



STATE OF SOUTH DAKOTA

OFFICE OF THE GOVERNOR

KRISTI NOEM | GOVERNOR

May 20, 2020

The President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500-0003

Dear President Trump:

I'm writing to ask for your assistance in resolving a matter impacting interstate commerce and travel of United States citizens within the state of South Dakota.

You may have seen the recent media reports about tribal checkpoints being placed on US/South Dakota highways within the boundaries of tribal reservations in South Dakota. Based on a written request from my office dated April 23, 2020 (enclosed as Document 1), the Department of Interior, Bureau of Indian Affairs issued a memorandum dated April 24, 2020 (the "BIA Memo"). The BIA Memo is enclosed as Document 2.

Even after issuance of the BIA Memo, and despite widespread media discussion of this issue, the Cheyenne River Sioux Tribe ("CRST") has maintained checkpoints in violation of processes set forth therein and in violation of applicable law. COVID-19 testing does not occur at these checkpoints, and for some travelers these checkpoints are ultimately a blockade.

On May 8, 2020, my office sent a letter to the CRST demanding removal of the checkpoints and compliance with applicable law. That letter is enclosed as Document 3. To date, the CRST has refused to comply with the requests or the law.

Following the refusal of the CRST to conform with applicable law, I asked South Dakota Attorney General Jason Ravnsborg to order an investigation into the CRST checkpoints. That investigation is ongoing, but I am providing your office with the following Affidavits which have been provided to my office by the South Dakota Attorney General:

Affidavit of Wade Eastman

Affidavit of Tracy Eichler

Affidavit of David Martin

Affidavit of Brandon McCarthy

Affidavit of Tyler Neuharth (together with his investigative report)

My office can provide links to the video recordings referenced in the Neuharth Affidavit in the event a federal official desires to view them. However, because the investigation is continuing, we will not be making those videos (nor the enclosed Affidavits) available to the public outside of a formal legal proceeding.

A review of the above regarding the CRST checkpoints makes it clear: interrogations of travelers are occurring on US/State highways, unlawful tribal checkpoints are being operated in violation of applicable law, based on answers to certain questions and decisions of tribal checkpoints officials some travelers are being turned around as the checkpoint becomes a blockade, interstate commerce is being adversely affected, and tribal traveler interrogations are being conducted in an arbitrary and inconsistent manner.

This, however, is not simply a matter between a sovereign state and a sovereign tribal government. Rather, the federal government has an interest in interstate commerce, transportation of critical infrastructure goods, provision of services from critical infrastructure industries, and the uniform treatment of all travelers on a non-discriminatory basis.

As a final alternative to formal litigation, I'm asking for immediate federal assistance to: (a) bring a prompt end to these unlawful tribal checkpoints/blockades on US/State highways; and (b) require the CRST to comply with the procedures set forth in the BIA Memo.

I believe a reasonable path forward that balances the interest of the federal government, the sovereign interest of the CRST, and the sovereign interest of the state of South Dakota is found in my letter to Chairman Frazier dated May 12, 2020. That letter is enclosed as Document 4.

My May 12, 2020 letter (enclosed as Document 4) suggests a compromise plan that consists of three parts:

- A. **US/State Highways: no tribal checkpoints.** No one entering or traveling on a US or State highway should be stopped or impeded, and this means no permit would be required for such travel. Any tribal interaction with these travelers at checkpoints is unlawful and could actually increase the risk of spreading the virus on the reservation.
- B. **Tribal/BIA roads: checkpoints acceptable.** It is within tribal sovereignty to establish and operate tribal checkpoints on BIA/tribal roads. This means that anyone turning off a US or State highway for a destination within a reservation could be subject to a tribal checkpoint.

- C. **Reasonable tribal checkpoint accommodations.** Ideally, if a tribe decides to operate tribal checkpoints on BIA/tribal roads, the tribe would make reasonable accommodations for the good of its own people. This would include access for all people to permit emergency services, delivery of food, energy and medical supplies, and access to private property within the reservation.

This is not a matter of tribal sovereignty, as South Dakota received easements giving South Dakotans and other highway travelers access rights over and upon the US/State highways on tribal land. These easements demonstrate the State's rights in the roadways and further support the process set forth in the BIA Memo. You can view copies of these easements at [COVID.SD.GOV](https://www.southdakota.gov/COVID-19/COVID.SD.GOV).

Finally, tribal health is as important to me as the health of every South Dakotan residing outside of tribal boundaries. Based on the science we have today, we cannot stop the COVID-19 virus. Because of this, our efforts have focused on slowing the spread consistent with available hospital capacity and medical supplies. The CRST checkpoints/blockades actually increase the risk of speeding up the transmission of the COVID-19 virus to the reservations and increasing the frequency of exposure as tribal members interact with travelers that would otherwise pass through the reservation. Accordingly, there is no legal nor scientific basis for the CRST checkpoints/blockades.

The time has come for formal federal action and with the enclosures we respectfully ask for the same.

Signed,



Kristi Noem
Governor

Electronic copy to:

Doug Hoelscher, Director of White House Intergovernmental Affairs
Timothy LaPointe, BIA Regional Director for the Great Plains
Darryl LaCounte, Director of BIA at the Department of Interior
United States Department of Justice, Office of the Attorney General
United States Senator John Thune

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United States Senator Mike Rounds
United States Representative Dusty Johnson

Documents enclosed:

1. April 23, 2020: [Gov. Noem letter to Department of Interior](#)
2. April 24, 2020: [Department of Interior letter to Chairman Frazier](#)
3. May 8, 2020: [Demand letter to Chairman Frazier](#)
4. May 12, 2020: [Three Part Proposal to Chairman Frazier](#)
5. Affidavit of Wade Eastman
6. Affidavit of Tracy Eichler
7. Affidavit of David Martin
8. Affidavit of Brandon McCarthy
9. Affidavit of Tyler Neuharth (together with his investigative report)

Documents referenced:

Easements for US/State highways in question within the CRST borders

Easements for US highway 212: <https://sd.gov/governor/docs/Hwy212-easements.pdf>

Easements for SD highway 20: <https://sd.gov/governor/docs/Hwy20-easements.pdf>

Easements for SD highway 34: <https://sd.gov/governor/docs/Hwy34-easements.pdf>

Easements for SD highway 63: <https://sd.gov/governor/docs/Hwy63-easements.pdf>