

“Sovereign” Indian Reservations Along U.S. Canada Border Endanger National Security

I. Federal Laws Requiring Tribal Government to Protect Borders

- **Homeland Security Act of 2002:** – treats “federally recognized tribes” as “local governments” for purposes of implementing on reservations “voluntary” “critical infrastructure information” sharing;¹
 - “Critical Infrastructure”- includes “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.”²
 - “Critical infrastructure” – 2007 amendment of HSA Sec. 2001(3)³ redefined as including agriculture and food,⁴ dams,⁵ commercial nuclear reactors,⁶ energy⁷ and water.⁸
 - “Local Government” – HAS 2002 Sec. 2(10)(B) defined as including an “**Indian tribe.**”⁹
 - “Critical Information Infrastructure” – HSA Sec. 2(10)(B) defined as “information not customarily in the public domain and related to the security of critical infrastructure or protected systems [the] actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of [which...] violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety.”¹⁰

¹ See P.L. 107–296, *Homeland Security Act of 2002* (116 Stat. 2135) (Nov. 25, 2002), codified at 6 U.S.C. 601 et seq., available at: https://www.dhs.gov/sites/default/files/publications/hr_5005_enr.pdf. See *Id.*, at §§ 2(4) (defining “critical infrastructure” as having “the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e).”) See P.L. 107–56, *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001* (115 Stat. 272) (Oct. 26, 2001), at § 1016(e), codified at 42 USC 5195c, the “Critical Infrastructures Protection Act of 2001,” available at: <https://www.sec.gov/about/offices/ocie/aml/patriotact2001.pdf>.

² See P.L. 107–56, *supra* at § 1016(e), codified at 42 USC 5195c(e).

³ See P.L. 110-53, the *Implementing Recommendations of the 9/11 Commission Act of 2007* (121 Stat. 266, 271) (Aug. 3, 2007), available at: <https://www.gpo.gov/fdsys/pkg/PLAW-110publ53/pdf/PLAW-110publ53.pdf> (adding “Title XX Homeland Security Grants”).

⁴ *Id.*, at § 2001(3)(A), codified at 6 U.S.C. 601(3)(A).

⁵ *Id.*, at § 2001(3)(F).

⁶ *Id.*, at § 2001(3)(E).

⁷ *Id.*, at § 2001(3)(I).

⁸ *Id.*, at § 2001(3)(Q).

⁹ *Id.*, § 2(10)(B), codified at 6 U.S.C. 101. See also P.L. 112–265 (Jan. 14, 2013), at § 2(11)(B), amending the *Homeland Security Act of 2002*, available at: <http://legcounsel.house.gov/Comps/HSA02.PDF>.

¹⁰ *Id.*, at § 212(3)(A), codified at 6 U.S.C. 131(3)(A), a part of the “Critical Infrastructure Information Act of 2002.” See *Id.*, at § 211.

- “Indian Tribe” – 2007 amendment of HSA Sec. 2001(7) redefined as consistent with “the meaning given that term in section 4(e) of the Indian Self-Determination Act (25 U.S.C. 450b(e)).”¹¹
- “Tribal Government” – 2007 amendment of HSA Sec. 2001(14) defined as “the government of an Indian tribe.”¹²
- “Directly Eligible Tribe” – eligible to receive considerable state and/or federal grant funding to fulfill their responsibilities under these provisions, if it:
 - 1) “is located in the continental United States;”¹³
 - 2) “operates a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services;”¹⁴
 - **3) “is located on or near an international border or a coastline bordering an ocean [...] or international waters;”**¹⁵
 - 4) “is located within 10 miles of a system or asset included on the prioritized critical infrastructure list established under section 210E(a)(2) or has such a system or asset within its territory;”¹⁶
 - **5) “is located within or contiguous to 1 of the 50 most populous metropolitan statistical areas in the United States;”**¹⁷ *OR*
 - **6) “the jurisdiction of which includes not less than 1,000 square miles of ‘Indian country’”** as defined in 18 USC 1151,¹⁸ and which has certified that it has not received any such funding from a State under Section 2004 of the amended Act.¹⁹
 - ❖ “Indian Country” – 18 USC 1151 -- (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, *and* (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

¹¹ See P.L. 110-53, *supra* at § 2001(7).

