, in the history of U.S.-Native
13 American relations, the flaws are grievous. So,
14 when a petition is made depending on I'll just say
15 the administration that is in charge who puts the
16 bureau chief in charge, their political point of
17 view can result in a, I'll just say it, denial of
18 a petition. But two administrations later, one
19 administration later, the wrong gets seen and
20 potentially things can be righted and justice can
21 be served.

22 So, my impression is there should be an

1 ability to re-petition. No agency is flawless and
2 based on the special relationship that should
3 exist between Native Americans and the U.S.
4 Government, the re-petitioning should be allowed.
5 And thank you for allowing me to have a chance to
6 speak.

7 MS. SFIRIDIS: Thank you, Mr. Kelly.
8 Again, if there is anybody else who would like to
9 be placed into the queue, please raise your hand.
10 If you can't figure out how to raise your hand,
11 feel free to shoot me a message. Mr. Herrera.

12 MR. HERRERA: Yes, ma'am. Thank you so
13 much for your patience with me. I have a better
14 understanding now, but I need to find out for our
15 families how can I find out what our status is?
16 Because I don't know that we were ever turned
17 down. The only communication we had was that our
18 Letter of Intent had been accepted and I followed
19 up with some partial history and asked for help,
20 but then I never heard anything back. Is there
21 someone I can contact to find out where we're at
22 or are we out with our petition?

1 MS. SFIRIDIS: Yes. So, we have the
2 Director of the Office of Federal Acknowledgement
3 on the line. Would you mind dropping your contact
4 info into the chat box and the Office of Federal
5 Acknowledgment is who you should contact, and
6 they'll be able to tell you where your petition is
7 in the process.

8 MR. HERRERA: Thank you so much.

9 MS. SFIRIDIS: You're welcome. And I
10 know, I've done a couple of chats here. There is
11 concern that some folks don't know how to raise
12 their virtual hand or to send a chat. I am happy
13 to let folks come off mute and provide comments if
14 that's easier.

15 MS. PARKEY: I don't know how to raise
16 my hand. How do I raise my hand?

17 MS. SFIRIDIS: It sounds like we have
18 someone who's trying to comment. Nola Parkey? If
19 you'd like to comment, you are off mute, you may
20 go ahead.

21 MS. PARKEY: My name is Nola Parkey. I
22 am the Executive Director for the Burt Lake Band

1 of Ottawa and Chippewa Indians. The Burt Lake
2 Band signed two treaties with the Federal
3 Government. We had a reservation on Burt Lake,
4 which is in Michigan. That was put -- trust land,
5 it was put in trust by President Polk. Some white
6 people decided that that was much too nice of land
7 and in 1900 they burned the Tribe off the land.

8 When the Bureau of Indian Affairs was
9 started, we sent our paperwork in as we were
10 supposed to do, and we never received a reply
11 back. We actually found a letter in the archives
12 from someone with the BIA back in that day who
13 said basically that they were just going to ignore
14 the Northern Michigan Indians, which is what they
15 did. We also understand that man lost his job
16 over that, but they didn't do anything for the
17 band. They didn't give them their land back.
18 They never told us we weren't recognized. We
19 assumed we were a recognized Tribe. To this day,
20 no one has told us that we are not a recognized
21 Tribe.

22 The idea of banning some Tribes from

1 re-petitioning, like the last gentleman said, no
2 one is flawless. Our hope is to at some point
3 after all of these years to get a wrong righted.
4 And I feel very bad for Tribes like the Chinook
5 people who have actually had their status taken
6 away. It seems to be one person's decision and
7 then another person's decision and there doesn't
8 seem to be any consistency.

9 I would hope that this ban would not be
10 held up. There's too many lives at stake, there's
11 too many people at stake, there's people living at
12 a poverty level that shouldn't be. I guess I
13 would hope that the new people in charge perhaps
14 will see how bad this ban really is and do
15 something about it. Thank you.

16 MS. SFIRIDIS: Thank you for your
17 comments. At this time, we don't have anyone else
18 in the queue. I am happy to take comments however
19 it is easier. You can raise your virtual hand,
20 send a chat, or feel free to come off of mute and
21 announce that you'd like to speak. We have the
22 session until 5 p.m. Team DOI is happy to stay

1 here until the end.

2 So, again, at this point if anybody
3 would like to comment, feel free to raise your
4 virtual hand. If you're on the phone, you can
5 press *9 to do that and then *6 will unmute you.
6 If there is no further comments we can also end
7 early, but again -- oh, Chairwoman Lopez.

8 MS. LOPEZ: Hi, thank you. I just have
9 one other comment and a question. Because I was
10 notified about this meeting from three of the
11 Federal Tribes who received
12 government-to-government consultation about this
13 meeting, and I just want to know, was this meeting
14 sent out to prior petitioners, petitioners who
15 were denied and to petitioners with active
16 petitions? How was this notice sent out? Was it
17 put in the Federal Register? Was it -- how was
18 this notice put out to the Tribes or Tribal
19 communities that are applying for federal
20 recognition? How was this notice put out? Or was
21 it just not put out and could you enlighten me
22 with that response?

