

# WESTERN STATES CONSTITUTIONAL RIGHTS, LLC

February 2, 2017

Hon. Lisa Murkowski  
United States Senator, Alaska  
Chairwoman, Senate Committee on Energy & Natural Resources  
709 Hart Senate Office Building  
Washington, DC 20510

Re: Rejection of Nomination of Cong. Ryan Zinke as Interior Secretary

Dear Senator Murkowski,

We are Western States Constitutional Rights, LLC, a Montana-based nonprofit entity the mission of which is to promote the protection of private property rights held by western United States property owners against reckless federal, state and local government laws, regulations and policies. Our members are irrigators, landowners and business owners located on or near the Flathead Irrigation Project situated within the Flathead Indian Reservation, and from other areas in northwestern Montana, but our concerns are widely shared by many citizens throughout the western United States.

On January 17, 2017, Montana's Congressman, Ryan Zinke, testified before the U.S. Senate Committee on Energy and Natural Resources, which is considering his nomination to serve as the nation's 52nd Secretary of the Interior. "Declaring himself a 'Teddy Roosevelt Republican,'" the nominee was reported to have "sought the middle ground on a host of issues at his confirmation hearing [...] — including declaring that climate change is real while insisting that the science on humans' role may not be settled."<sup>1</sup> It also was reported that Zinke had been nominated because he "had earlier won favor with Donald Trump Jr., the president[]'s son and an avid trophy hunter, in part because he opposed efforts by some congressional Republicans to sell off federal land."<sup>2</sup>

Unfortunately, Mr. Zinke's declaration of himself as a Teddy Roosevelt Republican is only a half-truth, for former President Roosevelt had stood for more than conserving 230 million acres of federal lands for hunting and other recreational activities and establishing America's national park system. Mr. Zinke consciously failed to relate to the Committee or to the public that Teddy Roosevelt also had believed in the Indian allotment system,<sup>3</sup> and had "wanted the Native

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<sup>1</sup> See Eric Wolff and Esther Whieldon, *Interior Pick Zinke on Climate Change: 'I Don't Believe it's a Hoax'*, Politico (1/17/17), available at: <http://www.politico.com/story/2017/01/ryan-zinke-interior-climate-change-233703>.

<sup>2</sup> *Id.* See also Outdoor Recreation Industry Roundtable, *Interior Secretary-Designate Ryan Zinke's Testimony at Confirmation Hearing Draws Support of Outdoor Recreation Industry Roundtable*, Press Release (Jan. 17, 2017), available at: <http://www.crossroadstoday.com/story/34282712/interior-secretary-designate-ryan-zinkes-testimony-at-confirmation-hearing-draws-support-of-outdoor-recreation-industry-roundtable>.

<sup>3</sup> See The American Presidency Project, *Theodore Roosevelt, XXVI President of the United States: 1901-1909, First Annual Message* (Dec. 3, 1901), available at: <http://www.presidency.ucsb.edu/ws/index.php?pid=29542> ("The General Allotment Act is a mighty pulverizing engine to break up the tribal mass. It acts directly upon the family and the individual. Under its provisions some sixty thousand Indians have already become citizens of the United States.")

Americans to experience the American dream.”<sup>4</sup> To this end, former President Roosevelt truly believed “that by assimilating [t]he Indian population [which] had been shrinking for a long time, [...] that meant prosperity for everyone.”<sup>5</sup> He had reasoned in his First Annual Address, that “the time ha[d] arrived when we should definitely make up our minds to recognize the Indian **as an individual** and *not as a member of a tribe*” (emphasis added).<sup>6</sup> In other words, former President Roosevelt, a constitutionalist and progressive, did not believe, as Rep. Zinke apparently does, in elevating tribal governments as unaccountable “sovereign nations” above individual U.S. Constitutional rights held by citizen tribal members. Furthermore, Rep. Zinke has failed to identify former President Roosevelt’s policies to ensure U.S. national security which focused on keeping out foreign incursions from Europe and Asia.<sup>7</sup>

The following discussion identifies and describes Ryan Zinke’s public positions on these and related issues. It also reveals evidence of his lack of broad vision and understanding, and his inability and failure, thus far, to undertake the scope and degree of due diligence required of a U.S. public official who must handle many complex issues simultaneously in fulfillment of the responsibility he would assume in administering one of the largest federal government agencies. Interior, moreover, is now obliged to assist the Department of Homeland Security in “[ensur[ing] the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code.”<sup>8</sup> Would a Secretary Zinke enforce this executive order on a “sovereign Indian reservation? Congressman Zinke’s positions and failures to-date do not indicate that he would do so. Consequently, although your Committee voted 16-6 to approve his

<sup>4</sup> See Alys Landry, *Theodore Roosevelt: ‘The Only Good Indians Are the Dead Indians’*, Indian Country (June 28, 2016), available at: <https://indiancountrymedianetwork.com/history/events/theodore-roosevelt-the-only-good-indians-are-the-dead-indians/>.

<sup>5</sup> *Id.*

<sup>6</sup> See The American Presidency Project, *Theodore Roosevelt, XXVI President of the United States: 1901-1909, First Annual Message* (Dec. 3, 1901), *supra*.

<sup>7</sup> See The Miller Center of the American President, *Theodore Roosevelt: Foreign Affairs*, available at: <http://millercenter.org/president/biography/roosevelt-foreign-affairs> (“TR’s diplomatic maxim was to ‘speak softly and carry a big stick,’ and he maintained that a chief executive must be willing to use force when necessary while practicing the art of persuasion. He therefore sought to assemble a powerful and reliable defense for the United States to avoid conflicts with enemies who might prey on weakness. [...] During the Santo Domingo crisis, Roosevelt formulated what became known as the Roosevelt Corollary to the Monroe Doctrine. **The Monroe Doctrine, issued in 1823, stated that the United States would not accept European intervention in the Americas. Roosevelt realized that if nations in the Western Hemisphere continued to have chronic problems, such as the inability to repay foreign debt, they would become targets of European intervention.** To preempt such action and to maintain regional stability, the President drafted his corollary: the United States would intervene in any Latin American country that manifested serious economic problems. The corollary announced that the United States would serve as the ‘policeman’ of the Western Hemisphere...” (emphasis added)). *Id.*

<sup>8</sup> See White House, Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*, 82 FR 8799 (Jan. 25, 2017), available at: <https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf> (“Sec. 2. Policy. It is the policy of the executive branch to: (a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code; (b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States; (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law; (d) Ensure that aliens ordered removed from the United States are promptly removed...”).

nomination along partisan lines he U.S. Senate should conclude that Congressman Zinke is not worthy of being confirmed as the 52<sup>nd</sup> Secretary of the Interior.<sup>9</sup>

We thank you for your serious consideration of our concerns.

Respectfully,

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**Western States  
Constitutional Rights, LLC**

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<sup>9</sup> See Darryl Fears, *Ryan Zinke is One Step Closer to Becoming Interior Secretary*, Washington Post (Jan. 31, 2017), available at: [https://www.washingtonpost.com/news/energy-environment/wp/2017/01/31/ryan-zinke-is-one-step-closer-to-becoming-interior-secretary/?utm\\_term=.9cc6276215bf](https://www.washingtonpost.com/news/energy-environment/wp/2017/01/31/ryan-zinke-is-one-step-closer-to-becoming-interior-secretary/?utm_term=.9cc6276215bf).

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# Reject the Nomination of Congressman Ryan Zinke as the 52<sup>nd</sup> U.S. Secretary of the Interior

## 1. Zinke Lacks the Ethics, Character and Good Judgment Required of an Interior Secretary

On January 16, 2017, the *New York Times* reported that “two retired admirals under whom Mr. Zinke served [...as] a midlevel SEAL Team 6 officer in the late 1990s,” had criticized Zinke’s understatement of the damage he had previously caused by improperly billing the U.S. government for travel to his home in Montana.”<sup>10</sup> As had been previously reported in the *Intercept* during December 2016, Zinke had apparently engaged in an extensive “pattern of fraud” in his dealings with the federal government which he had failed to stop even after he had been caught red-handed.

“[W]hen Zinke was a mid-career officer at SEAL Team 6, he was caught traveling multiple times to Montana in 1998 and 1999 to renovate his home. Zinke claimed that the travel was for official duties, according to the sources. He submitted travel vouchers and was compensated for the travel costs. Two SEAL officers investigated Zinke’s records and discovered **a years-long ‘pattern of travel fraud,’** according to two of the sources. When confronted about the trips, Zinke acknowledged that he spent the time repairing and restoring a home in Whitefish, Montana, and visiting his mother, according to two retired SEAL Team 6 leaders. The future lawmaker eventually told SEAL leaders that the Montana house was where he intended to live after he retired from the Navy. After Zinke was caught and warned, he continued to travel home and submit the expenses to the Navy” (emphasis added).<sup>11</sup>

“**Zinke could have been referred for criminal charges,** or subjected to a non-judicial proceeding that would have censured him, likely removing him from the unit” (emphasis added).<sup>12</sup> However, he received no formal punishment out of deference to “a tradition at SEAL Team 6 of avoiding scandal and failing to adequately hold its officers accountable for criminal behavior and other misconduct.”<sup>13</sup> As a result, when he released his military records during his 2014 campaign for Congress, they detailed only “two incidents of unapproved travel to Montana,” and the now-dated “1999 evaluation cited “lapses in judgement” for travel.”<sup>14</sup>

As these former admirals recently indicated, the “decision to cite Mr. Zinke for ‘lapses in judgment’ in failing to set a proper example was a red flag for boards screening officers for coveted

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<sup>10</sup> See Christopher Drew and Sean D. Naylor, *Interior Nominee Promotes Navy SEAL Career, While Playing Down ‘Bad Judgment’*, The New York Times (Jan. 16, 2017), available at: <https://www.nytimes.com/2017/01/16/us/politics/ryan-zinke-navy-seal.html>.

<sup>11</sup> See Matthew Cole, *Trump’s Pick for Interior Secretary Was Caught in ‘Pattern of Fraud’ at SEAL Team 6*, Intercept (Dec. 20, 2016), available at: <https://theintercept.com/2016/12/20/trumps-pick-for-interior-secretary-was-caught-in-pattern-of-fraud-at-seal-team-6/>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

command jobs.”<sup>15</sup> In other words, such language served to place officials on notice that “‘this officer has questionable judgment,’ that would keep him from being selected for a command position,” Admiral Pybus said.”<sup>16</sup> What these former admirals did not say, and what the members of this august Committee should focus on, is how Ryan Zinke’s reprehensible behavior and poor judgment reveal his lack of qualification for the cabinet position for which he was nominated – U.S. Secretary of the Interior.

**2. Zinke Lacks the Discipline and Judgment to Thoroughly Investigate Tribal Natural Resource Management Competence Before Rendering Judgment as Interior Secretary:**

On January 18, 2017, the U.S. Fish & Wildlife Service published a notice in the federal register seeking comments on a proposed Comprehensive Conservation Plan (“CCP”) for the National Bison Range, a unit of the National Wildlife Refuge System located in northwestern, Montana, entirely within the Flathead Indian Reservation of the Confederated Salish and Kootenai Tribes (“CSKT”).<sup>17</sup> The federal register notice also provided an alternative option to the FWS implementing the CCP and managing the National Bison Range. Such option would entail the Interior Secretary transferring the National Bison Range to the CSKT by placing it into federal trust for the Tribes. “The alternative returns to the tribe control of their traditional lands and cultural resources,”<sup>18</sup> and would engender an “Annual Funding Agreement per the Tribal Self-Governance Act, wherein the CSKT would be responsible for implementing the provisions of the AFA.”<sup>19</sup>

On January 21, 2017, the Montana-based *Daily Interlake* reported that the Public Employees for Environmental Sustainability (“PEER”), a public advocacy group, was quick to criticize the FWS action, and has sued the Agency “alleging that it illegally advocated for the transfer proposal before conducting an environmental review.”<sup>20</sup> While the *Interlake* also had noted that it was uncertain whether the incoming Trump administration would continue this process, Congressman “Zinke hasn’t publicly taken a position on transferring the Bison Range.” Rather, Zinke was quoted as saying that, ‘I have no doubt that the Salish-Kootenai tribes are capable of managing buffalo.’”<sup>21</sup> He also was quoted as saying that he “want[ed] to make sure that there’s provisions in there to ensure that the land does not get sold and remains public land.”<sup>22</sup>

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<sup>15</sup> See Christopher Drew and Sean D. Naylor, *Interior Nominee Promotes Navy SEAL Career, While Playing Down ‘Bad Judgment’*, The New York Times (Jan. 16, 2017), *supra*.

<sup>16</sup> *Id.*

<sup>17</sup> See “Notice of Intent To Prepare a Comprehensive Conservation Plan for the National Bison Range,” Moiese, Montana, Fish and Wildlife Service, 82 FR 5597 (Jan. 18, 2017), available at: <https://www.fws.gov/policy/library/2017/2017-00808.pdf>.

<sup>18</sup> *Id.*, at 5598.

<sup>19</sup> *Id.*

<sup>20</sup> See Sam Wilson, *Agency Moves to Transfer Bison Range to Tribes*, Daily Interlake (Jan. 21, 2017), available at: <http://www.dailyinterlake.com/article/20170121/ARTICLE/170129981>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

The problem here is that Rep. Zinke, once again, is telling only a half-truth, or even worse, he has failed to undertake the minimal due diligence review required of his high office which would have informed him before he had made such comment. In fact, a thorough review of the facts on the ground would have revealed that, in 2006, the CSKT entered into a ‘638 contract’ with DOI-FWS to manage the National Bison Range, which the agency terminated prematurely because of alleged mismanagement.<sup>23</sup> Despite this setback, the CSKT thereafter pursued new ‘638 contracts’<sup>24</sup> with DOI-FWS amid objections that the governing advance funding agreements suffered ongoing flaws; inter alia, they denied the public access to financial and other records maintained by the Tribes and their subcontractors.<sup>25</sup> In light of these objections, the CSKT and Obama administration had announced their intention to secure Congressional legislation “that would transfer the lands comprising the National Bison Range in Montana to be held in trust by the United States for the benefit of the CSKT.”<sup>26</sup> At least one environmental group (the Public Employees for Environmental Responsibility) has, thus far, objected to such transfer because it “could lead to other wildlife refuges and even national parks being ceded to [nontransparent and unaccountable] Native American tribes.”<sup>27</sup>

Clearly, these facts and PEER’s conclusion run counter to Zinke’s public assurances and reveal his lack of awareness of CSKT’s prior failure managing the National Bison Range. This provides but another reason to conclude that Ryan Zinke lacks the judgment and discipline to serve as the next Interior Secretary.

### **3. Zinke’s Promotion of Tribal Government Sovereignty Above Individual U.S. Constitutional Rights Betrays a Lack of Judgment that Disqualifies Him From Being Interior Secretary:**

<sup>23</sup> See Public Employees for Environmental Responsibility, *Abuses at National Bison Range Confirmed by Investigation - Threats, Intimidation and Safety Concerns Documented in Independent Report*, Press Release (Jan. 9, 2007), available at: <http://www.peer.org/news/news-releases/2007/01/09/abuses-at-national-bison-range-confirmed-by-investigation/>; Public Employees for Environmental Responsibility, *Court Throws Out National Bison Range Tribal Compact - Failure to Consider Potential Negative Effects on Iconic Refuge Was Fatal Flaw*, Press Release (Sept. 28, 2010), available at: [http://www.peer.org/news/news-releases/2010/09/28/court-throws-out-national-bison-range-tribal-pact-/-/](http://www.peer.org/news/news-releases/2010/09/28/court-throws-out-national-bison-range-tribal-pact-/).

<sup>24</sup> See, e.g., U.S. Fish and Wildlife Service, *Fiscal Years 2013–2016 Annual Funding Agreement Between the United States Department of the Interior Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes of the Flathead Reservation* (March 8, 2012 Draft), available at: [http://www.fws.gov/uploadedFiles/FY\\_13-16\\_AFA\\_Draft\\_4-12-12\\_tech\\_corrections\\_draft.pdf](http://www.fws.gov/uploadedFiles/FY_13-16_AFA_Draft_4-12-12_tech_corrections_draft.pdf).

<sup>25</sup> See Public Employees for Environmental Responsibility, *New Plan for Outsourcing National Bison Range to Tribe - Tribal Takeover Resembles Agreement Invalidated by Federal Court in 2010*, Press Release (May 15, 2012), available at: <http://www.peer.org/news/news-releases/2012/05/15/new-plan-for-outsourcing-national-bison-range-to-tribe/>; Public Employees for Environmental Responsibility, *New Bison Range Tribal Agreement Repeats Same Old Mistakes - Employee Comments Detail Why New Agreement Will Work to Refuge Detriment*, Press Release (July 22, 2014), available at: <http://www.peer.org/news/news-releases/2014/07/22/new-bison-range-tribal-agreement-repeats-same-old-mistakes/>; David Reese, *Tribes Seek Third Funding Contract to Manage National Bison Range*, Big Fork Eagle (June 17, 2015), available at: [http://www.flatheadnewsgroup.com/bigforkeagle/tribes-seek-third-funding-contract-to-manage-national-bison-range/article\\_cac19d2e-1079-11e5-9322-fb60d33caa61.html](http://www.flatheadnewsgroup.com/bigforkeagle/tribes-seek-third-funding-contract-to-manage-national-bison-range/article_cac19d2e-1079-11e5-9322-fb60d33caa61.html).

<sup>26</sup> See Tristan Scott, *FWS Considering Transfer of National Bison Range to Tribes*, Flathead Beacon (Feb. 16, 2016), available at: <http://flatheadbeacon.com/2016/02/16/fws-considering-transfer-of-national-bison-range-to-tribes/>.

<sup>27</sup> See Sean Reichard, *New West Daily Roundup*, NewWest (Feb. 26, 2016), available at: <http://newwest.net/2016/02/09/new-west-daily-roundup-for-feb-9-2016/>.

Since joining the U.S. Congress, Rep. Zinke has sponsored several pieces of legislation that elevated the “sovereignty” of Native American tribes above individual constitutional rights and public accountability. A brief summary of the troubling federal legislation that Rep. Zinke promoted follows.

a. *H.R.286 – The Little Shell Tribe of Chippewa Indians Restoration Act of 2015*

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On January 12, 2015, Rep. Zinke introduced H.R.286 – the *Little Shell Tribe of Chippewa Indians Restoration Act of 2015* into the House Natural Resources Committee.<sup>28</sup> The Act, which was never enacted into law, would have extended federal recognition and all of the services and benefits associated therewith to the Little Shell Tribe of Chippewa Indians of Blaine, Cascade, Glacier, and Hill Counties, Montana even though the Tribe lacked a physical reservation.<sup>29</sup> For this reason, it also would have directed the Interior Secretary “to acquire, for the benefit of the Tribe, trust title to 200 acres of land within [this geographic] area to be used for a tribal land base.”<sup>30</sup>

b. *H.R.511 – The Tribal Labor Sovereignty Act of 2015*

On April 28, 2015, Rep. Zinke signed on as a cosponsor of H.R.511 – the *Tribal Labor Sovereignty Act of 2015*,<sup>31</sup> which had, earlier that year, been introduced into the House Committee on Education and the Workforce. The Act, which was never enacted into law, would have amended the National Labor Relations Act (“NLRA”) to treat as other than an “employer,” and thus, to exempt “any Indian tribe or any enterprise or institution owned and operated by an Indian tribe and located on its lands” from coverage by the NLRA.<sup>32</sup> According to Rep. Zinke, this legislation was significant because it would have “return[ed] sovereignty to tribes.”

“‘This is about sovereignty, opportunity and respect,’ said Rep. Ryan Zinke. ‘The federal government already saddles our tribes with burdensome regulations that hamper their ability to achieve the same goals of prosperity and success that we all aspire to. Considering the fact that the NLRB notoriously overreaches in the private sector, imagine what damage they would do to Montana’s tribes. H.R.511 is supported by tribes all across the nation. This bill affirms my strong support for their sovereignty.’ Tribal Labor Sovereignty Act Of 2015: Prevents the NLRB from exerting jurisdiction over Native American

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<sup>28</sup> See Congress.gov, *H.R.286 - Little Shell Tribe of Chippewa Indians Restoration Act of 2015*, 114th Cong. (Jan. 12, 2015), available at: <https://www.congress.gov/bill/114th-congress/house-bill/286/related-bills>. Montana Senators Steve Daines and Jon Tester cosponsored the sister bill in the Senate – S.35 – the *Little Shell Tribe of Chippewa Indians Restoration Act of 2015*. See Congress.gov, *S.35 - Little Shell Tribe of Chippewa Indians Restoration Act of 2015*, 114th Cong. (Sept. 10, 2015), available at: <https://www.congress.gov/bill/114th-congress/senate-bill/35/related-bills>; *Letter from U.S. Senator Steve Daines to House Committee on Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs* (Sept. 29, 2015), available at: <https://www.daines.senate.gov/imo/media/doc/2015%2009%2029%20Daines%20Little%20Shell%20Statement%20for%20the%20Record.pdf>.

<sup>29</sup> *Id.*, at Summary.

<sup>30</sup> *Id.*

<sup>31</sup> See Congress.gov, *H.R.511 - Tribal Labor Sovereignty Act of 2015*, 114th Cong. (April 28, 2015), available at: <https://www.congress.gov/bill/114th-congress/house-bill/511/cosponsors>.