¹² *Id.*, at § 2001(14).

¹³ *Id.*, at § 2001(4)(A)(i).

¹⁴ *Id.*, at § 2001(4)(A)(ii).

¹⁵ *Id.*, at § 2001(4)(A)(iii)(I).

¹⁶ *Id.*, at § 2001(4)(A)(iii)(II).

¹⁷ *Id.*, at § 2001(4)(A)(iii)(III).

¹⁸ *Id.*, at § 2001(4)(A)(iii)(IV). 18 U.S.C. 1151 defines the term “Indian country” as: “(a) (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”

¹⁹ See P.L. 110-53, *supra* at §§ 2001(4)(A)(iv), 2005(j).

- **Intelligence Reform and Terrorism Prevention Act of 2004 (“IRTP”)²⁰**: Sec. 6501 identifies tribal governments as “potential information sharing parties” with respect to grand jury information received from a federal attorney about planned, potential or actual threats of sabotage or terrorism, or other grave hostile acts, or of clandestine intelligence gathering activities within the U.S., provided Attorney General and Director of National Intelligence guidelines are followed.²¹
 - IRTP Sec. 7201 – Indian tribes may receive grant monies from the DHS Secretary to establish “terrorist travel intelligence” training programs²² that would enable tribal members and other tribal government employees to effectively detect, intercept, and disrupt terrorist travel.²³
 - IRTP Sec. 510(b) – directs Indian tribal governments to develop minimal “interoperable communications” capabilities.²⁴
 - Must “communicate with each other in the event of an Emergency,” and “have appropriate and timely access to the “Information Sharing Environment””;
 - ❖ IRTP Section 1016(b)(2) – An “Information Sharing Environment” “provides and facilitates the means for sharing terrorism information among all appropriate Federal, State, local, and tribal entities...”²⁵
 - IRTP Secs. 7301(a)(5)-(6) and (b)(5) – Requires BIA to adopt National Incident Management System (NIMS) and demonstrate its regular training of tribes in and tribes’ regular use of NIMS, as a condition for tribal governments receiving Federal emergency preparedness assistance.²⁶

II. Vulnerability of U.S. Borders Running Thru Indian Lands to Crime & Terrorism

- Reservations Pose Border Risk: Potential U.S. Entry Through Indian Lands Raises Terror Alarms, Baltimore Sun (Feb. 17, 2002)
 - (Citing risks of terrorist infiltration along the many thousands of miles of the U.S.’ northern and southern borders and the unmonitored Native American reservations located beside them);
- Remarks of U.S. Customs Commissioner Robert C. Bonner: Native American Border Security Conference Ronald Reagan Building, U.S. Customs and Border Patrol archive

²⁰ See P.L. 108-458, *Intelligence Reform and Terrorism Prevention Act of 2004*, (118 Stat. 3638) (Dec. 17, 2004), available at: <http://www.nctc.gov/docs/irtpa.pdf>.

²¹ *Id.*, at § 6501(a)(1) (The guidelines referenced are those issued pursuant to Rule 6(e)(3)(D) of the Federal Rules of Criminal Procedure).

²² *Id.*, at §§ 7201(d)(1)-(2).

²³ *Id.*, at §§ 7201(d)(4), 7201(e).

²⁴ *Id.*, at § 510(b) (“The interoperable communications capabilities established under subsection (a) shall ensure the ability of all levels of government agencies, emergency response providers (as defined in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101))...” (emphasis added)).

²⁵ *Id.*, at § 1016(b)(2).

²⁶ *Id.*, at §§ 7301(a)(5)-(6) and (b)(5).