1 MS. SFIRIDIS: Sure. The notice, so it
2 was sent out to Federally Recognized Tribes
3 through a Dear Tribal Leader Letter. It was also
4 posted on the Indian Affairs website, a
5 consultation website, and it was published in the
6 Federal Register as well.

7 MS. LOPEZ: So then these Tribes that
8 are actively submitting a petition or the ones
9 that were denied were basically denied the right
10 to consult and basically it's just more of a
11 public comment for the Tribes that are not
12 federally recognized?

13 MS. SFIRIDIS: Well, we have the
14 listening session today that we're in for the
15 prospective and former and denied petitioners, so
16 this is the opportunity to comment.

17 And I also just want to remind everyone,
18 too, that we are accepting written comments
19 through July 6. I would highly encourage you to
20 send in written comments. We read everything that
21 comes in and they all become part of the record.

22 MS. WILBERT: Stephanie, there is a

1 question in the chat from Mr. Tonenna. Is it
2 appropriate to ask what happens next after the
3 session?

4 MS. SFIRIDIS: Do we have somebody from
5 Solicitor that can answer that for me?

6 MR. PARTESOTTI: Sure. Hi, Stephanie.
7 This is John-Michael, hello everyone, good
8 afternoon. So I believe the next step is that we
9 are going to be reviewing the written comments on
10 the proposed rule and then engaging in further
11 deliberations after that as to next steps in
12 preparation for a final rule. I don't think that
13 we have more information at this time about what
14 that's going to look like. So right now, as
15 Stephanie mentioned, we are just open to receiving
16 written comments after today's listening session
17 and eager just to, you know, see what folks have
18 to say and just going from there.

19 MS. SFIRIDIS: Thank you, John-Michael.

20 MR. WILSON: Hello, I have a question.

21 MS. SFIRIDIS: Sure, go ahead.

22 MR. WILSON: Richard Wilson. I'm not

1 sure if this is proper in this forum here, because
2 this is my first time attending, but I wanted to
3 know are there maybe one or two specific reasons
4 why the Bureau of Indian Affairs disqualifies, I
5 guess, an application or a Tribe? Or should I
6 just --

7 MS. SFIRIDIS: Do you mean -- oh, I'm
8 sorry, go ahead.

9 MR. WILSON: Or should I, you know, just
10 do further investigation outside of, you know,
11 this forum, which I will do? But again, I didn't
12 know if this would be the proper place to ask, you
13 know, why, you know, like I said, one or two
14 reasons why a particular Tribe applying would be,
15 I guess, rejected in a sense.

16 MS. SFIRIDIS: Sure. So there are
17 actually seven mandatory criteria for federal
18 acknowledgement, so I would encourage you to look
19 at the Office of Federal Acknowledgement website
20 as a starting point and the Office of Federal
21 Acknowledgement will also be able to answer
22 questions offline as well. Feel free to reach out

1 to them, and I believe that their information is
2 in the chat. Also, the Part 83 regulations, they
3 are found at 25 C.F.R. Part 83. That's what the
4 Office of Federal Acknowledgement follows to
5 evaluate petitioners.

6 MS. LANGE: This is Charlotte Lange.

7 MS. WILSON: Thank you.

8 MS. LANGE: Hello?

9 MS. SFIRIDIS: Go ahead, we can hear
10 you.

11 MS. LANGE: Yes, I'd like to comment. I
12 attended the meeting last time in Solvang for the
13 same kind of reason and, unfortunately, there
14 again the Federally Recognized Tribes had the
15 bigger voice and we weren't allowed to be in those
16 meetings. Well, it's our voice that needs to be
17 heard because they're already federally recognized
18 and we're at the part where we're not going to
19 have more than one chance to apply for
20 recognition. So that's another reason why we
21 attended and had expressed that at that meeting
22 back then.

1 And the other reason for these Tribes,
2 we voted for them in California to have gaming to
3 help support us people, Tribes that are not
4 federally recognized. So I find it kind of a
5 little ironic that we don't have more support from
6 our Federally Recognized Tribes when we voted for
7 their big issue on gaming.

8 So, my concern is the re-petitioning is
9 that if we don't get more than one chance or we're
10 continuing on this process, I mean, you know, we
11 have documentation after documentation and it is a
12 big process to prove that we're Indian and the
13 rolls already prove that we are federally
14 recognized at a certain point. And some of our
15 Tribes have allotments that have been given to us
16 as recognized as Indian people way back when the
17 allotments were being issued, and that's our case
18 at Mono Lake Kootzaduka'a Tribe.

19 So, I just find it really disheartening,
20 the process that all us Indian people are
21 continuing to go through when these are our
22 traditional lands and we should just be given that

1 respect and honor. And our Elders, it was so sad
2 to see back in Solvang the Elders that were crying
3 and disheartened, you know, that they'll never see
4 this in their lifetime. And with this pandemic
5 we're seeing that in our lifetime even more with
6 our Federally Recognized Tribes.