<sup>32</sup> *Id.*, at Summary.

businesses operating on tribal lands by restoring a legal standard in place long before the board's misguided decision. Protects the sovereignty of Native American tribes, ensuring they are afforded the same rights and protections enjoyed by state and local governments. Returns to tribes the ability to govern labor relations in their businesses in a way they determine is best for their workplaces, eliminating legal confusion and uncertainty."<sup>33</sup>

What Rep. Zinke's explanation of this bill fails to mention is that the benefits are to be derived only by tribal governments rather than by individual tribal members, and that non-tribal businesses do not receive an equivalent benefit under federal or state law. In other words, it smacks of racial discrimination.

c. *H.R.2647 – The Resilient Federal Forests Act of 2015 // The Emergency Wildfire and Forest Management Act of 2016 and S.3013 – The Salish and Kootenai Water Rights Settlement Act of 2016*

On June 4, 2015, Rep. Zinke signed on as a cosponsor to H.R.2647 – *the Resilient Federal Forests Act of 2015*,<sup>34</sup> which was subsequently amended and retitled as the *Emergency Wildfire and Forest Management Act of 2016*.<sup>35</sup> Each of these bills contained tribal forest management provisions (Title VII, Sections 701-703; Title III, Sections 301-303), respectively, that were incorporated within the House version<sup>36</sup> of a massive omnibus Senate Energy bill – S.2012 - the *North American Energy Security and Infrastructure Act of 2016*<sup>37</sup> – that had almost made its way through a House-Senate conference committee during December 2016.

The Tribal Forest Management (“TFM”) provisions of House/Senate S.2012 were problematic chiefly because they would have racially discriminated in favor of federal recognized Native American tribes, consistent with the “benign” racial discrimination policies originated during the administration of former President Nixon.<sup>38</sup> This would be achieved by effectively recognizing

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<sup>33</sup> See Commander Ryan Zinke, Montana's Congressman, *Ryan Zinke Votes to Return Sovereignty to Tribes*, Press Release (Nov. 17, 2015), available at: <https://zinke.house.gov/media-center/press-releases/ryan-zinke-votes-return-sovereignty-tribes>.

<sup>34</sup> See *The Resilient Federal Forests Act of 2015*, H.R. 2647rfs, 114<sup>th</sup> Cong. 1<sup>st</sup> Sess. (July 13, 2015), available at: <https://www.congress.gov/114/bills/hr2647/BILLS-114hr2647rfs.pdf>.

<sup>35</sup> See Congress.gov, *H.R.2647 - Emergency Wildfire and Forest Management Act of 2016*, 114<sup>th</sup> Cong. (June 4, 2015), available at: <https://www.congress.gov/bill/114th-congress/house-bill/2647/cosponsors?overview=closed#tabs>. See also H.R. 2647rs - *Emergency Wildfire and Forest Management Act of 2016*, 114<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Sept. 19, 2016), available at: <https://www.congress.gov/114/bills/hr2647/BILLS-114hr2647rs.pdf>.

<sup>36</sup> It seems H.R. 2647 had been incorporated within an earlier House version of S.2012 via an amendment replacing Title VII with new Title III as part of “Division B, Titles I-X.” See HOUSE AMENDMENT TO S. 2012 (Rules Committee Print 114-55), available at: <https://rules.house.gov/sites/republicans.rules.house.gov/files/114/PDF/114-S2012-RCPSumm.pdf>.

<sup>37</sup> See RULES COMMITTEE PRINT 114-55, TEXT OF HOUSE AMENDMENT TO S. 2012, ENERGY POLICY MODERNIZATION ACT OF 2016 (May 20, 2016), available at: <http://docs.house.gov/billsthisweek/20160523/CPRT-114-HPRT-RU00-S2012.pdf>.

<sup>38</sup> See United States Government, Department of Justice, *Memorandum – Indian Preference Statutes* (June 22, 1973), *Keenan v. Bay*, Civil Action No. 1:15-cv-01440, *supra* at Exhibit 66, available at: [http://www.koganlawgroup.com/uploads/EXHIBIT\\_66\\_-\\_BIA\\_MEMO\\_INDIAN\\_PREFERENCES\\_1973\\_.pdf](http://www.koganlawgroup.com/uploads/EXHIBIT_66_-_BIA_MEMO_INDIAN_PREFERENCES_1973_.pdf).



off-reservation aboriginal pre-European Settlement-era land and water rights where none currently exist in national federal law, consistent with the U.N. Declaration of the Rights of Indigenous Peoples,<sup>39</sup> at the expense of all other Americans' constitutionally protected private property rights.

*First*, the TFM provisions of the House version of S.2012 would have provided Native American Tribes located near U.S. national forest and park lands with federal "638" contracts to manage, oversee and control such lands and appurtenant water resources for federal regulatory and other purposes, even though they are located way beyond the boundaries of Federal Indian reservations. '638 self-determination contracts' were first authorized by the 1975 Indian Self-Determination and Education Assistance Act ("ISDEAA"), as amended.<sup>40</sup> The ISDEAA initially empowered the Secretaries of the Interior and Health, Education and Welfare to enter into five categories of self-determination contracts with tribes for the performance and/or management of specific types of government programs, functions, services, or activities (including administrative functions) that would otherwise be performed or managed by the agencies on behalf of the tribes – "for the benefit of Indians because of their status as Indians."<sup>41</sup> Congress subsequently expanded this authorization when it amended the ISDEAA in 1994. Thereafter, 638 contracts could be entered into for the management of trust fund, ***trust lands or interests in such lands***.<sup>42</sup> This strongly suggests that national forests and park lands could eventually be transferred into trust for federally recognized tribes.

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*Second*, the TFM provisions of the House version of S.2012 would have enabled Native American Tribes to treat "Federal Forest Lands," including U.S. National Forests and National Parks belonging to ALL Americans, as "Indian Forest Lands," merely by establishing that "the Federal forest land is located within, or mostly within, a geographical area that presents a feature or involves circumstances principally relevant to that Indian tribe." In other words, a tribe would have needed to show only that the forest lands are covered by an Indian Treaty, are part of a current or former Indian Reservation or were adjudicated (i.e., by the former Indian Claims Commission<sup>43</sup>) to be part of a Tribal Homeland.

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*See also Keenan v. Bay*, Civil Action No. 1:15-cv-01440, *supra* at "Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction," at pp. 15-19.

<sup>39</sup> *See* United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, (A/61/L.67 and Add.1) (Sept. 13, 2007), available at: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

<sup>40</sup> *See* P.L. 93-638, 88 Stat 2203 (Jan. 4, 1965), available at: [http://indianlaw.mt.gov/content/fed\\_state/acts\\_of\\_congress/pl\\_93\\_638.pdf](http://indianlaw.mt.gov/content/fed_state/acts_of_congress/pl_93_638.pdf), codified at 25 U.S.C. codified at 25 U.S.C. § 450 et seq.

<sup>41</sup> *Id.*, at §§ 104(a)(1)-(3), 104(b)(1)-(2), codified at 25 U.S.C. § 450f(a)(1)(A)-(E). *See also* 25 C.F.R. Part 900, available at: <https://www.gpo.gov/fdsys/pkg/CFR-2011-title25-vol2/pdf/CFR-2011-title25-vol2-part900.pdf>.

<sup>42</sup> *See* P.L. 103-413, *Tribal Self-Governance Act of 1994* (108 Stat 4271) (Oct. 25, 1994), at §§ 201, 204, available at: <http://uscode.house.gov/statutes/pl/103/413.pdf>. The Tribal Self-Governance Act of 1994 empowered each participating federally recognized tribal government to develop and secure DOI approval of a plan of self-governance capable of being implemented with congressional appropriations, while "ensur[ing] the continuation of the trust responsibility of the U.S to Indian tribes and Indian individuals." Its provisions were premised on a finding that, "the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations," and that "the United States recognizes [...] the right of the tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes." *Id.*, at Sec. 202(a)(1)-(2). *See also* 25 U.S.C. 458bb, 458cc, 458dd; Pub. L. 103-413, *supra* at Title II, at Sect. 203(4).

<sup>43</sup> *See* U.S. Indian Claims Commission, *Indians Claim Commission Decisions*, available at: <http://digital.library.okstate.edu/icc/>.

*Third*, the TFM provisions of the House version of S.2012 would have expanded tribal political sovereignty and legal jurisdiction and control, especially over mountainous forest lands from which most of the waters emanate (i.e., snowpack) that are relied upon for downstream irrigation by farmers and ranchers located throughout the northwestern Montana and the western United States. Thus, in lean water years, federally recognized tribes, including the CSKT, would be emboldened to exercise their water rights based on an aboriginal (pre-European settlement-era) priority date to claim use over all watershed waters flowing through deemed “Indian Forest Lands” at the expense of downstream farmers and ranchers.

*Fourth*, the TFM provisions of the House version of S.2012 would have enabled Native American Tribes to impose further “federal fiduciary trust obligations”<sup>44</sup> on the U.S. government to protect their religious, cultural and spiritual rights to fish, waters and lands located beyond the boundaries of Federal Indian Reservations. This would have been achieved by severely curtailing the use and enjoyment of non-tribal members’ constitutionally protected private water and land rights without paying them “just compensation” as required by the Fifth Amendment to the U.S. Constitution.

The significance of the so-called federal fiduciary trust obligation was emphasized in a federal lawsuit filed on July 29, 2016 by the Hoopa Valley Tribe of northern California against the U.S. Bureau of Reclamation (“BOR”) and National Marine Fisheries Service.<sup>45</sup> The legal action was brought, in part, to compel these agencies to uphold a claimed “federal fiduciary trust obligation” to protect the tribe’s alleged off-reservation aboriginal pre-European Settlement-era water and fishing rights in southern Oregon’s Upper Klamath Lake and Klamath River,<sup>46</sup> even though their Indian Reservation is located more than 240 miles southwest of the lake!

Similarly, on November 29, 2016, the Yurok Tribe of northern California filed its own lawsuit against the Bureau of Reclamation,<sup>47</sup> alleging *inter alia* that: 1) “[t]he Executive Orders that created the Yurok Reservation vested the Yurok Tribe with ‘federally reserved fishing rights;’” 2) the “[f]ederally reserved fishing rights in Yurok trust fish species are integral to the Yurok way of life for subsistence, commercial, and cultural purposes;” 3) the “Yurok trust species include, but are not limited to, coho and chinook salmon, steelhead trout, lamprey, sturgeon, and eulachon;”<sup>48</sup> and 4) “The Yurok Tribe has an existential interest in protecting its federally reserved fishing rights due to its cultural and spiritual reliance on the Klamath fishery, including coho and chinook

<sup>44</sup> See American Indian Policy Review Commission, Congress of the United States, “Final Report”, submitted to Congress (May 17, 1977), Vol. 1, at *Chap. 4 – Trust Responsibility*, available at: <http://www.docs.lakotalaw.org/NPR-report-sources/American%20Indian%20Policy%20Review%20Commission,%20Final%20Report,%201977.pdf>.

<sup>45</sup> See *Hoopa Valley Tribe v. U.S. Bureau of Reclamation*, Case 4:16-cv-04294 (7/29/16), available at: <http://www.schlosserlawfiles.com/~hoopa/16-4294ComplaintDoc1.pdf>.

<sup>46</sup> *Id.*, at Complaint at paras. 3 (“BOR owes a fiduciary trust responsibility to the Tribe, which holds federal reserved rights to fish and water in the Klamath River”), 11 (“...This relief is necessary to [...] protect tribal trust resources.”), 21A (“BOR has primary management authority over the Klamath Project, the operation of which is at the heart of this action, and has a trust responsibility to ensure a continued fishery for the Tribe.”), 21B (“Both BOR and NMFS are obligated by federal law to protect the Tribe’s fishing rights in the Klamath-Trinity River system and each have a trust responsibility to ensure a continued fishery for the Tribe.”).

<sup>47</sup> See *Yurok Tribe v. U.S. Bureau of Reclamation*, Case 3:16-cv-06863-WHO (11/29/16).

<sup>48</sup> *Id.*, at Complaint at para. 12.

salmon.”<sup>49</sup> The Yurok Tribe filed this suit even though their reservation, as well, is located more than 240 miles southwest of Upper Klamath Lake! A ‘win’ in these cases would severely curtail the ability of Klamath Irrigation Project and Off-Project irrigators in the Klamath Basin to exercise their water rights to secure much needed seasonal flows from the lake and river.

*Fifth*, the TFM provisions of the House version of S.2012 are troublesome because when combined with U.S. Senator Tester (MT-D)’s bill, S.3013 – the *Salish and Kootenai Water Rights Settlement Act of 2016*,<sup>50</sup> introduced and referred to the U.S. Senate Committee on Indian Affairs on May 26, 2016,<sup>51</sup> they would expand and codify into national federal law the *off-reservation* aboriginal pre-European settlement-era water and fishing rights claimed by the Confederated Salish and Kootenai Tribes (“CSKT”) of the Flathead Reservation in northwestern Montana.

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Section 11(a) of S.3013 would have provided for the confirmation of what would seem to be additional CSKT Instream Flow water rights in waters flowing in or through National Forest and National Park Lands identified in Sections 11(b)(1)-(5), which apparently are not included within the Tribal instream flow rights designated in the abstracts accompanying the CSKT Water Compact – Montana *Senate Bill SB-262* enacted into state law.<sup>52</sup> Section 11(b) of S.3013 had identified 4 National Forests in which such Tribal Instream Flow Rights reside: “(1) Bitterroot National Forest”<sup>53</sup> (falling within Basin 76H for which the Tribes possess only storage rights pursuant to Article III.D.6 of SB 262);<sup>54</sup> “(2) Flathead National Forest”<sup>55</sup> (falling within Basin 76J where the Tribes have relinquished their exercise of the Tribal Water Right to make a call against water located in Basin 76J,<sup>56</sup> and falling within Basin 76K in which the CSKT otherwise have instream flow rights);<sup>57</sup> “(3) Kootenai National Forest”<sup>58</sup> (falling within Basin 76D in which the

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<sup>49</sup> *Id.*, at para. 14.

<sup>50</sup> See 114th Cong. 2d Session, S.3013, *To authorize and implement the water rights compact among the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, the State of Montana, and the United States, and for other purposes* (May 26, 2016), available at: <https://www.congress.gov/114/bills/s3013/BILLS-114s3013is.pdf> (“SEC. 2. PURPOSES. The purposes of this Act are— (1) to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for— (A) the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation; and (B) the United States, for the benefit of the Tribes and allottees; (2) to authorize, ratify, confirm, and provide funding for the Compact, to the extent that the Compact is consistent with this Act; (3) to authorize and direct the Secretary of the Interior— (A) to execute the Compact; and (B) to take any other action necessary to carry out the Compact in accordance with this Act; and (4) to authorize funds necessary for the implementation of the Compact and this Act.”) *Id.*

<sup>51</sup> See Congressional Record, Senate (May 26, 2016), at p. S3291, available at: <https://www.congress.gov/crec/2016/05/26/CREC-2016-05-26-pt1-PgS3291.pdf>. See also Vince Devlin, *Congress's Turn: Tester Introduces CSKT Water Compact in D.C.*, Montana Standard (May 26, 2016), available at: [http://mtstandard.com/news/local/congress-s-turn-tester-introduces-cskt-water-compact-in-d/article\\_5714d8dc-e899-5a0b-8b46-0cec31d94008.html](http://mtstandard.com/news/local/congress-s-turn-tester-introduces-cskt-water-compact-in-d/article_5714d8dc-e899-5a0b-8b46-0cec31d94008.html).

<sup>52</sup> See The State of Montana, *Senate Bill No. 262*, at Section 1, available at: <http://leg.mt.gov/bills/2015/billhtml/SB0262.htm>. See also Legiscan, Votes: MT SB262 (2015), Regular Session, *Montana Senate Bill 262* (Adjourned Sine Die), available at: <https://legiscan.com/MT/votes/SB262/201>.

<sup>53</sup> See S.3013, *supra* at Section 11(b)(1).

<sup>54</sup> See The State of Montana, *Senate Bill No. 262*, *supra* at Article III.D.6 (“6. Contract Rights to Stored Water Held by MFWP in Basin 76H (Bitterroot)”).

<sup>55</sup> See S.3013, *supra* at Section 11(b)(2).

<sup>56</sup> See The State of Montana, *Senate Bill No. 262*, *supra* at Article III.D.4

<sup>57</sup> *Id.*, at Article III.D.2.

<sup>58</sup> See S.3013, *supra* at Section 11(b)(3).

CSKT have instream flow rights);<sup>59</sup> and “(4) Lolo National Forest”<sup>60</sup> (falling within Basin 76M in which the CSKT have instream flow rights).<sup>61</sup> Moreover, Section 11(b)(5) of S.3013 confirms the Tribal Instream Flow Right in “the National Bison Range Complex and affiliated Waterfowl Production Areas.”<sup>62</sup>

The Bitterroot, Flathead, Kootenai and Lolo National Forests, which are part of and/or surrounding the Flathead Indian Reservation, as well as, the National Bison Range located entirely within the reservation (discussed above), would seem to have been covered by the *Resilient Federal Forests Act of 2015 / Emergency Wildfire and Forest Management Act of 2016* (H.R.2647) that Rep. Zinke co-sponsored. In other words, had S.3013 and H.R. 2647 been passed by congress and signed into federal law by the president, federal government agencies such as the Interior Department’s Bureau of Indian Affairs<sup>63</sup> and the U.S. Department of Agriculture’s Forest Service<sup>64</sup> would have encouraged and protected the CSKT’s exercise of their aboriginal pre-European settlement-era reserved water rights tied to these national forests and park lands in lean water years at the expense of Flathead Irrigation Project and Off-Project farmers, ranchers and landowners. This would have occurred even though these national forests and parklands belong to ALL Americans.

During September 2016, our organization’s legal representative had convened a meeting in Washington, D.C. with Montana’s Republican delegations, which included Congressman Zinke’s national legislative director Micah Chambers and his assistant Amanda Averill. The purpose of the meeting was to express our organization’s and members’ concerns about this legislation and about how the policies of the Obama federal agencies would have encouraged, and could still encourage, the CSKT’s exercise of their aboriginal pre-European settlement-era reserved water rights at the expense of Montana ranchers, farmers and landowners. However, Mr. Chambers, as apparently instructed by Rep. Zinke, has not since contacted our organization, and Congressman Zinke has since refrained from responding to ANY of our organization’s queries. In fact, our organization had provided Congressman Zinke, his Montana staff and other public officials in Montana with key information proving how the CSKT could proceed based on Obama federal agencies policies. This information can be found online at the *This is Our West.com* website managed by our organization’s members and volunteers.<sup>65</sup>

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<sup>59</sup> See The State of Montana, *Senate Bill No. 262, supra* at Article III.D.1.

<sup>60</sup> See S.3013, *supra* at Section 11(b)(4).

<sup>61</sup> See The State of Montana, *Senate Bill No. 262, supra* at Article III.D.3.

<sup>62</sup> See S.3013, *supra* at Section 11(b)(5).

<sup>63</sup> See The Kogan Law Group, P.C., *Interior Department Policies & Guidelines Protecting Tribal Reserved Treaty & Aboriginal/Ancestral Water & Land Rights*, available at: <http://thiswestisourwest.com/index.cfm/in-the-news/interior-department-policies-guidelines-protecting-tribal-reserved-treaty-aboriginal-ancestral-water-land-rights/>.

<sup>64</sup> See The Kogan Law Group, P.C., *U.S. Forest Service Agency Policies & Guidelines Promoting Protection of Indian Treaty & Other Off-Reservation Reserved Rights In Fulfillment of USG’s “Legally Mandated Trust Responsibilities,”* available at: <http://thiswestisourwest.com/index.cfm/in-the-news/u-s-forest-service-agency-policies-guidelines-promoting-protection-of-indian-treaty/>. See also The Kogan Law Group, P.C., *Sample Federal/State/Tribal MOU to Implement Forest and Rangeland Restoration and Fuels Reduction Projects Protecting Tribal Treaty, Trust & Reserved Rights & Interests*, available at: [http://www.koganlawgroup.com/uploads/USFS\\_BLM\\_OR\\_MOU\\_with\\_Conf\\_Tribes\\_of\\_Warm\\_Springs\\_to\\_Forest\\_and\\_Rangeland\\_Restoration\\_and\\_Fuels\\_Reduction\\_Proje.pdf](http://www.koganlawgroup.com/uploads/USFS_BLM_OR_MOU_with_Conf_Tribes_of_Warm_Springs_to_Forest_and_Rangeland_Restoration_and_Fuels_Reduction_Proje.pdf).

<sup>65</sup> See This West is Our West, *Who We Are*, available at: <http://thiswestisourwest.com/index.cfm/who-we-are/>.

Ryan Zinke, thus far, has failed to demonstrate his ability to grasp this intellectually complicated and politically charged subject matter in order to address our concerns. His failure to speak up on these issues and to respond to our comments and concerns clearly indicates that he is politically willing to sanction “benign” racial discrimination (not subject to strict constitutional judicial scrutiny) in favor of the CSKT and against those who are not members of the CSKT. In particular, his intentional avoidance of these issues indirectly reflects his acceptance of the legal fiction that the Interior Department is protecting the Tribes’ and tribal members’ right to assemble as a “political entity” when, in reality, the agency is actually protecting the Tribes’ and tribal members’ religious, spiritual and cultural rights to preserve natural resources and the environment.