(10/7/02)

- (“24 Native American tribes have a border nexus – **24 tribes govern lands that are either adjacent to borders or directly accessible by boat from the border.** These tribal lands cover over 260 miles of the U.S. borders with Mexico and Canada.”)
 - Blackfeet Nation [in Montana] shares 63 miles of border with Canada;
- [Nuclear Terrorism: The Ultimate Preventable Catastrophe](#) – (MacMillan ©2004), at pp. 114-115) (Graham Allison, fmr. Special Advisor to Sec’y of Defense under Pres. Reagan and Ass’t Sec’y of Defense for Policy and Plans under President Clinton)
 - (“Twenty-one different American Indian reservations stretch across hundreds of miles of the northern and southern borders, and no state or federal agency has jurisdiction to patrol these lands. In New York, roughly ten miles of unpatrolled border crosses through the Akwesasne reservation of the St. Regis Mohawk nation, which has denied access to U.S. agents.”)
- [Tobacco and Terror: How Cigarette Smuggling is Funding Our Enemies Abroad](#), Report – Republican Staff of the U.S. House Committee on Homeland Security (Aug. 9, 2007)
 - (“[I]n New York State the smuggling networks [,...] dominated by tight-knit, nationality-based networks, primarily families through blood or marriage of Lebanese, Yemeni, Jordanian and Palestinian descent [...] rely primarily on access to the Native American Indian reservations for tax-free cigarettes – for obvious financial reasons.”)
- [Money Laundering Threat Assessment](#) – Money Laundering Threat Assessment Working Group (Dec. 2005);
- [National Money Laundering Strategy](#) – DHS, DOJ, Dept. of Treasury (2007)
 - (High volume cash-intensive tribal casinos were highly vulnerable to money laundering – “There are 567 federally recognized Indian Tribes (half are in Alaska), and 223 of them operate 411 gaming facilities in 28 states.[.] Of these, 307 are considered casino operations (the remainder are basically bingo halls). **Collectively, tribal casinos took in \$18.5 billion in revenue last year, twice the amount generated by Nevada casinos.**[.]”);
 - (“Indian Gaming Working Group (IGWG), led by the FBI, to monitor tribal casinos for criminal conduct [...] and] to ensure that tribal gaming commissions understand their BSA [Bank Secrecy Act] compliance responsibilities.”)
- [FinCEN Assesses Civil Money Penalty Against Minnesota-Based Tribal Casino](#), News Release, U.S. Treasury Dept. (April 21, 2011)
 - (Assessed “a \$250,000 civil monetary penalty against The Lower Sioux Indian Community, doing business as Jackpot Junction Casino Hotel of Morton, Minnesota for violating Bank Secrecy Act (BSA) requirements for casinos [...] related to gathering and recording required information for BSA reporting.”)

- [Testimony of Thomas J. Curry, Comptroller of the Currency](#), Before the Committee on Banking, Housing & Urban Affairs of the U.S. Senate (March 7, 2013), at Appendix B, p. 18
 - (Routine Fed'l Reserve Bank of New York audit reveals a money laundering scheme involving “significant sums of money flowing through the Jefferson National Bank of Watertown, N.Y. derived from cigarette and liquor smuggling through the Adwesasne Indian Reservation.”)
- [The State of America’s Border Security](#) – Report by U.S. Sen. Ron Johnson, Chairman of the U.S. Senate Committee on Homeland Security and Governmental Affairs (Nov. 23, 2015)
 - (Relayed that DOJ had been closely monitoring two reservations – the St. Regis Mohawk Reservation in upstate New York and the Tohono O’odham Reservation in Arizona – where from 5 to 10 percent of all of the marijuana grown in Canada and Mexico is smuggled into the United States.)
 - (“In **Montana, Minnesota, Michigan, and New York**, some Native American reservations are located directly on the U.S.-Canada border, while in **Washington State, Wisconsin, Maine, and North Dakota**, reservations are situated within a few miles of the international boundary.[.] TCOs [transnational criminal organizations] have used these lands to smuggle immigrants, narcotics, and other illicit goods[.]”) (p.44)
- [Information Sharing: Federal Agencies Are Sharing Border and Terrorism Information with Local and Tribal Law Enforcement Agencies, but Additional Efforts Are Needed](#) – Government Accountability Office (“GAO”) Report to the Chairman, House Committee on Homeland Security, GAO-10-41 (Dec. 2009)
 - (“[M]ost of the local and tribal officials in the border communities contacted did not clearly know what suspicious activities federal agencies and fusion centers wanted them to report, how to report them, or to whom [, and consequently, could not] “assist the officials in identifying potential terrorist threats.”)
- [Border Security: DHS Progress and Challenges in Securing the U.S. Southwest and Northern Borders](#), Government Accountability Office GAO-11-508T (March 30, 2011)
 - (“Federal, state, local, tribal, and Canadian law enforcement partners reported improved DHS coordination to secure the border, [...] **critical gaps [, however,] remained in sharing information and resources useful for operations, such as daily patrols in vulnerable areas, including National Parks and Forests.**”)

