

United States House of Representatives  
Committee on Homeland Security  
Subcommittee on Border and Maritime Security

Hearing on “Looking North: Assessing the Current Threat at the U.S.  
Canadian Broder”

Prepared Statement of Dr. Michael Marchand, Chairman  
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Reservation, on behalf of the National Congress of American Indians

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Chairwoman McSally, Ranking Member Vela, and members of the Subcommittee, my name is Michael Marchand and I am the Chairman of the Colville Business Council, the governing body of the Confederated Tribes of the Colville Reservation (“Colville Tribes” or the “CCT”).

**BACKGROUND ON NCAI AND THE COLVILLE TRIBES**

First, I would like to thank the Subcommittee for the opportunity to testify today on behalf of the National Congress of American Indians (“NCAI”), the oldest and largest American Indian organization in the United States, on this critically important topic. Tribal leaders created NCAI in 1944 as a response to federal termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while also ensuring that Native people may fully participate in the political system. As the most representative organization of American Indian tribes, NCAI serves the broad interests of tribal governments across the nation.

As independent sovereign governments, tribes have the same responsibilities for the public safety and security of their communities as states and local governments. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is a confederation of twelve aboriginal tribes and bands from across eastern Washington state and southern British Columbia, Canada. The present-day Colville Reservation is slightly larger than the state of Delaware and covers approximately 1.4 million acres in north-central Washington State.

The northern boundary of the Colville Reservation is approximately 70 miles long and within 30 miles of the U.S.-Canadian border. The North Half of the Colville Reservation, which was opened to non-Indian settlement in the late 1800s, extends northward from the existing boundary to the Canadian border. The Colville Tribes and its tribal members retain ownership of more than 160 tracts of land in the North Half, the largest of which are either contiguous to or within five miles of the Canadian border. The Colville Tribes exercises law enforcement and regulatory jurisdiction over these lands, but is not alone in helping protect the U.S. borders.

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Nearly forty tribes are located on or near the U.S. international border between Canada and Mexico, and are often the only major governmental presence in rural and isolated locations. For this reason, Tribal governments have broad emergency and first responder responsibilities, as well as extensive border responsibilities with immigration and smuggling implications, all integral aspects of homeland security.

### **INDIAN TRIBES SERVE A CRITICAL ROLE IN SECURING OUR NATION’S BORDERS**

#### *i. Tribes are First Responders.*

As touched upon briefly, in many jurisdictions along both borders, tribal personnel are the first and sole emergency response entity for both tribal and non-tribal communities; this includes firefighters, law enforcement, and medical emergency response. Many tribes have built significant emergency management infrastructure with highly trained personnel, and have critical contracts and agreements in place to support their non-Native surrounding communities. Several Indian tribes have their own departments of Homeland Security or Emergency Response.

In addition to preparing for basic first responder duties, tribes also prepare their communities for incidents such as pandemic outbreaks. Tribal law enforcement agencies work closely with the Department of Homeland Security (“DHS”), the Federal Bureau of Investigation, the Royal Canadian Mounted Police, and other U.S. and Canadian federal law enforcement, along with state, local and provincial police services, to secure their territories. The Blackfeet Nation is a prime example, and this needs to be encouraged and expanded, and of course funded. The fact that tribal police services are often first responders and at times the only responders along parts of the northern border must be recognized.

#### *ii. Tribes Protect Extensive Critical Infrastructure.*

There is significant vital infrastructure located on and near tribal lands including national communications network systems, highway and rail lines, dams, power transmission stations and relays, oil and natural gas pipelines, and military defense facilities and operations. The Fort Berthold Indian Reservation has several Minuteman missile launch facilities located within its exterior borders as a strategic element of the homeland security system. Also, the Grand Coulee Dam is the largest electric power producing facility in the United States and is situated on the Colville Indian Reservation, my home.

#### *iii. Tribes Protect the Border from Drug & Immigration Smuggling.*

As mentioned earlier, approximately 40 tribes are on or near U.S. international borders; many are in very remote areas of the border. For the past decade, the U.S. federal border enforcement strategy has resulted in funneling illegal immigration and drug smuggling into more remote areas. Unfortunately, those “remote” areas are often Indian reservations. The substantial increase in the flow of people and drugs, and the subsequent increase in crime and property damage, has been very difficult for tribal law enforcement and tribal communities to address with already limited resources. There has also been an irreversible destruction of cultural and religious sites, and adverse environmental impacts to tribal lands.

The Colville Tribes has dealt and continues to deal with cross border smuggling activity from Canada. During the mid to late 2000s, numerous sightings of unmarked fixed-winged aircraft were reported on or near the Colville Reservation. In one publicized incident, the Colville Tribes' Natural Resources officers and officers of the Tribe's police department seized an unmarked float plane from Canada that was attempting to smuggle illegal drugs into the United States. After a long chase, the officers ultimately captured the pilot and handed him over to federal law enforcement authorities as well as an estimated \$2 million in illegal drugs that had been deposited by the plane. The U.S. Border Patrol honored the Tribe's officers who participated in that seizure.