In other words, Ryan Zinke’s ignorance of the 1977 report of Congress’ American Indian Policy Review Commission, which recognized and concluded that, “Congress’ plenary power over Indians is subject to other constitutional limitations upon congressional power, *such as the Bill of Rights*” (emphasis added),<sup>66</sup> and his ignorance of the U.S. Constitution, itself, would help the CSKT, other federally recognized Native American Tribes in the western United States and federal agencies with jurisdiction over them (e.g., Interior Department’s Bureau of Indian Affairs, and U.S. Agriculture Department’s Forest Service) to violate the Fifth, Ninth, Tenth and Fourteenth Amendment rights of farmers, ranchers and other landowners with impunity.<sup>67</sup>

Perhaps, because of this ignorance and lack of political will, Rep. Zinke has failed to take a principled stand on issues that affect his constituencies. Rather than having opposed such legislation on behalf of the interests held by an overwhelming majority of his constituents based in northwestern Montana (there being only 7,753 enrolled members of the CSKT),<sup>68</sup> Rep. Zinke has either been found to champion the legislation without referencing the tribal forest management provisions (i.e., his co-sponsored H.R. 2647/S.2012 - the energy bill)<sup>69</sup> or to be “missing-in-action” (“MIA”) by failing to comment at all about the CSKT Water Compact legislation (i.e., introduced by Montana Senator Tester - S.3013)<sup>70</sup> and its interaction and relationship with the TFM provisions of the energy bill. Even worse, before the CSKT Water Compact was even passed by the Montana State legislature, there is evidence that Rep. Zinke had taken diametrically opposed positions with

<sup>66</sup> See American Indian Policy Review Commission, Congress of the United States, “Final Report”, submitted to Congress (May 17, 1977), Vol. 1, *supra* at p. 107.

<sup>67</sup> See The Kogan Law Group, P.C., *Legal Analysis of S.3013 – The Salish and Kootenai Water Rights Settlement Act of 2016 and Related Congressional Tribal Forest Management Legislation* (Aug. 29, 2016), available at: [http://www.koganlawgroup.com/uploads/FINAL4\\_Memo\\_-\\_KLG\\_Legal\\_analysis\\_of\\_S.3013\\_The\\_Salish\\_and\\_Kootenai\\_Water\\_Rights\\_Settlement\\_Act\\_of\\_2016\\_8-29-1.pdf](http://www.koganlawgroup.com/uploads/FINAL4_Memo_-_KLG_Legal_analysis_of_S.3013_The_Salish_and_Kootenai_Water_Rights_Settlement_Act_of_2016_8-29-1.pdf).

<sup>68</sup> See State of Montana, *Montana Governor’s Office of Indian Affairs – Confederated Salish and Kootenai Tribes*, available at: <http://tribalnations.mt.gov/cskt>.

<sup>69</sup> See Commander Ryan Zinke, Montana’s Congressman, *Rep. Ryan Zinke’s Statement on the Senate Energy Bill*, Press Release (April 20, 2016), available at: <https://zinke.house.gov/media-center/press-releases/rep-ryan-zinke-s-statement-senate-energy-bill>.

<sup>70</sup> See The Columbia Basin Bulletin, Fish & Wildlife News, *Montana Senator Seeks Congressional Approval For Salish-Kootenai Water Compact* (June 2, 2016), available at: <http://www.cbbulletin.com/436823.aspx> (“The other members of Montana’s congressional delegation — Sen. Steve Daines and **Rep. Ryan Zinke, both Republicans** — will likely be important during the congressional process. **So far, Daines and Zinke have yet to comment on the legislation introduced by Tester last week**” (emphasis added));

two different constituencies with respect to the CSKT Water Compact. As reported by the local *Ravalli Republic* in April 2015,

“Republican U.S. Rep. Ryan Zinke reportedly told the CSKT Tribal Council during a December visit, after his election but before he had been sworn into his first term, that he supported the compact. Char-Koosta News, the tribal newspaper, reported that Zinke told council members he hoped information in the compact would persuade people to think rationally about their stance, rather than feel with emotion, ‘which he feels that most people are doing,’ the newspaper said.<sup>71</sup> But in an interview on Missoula radio station KGVO earlier this month, before the Legislature had approved it, Zinke said there were some elements of the compact he was not comfortable with. ‘The state is looking at it very, very closely,’ Zinke said in a KGVO interview available on YouTube. ‘I’m not very comfortable with a number of provisions on it and I’m hoping the state looks at it closely and makes the right decision.’”<sup>72</sup>

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In sum, Rep. Zinke specializes in speaking out of both sides of his mouth at the same time, which is otherwise known as speaking with a “forked tongue.” These are the traits of a “follower” rather than a “leader,” and they are unbecoming of an Interior Secretary. For all of the above reasons, this Committee should reject Rep. Zinke’s nomination as the 52<sup>nd</sup> Secretary of the U.S. Department of Interior.

d. *H.R. 5633 – The Blackfeet Water Rights Settlement Act of 2016*

On April 21, 2015, Rep. Zinke wrote to U.S. Attorney Eric Holder requesting that the U.S. Department of Justice “to swiftly work with the Blackfeet Tribe to thoroughly examine their proposal, determine federal costs, and negotiate a final [water compact] settlement.”<sup>73</sup> On April 28, 2015, Montana’s Democratic Senator, Jon Tester introduced into the Senate and referred to the Senate Committee on Indian Affairs S.1125 – the *Blackfeet Water Rights Settlement Act of 2015*.<sup>74</sup>

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<sup>71</sup> See Adriana Fehrs, *Ryan Zinke visits CSKT Council*, Char-Koosta News (Dec. 11, 2014), available at: [http://www.charkoosta.com/2014/2014\\_12\\_11/Zinke\\_visits\\_CSKT\\_Council.html](http://www.charkoosta.com/2014/2014_12_11/Zinke_visits_CSKT_Council.html) (“[...] Zinke informed the Tribal Council of his support of the CSKT water compact. He says he hopes the information in the water compact will persuade people to think rationally about their stance on the settlement, rather than feel with emotion, which he feels that most people are doing.”).

<sup>72</sup> See Mike Dennison, *Water Compact’s Road Can be a Long and Rocky One in Washington, D.C.*, *Ravalli Republic* (April 18, 2015), available at: [http://ravallirepublic.com/news/state-and-regional/article\\_9a0cc2b6-0d8f-5f94-b52c-a4ddb9617261.html](http://ravallirepublic.com/news/state-and-regional/article_9a0cc2b6-0d8f-5f94-b52c-a4ddb9617261.html).

<sup>73</sup> See *Letter from Rep. Ryan Zinke to the Honorable Eric Holder and Honorable Sally Jewell, Re: Blackfeet Water Compact* (April 21, 2015), available at: [http://zinke.house.gov/sites/zinke.house.gov/files/wysiwyg\\_uploaded/4-21-15%20Letter%20to%20DOJ%20and%20DOJ%20RE-%20Blackfeet%20Water%20Settlement%20with%20Bishop%20Letter\\_0.pdf](http://zinke.house.gov/sites/zinke.house.gov/files/wysiwyg_uploaded/4-21-15%20Letter%20to%20DOJ%20and%20DOJ%20RE-%20Blackfeet%20Water%20Settlement%20with%20Bishop%20Letter_0.pdf). See also David Murray, *Zinke Urges a Quick Vote on Blackfeet Water Compact*, *Great Falls Tribune* (April 21, 2015), available at: <http://www.greatfallstribune.com/story/news/local/2015/04/21/zinke-urges-quick-vote-blackfeet-water-compact/26140881/>.

<sup>74</sup> See Congress.gov, *S. 1125 – Blackfeet Water Rights Settlement Act of 2015* (April 28, 2015), available at: <https://www.congress.gov/bill/114th-congress/senate-bill/1125/all-actions>.

The Senate version of the bill was thereafter reported favorably, with an amendment in the nature of a substitute, in the Senate Indian Affairs Committee, on February 3, 2016.<sup>75</sup>

On May 24, 2016, Rep. Zinke convened “the first ever Congressional hearing in the House of Representatives on the Blackfeet Water Compact.”<sup>76</sup> The Zinke Congressional Office press release quoted Chairman Harry Barnes of the Blackfeet Nation after the hearing as stating that, “Congressman Zinke made some powerful and supportive statements on behalf of the tribe, and we genuinely appreciate his efforts.”<sup>77</sup> It also emphasized

On July 6, 2016, Rep. Zinke introduced *a companion bill* – H.R. 5633 – the *Blackfeet Water Rights Settlement Act of 2016*<sup>78</sup> into the House of Representatives and referred it to the House Committee on Natural Resources.<sup>79</sup> The bill was thereafter referred to the House Subcommittee on Water, Power and Oceans, on July 11, 2016.<sup>80</sup> The purposes of the bill were to: 1) “achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana for [...] the Blackfeet Tribe of the Blackfeet Indian Reservation and [...] the United States, for the benefit of the Tribe and allottees;” 2) authorize, ratify, and confirm the water rights compact entered into by the Tribe and the State, to the extent that the Compact is consistent with this Act;” 3) “authorize and direct the Secretary of the Interior [...] to execute the Compact [...] and [...] take any other action necessary to carry out the Compact in accordance with this Act;” and 4) “authorize funds necessary for the implementation of the Compact and this Act.”<sup>81</sup> As the Zinke press release emphasized, “Today I’m proud to introduce the Blackfeet Water Compact legislation. The Blackfeet have waited the longest, and over the history of time the Blackfoot Nation has given up the most,” said Zinke. ‘It’s time to move forward with this water compact.’”<sup>82</sup> In a signature Zinke opportunistic move, neither Congressman Zinke nor his office went to the trouble, however, of clarifying for Montanans how it was actually Senator Tester who had originated legislation providing for passage of the Blackfeet Tribe Water Compact!

The Zinke bill – H.R. 5633 – subsequently went through several markups during November 15-16, 2016. On November 16, 2016, the House Committee on Natural Resources order the bill to be

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<sup>75</sup> *Id.*

<sup>76</sup> See Commander Ryan Zinke, Montana’s Congressman, *Zinke, Barnes & House of Reps. Hold First Ever Hearing on Blackfeet Water Compact, Press Release* (May 24, 2016), available at: <https://zinke.house.gov/media-center/press-releases/zinke-barnes-house-reps-hold-first-ever-hearing-blackfeet-water-compact> (“The hearing was held by the Natural Resources Committee’s Subcommittee on Water, Power, and Oceans to discuss the “Blackfeet Water Rights Settlement Act of 2016” discussion draft and other water-related legislation.”).

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<sup>78</sup> See Commander Ryan Zinke, Montana’s Congressman, *Zinke Introduces Blackfeet Water Compact* (July 6, 2016), available at: <https://zinke.house.gov/media-center/press-releases/video-zinke-introduces-blackfeet-water-compact-congress-july-6-2016>.

<sup>79</sup> See Congress.gov, *H.R.5633 - Blackfeet Water Rights Settlement Act*, 114<sup>th</sup> Cong. (July 6, 2016), available at: <https://www.congress.gov/bill/114th-congress/house-bill/5633/all-actions>.

<sup>80</sup> *Id.*

<sup>81</sup> See H.R. 5633 - *A BILL To authorize and implement the water rights compact among the Blackfeet Tribe of the Blackfeet Indian Reservation, the State of Montana, and the United States, and for other purposes*, 11<sup>th</sup> Cong., 2d Sess. (July 6, 2016), at Sec. 2, available at: <https://www.congress.gov/114/bills/hr5633/BILLS-114hr5633ih.pdf>.

<sup>82</sup> See Commander Ryan Zinke, Montana’s Congressman, *Zinke Introduces Blackfeet Water Compact* (July 6, 2016), *supra*.

reported as “amended” by unanimous consent.<sup>83</sup> Apparently, these markups and the Committee’s movement of the bill had been precipitated by an October 2016 House Natural Resource Committee Democratic Minority staff report that had tried to shame the House Natural Resource Committee Republican Majority about how it had dragged its feet on the Blackfeet Water Compact<sup>84</sup> (“Since Republicans took control of the House, Congress has not funded a single Indian water rights settlement”).<sup>85</sup> The report also quoted Interior Department Counselor John Bezdek’s May 2016 House testimony calling for approval of the Blackfeet Compact.<sup>86</sup>

As the legislative history of H.R. 5633 shows, on December 8, 2016, it was likely incorporated into the House version of the omnibus Senate water bill – S.612 – the *Water Infrastructure Improvements for the Nation (“WIIN”) Act*.<sup>87</sup> Meanwhile, Subtitle G of Title III of the Senate version of S.612 had already previously contained the Tester version of the Blackfeet Tribe Water Compact – S.1125 for which Zinke claimed public credit.<sup>88</sup> On December 10, 2016, the House

<sup>83</sup> See Congress.gov, *H.R.5633 - Blackfeet Water Rights Settlement Act*, 114<sup>th</sup> Cong. (July 6, 2016), available at: <https://www.congress.gov/bill/114th-congress/house-bill/5633/all-actions>.

<sup>84</sup> See Natural Resources Committee Democrats, Raul M. Grijalva, *Water Delayed is Water Denied - How Congress has Blocked Access to Water for Native Families* (Oct. 10, 2016), available at: [http://democrats-naturalresources.house.gov/imo/media/doc/House%20Water%20Report\\_FINAL.pdf](http://democrats-naturalresources.house.gov/imo/media/doc/House%20Water%20Report_FINAL.pdf) (“If House Republicans are serious about supporting Indian water settlements, they should approve the Blackfeet and Pechanga settlements immediately and begin work on the many more settlements that will come before Congress in the future. Doing so would show that Republicans in the House are serious about protecting taxpayers, cutting red tape, fulfilling the federal government’s legal obligation to the tribes, and finally allowing Native families to have access to the basic water and sanitation services they deserve.”) *Id.*, at p. 18.

<sup>85</sup> *Id.*, at p. 16. See also *Id.*, at p. 17 (“After the administration complied with the Bishop process and affirmed that the settlement would result in ‘very significant benefits for the Federal Government and the American taxpayer,’ Chairman Bishop sent a letter on July 1, 2016, requesting even more information from the departments of Justice and Interior. The departments replied with more information on July 22, 2016, and reiterated that the administration has complied with the Bishop process. Still, Chairman Bishop has not announced plans to pass the Blackfeet Indian Water Rights Settlement out of the House Natural Resources Committee before the end of the 114th Congress.”)

<sup>86</sup> See also *Id.*, at p. 17, citing *Statement of John Bezdek, Counselor to the Deputy Secretary United States Department of the Interior* Before the Subcommittee on Water, Power and Oceans Committee on Natural Resources House of Representatives On Discussion Draft - HR \_\_\_\_ - The Blackfeet Water Rights Settlement Act of 2016 (May 24, 2016), at p. 4, available at: [http://naturalresources.house.gov/uploadedfiles/testimony\\_bezdek\\_h.r.\\_.pdf](http://naturalresources.house.gov/uploadedfiles/testimony_bezdek_h.r._.pdf) (“The funding to construct, rehabilitate, and expand the Tribe’s municipal water system will ensure all major population centers on the Reservation have reliable and safe drinking water supply for 50 years into the future.”)

<sup>87</sup> See Congress.gov, *S.612 - WIIN Act*, 11<sup>th</sup> Cong., 2d. Sess., available at: <https://www.congress.gov/bill/114th-congress/senate-bill/612/actions> (“12/08/2016 – Passed/agreed to in House: On passage Passed by recorded vote: 360 - 61 (Roll no. 622).”) See also U.S. House of Representatives, *FINAL VOTE RESULTS FOR ROLL CALL 622* (Dec. 8, 2016), available at: <http://clerk.house.gov/evs/2016/roll622.xml>.

<sup>88</sup> See S.612, *An Act To provide for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources, and for other purposes*, 114<sup>th</sup> Cong., 2d. Sess. (Jan. 4, 2016), available at: <https://www.congress.gov/114/bills/s612/BILLS-114s612enr.pdf>.



again amended its version of S.612 which the Senate approved, and it was passed by the Congress.<sup>89</sup> On December 16, 2016, S.612 was signed into law by the president.<sup>90</sup>

Clearly, Zinke's representation of his involvement in the Blackfeet Tribe Water Compact's passage was less than truthful. Zinke's support for the Blackfeet Tribe Water Compact, like his support for the CSKT Water Compact, indicates that he will work all sides of the political fence on an issue so that he may advance his career accordingly, without regard to his constituents. That Zinke has favored federally recognized Native American Tribes and advocated for strengthening their "sovereign" status as nations is problematic because it foretells how he would likely continue to promote their interests as Interior Secretary, at the expense of western farmers, ranchers and landowners.

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For all of the above reasons, this Committee should reject Ryan Zinke's nomination as the 52<sup>nd</sup> Secretary of the United States Department of Interior.

4. **Zinke's Promotion of Tribal Government Sovereignty Above U.S. National Security Betrays a Lack of Judgment that Disqualifies Him from Being Interior Secretary:**

- a. *H.R. 205 (the Helping Expedite and Advance Responsible Tribal Homeownership ("HEARTH") Act of 2012 // H.R. 2362 (the Indian Tribal Trade and Investment Demonstration Project Act of 2011)*

On November 3, 2011, the Subcommittee on Indian and Alaska Native Affairs of the House Committee on Natural Resources convened a hearing to discuss H.R. 205 (the Helping Expedite and Advance Responsible Tribal Homeownership ("HEARTH") Act of 2011) and H.R. 2362 (the Indian Tribal Trade and Investment Demonstration Project Act of 2011). During his testimony, Congressman Coleman noted how if the HEARTH Act were enacted it would provide the benefits offered under the Indian Tribal Trade and Investment Demonstration Project Act to all Indian Tribes.<sup>91</sup>

Although both bills had languished in committee during 2011, they each were reintroduced in 2012. Ultimately, H.R. 2362, the language of which expressly referenced the Republic of Turkey,<sup>92</sup> had failed to muster sufficient votes to secure passage in the House of Representatives, while the more innocuously sounding H.R. 205 secured overwhelming House support and unanimously

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<sup>89</sup> *Id.*, ("12/10/2016 - Resolving differences -- Senate actions: Senate agreed to House amendment to S. 612 by Ye-Nay Vote. 78 - 21. Record Vote Number: 163."). See also House of Representatives, RULES COMMITTEE PRINT 114-69 TEXT OF HOUSE AMENDMENT TO S. 612, TO DESIGNATE THE FEDERAL BUILDING AND UNITED STATES COURTHOUSE LOCATED AT 1300 VICTORIA STREET IN LAREDO, TEXAS, AS THE "GEORGE P. KAZEN FEDERAL BUILDING AND UNITED STATES COURTHOUSE [Showing the text of the Water Infrastructure Improvements for the Nation (WIIN) Act] (Dec. 5, 2016), available at: <http://docs.house.gov/billsthisweek/20161205/CPRT-114-HPRT-RU00-S612.pdf>.

<sup>90</sup> See Congress.gov, *S.612 - WIIN Act*, 11<sup>th</sup> Cong., 2d. Sess., available at: <https://www.congress.gov/bill/114th-congress/senate-bill/612/actions>; Public Law 114-322, 130 Stat. 1628.

<sup>91</sup> See *Keenan v. Bay*, Civil Action No. 1:15-cv-01440, at "Complaint," para. 76, available at: [http://app6.websitetonight.com/projects2/0/3/9/5/1645930/uploads/-232\\_Complaint\\_9-2-15.pdf](http://app6.websitetonight.com/projects2/0/3/9/5/1645930/uploads/-232_Complaint_9-2-15.pdf).

<sup>92</sup> *Id.*, at paras. 74-75, 77.

passed the U.S. Senate in July 2012. Later the same month, the President signed H.R. 205 (the HEARTH Act) into law. As a result, ALL Native American Tribes, including Montana’s CSKT, became eligible to lease their reservation lands to any third party, including foreign enterprises based in the Republic of Turkey and other foreign countries, without engendering DOI oversight provided a tribe’s leasing regulations had first secured DOI approval and the leases were entered into for other than natural resource or mineral extraction purposes.<sup>93</sup> Leases could be entered into for a number of purposes, including for public, *religious*, educational, recreational, residential, business, agricultural and other purposes, up to a 75-year term, including renewals. Without direct DOI oversight, the CSKT and other Native American Tribes could conceivably execute long-term leases with Middle Eastern governments and/or companies, including those from the Islamic Republic of Turkey, to build madrassas and spread Islam on their reservations.

While Denny Rehberg, Montana’s only Congressman at this time, had voted in favor of H.R. 205,<sup>94</sup> Ryan Zinke effectively inherited this/his vote on the matter. He did so by thereafter hiring as his 2014 campaign manager Denny Rehberg’s former chief of staff, Alan Mikkelsen, to secure his congressional victory in November 2014,<sup>95</sup> and following his victory, by hiring Rehberg’s “state director Randy Vogel to oversee his state offices in Billings and Helena.”<sup>96</sup>

Since assuming his Congressional Office in January 2015, Ryan Zinke has refused to publicly comment regarding whether the HEARTH Act poses a U.S. national security risk in light of the Islamic Republic of Turkey’s instrumental role in lobbying for (during 2009-2011) and securing its passage and enactment into law (during 2011-2012). Mr. Zinke has failed, furthermore, to critically review the U.S. national security implications of this legislation’s Interior Department implementing regulations. Had he done either, he would have, as a matter of prudence and reason, called for their repeal.

Aside from his reported lapse in judgment, Mr. Zinke has received kudos for his prior service as a member of SEAL Team 6 and as a member of other SEAL teams conducting operations in the Middle East, by guarding America’s front-door against lethal terrorists. However, as a member of the U.S. Congress, Ryan Zinke has failed to guard America’s back-door against infiltration by lethal terrorists, particularly, those able to enter the United States in apparently innocent and/or unnoticed fashion (e.g., as putative political refugees) across an extremely porous and virtually unguarded 3,987-mile U.S.-Canada border that spans “sovereign” Indian reservations and/or is within 50 miles of “sovereign” Indian reservations.

Mr. Zinke, moreover, has thus far refused to comment on the established connection between the HEARTH Act and the Islamic Government of Turkey’s prior engagement (during 2008-2009) in extensive public outreach efforts (including a sponsored trip to Istanbul, Turkey) toward 17 Native

<sup>93</sup> *Id.*, at paras. 72, 78.