III. Negative Reaction of Tribes to U.S. Border Patrol Requirements

- [When the Border Crosses You](#), Ruben Pacheco, OpenBorders.com (July 31, 2015)
 - (Tribal point of view – U.S. CPB policy and activities unnecessarily restrict tribal members’ movements and occupy their traditional homelands, via “24-hour border surveillance that uses high-powered lights, drones, and black hawk helicopters.”)

- (“According to Resolution 98-063 passed by the Tohono legislative council, ‘enforcement of the U.S. Immigration laws has made it extremely difficult for all Tohono O’odham to continue their sovereign right to pass and re-pass the United States- Mexico border as we have done for centuries as our members are routinely stopped by the U.S. Border when others have been actually ‘returned’ to Mexico even though enrolled”).
- [At Akwesasne, Mohawks Are Caught in the Middle of U.S., Canadian Border Procedures](#), Daniel Flatley, Watertown Daily Times (March 15, 2015)
 - (The Akwesasne territory on which the St. Regis Mohawk reservation is located in upstate New York in the St. Lawrence Valley straddles both sides of the US-Canadian border. The elected tribal councils on both sides of the border have alleged that U.S. and Canadian border policies have threatened “the sovereignty of the reservation, which effectively runs as its own country,” and individual freedom of movement.)
- [Indians Seek Less Hassle, More Respect at U.S.-Canada Border](#), Tristan Scott, Missoulian (Feb. 12, 2012)
 - (“[S]even bands of Kootenai span[] international and state borders - five in southeastern British Columbia, one in northwestern Montana and one in northern Idaho - but the members all share the same tribal council. The Blackfeet Nation is divided into four tribes, one in northern Montana and three just across the border, in southern Alberta.”)
 - (In 2011, the CSKT had found U.S.-Canadian border policies so unnecessarily restrictive of tribal members’ travel and freedom of movement through ancestral lands, that it sought to intervene with the CPB.)
- [White Man’s Borders and the Sacred Lands, Sites & Tribes They Affect](#), Vincent Schilling, Indian Country (8/14/2014)
- [In Efforts to Secure US-Mexico Border, Ariz. Native Americans Feel Caught in the Middle](#), Byron Pitts and Dan Lieberman, ABC News (June 27, 2013)
- [In Hostile Terrain: Human Rights Violations in Immigration Enforcement in the U.S. Southwest](#), Amnesty International (©2012)
 - (Depicting CPB activities as international human rights abuses)
- [U.S. Government Violates Rights of Lipan Apache Peoples at the U.S.-Mexico Border](#), The Human Rights Clinic at the University of Texas at Austin School of Law, Press Release (April 15, 2014)
 - (Depicting CPB activities as international human rights abuses)
- [Native Nations and U.S. Borders: Challenges to Indigenous Culture, Citizenship and Security](#), Rachel Rose Starks, Jen McCormack and Stephen Cornell, Native Nations Institute for Leadership, Management, and Policy at the **Udall Center for Studies in Public Policy**, The University of Arizona (2011)

- - (“**[I]ndigenous border nations**” – “includes not only those nations whose lands approach or straddle an international boundary but also those that have cultural links or shared histories across those borders or whose sense of peoplehood embraces communities on both sides.”)
 - (The [Udall Foundation](#) is an independent executive branch agency established by Congress in 1992 that, like the Department of Interior’s Bureau of Indian Affairs, promotes the rights and self-governance of American Indians.)