7 So I reach out to everyone, Federally
8 Recognized Tribes, to support us Tribes that are
9 trying to endeavor in this process because it
10 isn't easy and our Elders deserve that respect to
11 be federally recognized because they're the ones
12 that really worked hard for this before us. Thank
13 you.

14 MS. SFIRIDIS: Thank you.

15 MR. KELLY: Hi, I'd like to say one more
16 thing if possible.

17 MS. SFIRIDIS: Sure.

18 MR. KELLY: To follow up on I believe
19 Chairwoman Lopez' question about how the meeting
20 was communicated, it sounds like only recognized
21 Tribes did receive a notification. If that's
22 true, then I would encourage all the Tribal Elders

1 that are present to reach out to those that are
2 planning to petition or if they were denied
3 petition, because it sounds like if, you know,
4 they were denied, their petition was denied, then
5 that means they weren't recognized, which means
6 they weren't on the list to be informed about the
7 meeting. And hopefully, you know, the people that
8 need to and want to can submit their written
9 responses by that July deadline. Thank you.

10 MS. SFIRIDIS: Thank you.

11 MR. KELLY: And one last thing. I think
12 it would be great for the Bureau of Indian Affairs
13 to have a very large, I'll just call it an email
14 list besides the recognized Tribes, anybody else
15 that's interested that can get an email blast
16 saying, you know, these events are happening. I'm
17 just starting my research process and I happened
18 to get onto the Bureau of Indian Affairs website
19 the other day and happened upon the notification
20 for this meeting. I'm very happy and fortunate
21 that, you know, I was surfing and I saw this. I
22 learned a lot. Thank you.

1 MS. SFIRIDIS: Thank you. So, again, we
2 have nearly an hour left in our scheduled time for
3 the listening session. If anybody would like to
4 make further comments, you can raise your virtual
5 hand, that is, you can do that at the Reactions,
6 the bottom right of your Zoom screen, select the
7 Raise Hand function; send me a chat; or feel free
8 to come off of mute at this point.

9 And while we're waiting for the next
10 comment, Claire, maybe you can put up the screen
11 again with the email address for the written
12 comments to make sure everyone has this. And that
13 information is also being dropped in the chat box
14 if it's easier to just copy and paste that. And
15 my email is also in the chat box if you have any
16 questions about Part 83 or the re-petitioning ban.
17 Any general questions about Part 83 or
18 petitioning, I would reach out to OFA, the Office
19 of Federal Acknowledgement, and that information
20 is also in the chat.

21 And I'm not seeing any other hands or
22 comments. I do have a question in the chat asking

1 who is the office contact to speak to about a
2 petition? The office is the Office of Federal
3 Acknowledgement. The Director is Lee Fleming. He
4 has dropped into the chat both the website address
5 for the Office of Federal Acknowledgement; he has
6 also dropped in the chat the actual mailing
7 address along with the phone number.

8 I do have a question about will these
9 recordings be available and when? I honestly do
10 not know the answer right this moment, so I can
11 check on that, if they are going to be posted. I
12 don't think we usually have the recordings
13 available. If there is a transcript that would be
14 posted, it would be on the Indian Affairs
15 consultation website. I do not know if that's
16 happening at this moment.

17 And we can wait another minute to see if
18 anyone else has any comments.

19 Okay, I'm not seeing any hands raised or
20 hearing anyone come off mute, and I am not getting
21 any other chats to ask a question, so if there are
22 no other comments, then we can end early. I'll

1 give a last call for comments and then if there's
2 no one, we will conclude this session.

3 And again, if you are unsure how to
4 raise your virtual hand or send a chat, please
5 feel free to come off mute at this time, let me
6 know that you want to make a comment. I don't
7 want to cut anybody off, I want to give everyone
8 time to speak, but if there are no comments we can
9 end.

10 Okay. In that case I would like to
11 thank everyone for joining the listening session
12 today. I appreciate everyone's comments. I will
13 be recapping internally with our team. Please
14 don't forget that you can submit written comments
15 by July 6th, 11:59 p.m. Eastern Time, at
16 consultation@bia.gov. If you have any questions
17 in the meantime, please feel free to reach out to
18 me. My email is on the screen and in the chat.

19 And that's it. That will conclude our
20 session today. Thank you, everyone.

21 MR. WILSON: Thank you. Good evening.

22 MR. KELLY: Thank you, Stephanie.

1 (Whereupon, at 4:15 p.m., the
2 PROCEEDINGS were adjourned.)

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1 CERTIFICATE OF NOTARY PUBLIC

2 DISTRICT OF COLUMBIA

3 I, Kendra Hammer, notary public in and
4 for the District of Columbia, do hereby certify
5 that the forgoing PROCEEDING was duly recorded and
6 thereafter reduced to print under my direction;
7 that the witnesses were sworn to tell the truth
8 under penalty of perjury; that said transcript is a
9 true record of the testimony given by witnesses;
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to the action in
12 which this proceeding was called; and, furthermore,
13 that I am not a relative or employee of any
14 attorney or counsel employed by the parties hereto,
15 nor financially or otherwise interested in the
16 outcome of this action.

17

18 (Signature and Seal on File)

19 Notary Public, in and for the District of Columbia

20

21

22