<sup>94</sup> See Govtrack, *H.R. 205 (112th): HEARTH Act of 2012*, 112<sup>th</sup> Cong., available at: <https://www.govtrack.us/congress/votes/112-2012/h252>.

<sup>95</sup> See Brenda Ahearn, *St. Ignatius Consultant Becomes Zinke Campaign Manager*, Missoulian (July 15, 2014), available at: [http://missoulian.com/news/state-and-regional/st-ignatius-consultant-becomes-zinke-campaign-manager/article\\_1884bf98-0c7d-11e4-9484-0019bb2963f4.html](http://missoulian.com/news/state-and-regional/st-ignatius-consultant-becomes-zinke-campaign-manager/article_1884bf98-0c7d-11e4-9484-0019bb2963f4.html).

<sup>96</sup> See Lisa Baumann, *Zinke Announces Hiring of Top Staff*, Great Falls Tribune (Jan. 6, 2015), available at: <http://www.greatfallstribune.com/story/news/politics/2015/01/06/zinke-announces-hiring-top-staff/21343109/>.

American Tribes<sup>97</sup> with reservations spanning or located 50 miles from the U.S.-Canada border. These efforts had largely been based on an alleged common ancestry<sup>98</sup> (i.e., a common cultural (genetic) identity<sup>99</sup> and a common experience of oppression at the hands of the “European settlers.”<sup>100</sup>)

The seven tribes meeting these criteria included: 1) the Bay Mills Indian Community of Michigan;<sup>101</sup> 2) the Stockbridge-Munsee Band of Mohican Indians of Wisconsin;<sup>102</sup> 3) the Coeur

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<sup>97</sup> See *Keenan v. Bay*, Civil Action No. 1:15-cv-01440, *supra* at “Complaint,” paras. 69-71, 84. See also *Id.*, at Exhibit 41, available at: [http://www.koganlawgroup.com/uploads/EXHIBIT\\_41\\_-\\_TURKEY\\_OUTREACH\\_EFFORTS\\_TOWARD\\_INDIAN\\_TRIBES\\_2008-2015.pdf](http://www.koganlawgroup.com/uploads/EXHIBIT_41_-_TURKEY_OUTREACH_EFFORTS_TOWARD_INDIAN_TRIBES_2008-2015.pdf); *Id.*, at Exhibit 43, available at: [http://www.koganlawgroup.com/uploads/EXHIBIT\\_43\\_-\\_MCCURDY\\_TESTIMONY\\_HR2362\\_TURKEY\\_11-3-13.pdf](http://www.koganlawgroup.com/uploads/EXHIBIT_43_-_MCCURDY_TESTIMONY_HR2362_TURKEY_11-3-13.pdf).

<sup>98</sup> See *Id.*, at Exhibit 42, available at: [http://www.koganlawgroup.com/uploads/EXHIBIT\\_42\\_-\\_COLEMAN\\_TESTIMONY\\_HR\\_2362\\_TURKEY\\_HR\\_205\\_HEARTH\\_11-3-11.pdf](http://www.koganlawgroup.com/uploads/EXHIBIT_42_-_COLEMAN_TESTIMONY_HR_2362_TURKEY_HR_205_HEARTH_11-3-11.pdf).

<sup>99</sup> See e.g., Matthew C. Dulik, Sergey I. Zhadanov, Ludmila P. Osipova, Ayken Askapuli, Lydia Gau, Omer Gokcumen, Samara Rubinstein and Theodore G. Schurr, *Mitochondrial DNA and Y Chromosome Variation Provides Evidence for a Recent Common Ancestry between Native Americans and Indigenous Altaians*, 90 *The American Journal of Human Genetics* 229–24 (Feb. 10, 2012), available at: [http://ac.els-cdn.com/S0002929711005490/1-s2.0-S0002929711005490-main.pdf?\\_tid=3360b3a6-df50-11e5-9738-00000aabb0f27&acdnat=1456797305\\_5f3857de9a2b4bce864ca18aee969613](http://ac.els-cdn.com/S0002929711005490/1-s2.0-S0002929711005490-main.pdf?_tid=3360b3a6-df50-11e5-9738-00000aabb0f27&acdnat=1456797305_5f3857de9a2b4bce864ca18aee969613) (“demonstrating that southern Altaians and Native Americans share a recent common ancestor”).

<sup>100</sup> This reference is to the common oppression experienced by Native Americans at the hands of European Christian discoverers and subsequent settlers, and by Muslims during the Crusades at the hands of European Christian soldiers. See, e.g., *Crusades*, History.com, available at: <http://www.history.com/topics/crusades>; Norman Housley, *The Crusades and Islam*, 13 *Medieval Encounters* 189-208 (Brill Publ. 2007), available at: <http://users.clas.ufl.edu/ncaputo/euh4930-08/articles/hously.pdf>. Cf. James Arlandson, *The Truth about Islamic Crusades and Imperialism*, *American Thinker* (Nov. 27, 2005), available at: [http://www.americanthinker.com/articles/2005/11/the\\_truth\\_about\\_islamic\\_crusad.html](http://www.americanthinker.com/articles/2005/11/the_truth_about_islamic_crusad.html). See also Fred Whitehead, *New Studies by Native American Scholar Document the Role of Christianity in Historic Oppression*, *Freethought History*, #9 (1994), available at: <http://ili.nativeweb.org/newstudy.html>; Blake A. Watson, *Book Review: Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* By Steven T. Newcomb, *Great Plains Research: A Journal of Natural and Social Sciences Paper* 1057 (2009), available at: <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=2056&context=greatplainsresearch>; Steven Newcomb, *Five Hundred Years of Injustice: The Legacy of Fifteenth Century Religious Prejudice*, *Shaman's Drum* (Fall 1992), available at: [http://ili.nativeweb.org/sdrm\\_art.html](http://ili.nativeweb.org/sdrm_art.html); Steven Newcomb, *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* (Fulcrum Publ., 3d edition Jan.1, 2008), available at: <http://www.columbia.edu/cu/cser/issp/files/bibliography2013/Newcomb.PagansPromisedLand.ix-xxxiii.73-102.pdf>; <http://www.amazon.com/Pagans-Promised-Land-Christian-Discovery/dp/1555916422>.

<sup>101</sup> See *Bay Mills Indian Community, Tax Agreement Area Map*, available at: <http://www.baymills.org/tax-agreement-area-map.php>. See also *The National Atlas of the United States of America, Michigan – Federal Lands and Indian Reservations*, available at: <https://www.worldofmaps.net/en/north-america/michigan-usa/map-federal-lands-and-indian-reservations.htm> and <https://www.worldofmaps.net/typo3temp/images/michigan-federal-lands-indian-reservations-map.png>. See also Wikipedia, *Bay Mills Indian Community*, available at: [https://en.wikipedia.org/wiki/Bay\\_Mills\\_Indian\\_Community](https://en.wikipedia.org/wiki/Bay_Mills_Indian_Community) and [https://en.wikipedia.org/wiki/Bay\\_Mills\\_Indian\\_Community#/media/File:MichiganIndianReservations.svg](https://en.wikipedia.org/wiki/Bay_Mills_Indian_Community#/media/File:MichiganIndianReservations.svg).

<sup>102</sup> See *Great Lakes Inter-Tribal Council, Inc., Tribes - Stockbridge-Munsee Community*, available at: <http://www.glitc.org/tribes/stockbridgemunsee>.

d'Alene Tribe of Idaho;<sup>103</sup> 4) the Seneca Nation of New York;<sup>104</sup> 5) the Assiniboine-Sioux<sup>105</sup> and Salish and Kootenai CSKT) tribes<sup>106</sup> of Montana; and 6) the Colville Reservation tribes of Washington.<sup>107</sup> The reservations of five of these seven tribes, *including the Flathead Indian Reservation on which the CSKT reside*, are also located within 100 miles of a nuclear power plant, a registered nuclear fuel facility or a registered uranium mine or deposit and also a water source.<sup>108</sup> Indeed, the Flathead Indian Reservation on which the CSKT reside is known to contain “mountains of uranium mine tailings” from past mining activities,<sup>109</sup> over which the U.S. government had sought to gain control,<sup>110</sup> and to be surrounded by areas containing uranium.<sup>111</sup>

<sup>103</sup> See Coeur D'Alene Tribe, *Culture-Ancestral Lands*, available at: <http://www.cdatribe-nsn.gov/cultural/ancestral.aspx>.

<sup>104</sup> See eSpatially New York, *The Blue Highways of GIS: Seneca Nation of Indians* (3/16/15), available at: <http://espatiallynewyork.com/2015/03/16/the-blue-highways-of-gis-seneca-nation-of-indians/>; Elizabeth M. Hoover, *Food Is Our Medicine, Seneca Nation, New York* (Jan. 29, 2015), available at: <https://gardenwarriorsgoodseeds.com/2015/01/29/food-is-our-medicine-seneca-nation-new-york/>.

<sup>105</sup> See Native American Tribes of the U.S., *Montana Tribes*, available at: <https://www.aaanativearts.com/montana-tribes>. See also Native American Tribes of the U.S., *Montana Tribes - Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation*, available at: <https://www.aaanativearts.com/assiniboine-and-sioux-tribes-of-the-fort-peck-indian-reservation> and <http://opi.mt.gov/Images/IndianEd/2010TrTerrMapB.jpg>. See also Native Village Youth and Education News, *With Only 50 Speakers Left, Tribes' Language to be Preserved by Team of IU Anthropologists* (Oct. 2009), available at: <http://www.nativevillage.org/Archives/2009%20Archives/Oct%202009%20I%20201%20NV%20News/With%20only%2050%20speakers%20left.htm>.

<sup>106</sup> See ArleeMontana.com, *Confederated Salish and Kootenai Tribes*, available at: [http://www.arleemontana.com/cultures/salish\\_and\\_kootenai\\_tribes;](http://www.arleemontana.com/cultures/salish_and_kootenai_tribes;) 4 BPBlogspot, available at: [http://4.bp.blogspot.com/-jYYbtOqUu5k/UrHHzTMKx1I/AAAAAAAAABE/tGRso\\_2wgD0/s1600/watercompactMap.JPG](http://4.bp.blogspot.com/-jYYbtOqUu5k/UrHHzTMKx1I/AAAAAAAAABE/tGRso_2wgD0/s1600/watercompactMap.JPG); Flathead TMDL Project Overview and Maps, *Montana TMDL Development Projects - FlatheadTPAs.jpg*, available at: <http://montanatmdlflathead.pbworks.com/w/file/47108831/FlatheadTPAs.jpg>.

<sup>107</sup> See The Confederated Tribes of the Colville Reservation, *Demographics*, available at: <http://colville.whydevelop.com/demographics.php>; Nez Perce Tribe and the Confederated Tribes of the Colville Reservation, *Coleville Reservation*, available at: <http://www.aaanativearts.com/colville-tribe/colville-reservation.htm>; *Colville Reservation in Map of Washington State*, available at: <http://www.kstrom.net/isk/books/baddies/washmap.html>.

<sup>108</sup> See *Keenan v. Bay*, Civil Action No. 1:15-cv-01440, *supra* at Exhibit 45 ([http://www.koganlawgroup.com/Our\\_Practice\\_DSQ3.php](http://www.koganlawgroup.com/Our_Practice_DSQ3.php)).

<sup>109</sup> See Tori Woodard, *The Ward Valley Low Level Waste Nuclear Dump Battle 1990-98*, The Energy Net, available at: <http://www.energy-net.org/01NUKE/WardValley.htm> (“The proximity of the proposed Ward Valley nuclear waste dump to Indian Reservations along the Colorado River is a local manifestation of a nation-wide pattern. **Past mining activities left mountains of uranium mine tailings** on the Pine Ridge Indian Reservation in South Dakota, the Wind River Indian Reservation in Wyoming, *the Flathead Indian Reservation in Montana*, the Navajo and Hopi Reservations in Arizona, and several pueblos and reservations in New Mexico” (emphasis added)).

<sup>110</sup> See Montana Women's History, *Freda Augusta Beazley and the Rise of American Indian Political Power* (Sept. 2, 2014), available at: <http://montanawomenshistory.org/freda-augusta-beazley-and-the-rise-of-american-indian-political-power/> (“*The Flathead Reservation* was one of the first reservations slated for Termination, but the Indian Bureau faced strong opposition from Montanans. As secretary for both the MIPB and the NCAI, Beazley urged Montana's legislature and its congressional representatives to unite against Termination. Kept abreast of tribes' concerns by Beazley and the MIPB, *Rep. Lee Metcalf exposed Termination as a “land-grab” aimed at divesting tribes of their natural resources, such as* hydroelectric power, oil, gas, and *uranium*” (emphasis added)).

<sup>111</sup> See *Keenan v. Bay*, Civil Action No. 1:15-cv-01440, *supra* at Exhibits 46-65 ([http://www.koganlawgroup.com/Our\\_Practice\\_DSQ3.php](http://www.koganlawgroup.com/Our_Practice_DSQ3.php)). See also Tristan Scott, *Health Officials to Notify Public About Radioactive Drinking Water*, Flathead Beacon (June 3, 2016), available at: <http://flatheadbeacon.com/2016/06/03/health-officials-notify-public-radioactive-drinking-water/> (“The discussions

Aside from these tribes, the Islamic Government of Turkey also sponsored eight additional tribes with reservations located within 100 miles of a nuclear power plant, a registered nuclear fuel facility or a registered uranium mine or deposit and also a water source. These include the Navajo Tribe of Arizona and New Mexico, the Tunica-Biloxi Tribe of Louisiana, the Rosebud Sioux and Sicangu Oyate Tribes of South Dakota, the Yakama Nation of Washington, the Cherokee Nation of Oklahoma, the Hopi Indians of Arizona, and the Oglala Sioux Tribe of South Dakota.<sup>112</sup>

Finally, the CSKT of the Flathead Indian Reservation located in northwestern Montana have been awarded unique contracts with the U.S. Department of Defense handling sensitive nuclear materiel, working at classified nuclear facilities, and providing replacement parts for aircraft used by Middle Eastern countries, including Turkey, which likely attracted the interest of the Islamic Republic of Turkey. For example, two March 17, 2012 articles appearing in the *Ravalli Republic* and the *Missoulian*, two local press mediums, reported, in part, how the CSKT's S&K Aerospace subsidiary had secured a \$1 billion military replacement parts contract with the U.S. Air Force to supply foreign air forces, including those **from Saudi Arabia, Libya and Turkey**.<sup>113</sup> For obvious reasons, only scant information about the CSKT's relationship with the Saudi Arabian Air Force (but none about its relationship with the Turkish or Libyan Air Forces) had previously appeared in the Tribes' 2011-2014 annual reports and corresponding quarterly newsletters.<sup>114</sup> A third local

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began in January, shortly after a Flathead Beacon article drew attention to the issue, reporting **that hundreds of drinking water samples tested in the area exceeded federal standards for gross alpha radioactivity, including uranium** and radon, potentially exposing area residents to unsafe levels of contaminants. In particular, the radioactive elements, which occur naturally, seem to be present in private water wells in the communities in and around Kila. At the Flathead City-County Board of Health's May 26 meeting, members agreed to organize a mailing campaign as a first step to raise public awareness about the potential for radioactive contaminants in private wells, and to encourage residents to have their drinking water tested and possibly treated." (emphasis added)); Tristan Scott, Welling Concerns, Flathead Beacon (Jan. 13, 2016), available at: <http://flatheadbeacon.com/2016/01/13/welling-concerns/> ("The dull throbbing in Lisa Miller's neck set in almost as soon as she and her family moved into their new log cabin home, perched in the granite hills near Kila, an unincorporated community west of Kalispell. [...] At a neighborhood barbecue last July, Lisa conveyed her exasperation to a neighbor, who mentioned that the radon could be in the Millers' drinking water, and that **a number of private wells in the area contained uranium**, including adjacent wells. Uranium decays to form radium, the neighbor explained, which decays to form radon. 'I left thinking, 'Uranium? What in the world is uranium?' Lisa recalled. The Millers would soon learn the answer to that question, but many others were about to surface. A month after the barbecue, **the Millers received an analytical report showing that uranium, the stuff of nuclear fuel for power plants and atom bombs, was present in the family's drinking water at a level considered unsafe by both federal and state standards. The report was ominously stamped 'not potable without treatment.'**" (emphasis added)).

<sup>112</sup> *Id.*, at Exhibit 45.

<sup>113</sup> See Vince Devlin, *S&K Aerospace Gets Air Force Contract Worth Almost \$1B*, Ravalli Republic (March 17, 2012), available at: [http://ravallirepublic.com/news/state-and-regional/article\\_858b198d-d88c-5e22-8e4f-858fca53e120.html](http://ravallirepublic.com/news/state-and-regional/article_858b198d-d88c-5e22-8e4f-858fca53e120.html); Vince Devlin, *S&K Aerospace Gets Air Force Contract Worth Almost \$1B*, Missoulian (March 17, 2012), ("James Schaan, S&K Aerospace vice president for business development, said the Parts and Repair Ordering Services Program supplies and repairs military equipment for the armies, navies and air forces of 83 nations. *Saudi Arabia*, South Korea, Jordan, Japan, Poland, *Turkey*, *Libya*, Morocco, Thailand, the Czech Republic – it's a long list of U.S. foreign military sales customers around the globe, Schaan said" (emphasis added).)

<sup>114</sup> See *2012-2013 Annual Report of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation*, at p. 32, available at: [http://www.koganlawgroup.com/uploads/CSKT\\_2012\\_Annual\\_Report.pdf](http://www.koganlawgroup.com/uploads/CSKT_2012_Annual_Report.pdf); *2013-2014 Annual Report of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation*, at p. 33, available at: [http://www.koganlawgroup.com/uploads/CSKT\\_2013\\_Annual\\_Report\\_resized.pdf](http://www.koganlawgroup.com/uploads/CSKT_2013_Annual_Report_resized.pdf); *S&K Group Spirit 03-2013*, Summer 2013, at p. 6, available at: [http://www.koganlawgroup.com/uploads/CSKT\\_groupspirit\\_2013\\_summer.pdf](http://www.koganlawgroup.com/uploads/CSKT_groupspirit_2013_summer.pdf);

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media article released on April 18, 2012 and appearing in the Valley Journal,<sup>115</sup> meanwhile, had mentioned the Tribes' blossoming relationship with the Government of Turkey; but, it refrained from discussing anything about a CSKT/S&K military contract with Turkey or Libya.

On September 3, 2015, the U.S. Department of Energy issued a press release announcing that a \$12.8 million, fixed-price, contract had been awarded to S&K Logistics LLC, a CSKT subsidiary, "for project scheduling and cost estimating support services at the Savannah River Site."<sup>116</sup> According to the press release, "[t]he Savannah River Site (SRS) is a key DOE industrial complex dedicated to environmental cleanup, nuclear weapons stockpile stewardship, and nuclear materials disposition, in support of the U.S. nuclear non-proliferation efforts."<sup>117</sup> In addition, the press release stated that the Savannah Site "also develops and deploys technologies to support radiological and chemical cleanup activities following approximately 50 years of producing materials used for nuclear weapons, primarily plutonium and tritium."<sup>118</sup> In October 2015, S&K Logistics issued its own press release<sup>119</sup> announcing the contract award, as well as, a quarterly newsletter issue describing the contract in more detail. In particular, it stated that S&K "will support existing projects, initiatives, operation activities, and future Site missions," and "be establishing a new and proprietary software system for DOE use in forecasting, tracking, analysis, and reporting of ongoing DOE projects at the Site."<sup>120</sup> Clearly, S&K Logistics would be handling national security-sensitive information and possessed uranium handling skills which the Government of Turkey and other Middle Eastern entities, including terrorist groups which Turkey is known to harbor, such as Muslim Brotherhood, would potentially be interested in learning more about.

Also, during September 2015, the *National Interest* had published an article authored by a former German Defense Ministry official entitled, *Is Turkey Secretly Working on Nuclear Weapons?*. It argued that "[for] quite some time, evidence is mounting that Ankara is trying to acquire nuclear weapons."<sup>121</sup> In particular, the article asserted that, "the likelihood of a Turkish nuclear weapons

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*S&K Group Spirit 01-2014*, Winter 2014, at p. 9, available at: [http://www.koganlawgroup.com/uploads/CSKT\\_groupspirit\\_2014\\_01\\_winter.pdf](http://www.koganlawgroup.com/uploads/CSKT_groupspirit_2014_01_winter.pdf).

<sup>115</sup> See Tetona Dunlap, *S&K Technologies Lands \$975 Million Contract*, Valley Journal (April 18, 2012), available at: <http://www.valleyjournal.net/Article/2317/S-K-Technologies-lands-975-million-contract> (wherein S&K Technologies CEO Tom Acevedo stated that, "we have new connections with Turkey, and we would like to build that relationship").

<sup>116</sup> See Bill Taylor, *Savannah River Site Awards Small Business Contract to S&L Logistics*, U.S. Department of Energy Savannah River Site (Sept. 3, 2015), available at: <http://www.energy.gov/em/articles/savannah-river-site-awards-small-business-contract-sl-logistics>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> See Amy Schlatter, *S&K Logistics Services Earns Support Contract at the Savannah River Site Nuclear Facility*, The S&K Family of Companies (Oct. 20, 2015), available at: <http://www.skcorp.com/sk-logistics-services-earns-support-contract-at-the-savannah-river-site-nuclear-facility/>.

<sup>120</sup> See S&K Group Spirit, *S&K Logistics Services Earns Support Contract with Nuclear Facility in Georgia* (Fall 2015), at pp. 1 and 3, available at: [http://www.koganlawgroup.com/uploads/CSKT\\_groupspirit\\_2015\\_04\\_fall.pdf](http://www.koganlawgroup.com/uploads/CSKT_groupspirit_2015_04_fall.pdf) (containing a title page with the partial headline: "Going Nuclear: New Project at Savannah River Site").