IV. Threat of Foreign Refugees, Including Terrorists, Walking Across U.S. Borders

- [Resettlement Document Reveals IRC Plans for Missoula Refugees](#), Kim Briggeman, Missoulian (Oct. 11, 2016)
 - (“Missoula could resettle up to 150 refugees of as many as 15 nationalities in the next 12 months, but the biggest numbers will reflect the world’s most troubled spots. [...] Missoula’s FY17 abstract proposes as many as five people with U.S. ties from each of the world’s five refugee regions – Africa, East Asia, Europe and Central Asia, Latin America and the Caribbean, and the Near East and South Asia. **Syria, Afghanistan and Iraq are included in the latter category by the State Department.** The remaining 125 will have no U.S. ties.”)
- [While Candidates Politicize Refugees, Federal Judges Say States Can’t Block Syrian Resettlement](#), Troy Carter, Bozeman Daily Chronicle (Oct. 11, 2016)
 - (“[A] three-judge panel on the U.S. Court of Appeals for the Seventh Circuit unanimously decided last Monday against Republican vice presidential candidate Mike Pence’s attempt to block the resettlement of refugees from Syria to Indiana, the state in which he is governor. The court said that discrimination based on nationality is illegal. The federal judges also pointed out that state governors cannot stop refugee resettlement. They can only choose to not accept federal resettlement money. The 1980 Refugee Act made the resettlement of refugees a federal responsibility. And state governors have no official role in the federal government.”)
- [Appeals Court Upholds Order Against Pence on Syrian Refugees](#), Rick Callahan, Associated Press (Oct. 3, 2016)
 - Ruling: [Exodus Refugee Immigration v. Gov. Pence](#), U.S. Court of Appeals for the Seventh Circuit Oct 3, 2016
- [Syrians Find New Lives, Hope in Boise](#), Idaho Statesman (Sept. 19, 2016)
 - (“Despite resistance by Idaho’s top political leaders, 118 Syrian refugees have moved to the Gem State since last Oct. 1, all of them settling in Boise, according to new data from the State Department. Compared with larger cities, Boise took in a disproportionate share, accepting more than twice as many refugees as New York, with 9, and Los Angeles, with 45, combined.”)

- [Record Number of Newcomers arrive in Canada](#), Lynn Desjardins, Radio Canada International (Sept. 29, 2016)
 - (“Government census figures reveal that 320,932 newcomers came to Canada in the past year. That’s the highest number on record. Among them were thousands of Syrian refugees who began arriving in November 2015 and now number over 30,000.”)
- Government of Canada – [#Welcome Refugees: Canada Resettles Syrian Refugees](#)
- - (“The Government of **Canada resettled 25,000 Syrian refugees between November 2015 and February 29, 2016**. This included government-supported and privately sponsored refugees.”)
 - (“[32,437 Syrian refugees have arrived in Canada since Nov. 4, 2015.](#)”)
 - 17,122 [government-assisted](#) refugees
 - ❖ (“Under the Government-Assisted Refugees (GAR) Program, refugees are referred to Canada for resettlement by the United Nations Refugee Agency (UNHCR) or another referral organization. Individuals cannot apply directly.”)
 - 3,262 blended visa office-referred refugees
 - 12,053 privately sponsored refugees
- Government of Canada – [Funding Settlement Program and Resettlement Assistance Program \(RAP\)](#)
 - (“Immigration, Refugees and Citizenship Canada (IRCC) funds services that help newcomers settle and adapt to life in Canada. These services include language training, information and referrals, help finding employment that matches newcomers’ skills and education, and help integrating into Canadian society.”)
 - (“The Refugee Resettlement Assistance Program provides immediate and essential support services and income support to assist in meeting refugees’ resettlement needs. Essential services are supported through contributions to service provider organizations.”)
- Government of Canada – [Map of Destination Communities and Service Provider Organizations](#)
 - (“The Government of Canada provides settlement and resettlement services through several hundred IRCC-funded service provider organizations in large and small communities across Canada. The map below shows the 36 communities where there is an existing Resettlement Assistance Program (RAP) service provider organization. The map is updated monthly. Last updated on September 21, 2016. **Many of the 25,000 Syrian refugees arriving in Canada by the end of February 2016 will be government-assisted refugees (GARs) and will initially go to those 36 communities.**”)

- (Legend
 - Communities welcoming Syrian refugees
 - Resettlement Assistance Program communities
 - Service Provider Organizations)
- **MOST OF THE SYRIAN REFUGEES HAVE BEEN RESETTLED ALONG THE U.S. BORDER FROM NORTHEASTERN MAINE TO EASTERN MICHIGAN, & FROM NORTHWESTERN MINNESOTA TO NORTHWESTERN WASHINGTON STATE**