Smugglers have found the Colville Reservation an attractive thoroughfare for smuggling activity because of its remote location and because at any given time, the Colville Tribe has a few as six law enforcement officers (three police officers and three Natural Resources Department officers) to patrol the entire 2,275 square-mile Colville Reservation. The Tribe has reason to believe that smugglers exploit our lack of resources by monitoring our radio frequencies and coordinating their activities around our officers' movements.

#### **NEEDED REFORMS**

The need to secure America's borders was prioritized following the events of September 11, 2001. These efforts, however, have largely failed to consider the tribal lands and territories that extend beyond the arbitrary borders placed throughout those lands. Despite what is often a cooperative working relationship on law enforcement issues, the DHS, CBP, Canada Border Services Agency, and other U.S.-Canada agencies often disregard the concerns of tribal communities and citizens located along the Northern border.

On August 21, 2017, more than 70 participants attended a day-long Summit, with representation from 19 tribal leaders from both the United States and Canada, to discuss concerns at the United States-Canada border. Tribal leaders shared the difficulties they face when crossing the border, while touching on many contributing factors, such as the unwillingness of border agents to accept tribal government-issued identification documents; excessive interrogation and harassment; denial of entry for minor offenses; and the improper handling of sacred or cultural items. All in attendance expressed a willingness to continue working cooperatively with U.S. and Canadian border officials toward strengthening border security, and in a manner that recognizes tribes as equal, sovereign governmental partners.

The Colville Tribes and other tribes in Washington State can empathize with these concerns. The homelands of the Okanogan and Arrow Lakes bands of the Colville Tribes were on both sides of the U.S.-Canadian border. We have relatives buried on the Canadian side and the CCT recently secured a victory in Canadian courts that affirmed the rights of Arrow Lakes members to hunt in their traditional territory. Despite this, some of our members are prohibited from entering Canada based on misdemeanor convictions or other minor offenses. Other Tribes, like the Swinomish Indian Tribal Community, have experienced similar difficulties when their members seek to enter Canada for ceremonial purposes.

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Tribes in the Northwest have also worked themselves to coordinate on cross border issues affecting our First Nations relatives. The Coast Salish Gathering, held on September 29, 2017, provided an opportunity for U.S. tribal leaders and First Nation Chiefs, the U.S. Environmental Protection Agency, and Environment Canada to build a collaborative body for mutual understanding to solve cross-border environmental issues facing our shared homelands.

Also, at its NCAI's 2017 annual conference, NCAI's membership enacted a resolution stating that a coordinated, immediate, and on-going engagement with both the United States and Canadian governments is necessary in the following areas:

- (1) Improvement of both United States and Canadian (including Alaska) border crossing policies and practices for tribal citizens;
- (2) Improvement of both United States and Canadian (including Alaska) border security training and recognition of tribal identification credentials;
- (3) Implementation of the Jay Treaty provisions in Canada governing border crossing for all tribal members and First Nations communities and removal of the 50 percent blood quantum requirement in the United States; and
- (4) Improvement in education and cultural sensitivity by border agents.

*NCAI Resolution MKE-17-017 (Attached).* Against this backdrop, NCAI suggests that the Committee direct DHS to do the following:

*i. Increase Consultation and Coordination with Tribal Governments.*

The DHS must work to increase compliance with Executive Order 13175 which requires each federal agency to consult with Tribal Nations. Further, there are dozens of provisions in various DHS authorizations that mistakenly categorize tribes as “local governments” and therefore set the wrong legal framework for the federal-tribal relationship. Instead, such provisions should acknowledge that DHS has a trust relationship with Indian tribes.

*ii. Directly Empower Tribal First Responders.*

Largely because of the erroneous categorization of tribal governments as “local” governments in DHS's authorizations, DHS has set up an inappropriate infrastructure whereby tribes are deemed subsets of state governments for most purposes. Not only is this erroneous, it is ineffective. DHS has essentially delegated homeland security oversight to state governments that have little incentive and no legal responsibility to ensure the security of tribal communities. Tribes do not want to be a gaping hole in the Nation's homeland security infrastructure.

Currently tribes must apply for nearly all DHS grants and programs through state governments. This is unacceptable. Tribal governments should be able to apply directly to and deal directly with DHS. Some of these changes are legislative, but many of them are administrative. DHS has misinterpreted the one grant tribes have been successful at ensuring direct access, the SHSGP. The statute requires that “at least” (or a minimum) 0.1% of pertinent funding be made available for tribes. DHS, however, has implemented this as a ceiling, with a maximum of 0.1% made available.

*iii. Create Uniformity in DHS's Acceptance of Tribal Governmental Identification.*

Finally, there is no consistent agency-wide recognition of tribal governmental identification. TSA accepts tribal IDs for domestic air travel as long as they have a photo (but they have not yet put this into regulations). The Western Hemisphere Travel Initiative (WHTI) accepts tribal IDs for international land border crossing purposes, if they have met certain security requirements. DHS has had very inconsistent application of these rules. This oversight can be fixed administratively.

In closing, I appreciate the opportunity to testify on these important issues and look forward to answering any questions you may have.