<sup>121</sup> See Hans Rühle, *Is Turkey Secretly Working on Nuclear Weapons?*, The National Interest (Sept. 22, 2015), available at: <http://nationalinterest.org/feature/turkey-secretly-working-nuclear-weapons-13898> ("Hans Rühle is a former Head of the Planning Staff in the German Ministry of Defense. He publishes frequently on security and defense matters").

program ha[d] increased dramatically. Simply put: the Western intelligence community now largely agrees that Turkey is working both on nuclear weapon systems and on [...] means of delivery. Iran is the model to emulate.”<sup>122</sup>

To support these claims, the article’s author found, based on “thorough analysis” of civilian nuclear power plant procurement contracts Turkey has executed with the Russian Federation, and a French-Japanese consortium, that Turkey had rejected, without explanation, the typical contract provisions for constructing a light-water reactor” which “require[s] the use of low enriched uranium” and the plant builder-operator “take back [of] the spent fuel rods.”<sup>123</sup> “Turkey insisted that the deal would neither include the provision of uranium nor the return of the spent fuel rods. Ankara wanted to deal with this matter separately at a later stage.”<sup>124</sup>

As the article’s author related, this could only mean one thing: “Turkey wants to maintain the option to run the reactors with its own low enriched uranium and to reprocess the spent fuel rods itself. This, in turn, means that Turkey intends to enrich uranium, at least to a low level.” In addition, the article’s author emphasized how Turkey’s pursuit of “twenty-three projects in total— indicates the scope of Turkey’s envisioned enrichment effort. The path that Turkey wants to take is clear: to follow in Iran’s footsteps.” The Rühle article, furthermore, argues that, “rejection to return the spent fuel rods to the supplying countries [...] allows for only one conclusion: Turkey is bent on producing plutonium for making weapons. [...] With its rejection to return the spent fuel rods, Turkey is embarking on the pathway to the bomb.”<sup>125</sup> This article also relates that other foreign intelligence sources had concluded, as early as 2010, that “Turkey could become a nuclear power *any time it wanted to*.”<sup>126</sup>

This could become a reality if Turkey were enabled to secure access to significant U.S. uranium reserves and/or to U.S. uranium refining technology. In June 2015, it was announced that publicly

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> See *Id.* (“The assumption that Turkey is aiming for nuclear weapons is also supported by the country’s activities towards creating the entire nuclear fuel cycle. As has been revealed by a well-connected information service, German intelligence reported that as far back as May 2010, Prime Minister Erdogan had demanded to secretly start preparing for the construction of sites to enrich uranium. Accordingly, Turkey has started to produce Yellowcake, a chemically compressed uranium ore. Yellowcake is converted to gas, which is then enriched in centrifuges. To date, nothing is publicly known about a conversion plant in Turkey, yet according to the BND, Turkey is already in possession of enriched uranium originating from a former Soviet republic and smuggled via Kosovo and Bosnia and Herzegovina with the help of the Mafia. It would not come as a surprise if Turkey already had centrifuges to enrich uranium. After all, Turkey was involved in the activities of Pakistani nuclear smuggler Abdul Qadeer Khan, who between 1987 and 2002 sold thousands of centrifuges to Iran, North Korea and Libya. The electronics of these centrifuges came from Turkey. Khan had even contemplated moving his entire illegal production capacity of centrifuges to Turkey. In 1998, then Pakistani prime minister Nawaz Sharif offered Turkey a “nuclear partnership” on nuclear research. Moreover, there is still an organic partnership between both countries dating back to Turkey’s support for Pakistan’s nuclear program”).

<sup>126</sup> *Id.* (“Given the ambiguities surrounding the level of nuclear expertise of Turkish scientists, it remains difficult to offer clear-cut facts about the current state of Turkey’s nuclear activities. What appears worrying, however, are statements from intelligence circles about an advanced nuclear program. According to some sources, Israeli prime minister Netanyahu informed then Greek prime minister Papandreou on March 15, 2010 that Turkey could become a nuclear power any time it wanted to”) (emphasis added).

traded (NASDAQ listed) Colorado-based Uranium Resources, Inc. would merge with/acquire publicly traded Australian-based Anatolia Energy Ltd.<sup>127</sup> Following an Australian federal court's approval of the merger in October,<sup>128</sup> the companies thereafter announced, in November 2015, that the merger/acquisition had been completed.<sup>129</sup>

According to the World Nuclear Association (“WNA”), Anatolia Energy “has a 100% interest in 18 exploration licences which include the Temrezli project [located...] in the central Anatolian region 220 km east of Ankara,” Turkey.<sup>130</sup> In fact, the “Temrezli uranium deposit is the largest and highest grade uranium deposit known in Turkey, located in one of the richest uranium districts in the country.”<sup>131</sup>

When URI had announced the merger, it mentioned that it would complete further feasibility work to fully evaluate the relocation to the Temrezli Project site of its currently idle Rosita, Texas in-site recovery (“ISR”) processing facility, which had major upgrades and additions in 2007-2008 before construction was halted.<sup>132</sup> According to URI, if such relocation were to occur, the combined company would save approximately \$8 million in startup capital expenditures.<sup>133</sup> The relocated Rosita plant also could potentially process significant quantities of uranium at low cost in support of Temrezli Project operations.<sup>134</sup> Since the merger was actually an acquisition, the

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<sup>127</sup> See Uranium Resources, Inc., *Uranium Resources and Anatolia Energy Announce Merger with Aim to Fast-Track Uranium Production*, News Release (June 3, 2015), available at: <http://investor.uraniumresources.com/releasedetail.cfm?ReleaseID=916287>;

<http://www.businesswire.com/news/home/20150603005916/en/> (“Upon completion of the Merger, Anatolia shareholders are expected to own approximately 40.6% of the merged company, and current Uranium Resources shareholders are expected to own approximately 59.4%.”). Anatolia Energy Ltd. is 15% percent owned by Vancouver Canada-based Powertech Uranium, which, in 2014, had been acquired by Vancouver, Canada-based Azarga Resources. The new entity, Azarga Uranium Corp., controls U.S.-based uranium properties located in South Dakota, Wyoming and Colorado. See World Nuclear Association, *Nuclear Power in Turkey* (Aug. 2015), *supra*. See also Azarga Uranium Corp., *Consolidated Financial Statements for the year ended December 31, 2014 and 2013*, at Notes to the Consolidated Financial Statements, p. 8, available at: <http://azargauranium.com/wp-content/uploads/financial/financial-statements/Azarga-Uranium-Corp-12.31.2014-Financial-Statements.pdf> (The company’s corporate offices are located in Greenwood, CO, while its registered and records is located in Vancouver, British Columbia, CA.)

<sup>128</sup> See Uranium Resources, Inc., *Merger of URI and Anatolia Energy Approved by Australian Federal Court*, Businesswire (Oct. 22, 2015), available at: <http://www.businesswire.com/news/home/20151022005750/en/>.

<sup>129</sup> See Uranium Resources, Inc., *URI Successfully Completes Anatolia Merger A New Chapter Begins – Headed Towards Production*, News Release (Nov. 8, 2015), available at: <http://www.uraniumresources.com/investors/news-releases/2015/11/08/uri-successfully-completes-anatolia-merger-a-new-chapter-begins-headed-towards-production>.

<sup>130</sup> See World Nuclear Association, *Nuclear Power in Turkey* (Aug. 2015), *supra*.

<sup>131</sup> See Uranium Resources, Inc., *Uranium Resources and Anatolia Energy Announce Merger with Aim to Fast-Track Uranium Production*, News Release (June 3, 2015), *supra*.

<sup>132</sup> See Uranium Resources, Inc., *Uranium Resources and Anatolia Energy Announce Merger with Aim to Fast-Track Uranium Production*, News Release (June 3, 2015), *supra*.

<sup>133</sup> *Id.*; See also Peter Epstein, Exclusive Interview with Uranium Resources, Inc. (URRE) President and CEO Christopher Jones, Smarter Analyst (Aug. 7, 2015), available at: <http://www.smarteranalyst.com/2015/08/07/exclusive-interview-with-uranium-resources-inc-urre-president-and-ceo-christopher-jones/>.

<sup>134</sup> See Uranium Resources, Inc., *Uranium Resources and Anatolia Energy Announce Merger with Aim to Fast-Track Uranium Production*, News Release (June 3, 2015), *supra* (“It is fit for our Temrezli Project, and has the added benefit of already being designed and constructed with the ability to scale up the production profile from 800,000 lb U308 per



WNA reported that “the Turkish projects will be under URI, which will contribute experienced staff and a treatment plant to Temrezli (from Rosita in Texas).”<sup>135</sup>

URI’s press release boasts that the company “holds a federal Nuclear Regulatory Commission license to recover up to three million pounds of uranium [pa U308] per year” in New Mexico. In addition, it states that the company t also “controls minerals rights encompassing approximately 195,000 acres in the prolific Grants Mineral Belt in New Mexico, which holds one of the largest known concentrations of sandstone-hosted uranium deposits in the world.”<sup>136</sup>

URI also represented that it holds mineral rights to explore approximately 17,000 acres in South Texas, in which it has current projects at Butler Ranch and Alta Mesa Este.<sup>137</sup> In December 2015, the U.S. Geological Survey of the U.S. Department of Interior released a report stating that it believed there may be in excess of 200 million more pounds of uranium oxide reserves under the rolling South Texas plains than the 60 million pounds it had previously identified. It estimated that the combined identified and undiscovered uranium oxide resources could potentially provide “for almost five years of annual domestic U.S. nuclear fuel requirements.”<sup>138</sup>

The San Antonio Business Journal’s discussion of the USGS report notes, however, that the current low market price for uranium does not auger well for the mining and development of such discovery. “Data from Canadian mining giant Cameco (NYSE: CCJ) shows that uranium prices reached an all-time high of \$136 per pound in June 2007 and dramatically plummeted following the March 2011 nuclear power plant accident in Fukushima, Japan. Uranium is currently trading at \$36 per pound. Lower demand from Japan and subsequently lower commodity prices ha[s] had a strong and negative effect on mining.”<sup>139</sup>

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annum to 1.6 million lb U308per annum with some additional upgrades, which would accommodate potential future production from satellite operations that may feed into the Temrezli central processing plant.”)

<sup>135</sup> See World Nuclear Association, *Nuclear Power in Turkey* (Aug. 2015), *supra*.

<sup>136</sup> See Uranium Resources, Inc., *Uranium Resources Enters Agreement to Raise \$2.5 Million Cash With Other Consideration as It Divests Roca Honda Assets and Provides Update on the Merger With Anatolia*, Business Wire (June 28, 2015), available at: <http://www.businesswire.com/news/home/20150628005056/en/Uranium-Resources-Enters-Agreement-Raise-2.5-Million>.

<sup>137</sup> See Uranium Resources, Inc., *Merger of Uranium Resources, Inc. and Anatolia Energy Limited*, presentation at Australian Uranium Conference (Perth, July 15-16, 2015), at p. 13, available at: <http://www.uraniumresources.com/docs/default-source/anatolia-energy-archive/merger-of-uranium-resources-inc-and-anatolia-energy-limited-15-july-2015.pdf?sfvrsn=4>.

<sup>138</sup> See U.S. Geological Survey Energy Resources Program, *Estimates of Potential Uranium in South Texas Could Equal Five Years of U.S. Needs*, Energy News and Current Publications (Dec. 2, 2015), available at: <http://energy.usgs.gov/GeneralInfo/EnergyNewsroomAll/TabId/770/ArtMID/3941/ArticleID/1194/Estimates-of-Potential-Uranium-in-South-Texas-Could-Equal-Five-Years-of-US-Needs.aspx>; U.S. Geological Survey, *Estimates of Potential Uranium in South Texas Could Equal Five Years of U.S. Needs*, USGS Newsroom (Dec. 2, 2015), available at: [http://www.usgs.gov/newsroom/article.asp?ID=4402&from=rss\\_home#.Vm3HNfnF-Sr](http://www.usgs.gov/newsroom/article.asp?ID=4402&from=rss_home#.Vm3HNfnF-Sr). See also U.S. Geologic Survey, *Domestic Uranium Assessment, Assessment of Undiscovered Sandstone-Hosted Uranium Resources in the Texas Coastal Plain*, 2015 (Dec. 2015), available at: <http://pubs.usgs.gov/fs/2015/3069/fs20153069.pdf>.

<sup>139</sup> See Sergio Chapa, *New Deposits of Uranium Found in South Texas But Low Prices Remain a Challenge*, San Antonio Business Journal (Dec. 7, 2015), available at: <http://www.bizjournals.com/sanantonio/news/2015/12/07/new-deposits-of-uranium-found-in-south-texas-but.html>.

At the time of their announced merger, URI and Anatolia Energy proclaimed that the combined company would be “positioned as one of the next low cost uranium producers, *with a strong growth pipeline in the USA and Turkey*” (emphasis added).<sup>140</sup> Perhaps, URI and the Obama administration have been focused, all along, on exporting much-needed U.S.-based raw and/or processed uranium to Turkey and other Middle Eastern countries with which the U.S. State Department had previously negotiated and is currently negotiating 123 agreements?<sup>141</sup> Or, perhaps, URI and the Obama administration had long been focused on exporting U.S.-based raw and/or processed uranium to China, which has many existing and forthcoming nuclear reactors it must supply?<sup>142</sup>

As the evidence shows, the Islamic Government of Turkey has pursued and continues to pursue business relationships and cultural and educational exchanges with Native American Tribes located on or near U.S. borders and within a relatively close proximity to sensitive energy resources. In addition, companies holding significant economic interests in developing Turkey’s uranium mining industry secured access to the largest U.S. uranium reserves available, with whom its representatives claim genetic kinship, gives rise to various national security risks, namely those concerning security of the U.S.-Canada border which is currently vulnerable to passage by potential terrorists posing as innocent refugees, and those concerning security against nuclear materiel proliferation which can reach the hands of terrorists. Had Ryan Zinke taken the trouble to do his homework, he would have discovered how “sovereign” Indian reservations like the *Flathead Indian Reservation* located near open U.S.-Canada borders pose such national security risks.

b. *Sovereign” Indian Reservations Have Long Posed and Continue to Pose Threats to U.S.-Canada and U.S.-Mexico Border Security*

Clearly, the *Flathead Indian Reservation*, like many other reservations throughout the country, suffers from methamphetamine (“meth”) use and abuse attributable to the omnipresence of foreign and domestic drug cartels.<sup>143</sup> Similarly, the Kerr and Hungry Horse Dams of northwestern

<sup>140</sup> See Uranium Resources, Inc., *Uranium Resources and Anatolia Energy Announce Merger with Aim to Fast-Track Uranium Production*, News Release (June 3, 2015), *supra*.

<sup>141</sup> See, e.g., Chen Kane, *US Nuclear Cooperation Agreements and the Middle East*, Arms Control and Regional Security for the Middle East (Aug. 3, 2012), available at: <http://middleeast-armscontrol.com/2012/08/03/us-nuclear-cooperation-agreements-and-the-middle-east/>.

<sup>142</sup> See Paul K. Kerr and Mary Beth D. Nikitin, *Nuclear Cooperation with Other Countries: A Primer*, Congressional Research Service Report for Congress RS22937 (Aug. 5, 2015), *supra* at p. 9 (“President Obama submitted a new 30-year U.S.-China nuclear cooperation agreement for congressional review on April 21, 2015. [...Despite the introduction on July 15 of S.J.Res. 19,] which [] ‘disfavor[ed]’ the proposed Section 123 agreement with China, [...t]he agreement entered into force on November 10, 2015.”) See also Peter Epstein, *Uranium Resources, Inc. Past Producer of 8mm lbs. Permitted for 3mm lbs /Year in U.S.*, EpsteinResearch.com (10/22/15), available at: <http://epsteinresearch.com/2015/10/22/uranium-resources-inc-past-producer-of-8mm-lbs-permitted-for-3mm-lbs-year-in-u-s/> (“Consider that China has 25 nuclear reactors under construction on top of its 26 operational reactors, and plans to place a lot more into the construction phase. According to the World Nuclear Association, 43 additional reactors are planned and 136 proposed. That’s in China alone.”).

<sup>143</sup> See Lailani Upham and Ashley Upham, *Getting to Know Meth: Understanding the Problem Requires Knowing What It Is*, Char-Koosta News (March 19, 2015), available at: [http://www.charkoosta.com/2015/2015\\_03\\_19/Getting\\_to\\_know\\_meth.html](http://www.charkoosta.com/2015/2015_03_19/Getting_to_know_meth.html); Vince Devlin, *Meth Contamination Causes Headache for CSKT Housing Authority*, Missoulian (March 18, 2015), available at:

Montana are not the only critical energy infrastructure projects that are rendered more vulnerable to attack by foreign or domestic terrorist cells by the former Obama administration's questionable U.S. border and immigration/refugee and tribal sovereignty policies. It is thus inconceivable that Representative Zinke has, thus, far, refused to acknowledge credible government and other information source reporting revealing how weak U.S. law enforcement oversight of Native American reservations, especially along or near U.S. border areas, and poor communication with Indian tribal councils had given rise to lack of transparency, criminal activity and potential access of foreign terrorist networks.

As early as February 2002, the media cited the 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.<sup>144</sup> In October 2002, U.S. Customs and Border Protection ("CPB") convened its first Native American Border Security Conference in Washington, D.C. During the conference, former CPB Commissioner, Robert C. Bonner remarked how "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."<sup>145</sup> He also stated that,

"The Blackfeet Nation [in Montana] shares 63 miles of border with Canada; the Tohono O'odham Nation [in Arizona] shares a 75-mile boundary with Mexico. These and other border areas between our official ports of entry are important to our national security. These are areas through which those wishing to enter our country illegally could attempt to cross, and - make no mistake - that does not just include illegal migrants and smugglers of drugs and contraband. It potentially includes international terrorists. Even, potentially, terrorists bringing with them weapons of mass destruction -chemical, biological, or even radiological weapons."<sup>146</sup>

In his 2004 book entitled, *Nuclear Terrorism: The Ultimate Preventable Catastrophe*, Harvard University professor Graham Allison, a former Special Advisor to the Secretary of Defense under President Reagan and Assistant Secretary of Defense for Policy and Plans under President Clinton,

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[http://missoulian.com/news/local/meth-contamination-causes-headache-for-cs-kt-housing-authority/article\\_2577c07c-f822-5e0f-83bd-52a4d16f0e8b.html](http://missoulian.com/news/local/meth-contamination-causes-headache-for-cs-kt-housing-authority/article_2577c07c-f822-5e0f-83bd-52a4d16f0e8b.html). Cf. Justin Franz, *Blackfeet Tribal Council Votes to Banish Drug Dealers*, Flathead Beacon (Sept. 4, 2015), available at: <http://flatheadbeacon.com/2015/09/04/blackfeet-tribal-council-votes-to-banish-drug-dealers/>; Noelle Straub, *Tribal Leader Seeks Anti-Meth Aid*, Billings Gazette (Nov. 6, 2007), available at: [http://billingsgazette.com/news/state-and-regional/montana/tribal-leader-seeks-anti-meth-aid/article\\_758b5dce-c582-5d83-a4d6-58597284a7d8.html](http://billingsgazette.com/news/state-and-regional/montana/tribal-leader-seeks-anti-meth-aid/article_758b5dce-c582-5d83-a4d6-58597284a7d8.html). See also The National Congress of American Indians, *Methamphetamine in Indian Country: An American Problem Uniquely Affecting Indian Country* (2006), available at: [http://www.justice.gov/archive/tribal/docs/fv\\_tjs/session\\_1/session1\\_presentations/Meth\\_Overview.pdf](http://www.justice.gov/archive/tribal/docs/fv_tjs/session_1/session1_presentations/Meth_Overview.pdf).<sup>144</sup> See, e.g., Laura Sullivan, *Reservations Pose Border Risk: Potential U.S. Entry Through Indian Lands Raises Terror Alarms*, Baltimore Sun (Feb. 17, 2002), available at: [http://articles.baltimoresun.com/2002-02-17/news/0202170069\\_1\\_indian-reservations-border-security-indian-lands](http://articles.baltimoresun.com/2002-02-17/news/0202170069_1_indian-reservations-border-security-indian-lands).

<sup>145</sup> See *Remarks of U.S. Customs Commissioner Robert C. Bonner\*: Native American Border Security Conference Ronald Reagan Building*, U.S. Customs and Border Patrol archive (10/7/02), available at: <https://www.roadblockrevelations.org/roadblock/customs/conference/conferenceOpeningRemarks.pdf>.

<sup>146</sup> *Id.*

had warned that the lack of state or federal jurisdiction over such reservations, especially along U.S. borders, rendered them quite vulnerable to crossing by terrorists and criminals.

“The continental United States shares a 4,000-mile border with Canada and a 2,000-mile border with Mexico. [...] Indeed, in many places, the border disappears altogether. *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.* As the local Franklin County district attorney remarked, ‘Over the years, everything has been smuggled through there, from Iranian rugs – when you weren’t supposed to bring in Iranian rugs – to people, to drugs, to alcohol and cigarettes...The bad guys have always known about it.’ Four of the five Great Lakes also straddle the border with Canada. [...] Since 9/11, the number of Border Patrol agents assigned to the Canadian border has triple, from 334 to 1,000. Unfortunately, this still leaves four miles of border per agent. As Kevin Haskew, head of the International Boundary Commission (the U.S. agency responsible for surveying the U.S.-Canadian border), concluded, ‘You can walk across the border, and nobody’s going to know.’ Even with a higher concentration of agents at the border with Mexico, *approximately thirty backpackers carrying up to one hundred pounds of drugs still cross the Tohono O’odham Indian reservation along the Arizona-Mexico border each night.* The hikers simply duck under the single strand of barbed wire that marks the line and walk about fifteen miles through the desert to the reservation’s villages” (emphasis added).<sup>147</sup>

A more recent 2007 report prepared by the Republican Staff of the U.S. House Committee on Homeland Security, found, based on interviews conducted with “Federal and NY State law enforcement officers,” that Native American Indian reservations continue to serve as access points for Middle Eastern cigarette smuggling networks.

“[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. [...] In essence, the New York State Executive Branch’s decision to ‘look the other way’ on sales of untaxed Native American

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<sup>147</sup> See Graham Allison, *Nuclear Terrorism: The Ultimate Preventable Catastrophe*, Times Books (MacMillan) (©2004), at p. 114-115, available at: [https://books.google.com/books?id=jDFY6FY4aakC&pg=PA114&lpg=PA114&dq=Indian+reservations+%2B+terrorism&source=bl&ots=YZL-gXpyLX&sig=I5yVj26Fsl\\_qYiDB0CRATmGfMvA&hl=en&sa=X&ved=0ahUKEwjTw\\_u6ndXJAhXE4SYKHVhQAH04FBD0AQgnMAM#v=onepage&q=Indian%20reservations%20%2B%20terrorism&f=false](https://books.google.com/books?id=jDFY6FY4aakC&pg=PA114&lpg=PA114&dq=Indian+reservations+%2B+terrorism&source=bl&ots=YZL-gXpyLX&sig=I5yVj26Fsl_qYiDB0CRATmGfMvA&hl=en&sa=X&ved=0ahUKEwjTw_u6ndXJAhXE4SYKHVhQAH04FBD0AQgnMAM#v=onepage&q=Indian%20reservations%20%2B%20terrorism&f=false).

cigarettes to non-Native Americans, the so-called ‘policy of forbearance,’” has created a safe haven for illicit smuggling networks.”<sup>148</sup>

Notwithstanding tribal sensitivities, in 2007, the Secretary of the U.S. Treasury, the U.S. Attorney General and the Secretary of the U.S. Department of Homeland Security released their *National Money Laundering Strategy*<sup>149</sup> in response to the U.S. interagency *Money Laundering Threat Assessment* previously completed in December 2005.<sup>150</sup> The 2007 strategy described how high volume cash-intensive tribal casinos were highly vulnerable to money laundering. In particular, they singled out the risks posed by tribal-owned casinos considering that “[t]he growth of the casino industry in recent years has been driven primarily by Native American tribes.”<sup>151</sup>

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“The most notable development in this field is the striking growth of Native American casinos, which have enjoyed annual double-digit revenue growth for the last ten years [...]. These tribal casinos are moving rapidly from relative obscurity within the casino industry to a prominent position with ample potential for money laundering and other types of financial crimes. The regulatory structure of the tribal gaming industry is intricate, with somewhat overlapping layers of responsibility at the tribal, state, and federal levels. [...] 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.*[] If the tribal gaming industry were a single company, rather than 307 casinos, it would rank near the top 100 corporations in America” (emphasis added).<sup>152</sup>

According to these reports, the overlapping and often uncoordinated jurisdictions of various regulatory bodies and the FBI’s inability to devote sufficient investigative and enforcement “resources to Indian gaming violations even as the Indian gaming industry has grown,” has given rise to “concern over the potential for large-scale criminal activity in the Indian gaming

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<sup>148</sup> See Republican Staff of the U.S. House Committee on Homeland Security, *Tobacco and Terror: How Cigarette Smuggling is Funding Our Enemies Abroad*, U.S. Rep. Peter T. King, (R-NY), Ranking Member (Aug. 9, 2007), at pp. 3 and fn. 9; 8, available at: [http://www.foxnews.com/projects/pdf/Cigarette\\_smuggling\\_042408.pdf](http://www.foxnews.com/projects/pdf/Cigarette_smuggling_042408.pdf) (“New York State’s policy of forbearance as outlined in a letter from the Office of the Attorney General, State of New York, to U.S. District Court, Eastern District of New York regarding *City of New York v. Milhelm Attea & Bros., Inc.*, et al., 06 CV 3620 (CBA) dated September 24, 2007: Since the administration of Governor Pataki, the Department of Taxation and Finance has pursued what courts have referred to as a policy of non-enforcement, or forbearance, regarding collection of the excise taxes due on cigarettes sold on Indian reservations to non-tribal members”) *Id.*, at p. 8, fn. 19.

<sup>149</sup> See U.S. Department of the Treasury, U.S. Department of Justice and U.S. Department of Homeland Security, *2007 National Money Laundering Strategy* (2007) at p. 9, available at: <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/nmls.pdf>.

<sup>150</sup> See Money Laundering Threat Assessment Working Group, *U.S. Money Laundering Threat Assessment* (Dec. 2005), available at: <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/mlta.pdf>.

<sup>151</sup> See U.S. Department of the Treasury, U.S. Department of Justice and U.S. Department of Homeland Security, *2007 National Money Laundering Strategy* (2007), *supra* at p. 9.

<sup>152</sup> *Id.*, at Appendix A, p. 67. See also Money Laundering Threat Assessment Working Group, *U.S. Money Laundering Threat Assessment* (Dec. 2005), *supra* at p. 51.

industry.”<sup>153</sup> The 2007 strategy identified how the “law enforcement community [would] work through the 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.”<sup>154</sup>

In 2011, the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury 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.”<sup>155</sup> The penalty had been assessed because of the casino’s failure “to implement internal controls related to gathering and recording required information for BSA reporting,” from 2006-2009.<sup>156</sup> In 2013, Thomas J. Curry, former Comptroller of the Currency testified before the U.S. Senate Committee on Banking, Housing and Urban Affairs, that the Federal Reserve Bank of New York had discovered, during a routine bank examination, 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.”<sup>157</sup> “The case resulted in 21 indictments that also sought the recovery of assets totaling \$557 million.”<sup>158</sup>

In 2015, Senator Ron Johnson, Chairman of the U.S. Senate Committee on Homeland Security and Governmental Affairs, issued a report entitled, *The State of America’s Border Security*.<sup>159</sup> The report noted concerns conveyed in a 2010 article appearing in the McClatchey DC, that “[t]raffickers in Mexico and Canada increasingly [were] using Indian reservations along the borders as conduits for bringing marijuana, Ecstasy and other illicit drugs into the U.S.”<sup>160</sup> The article relayed that the U.S. Department of Justice had been closely monitoring two reservations in particular – 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.<sup>161</sup>

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<sup>153</sup> See U.S. Department of the Treasury, U.S. Department of Justice and U.S. Department of Homeland Security, *2007 National Money Laundering Strategy* (2007), *supra* at Appendix A, p. 70. See also Money Laundering Threat Assessment Working Group, *U.S. Money Laundering Threat Assessment* (Dec. 2005), *supra* at p. 54.

<sup>154</sup> See U.S. Department of the Treasury, U.S. Department of Justice and U.S. Department of Homeland Security, *2007 National Money Laundering Strategy* (2007), *supra* at p. 9.

<sup>155</sup> See Financial Crimes Enforcement Network of the U.S. Department of the Treasury, *FinCEN Assesses Civil Money Penalty Against Minnesota-Based Tribal Casino*, News Release (April 21, 2011), available at: [https://www.fincen.gov/news\\_room/nr/pdf/20110421.pdf](https://www.fincen.gov/news_room/nr/pdf/20110421.pdf).

<sup>156</sup> *Id.*

<sup>157</sup> See 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, available at: <http://www.occ.treas.gov/news-issuances/congressional-testimony/2013/pub-test-2013-41-written.pdf>.

<sup>158</sup> *Id.*

<sup>159</sup> See U.S. Senate Committee on Homeland Security and Governmental Affairs, Majority Staff Report, *The State of America’s Border*, Senator Ron Johnson, Chairman, 114<sup>th</sup> Cong. (Nov. 23, 2015), available at: <https://assets.documentcloud.org/documents/2642269/Final-Border-Report.pdf>.

<sup>160</sup> See Tim Johnson, *Indian Reservations on Both U.S. Borders Become Drug Pipelines*, McClatchey D.C. (June 16, 2010), available at: <http://www.mcclatchydc.com/news/nation-world/world/article24585559.html>.

<sup>161</sup> *Id.* (“The U.S. Justice Department is closely watching on two reservations where it says the problems are most acute: the St. Regis Mohawk Reservation in upstate New York and the Tohono O’odham Reservation in Arizona. As much as 20 percent of all the high-potency marijuana grown in Canada each year is smuggled through the St. Regis

According to the Johnson report,

“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[]” (emphasis added).<sup>162</sup>

As proof, the Johnson report cites the 1998 discovery by U.S. and Canadian officials of “a human smuggling ring operated by 47 Chinese immigrants and members of the St. Regis Mohawk Reservation,” the 2010 Drug Enforcement Agency (DEA) discovery of “82,000 marijuana plants in tribal lands located in Washington State,” and the ongoing cigarette smuggling taking place from the U.S. to Canada.<sup>163</sup> It also cited a 2011 Government Accountability Office report described in more detail below.

The 2011 GAO report cited within the Johnson report addressed DHS’ progress in securing the northern and southwestern U.S. borders, and contained references to two other GAO reports. First, it referenced a 2009 GAO report focused on the state of federal agency information sharing with local and tribal law enforcement agencies. It found that,

“most of the local and *tribal officials in the border communities [GAO officials] 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. According to an October 2008 intergovernmental report on suspicious activities, *fundamental to local and tribal law enforcement agencies’ efforts to detect and mitigate potential terrorist threats is ensuring that front-line personnel recognize and have the ability to document behaviors and incidents indicative of criminal activity associated with international terrorism.*[] Unlike behaviors, activities, or situations that are clearly criminal in nature—such as car thefts, burglaries, or assaults—suspicious activity reporting involves suspicious behaviors that have been associated with terrorist activities in the past and may be predictive of future threats to public safety. Examples include surveillance, photographing of facilities, site breaches or physical intrusion, cyberattacks, and the probing of security” (emphasis added).<sup>164</sup>

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Mohawk Reservation, according to the National Drug Intelligence Center's 2010 drug threat assessment report. Drug gangs smuggle 5 percent to 10 percent of all the marijuana produced in Mexico through the Tohono O'odham Reservation in Arizona, it adds.”).

<sup>162</sup> See U.S. Senate Committee on Homeland Security and Governmental Affairs, Majority Staff Report, *The State of America’s Border*, Senator Ron Johnson, Chairman, 114<sup>th</sup> Cong. (Nov. 23, 2015), at p. 44.

<sup>163</sup> *Id.*, at pp. 44-45.

<sup>164</sup> See United States Government Accountability Office, *Information Sharing: Federal Agencies Are Sharing Border and Terrorism Information with Local and Tribal Law Enforcement Agencies, but Additional Efforts Are Needed*, Report to the Chairman, Committee on Homeland Security, House of Representatives, GAO-10-41 (Dec. 2009), at p.

Although the GAO’s 2011 report found that “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.”<sup>165</sup>

The 2011 report also referenced a 2010 GAO report that had previously found, notwithstanding improved “information sharing and communication among DHS, DOI, and USDA law enforcement officials [...] in recent years, [...] critical gaps remained in implementing interagency agreements to ensure law enforcement officials had access to daily threat information and compatible secure radio communications needed to better ensure officer safety and an efficient law enforcement response to illegal activity.”<sup>166</sup>

These three GAO reports clearly indicate that better communication and coordination between and among federal, state and tribal officials was needed to ensure against a terrorist threat along the border near or within Indian country. Nevertheless, to the extent there is ongoing tribal resistance to U.S. border security measures on asserted “sovereignty” and “cultural identity” grounds, Indian reservations will continue to serve as illegal entry points for criminal activities, foreign drug cartels and Middle Eastern and other terrorists.

It should be noted that the reports discussed above identifying specific reservations that provide too easy an entry point for illegal immigrants and potential terrorists, arguably overlooked tribal members’ point of view. The tribal point of view is that 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.”<sup>167</sup> According to, at least one article:

“The homeland of the Tohono O’odham was split in two in 1853 with the Gadsden Purchase. [...] With the US-Mexico border cutting their sovereign territory in half, the people of Tohono O’odham are restricted from traveling freely within their own traditional homelands. *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*

35, available at: <http://www.gao.gov/new.items/d1041.pdf>, citing DOJ Criminal Intelligence Coordinating Council, Global Justice Information Sharing Initiative, Major Cities Chiefs Association, and DHS, *Findings and Recommendations of the Suspicious Activity Report (SAR) Support and Implementation Project* (Oct. 2008), available at: <https://it.ojp.gov/GIST/103/Findings-and-Recommendations-of-the-Suspicious-Activity-Reporting--SAR--Support-and-Implementation-Project>.

<sup>165</sup> See United States Government Accountability Office, *Border Security: DHS Progress and Challenges in Securing the U.S. Southwest and Northern Borders*, GAO-11-508T (March 30, 2011), at p. 13, available at: <http://www.gao.gov/new.items/d11508t.pdf>.

<sup>166</sup> *Id.*, citing United States Government Accountability Office, *Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands*, GAO-11-177 (Nov. 18, 2010), at pp. 13-14, available at: <http://www.gao.gov/assets/320/312517.pdf>.

<sup>167</sup> See Ruben Pacheco, *When the Border Crosses You*, OpenBorders.com (July 31, 2015), available at: <http://openborders.info/blog/tag/border-patrol/>.



*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”* (emphasis added).<sup>168</sup>

Given the number of tribal reservations located along U.S. borders, it is not unlikely that other tribes have adopted a similar viewpoint. For example, 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.<sup>169</sup>

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Similarly, **the Confederated Salish and Kootenai Tribes and the Blackfeet Nation of Montana, among others, consider the U.S.-Canada border “an arbitrary line demarcating ancestral lands, separating families and undermining tribal sovereignty.”**<sup>170</sup> However, since Ryan Zinke, as Congressman, has promoted the “sovereignty” of these tribes through various initiatives he has introduced as noted above, he has, for all intent and purposes, consciously overlooked the position of these tribes on this most important and critical issue of national security. Mr. Zinke should not be given the opportunity to make this same mistake again as Secretary of Interior.

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.

“Travel became more restrictive for everyone after the terrorist attacks of Sept. 11, 2001 [...] Congress passed the Western Hemisphere Travel Initiative, which restricted the list of documents acceptable for entering the United States. And although the list of acceptable documents included tribal identification cards, the revision has led to escalating conflicts over their legitimacy. In [2011,] those conflicts ha[d] prompted several meetings between CSKT tribal officials and

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<sup>168</sup> *Id.*

<sup>169</sup> See Daniel Flatley, At Akwesasne, *Mohawks Are Caught in the Middle of U.S., Canadian Border Procedures*, Watertown Daily Times (March 15, 2015), available at: <http://www.watertowndailytimes.com/news03/at-akwesasne-mohawks-are-caught-in-the-middle-of-us-canadian-border-procedures-20150315> (“For security purposes, American and Canadian officials require members of the community who live on a particular side of the border to identify themselves as being from that side when they travel across the territory. Some residents of Akwesasne have to travel across the border several times a day. ‘Some travelers are reluctant to say they come from ‘the U.S.’ or ‘Canadian part’ of Akwesasne, while some border officers may insist that they do so,’ said Ian Kalman, a doctoral candidate in anthropology at McGill University in Montreal, who has studied these relationships. ‘Other travelers don’t care; they just want to go home, and if that means saying they’re coming from ‘the U.S. part of Akwesasne,’ that’s not such a big deal. It varies from situation to situation, and often depends on the rapport between officers and travelers. These sorts of exchanges reinforce or challenge particular notions of Akwesasne’s geopolitics.”).

<sup>170</sup> See Tristan Scott, *Indians Seek Less Hassle, More Respect at U.S.-Canada Border*, Missoulian (Feb. 12, 2012), available at: [http://missoulian.com/news/local/indians-seek-less-hassle-more-respect-at-u-s-/article\\_818b6420-5545-11e1-8260-0019bb2963f4.html](http://missoulian.com/news/local/indians-seek-less-hassle-more-respect-at-u-s-/article_818b6420-5545-11e1-8260-0019bb2963f4.html) (“[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.”) *Id.*

representatives from Customs and Border Protection, and ha[d] led to a series of discussions about developing an enhanced form of the existing tribal identification cards, as well as making cultural awareness and sensitivity training mandatory for border security personnel. As proposed, the new identification cards would use radio frequency identification microchips similar to what was proposed under the REAL ID Act.”<sup>171</sup>

In each of these cases, the CPB has been accused of “restrict[ing] access to traditional lands, resources, sacred spaces, [...abus[ing...]] eminent domain, and [...] constructi[ng...] border wall[s] on [...] burial ground[s],” and/or waiving federal and state environmental restrictions protecting indigenous territory.<sup>172</sup> Remarkably, the environmental restrictions alleged to have been violated, as recently as 2005, include the following: prohibitions against use of motorized vehicles or bicycles; requirements to purchase special feed so that the horse droppings would organically break down; and prohibitions against placing cameras or electronic surveillance on hilltops that are sacred sites.<sup>173</sup> In some cases, CPB activities have even been depicted by activists as international human rights abuses.<sup>174</sup>

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<sup>171</sup> *Id.*

<sup>172</sup> *Id.* (“The Tohono O’odham aren’t the only tribe affected by heightened border security; there are nearly 30 American Indian tribes living with the consequences of border enforcement. The Lipan Apache of the Texas-Mexico border find their property divided by a recently constructed border fence. In 2006, Congress passed the Secure Fence Act, which allowed the government to waive laws that would interfere with the construction of a border fence. Using this law, the DHS waived a total of 36 federal and state laws including laws protecting indigenous territory and environmental protection regulations. A recent report on the Racially Discriminatory Impact of the Border Wall on the Lipan Apache People of Texas outlines the injustices that the Lipan Apache endure within the borderlands such as restricted access to traditional lands, resources, sacred spaces, the abuse of eminent domain, and the construction of the border wall on the burial ground of Apache elders.”). See also Vincent Schilling, *White Man’s Borders and the Sacred Lands, Sites & Tribes They Affect*, Indian Country (8/14/2014), available at: <http://indiancountrytodaymedianetwork.com/2014/08/14/white-mans-borders-and-sacred-lands-sites-tribes-they-affect-156402>; Byron Pitts and Dan Lieberman, *In Efforts to Secure US-Mexico Border, Ariz. Native Americans Feel Caught in the Middle*, ABC News (June 27, 2013), available at: <http://abcnews.go.com/US/efforts-secure-us-mexico-border-ariz-native-americans/story?id=19496394>; Daniel Flatley, *At Akwesasne, Mohawks Are Caught in the Middle of U.S., Canadian Border Procedures*, Watertown Daily Times (March 15, 2015), *supra*.

<sup>173</sup> See, e.g., Ryan Slattery, *Customs and Immigration: The View From Tombstone*, HomelandSecurityToday.us (05/31/05), available at: <http://www.hstoday.us/focused-topics/customs-immigration/single-article-page/the-view-from-tombstone/0f2e7a5543bd048491895f22ddf21a2.html>; Tristan Scott, *Indians Seek Less Hassle, More Respect at U.S.-Canada Border*, Missoulian (Feb. 12, 2012), *supra*.

<sup>174</sup> See Amnesty International, *In Hostile Terrain: Human Rights Violations in Immigration Enforcement in the U.S. Southwest* (©2012), available at: [http://www.amnestyusa.org/sites/default/files/ai\\_inhostileterrain\\_032312\\_singles.pdf](http://www.amnestyusa.org/sites/default/files/ai_inhostileterrain_032312_singles.pdf). See also The University of Texas at Austin School of Law, *U.S. Government Violates Rights of Lipan Apache Peoples at the U.S.-Mexico Border*, Press Release (April 15, 2014), available at: <http://soboco.org/wp-content/uploads/2014/04/Press-Release-US-Government-violates-rights-of-Lipan-Apache.pdf> (“The Human Rights Clinic at The University of Texas School of Law have announced that the Ndé Peoples (‘Lipan Apache’; Lipan Apache Band of Texas), indigenous peoples living and from the border area, have had their rights systematically violated by the United States government. The Clinic reports that U.S. government actions in constructing the U.S.-Mexico border wall have restricted the Ndé Peoples from accessing their traditional land and resources without obtaining any prior consent from them, and have failed to provide any compensation or effective solution to the problems faced.”).

A further review of the position these tribes have taken on this issue reveals the work of the progressive scholars of the Udall Center for Studies in Public Policy at the University of Arizona. These scholars, no doubt, favor “one world” without borders, have come to the defense of tribal sovereignty, and have consciously endeavored to reeducate and change the vernacular of the American public. To this end, the Udall Center and the Udall Foundation have released a book that refers to these tribes as “indigenous border nations,”<sup>175</sup> defined as nations “whose lands or people straddle an international U.S. boundary or are located adjacent to or near such a boundary, or for whom U.S. border policy and activities raise significant challenges.”<sup>176</sup> In fact, the Udall Center’s “list of indigenous 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. [...] Our definition of a border nation thus includes location and other kinds of connections: culture, language, law, and history.”<sup>177</sup>

“International borders and the policies that govern them have altered drastically numerous aspects of life for Native nations in border regions, from how they perceive citizenship in their own nations to matters of security, culture, collective identity, language, public health, the natural environment, and the management of resources such as water, lands, and wildlife. For the most part, however, Native nations have been excluded from border policy processes—from nineteenth century border-making to twenty-first-century border fencing.”<sup>178</sup>

In other words, these scholars have disingenuously portrayed Native American tribes as victims of U.S. and Canadian political borders, which must be corrected as a matter of social justice in favor of preserving tribal sovereignty and cultural identity, consistent with Udall Foundation-implemented Obama administration policy. The Udall Foundation is an independent executive branch agency that, in addition to the Department of Interior’s Bureau of Indian Affairs, promotes the rights and self-governance of American Indians.<sup>179</sup>

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<sup>175</sup> See Rachel Rose Starks, Jen McCormack and Stephen Cornell, *Native Nations and U.S. Borders: Challenges to Indigenous Culture, Citizenship and Security*, Native Nations Institute for Leadership, Management, and Policy at the Udall Center for Studies in Public Policy, The University of Arizona (2011), available at: [http://nni.arizona.edu/pubs/Native%20Nations%20and%20US%20Borders\\_sample%20chapter.pdf](http://nni.arizona.edu/pubs/Native%20Nations%20and%20US%20Borders_sample%20chapter.pdf). As the inside cover of this book reveals, “[s]upport for the preparation and publication of [it] came from the Morris K. Udall and Stewart L. Udall Foundation,” which is a federal agency that apparently supports progressive U.S. government policies. See Udall Foundation, available at: <http://www.udall.gov/> (“The Morris K. Udall and Stewart L. Udall Foundation is a federal agency providing programs to promote leadership, education, collaboration, and conflict resolution in the areas of environment, public lands, and natural resources *in order to strengthen Native nations, assist federal agencies and others to resolve environmental conflicts, and to encourage the continued use and appreciation of our nation’s rich resources*”)(emphasis added).

<sup>176</sup> *Id.*, at p. 5.

<sup>177</sup> *Id.*, at pp. 5-6.

<sup>178</sup> *Id.*, at p. 6.

<sup>179</sup> See Udall Foundation, *About Us*, available at: <http://www.udall.gov/AboutUs/AboutUs.aspx> (“The Udall Foundation was established by the U.S. Congress in 1992 as an independent executive branch agency to honor Morris K. Udall’s lasting impact on this nation’s environment, public lands, and natural resources, and his support of the rights and self-governance of American Indians and Alaska Natives.”)

c. *Canada's Recent Placement of 25,000+ Syrian Refugees Along the U.S.-Canada Border Since November 2015 Raises Added National Security Risks on Indian Reservations Near or Transcending National Borders*

During November 16, 2015, Newsweek reported that the governors of the border states of California, Washington, Minnesota, Pennsylvania, New York and Vermont had voluntarily accepted Syrian refugees no matter the risk to state and national security.<sup>180</sup> As discussed above, the “sovereign” reservations of a number of federally recognized Native American tribes are located in at least four of these border states (California,<sup>181</sup> Washington,<sup>182</sup> Minnesota<sup>183</sup> and New York<sup>184</sup>). In least three of these states, reside federally recognized “sovereign” tribes having reservations and cultural claims to aboriginal lands straddling or close to the U.S.-Canada border. Consistent with the new vernacular of the Udall Center noted above, this would render them “indigenous border nations” the cultural rights of which have been allegedly violated by U.S.-Canada border policies.<sup>185</sup>

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Meanwhile, the Newsweek article also reported that the governors of the border states of Arizona, New Mexico, Texas, Idaho, Wisconsin, Michigan, New Hampshire, and Maine had refused to accept Syrian refugees, citing the risk to state and national security.<sup>186</sup> No doubt, these governors are aware of the presence of “sovereign” federally recognized Native American tribes within their state borders having reservations straddling or close to the U.S.-Mexico and U.S.-Canada borders that constitute potential, if not, actual terrorist crossings. Idaho is the home of the Idaho National Laboratory’s nuclear enrichment and reprocessing center, and Texas hosts four nuclear reactors.<sup>187</sup>

What the Newsweek article did not intentionally mention is that the U.S. federal government’s 2008 *U.S. v. Holy Land Foundation* case<sup>188</sup> had revealed evidence of a 15-year FBI investigation demonstrating “that the most prominent Islamic organizations in America and North America are a part of the Muslim Brotherhood, Hamas, *the jihadi network* here” (emphasis added).<sup>189</sup> In other words, Muslim Brotherhood-affiliated organizations are located within four states hosting Indian reservations “of interest” to Turkey, as noted above.

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<sup>180</sup> See Polly Mosendz, *Map: Every State Accepting and Refusing Syrian Refugees*, Newsweek (Nov. 16, 2015), available at: <http://www.newsweek.com/where-every-state-stands-accepting-or-refusing-syrian-refugees-395050>.

<sup>181</sup> See 500 Nations, *California Tribes & Organizations*, available at: [http://500nations.com/California\\_Tribes.asp](http://500nations.com/California_Tribes.asp).

<sup>182</sup> See 500 Nations, *Washington Tribes*, available at: [http://500nations.com/Washington\\_Tribes.asp](http://500nations.com/Washington_Tribes.asp).

<sup>183</sup> See 500 Nations, *Minnesota Tribes*, available at: [http://500nations.com/Minnesota\\_Tribes.asp](http://500nations.com/Minnesota_Tribes.asp).

<sup>184</sup> See 500 Nations, *New York Tribes*, available at: [http://500nations.com/New\\_York\\_Tribes.asp](http://500nations.com/New_York_Tribes.asp).

<sup>185</sup> See Rachel Rose Starks, Jen McCormack and Stephen Cornell, *Native Nations and U.S. Borders: Challenges to Indigenous Culture, Citizenship and Security*, Native Nations Institute for Leadership, Management, and Policy at the Udall Center for Studies in Public Policy, The University of Arizona (2011), *supra* at p. 6.

<sup>186</sup> See Polly Mosendz, *Map: Every State Accepting and Refusing Syrian Refugees*, Newsweek (Nov. 16, 2015), *supra*.

<sup>187</sup> See United States Nuclear Regulatory Commission, *Operating Nuclear Power Reactors (by Location or Name)*, available at: <http://www.nrc.gov/info-finder/reactor/>.

<sup>188</sup> See endnote #1, *supra*; *U.S. v. Holy Land Foundation*, CR NO. 3:04-CR-240-G (ND TX), at “List of Unindicted Co-conspirators and/or Joint Venturers.”

<sup>189</sup> See Tony Lee, *Fmr. FBI Counterterrorism Agent: ‘Vast Majority’ of US Mosques/Islamic Centers Part of ‘Jihadi Network*, Breitbart News (Dec. 4, 2015), *supra*.

For example, the Confederated Coleville Tribes are located within the State of Washington as are the Council on American Islamic Relations (“CAIR”) of Seattle, WA,<sup>190</sup> and the Pullman Islamic Center, of Pullman, WA.<sup>191</sup> Similarly, the Seneca Tribes are located in the State of New York as are the Council on American Islamic Relations (“CAIR-NY”) of New York, NY,<sup>192</sup> the Arab-American Association of New York, of New York, NY,<sup>193</sup> the Islamic Society of Bay Ridge of Bay Ridge, NY,<sup>194</sup> and the Islamic Circle of North America (ICNA), of Jamaica (Queens), NY.<sup>195</sup> Furthermore, the Hopi Indian and Navajo Tribes are located, in part, within Arizona, as are the Islamic Center of Tucson, of Tucson, AZ<sup>196</sup> and the Council on American Islamic Relations (“CAIR-AZ”) of Chandler, AZ.<sup>197</sup> Finally, the Bay Mills Indian Community is located in the State of Michigan as are the Council on American Islamic Relations (“CAIR-MI”)<sup>198</sup> and the Islamic American University of the Muslim American Society,<sup>199</sup> each of Southfield, MI.

If this internal threat were not enough, during September 2016, the Canadian Government of Justin Trudeau bragged about how, “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” (emphasis added).<sup>200</sup> Canada’s Immigration Minister, John McCallum, has stated that Canada’s admission of the refugees is part and parcel of a deliberate policy to repopulate Canada “to offset the rapidly aging population.”<sup>201</sup> The Canadian Government has further bragged that, as of January 2, 2017, “39,671 Syrian refugees [have been] resettled under the initiative.”<sup>202</sup>

As of December 23, 2016, the Canadian Government Immigration website sets forth a detailed map showing “communities welcoming Syrian refugees,” government-funded “communities

<sup>190</sup> See Clarion Project, *Islamic Organization Profile, Washington, CAIR-Seattle*, available at: <http://www.clarionproject.org/analysis/cair-seattle>.

<sup>191</sup> See Clarion Project, *Islamic Organization Profile, Washington, Pullman Islamic Center*, available at: <http://www.clarionproject.org/analysis/pullman-islamic-center>.

<sup>192</sup> See Clarion Project, *Islamic Organization Profile, New York, CAIR-New York*, available at: <http://www.clarionproject.org/analysis/cair-new-york>.

<sup>193</sup> See Clarion Project, *Islamic Organization Profile, New York, Arab-American Association of New York*, available at: <http://www.clarionproject.org/analysis/arab-american-association-new-york>.

<sup>194</sup> See Clarion Project, *Islamic Organization Profile, New York, Islamic Society of Bay Ridge*, available at: <http://www.clarionproject.org/analysis/islamic-society-bay-ridge>.

<sup>195</sup> See Clarion Project, *Islamic Organization Profile, New York, Islamic Circle of North America (ICNA)*, available at: [http://www.clarionproject.org/analysis/islamic-circle-north-america-icna#\\_ftn2a](http://www.clarionproject.org/analysis/islamic-circle-north-america-icna#_ftn2a).

<sup>196</sup> See Clarion Project, *Islamic Organization Profile – Arizona - Islamic Center of Tucson*, available at: <http://www.clarionproject.org/analysis/islamic-center-tucson>.

<sup>197</sup> See Clarion Project, *Islamic Organization Profile – Arizona - Council on American-Islamic Relations—Arizona (CAIR-AZ)*, available at: <http://www.clarionproject.org/analysis/council-american-islamic-relations-arizona-cair-az>.

<sup>198</sup> See Clarion Project, *Islamic Organization Profile – Michigan – CAIR Michigan*, available at: <http://www.clarionproject.org/analysis/cair-michigan>.

<sup>199</sup> See Clarion Project, *Islamic Organization Profile – Michigan – Islamic American University*, available at: <http://www.clarionproject.org/analysis/islamic-american-university-0>; Islamic American University, available at: <http://www.islamicau.org/>.

<sup>200</sup> See Lynn Desjardins, *Record Number of Newcomers Arrive in Canada*, Radio Canada International (Sept. 29, 2016), available at: <http://www.rcinet.ca/en/2016/09/29/record-number-of-newcomers-arrive-in-canada/>.

<sup>201</sup> *Id.*

<sup>202</sup> See Government of Canada, Immigration and Citizenship-Refugees, *Welcome Refugees: Canada Resettled Syrian Refugees*, available at: <http://www.cic.gc.ca/english/refugees/welcome/>.

where there is an existing Resettlement Assistance Program (RAP) service provider organization,” and “a wide variety of communities, large and small, across the country where” sponsoring “organizations and groups of Canadians” are located. This map clearly indicates that most such communities are located along the U.S.-Canada border stretching from northeastern Maine to southeastern Michigan; from northwestern Minnesota to northwestern Washington.<sup>203</sup>

Mr. Zinke’s failure to comment on these findings is as palpable as it is inexcusable, especially considering President Trump’s recently issued (Jan. 27, 2017) *Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States*, which addresses, in part, the influx of Syrian and refugees.<sup>204</sup> As this E.O. clearly recognizes,

“Numerous foreign-born individuals have been convicted or implicated in terrorism-related crimes since September 11, 2001, *including foreign nationals who entered the United States after receiving visitor, student, or employment visas, or who entered through the United States refugee resettlement program.* Deteriorating conditions in certain countries due to war, strife, disaster, and civil unrest increase the likelihood that terrorists will use any means possible to enter the United States. The United States must be vigilant during the visa-issuance process to ensure that those approved for admission do not intend to harm Americans and that they have no ties to terrorism.” (emphasis added).<sup>205</sup>

Indeed, this E.O. reaffirms that “the stated policy of the United States [is] to protect its citizens from foreign nationals who intend to commit terrorist attacks in the United States; and to prevent the admission of foreign nationals who intend to exploit United States immigration laws for malevolent purposes.”<sup>206</sup> The breadth of his EO is justified given the multiple migration routes reportedly used by terrorists to enter the U.S. and Europe.<sup>207</sup> It goes much farther than the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, which “establishe[d] new eligibility requirements for travel under the Visa Waiver Program that denied the benefits of said program to “Nationals of VWP countries who have been present in Iraq, Syria, Iran, Sudan, at any time on or after March 1, 2011.”<sup>208</sup> That program, as well, acknowledged the distinct national security threat posed by immigrants and refugees from Middle Eastern countries.

“DHS remains concerned about the risks posed by the situation in Syria and Iraq, where instability has attracted thousands of foreign fighters, including many from VWP countries. Such individuals could travel to the United States for

<sup>203</sup> See Government of Canada, Immigration and Citizenship-Refugees, *Map of destination Communities and Service Provider Organizations*, available at: <http://www.cic.gc.ca/english/refugees/welcome/map.asp>.

<sup>204</sup> See White House, *Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States* (Jan 27, 2017), available at: <https://www.whitehouse.gov/the-press-office/2017/01/27/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

<sup>205</sup> *Id.*, at Sec. 1.

<sup>206</sup> *Id.*, at Sec. 2.

<sup>207</sup> See James Rothwell, *Majority of Paris Attackers Used Migration Routes to Enter Europe*, Reveals Hungarian Counter-terror Chief, *The Telegraph* (Oct. 2, 2016), available at: <http://www.telegraph.co.uk/news/2016/10/02/majority-of-paris-attackers-used-migration-routes-to-enter-europ/>.

<sup>208</sup> See U.S. Customs and Border Protection, *Visa Waiver Program Improvement and Terrorist Travel Prevention Act Frequently Asked Questions*, available at: <https://www.cbp.gov/travel/international-visitors/visa-waiver-program/visa-waiver-program-improvement-and-terrorist-travel-prevention-act-faq>.

operational purposes on their own or at the behest of violent extremist groups.”<sup>209</sup>

In recognition of this national security risk, Section 5 of the E.O. directs “the Secretary of State [to] suspend the U.S. Refugee Admissions Program (USRAP) for 120 days.”<sup>210</sup> It also “proclaim[s] that] the entry of nationals of Syria as refugees is detrimental to the interests of the United States,” and consequently “suspend[s] any such entry until such time as [the President has] determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.”<sup>211</sup> It furthermore limits to 50,000 the entry of all refugees into the United States for fiscal year 2017.<sup>212</sup> This is generally consistent with the number of refugees former President Bush had admitted following 9/11,<sup>213</sup> a number that is far less than the 84,995 refugees former President Obama admitted into the United States during the fiscal year ended in September 2016.<sup>214</sup>

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Obama’s refugee policy was consistent with his national policy of promoting at the United Nations the “sovereignty” and indigenous rights of tribal nations domestically and internationally,<sup>215</sup> namely, at the United Nations,<sup>216</sup> at the expense of national security. Indeed, the Obama administration had agreed to give legal recognition and protection to the right of indigenous peoples to “to own, use, develop and control” “the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,”<sup>217</sup> but short of dismembering or impairing the territorial integrity or political unity of the United States.<sup>218</sup>

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<sup>209</sup> *Id.*

<sup>210</sup> See White House, *Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States* (Jan 27, 2017), *supra* at Sec. 5(a).

<sup>211</sup> *Id.*, at Sec. 5(c).

<sup>212</sup> See White House, *Executive Order: Protecting the Nation from Foreign Terrorist Entry into the United States* (Jan 27, 2017), *supra* at Sec. 5(d).

<sup>213</sup> See Migration Policy Institute, *U.S. Annual Refugee Resettlement Ceilings and Number of Refugees Admitted, 1980-Present*, available at: <http://www.migrationpolicy.org/programs/data-hub/charts/us-annual-refugee-resettlement-ceilings-and-number-refugees-admitted-united>.

<sup>214</sup> See Jens Manuel Krogstad and Jynnah Radford, *Key Facts About Refugees to the U.S.*, Pew Research Center (Jan. 30, 2017), available at: <http://www.pewresearch.org/fact-tank/2017/01/30/key-facts-about-refugees-to-the-u-s/>.

<sup>215</sup> See U.S. Department of State Office of the Spokesman, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, Media Note (Dec. 16, 2010), available at: <http://www.state.gov/r/pa/prs/ps/2010/12/153027.htm> (“The decision to support the Declaration represents an important and meaningful change in the U.S. position, and resulted from a comprehensive, interagency policy review, including extensive consultation with tribes. While the Declaration is not legally binding, it carries considerable moral and political force and complements the President’s ongoing efforts to address historical inequities faced by indigenous communities in the United States.”)

<sup>216</sup> See United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* (A/61/L.67 and Add.1) (adopted Sept. 13, 2007) (Publ. March 2008), available at: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf). See also U.S. Department of State, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples - Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples* (Dec. 16, 2010), available at: <http://www.state.gov/documents/organization/184099.pdf>.

<sup>217</sup> See United Nations, *United Nations Declaration on the Rights of Indigenous Peoples* *supra* at Art. 26(1)-(3).

<sup>218</sup> *Id.*, at Art. 46. See also U.S. Department of State, *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples - Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples* (Dec. 16, 2010), *supra* at pp. 3, 6.

Zinke has failed to endorse the Trump administration policy and to relate it to Indian reservations spanning or located within 50 miles the U.S.-Canada or U.S.-Mexico borders, and to reject the prior Obama administration’s refugee policy (discussed at more length below) and its Indian “sovereignty” policy. Zinke also has failed to speak up about Canada’s recent response to those executive orders. For example, *USAToday* recently reported that, in response to President Trump’s executive order “suspending immigration and visas for citizens from certain countries with majority Muslim populations,” Canadian Prime Minister Justin Trudeau stated that Canada would continue to welcome and accept refugees from Iran, Syria and other Middle Eastern countries “fleeing persecution, terror & war.”<sup>219</sup> Since it would appear that Canada does not currently take the threat of terrorism as seriously as we do in the United States, it was incumbent upon Ryan Zinke, as a former SEAL Team 6 member, to weigh in on the national security aspects of this issue to demonstrate how he would handle it as Interior Secretary. Unfortunately, Zinke’s “absence” is quite telling, and revealing of a clear bias in favor of “sovereign” Indian nations at the expense of U.S. national security and the security of individual U.S. citizens.

d. *Former Obama Administration-Turkey-ISIS Links and Refugee Policies Increased National Security Risks on Indian Reservations Near or Transcending the U.S.-Canada and U.S.-Mexico Borders*

To repeat, Congressman Zinke’s failure to publicly relate national security risks engendered by the Indian “sovereignty,” refugee, and terrorism policies of the prior administration is a major failure in judgment of which this Committee must take official notice.

In May 2015, it was reported that a declassified [2012 US Defense Intelligence Agency \(DIA\) document](#) obtained by Judicial Watch revealed the supporting “role that the U.S. government played in the rise of ISIS.”<sup>220</sup>

“According to the newly declassified document, in coordination with the Gulf states *and Turkey*, the West intentionally sponsored violent Islamist groups to destabilize Assad, and that these ‘supporting powers’ desired the emergence of a ‘Salafist Principality’ in Syria to ‘isolate the Syrian regime.’ [...T]he Pentagon foresaw the likely rise of the ‘Islamic State’ as a direct consequence of this strategy, and warned that it could destabilize Iraq. Despite anticipating that Western, Gulf state *and Turkish support* for the “Syrian opposition”—which included al-Qaeda in Iraq—could lead to the emergence of an ‘Islamic State’ in Iraq and Syria (ISIS), the document provides no indication of any decision to reverse the policy of support to the Syrian rebels. On the contrary, the emergence

<sup>219</sup> See Bill Keveney, *Iran Retaliates, Canada Opens Arms After Trump Immigration Ban*, *USAToday* (Jan. 28, 2017), available at: <http://www.usatoday.com/story/news/2017/01/28/iran-retaliates-canada-opens-arms-after-trump-immigration-ban/97189224/> and <http://www.cnn.com/2017/01/29/trump-immigration-ban-iran-retaliates-canada-opens-arms.html>.

<sup>220</sup> See Nafeez Ahmed, *Pentagon Report Predicted West’s Support for Islamist Rebels Would Create ISIS Anti-ISIS Coalition Knowingly Sponsored Violent Extremists to ‘Isolate’ Assad, Rollback Shia Expansion*, *Insurge Intelligence* (May 22, 2015), available at: <https://medium.com/insurge-intelligence/secret-pentagon-report-reveals-west-saw-isis-as-strategic-asset-b99ad7a29092#.9o5bm1ssn>.



of an al-Qaeda affiliated “Salafist Principality” as a result is described as a strategic opportunity to isolate Assad.”<sup>221</sup>

This document would explain why, as U.S. House of Representatives Foreign Affairs Committee Chairman, Ed Royce (R-CA) would later claim, in November 2015, that “U.S. military pilots who have returned from the fight against the Islamic State in Iraq are confirming that they were blocked from dropping 75 percent of their ordnance on terror targets because they could not get clearance to launch a strike.”<sup>222</sup>

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Concerned that the Obama administration’s ISIS, immigration and refugee policies were increasing the risk of domestic terrorism, on August 12, 2015, U.S. Senator Jeff Sessions, Chairman of the Senate Judiciary Committee’s Subcommittee on Immigration and the National Interest, and U.S. Senator Ted Cruz (R-TX), Chairman of the Judiciary Committee’s Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts wrote to U.S. Attorney General Loretta Lynch, DHS Secretary Jeh Johnson and Secretary of State John Kerry.<sup>223</sup> The letter requested that these officials complete a chart the senators had given them by “providing detail on the immigration history, including family immigration history, of 72 individuals involved with or sentenced for terrorist activity in just the last year alone” (emphasis added).<sup>224</sup> The chart drew the connection between “[n]umerous [domestic] terror attacks, attempts and plots [...] the structures enabling them [...] and the issuance of immigration visas, as well as subsequent naturalizations.”<sup>225</sup> In fact, the chart revealed that the “Obama administration’s lax immigration policies have allowed a large number of terrorists *with documented ties to ISIS and other radical Islamic groups* into the United States, including individuals from Yemen, Saudi Arabia, Somalia and Uzbekistan who have been criminally charged in recent years” (emphasis added).<sup>226</sup>

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<sup>221</sup> *Id.* Cf. Jonathan Broder, *The ISIS Creation Myth*, Newsweek (June 12, 2015), available at: <http://www.newsweek.com/2015/07/03/isis-george-w-bush-barack-obama-342613.html>.

<sup>222</sup> See Adam Kredo, *U.S. Pilots Confirm: Obama Admin Blocks 75 Percent of Islamic State Strikes*, Washington Beacon (Nov. 20, 2015), available at: <http://freebeacon.com/national-security/us-pilots-confirm-obama-admin-blocks-75-percent-of-isis-strikes/> (“‘You went 12 full months while ISIS was on the march without the U.S. using that air power and now as the pilots come back to talk to us they say three-quarters of our ordnance we can’t drop, we can’t get clearance even when we have a clear target in front of us,’ Royce said. ‘I don’t understand this strategy at all because this is what has allowed ISIS the advantage and ability to recruit.’ When asked to address Royce’s statement, a Pentagon official defended the Obama administration’s policy and said that the military is furiously working to prevent civilian casualties.”).

<sup>223</sup> See Jeff Sessions, United States Senator for Alabama, *Chairmen Sessions, Cruz Ask Feds to Provide Immigration Histories of Terrorists Operating Inside U.S.*, Press Release (Aug. 12, 2015), available at: <http://www.sessions.senate.gov/public/index.cfm/2015/8/chairmen-sessions-cruz-ask-feds-to-provide-immigration-histories-of-terrorists-operating-inside-u-s>.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*; See also Jeff Sessions, United States Senator for Alabama, *Publicly Identified Cases Involving a Nexus to Terrorism from July 2, 2014, through August 11, 2015* (Aug. 12, 2015), available at: <http://www.sessions.senate.gov/public/cache/files/635eb1f5-57bc-4726-a87d-08729289f8b3/publicly-identified-cases-involving-a-nexus-to-terrorism-14-15.pdf>; Judicial Watch, *Chart Lists Terrorists in U.S. Due to Lax Immigration Policies* (Aug. 18, 2015), available at: <http://www.judicialwatch.org/blog/2015/08/chart-lists-terrorists-in-u-s-due-to-lax-immigration-policies/>.

<sup>226</sup> *Id.*

In May and September 2015, Judicial Watch filed FOIA requests with DHS seeking production of “records between the U.S. Department of State and voluntary agencies regarding refugees arriving in the United States.”<sup>227</sup> Given the State Department’s failure to respond to these requests, Judicial Watch filed a lawsuit on December 14, 2015 to secure those records.

“Judicial Watch investigating *the Obama administration’s Refugee and Resettlement program which plans to bring an additional 10,000 Syrian refugees to the United States in 2016, and even more in 2017. Obama is pressing ahead with his plan even as Syrian refugees have been implicated in the Paris terrorist attacks in which 129 people were killed and 350 were wounded.* The Obama administration is working in conjunction with The Office of the United Nations High Commissioner for Refugees to settle these individuals all across the U.S. The federal government contracts with non-profits and other entities to settle and provide financial payments to refugees. Many states are refusing to participate in this refugee resettlement program as a result of the Paris attacks. The Judicial Watch FOIA lawsuit seeks documents that detail much of the federal spending and other details about the refugee program. [...] *A number of Somalian refugees or their children have left the United States to fight for ISIS. One of these refugees is reportedly tied to the San Bernardino terrorist attack and many refugees have already been arrested on terrorism charges.* The U.S. plans to spend \$582 million taxpayer dollars to resettle refugees, which includes a \$1,000 per refugee in spending money once they are here. ‘The Obama administration doesn’t want Americans to know about how it places refugees from terrorist states in their local communities,’ said Judicial Watch President Tom Fitton. ‘*The fact we had to file a federal lawsuit to obtain basic information about Obama’s dangerous refugee plans should tell Americans (and Congress) that the Obama administration has something to hide about refugees, terrorism, and national security*’” (emphasis added).<sup>228</sup>

Apparently, the Judicial Watch lawsuit sought to confirm assertions contained in a November 2015 Investor’s Business Daily article that, “the United Nations, in concert with a global Islamist group [...] picks the Syrian refugees that resettle in the U.S.”<sup>229</sup> It cited a U.S. State Department report entitled, *Proposed Refugee Admissions for Fiscal Year 2016: Report to the Congress* that stated,

<sup>227</sup> See Judicial Watch, *Judicial Watch Files FOIA Lawsuit for Obama Administration Refugee Documents*, Press Room (Dec. 14, 2015), available at: <http://www.judicialwatch.org/press-room/press-releases/judicial-watch-files-foia-lawsuit-for-obama-administration-refugee-documents/> (These FOIAs had sought records “reflecting the number of refugees, their countries of origin, and destinations in the United States in which they were settled by the Bureau of Population, Refugees and Migration (PRM) through R&P programs for the years 2013, 2014, and 2015.”); Rachel Stoltzfoos, *Judicial Watch Sues Obama Administration Over Refugee Program*, the Daily Caller (12/14/15), available at: <http://dailycaller.com/2015/12/14/judicial-watch-sues-obama-administration-over-refugee-program/>.

<sup>228</sup> See Judicial Watch, *Judicial Watch Files FOIA Lawsuit for Obama Administration Refugee Documents*, Press Room (Dec. 14, 2015), *supra*.

<sup>229</sup> See Investor’s Business Daily, *UN Working With Islamist Group To Resettle Over 15,000 Syrian Refugees In America*, Editorial (Nov. 17, 2015), available at: <http://news.investors.com/ibd-editorials/111715-781305-why-is-un-using-islamist-group-to-resettle-syrian-refugees-in-the-us-.htm>.

“The United States is one of 28 countries that have agreed to accept referrals from UNHCR as part of its ambitious international effort to secure permanent or temporary resettlement for 130,000 Syrian refugees by the end of 2016. [...] As of mid-2015, UNHCR has referred more than 15,000 Syrian refugees to the United States. [...] And these individuals are being screened to determine whether they are eligible.”<sup>230</sup>

In addition, the report disclosed that, “in some countries, such as Syria, Yemen, and Eritrea, Department of Homeland Security (DHS) adjudicators have been unable to travel to interview applicants for several years.”<sup>231</sup>

The State Department report did not reveal, however, that the UNHCR had been working closely with the Organization of Islamic Cooperation (“OIC”) for many years, as Mr. Antonio Guterres, United Nations High Commissioner for Refugees had conveyed in a May 2012 speech convened at the OIC Ministerial Conference in Turkmenistan. “In 2011, the 57 OIC States hosted 50% of the persons who are of concern to UNHCR, some 17.6 million in total, comprising not only refugees, but also asylum-seekers, returnees, internally displaced persons and stateless people.”<sup>232</sup> The State Department report, furthermore, did not reveal the extent of its relationship with OIC during both the Bush and Obama administrations, though this can be found on the website of the OIC Permanent Observer Mission to the United Nations in New York.<sup>233</sup> Moreover, the State

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<sup>230</sup> See United States Department of State, United States Department of Homeland Security and United States Department of Health and Human Services, *Proposed Refugee Admissions for Fiscal Year 2016*, Submitted on Behalf of the President of the United States to the Committees on the Judiciary, United States Senate and United States House of Representatives in Fulfillment of the Requirements of Sections 207(d)(1) and (e) of the Immigration and Nationality Act, at pp. iii-iv, available at: <http://www.state.gov/documents/organization/247982.pdf>.

<sup>231</sup> *Id.*, at p. vii.

<sup>232</sup> See UNHCR, The UN Refugee Agency, OIC Ministerial Conference on Refugees in the Muslim World, *Opening Remarks by Mr. António Guterres, United Nations High Commissioner for Refugees* (May 11, 2012), available at: <http://www.unhcr.org/4fb270979.html>.

<sup>233</sup> See Organization of Islamic Cooperation, Permanent Observer Mission to the United Nations in New York, *Background - OIC - US Cooperation* (8/8/11), available at: <http://www.oicun.org/oicus/64/20110808013147562.html> (“The relationship between the Organization of Islamic Cooperation (formerly the Organization of the Islamic Conference) and the United States is a partnership of engagement, which is growing stronger. President George W. Bush announced the establishment of the Office of the US Special Envoy to the OIC on June 27, 2007, and subsequently appointed Mr. Sada Cumber, a prominent Muslim American, to the position on March 3, 2008. The interest of the US in the activities of the OIC through the visits and of the Special Envoy facilitated an exchange of info and views between the OIC Secretariat and the US State Department. This led to a better understanding of the OIC activities and efforts in the promotion of peace, reconciliation, security and development. [...] On January 20, 2009, the day of the inauguration of President Barack Obama, the New York Times and the International Herald Tribune published the OIC Secretary General’s open letter to President Obama, both welcoming the President and calling for a continued partnership. The letter was entitled, “An Invitation to a New Partnership from The Organization of Islamic Conference to President Barack Obama”. Main points from the letter included a call for dialogue between the West and the Muslim world; addressed the myths about Islam and Islamophobia, and a discussion of the guiding principles in moderation and modernization specifically in reference to the battle against terrorism. There was also an emphasis on President Obama’s use of the word “change” throughout his campaign comparing it to the changes that have taken place within the OIC. Finally, the Secretary General expressed his appreciation for the appointment of the Office of the US Special Envoy to the OIC specifically concerning a positive outlook on the working partnership between the two. The following month in February 2009, a bipartisan report calling for the new administration to engage with the Muslim world was published. The report titled, “Changing Course: A New Direction for U.S. Relations with the Muslim World”, called the OIC as a key actor and partner for the US to cooperate with. This report

Department report failed to reveal how the OIC's founding charter had sought "to propagate 'legitimate jihad' and 'the norms of Islamic Shari'ah,'" that "the Saudi-based OIC, in fact, is tied to the radical Muslim Brotherhood,"<sup>234</sup> and that the OIC had previously sponsored the anti-free speech Defamation of Religions Resolution which the UN Human Rights Council, and later the UN General Assembly had approved for over a decade (1999-2010).<sup>235</sup>

In addition to its lax Middle Eastern refugee policy and hands-off Muslim immigration policy, the Obama administration's open borders policy had facilitated the smuggling of Islamic terrorist organization members known as "special interest aliens" by Mexican drug cartels across the Texas-Mexico border. According to Judicial Watch,

"Mexican drug cartels are smuggling foreigners from countries with terrorist links into a small Texas rural town near El Paso and they're using remote farm roads—rather than interstates—to elude the Border Patrol and other law enforcement barriers, according to Judicial Watch sources on both sides of the Mexico-U.S. border. The foreigners are classified as Special Interest Aliens (SIA) and they are being transported to stash areas in Acala, a rural crossroads

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confirmed that not only the Presidential Cabinet, but also by the other key members of the US government saw the US-OIC cooperation as an important relationship. [...] Also the first formal meeting between the OIC Secretary General and Secretary of State Clinton was held at the US State Department, where issues such as Palestine, Somalia and Afghanistan were discussed. President Obama took another important step in ensuring a solid relationship with the OIC when he appointed Mr. Rashad Hussain as the second US Special Envoy to the OIC in February 2010.")

<sup>234</sup> See Investor's Business Daily, *UN Working With Islamist Group To Resettle Over 15,000 Syrian Refugees In America*, Editorial (Nov. 17, 2015), *supra*. See also Steven Emerson, John Rossomando and Dave Yonkman, *Brookings Takes Both Sides of the Issue on Islamist Censorship - Part 3 of a 4-Part Investigative Series: Brookings Sells Soul to Qatar's Terror Agenda*, IPT News (Oct. 30, 2014), available at: <http://www.investigativeproject.org/4638/brookings-takes-both-sides-of-the-issue-on>, critiquing Turan Kayaoglu, *A Rights Agenda for the Muslim World? The Organization of Islamic Cooperation's Evolving Human Rights Framework*, The Brookings Institution, Brookings Doha Center Analysis Paper Number 6 (Jan. 2013), at p. 22, available at:

<http://www.brookings.edu/~media/Research/Files/Papers/2013/1/08%20oic%20human%20rights%20kayaoglu/Turan%20Kayaoglu%20English.pdf> ("A 2013 Brookings report on the OIC noted that 'in the two decades from the Cairo Declaration in 1990 to the establishment of the Independent Permanent Commission on Human Rights in 2011, the OIC has gradually shed the language of sharia.' The report, '*A Rights Agenda for the Muslim World? The Organization of Islamic Cooperation's Evolving Human Rights Framework*,' offered no evidence that the OIC had abandoned its anti-free speech agenda, but nonetheless recommended that 'given the OIC's ambition as a human rights actor, the international human rights community should prioritize engagement with the OIC. This would provide the organization with much needed prestige and knowledge that could help in efforts to establish autonomy and authority over human rights issues in member states.'").

<sup>235</sup> *Id.*, referencing Asma T. Uddin and Haris Tarin, *Rethinking the "Red Line": The Intersection of Free Speech, Religious Freedom, and Social Change*, The Brookings Institution, The Brookings Project on U.S. Relations with the Islamic World, U.S.-Islamic World Forum Papers 2013 (Nov. 2013), at p. 3, available at: [http://www.brookings.edu/~media/research/files/papers/2013/11/us%20islamic%20world%20forum%20publication%20free%20speech\\_english\\_web.pdf#page=8](http://www.brookings.edu/~media/research/files/papers/2013/11/us%20islamic%20world%20forum%20publication%20free%20speech_english_web.pdf#page=8) ("So far, the OIC has failed to outlaw criticism of Islam. Endorsing the criminalization of the 'defamation of religions' proved too much even for Brookings, which labeled the OIC effort as 'destructive to religious reform.' 'Unlike religion, people do need protection. And the OIC's anti-defamation of religions resolution failed to recognize there are already international laws that protect human rights at stake when it comes to religious discrimination that's just to name a few,' a 2013 Brookings report said. OIC also seeks funding from its member states to create 'media campaigns to counter intolerance against Islam and discourage using expressions such as 'Islamic' fascists or 'Islamic' extremists for criminal terrorists.'")

located around 54 miles from El Paso on a state road – Highway 20. Once in the U.S., the SIAs wait for pick-up in the area’s sand hills just across Highway 20. Terrorists have entered the U.S. through Mexico for years and in fact, *an internal Texas Department of Public Safety report leaked by the media months ago documents that several members of known Islamist terrorist organizations have been apprehended crossing the southern border in recent years.*<sup>236</sup>

The Texas Department of Public Safety report referenced stated that, “[t]he illegal entry of special interest aliens (SIAs)[] poses a significant potential threat to homeland security, as we are concerned about the possibility that SIAs could be associated with terrorist organizations. [...] Over the past few years, these have included SIAs from Afghanistan, Bangladesh, Egypt, Iran, Iraq, Jordan, Lebanon, Pakistan, Somalia, *Syria, and Turkey.* [...] The Terrorist Screening Center reported *143 land border crossing encounters with watch-listed individuals in southwest border states* between November 2013 and July 2014 [...] These included 97 in Texas, one in New Mexico and 43 in California.” (emphasis added).<sup>237</sup> The report then proceeds to describe various encounters during 2010-2014 with SIAs from Somalia Sri Lanka and Bangladesh, including those heading for Canada.<sup>238</sup>

This information should resonate with border state law enforcement officials, considering that FBI officials believe that Syed Farook, the Somali-born ‘refugee’ shooter in the San Bernardino, California massacre, had been radicalized online by known Somali terrorist recruiter Mohamed Abdullahi Hassan.<sup>239</sup> Hassan has been described as “[a] Minnesota man who joined al-Shabab in Somalia more than seven years ago and more recently went online to urge others to carry out violence on the behalf of the Islamic State group.”<sup>240</sup> A recent Los Angeles Times article indicates that “several federal law enforcement officials, speaking confidentially [...] are also concerned that the two shooters could have been jointly or independently in direct contact with members of

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<sup>236</sup> See Judicial Watch, *Mexican Cartels Smuggle Terrorists into U.S. Through Rural Texas Border Region* (July 29, 2015), available at: <http://www.judicialwatch.org/blog/2015/07/mexican-cartels-smuggle-terrorists-into-u-s-through-rural-texas-border-region/>.

<sup>237</sup> See The State of Texas, Department of Public Safety, *Border Surge Report on Operation Strong Safety*, Houston Chronicle (Feb. 24, 2015), at p. 30, available at: <http://www.scribd.com/doc/256933420/Border-Surge-Report#> (“*The illegal entry of special interest aliens (SIAs)[] poses a significant potential threat to homeland security, as we are concerned about the possibility that SIAs could be associated with terrorist organizations. We judge that foreign terrorists almost certainly are aware of the U.S.-Mexico border’s vulnerability to illegal entry, though we currently are not aware of any specific and credible information indicating a terrorist plot associated with the border. The number of CPB encounters with SIAs in Texas sectors increased 15 percent during the first nine months of 2014 compared to the same time period in 2013.[] In total, 493 SIAs from the 35 countries of interest (compared to 428 during the same period last year) either were encountered illegally entering between Ports of Entry (apprehensions) or presenting themselves at Ports of Entry (inadmissible aliens) in Texas sectors along the border. Over the past few years, these have included SIAs from Afghanistan, Bangladesh, Egypt, Iran, Iraq, Jordan, Lebanon, Pakistan, Somalia, Syria, and Turkey*”) (emphasis added). See also Brian M. Rosenthal, *Border Surge Harming Crime Fighting in Other Parts of Texas, Internal Report Finds*, Houston Chronicle (Feb. 24, 2015), available at: <http://www.houstonchronicle.com/news/article/Border-surge-harming-crime-fighting-in-other-6099660.php>.

<sup>238</sup> *Id.*, at p. 31.

<sup>239</sup> See Leo Hohmann, *Somali ‘Refugee’ Linked to San Bernardino Attack*, WND (12/6/2015), available at: <http://www.wnd.com/2015/12/somali-refugee-linked-to-san-bernardino-terror-attack/>.

<sup>240</sup> See Amy Forliti, The Associated Press, *Minnesota Man Whose Tweets Urged Jihad Surrenders in Africa* (Dec. 7, 2015), available at: <http://www.krmg.com/ap/ap/us/minnesota-man-whose-tweets-urged-jihad-surrenders-mpd27/>.

one or more foreign terror operations.”<sup>241</sup> A more recent article appearing in the New York Times reveals how the FBI had tracked an Egyptian-born Maryland man’s extensive online communications with Egypt-based ISIS operatives to secure receipt of “at least \$8,700 from Islamic State operatives [which he] planned to use [...] to launch an attack in the United States as part of a pledge of loyalty to the militant group.”<sup>242</sup>

In April 2014, Judicial Watch reported that it had been informed by Mexican law enforcement and intelligence officials that *ISIS* is operating a camp “eight miles from the U.S. border in an area known as “Anapra” situated just west of Ciudad Juárez in the Mexican state of Chihuahua [...] just a few miles from El Paso, Texas. [...] Another *ISIS* cell to the west of Ciudad Juárez, in Puerto Palomas, targets the New Mexico towns of Columbus and Deming for easy access to the United States.”<sup>243</sup> According to Judicial Watch’s sources, “*ISIS* is conducting reconnaissance of regional universities; *the White Sands Missile Range*; government facilities in Alamogordo, NM; Ft. Bliss; and *the electrical power facilities near Anapra and Chaparral, NM*” (emphasis added).<sup>244</sup> This last point should raise red flags for the Trump administration as well as state government officials given the number of hydroelectric dams located in the southwest and northwest regions, including Kerr and Hungry Horse Dams.

Congressman Zinke has nowhere demonstrated any knowledge or understanding of this subject matter and its relationship to the federal government’s continued practice of recognizing tribal “sovereignty” and politically “sovereign” Indian reservations at all costs, especially reservations spanning or located within 50 miles of America’s relatively unguarded (“open”) borders with

<sup>241</sup> See Richard A. Serrano and Teresa Watanabe, *FBI hunts for Electronic Trail that Could Link San Bernardino Shooters to Foreign Terror Groups*, Los Angeles Times (Dec. 12, 2015), available at: <http://www.latimes.com/local/lanow/la-me-ln-proving-couple-s-terrorist-ties-rest-with-electronics-they-tried-to-destroy-sources-say-20151212-story.html> (“Officials have described Syed Rizwan Farook and his wife, Tashfeen Malik, as ‘self-radicalized’ terrorists since they killed 14 people and wounded 21 in the Dec. 2 attack. But several federal law enforcement officials, speaking confidentially Friday and Saturday because the investigation is ongoing, are also concerned that the two shooters could have been jointly or independently in direct contact with members of one or more foreign terror operations. The Islamic State group has described both shooters as “supporters” but has not claimed responsibility for the attack, unlike its immediate move to do so after the Paris terrorist assaults last month. The couple had pledged allegiance to the terror organization shortly before they launched their assault on the Inland Regional Center. Whether Farook and Malik were ordered to carry out a terrorist attack may well be determined based on what the divers bring up from the bottom of Seccombe Lake.”).

<sup>242</sup> See Eric Lichblau, *Maryland Man Accused of Tapping Money From ISIS Operatives for a U.S. Attack*, New York Times (Dec. 14, 2015), available at: [http://www.nytimes.com/2015/12/15/us/politics/maryland-man-accused-of-tapping-money-from-isis-operatives-for-a-us-attack.html?\\_r=0](http://www.nytimes.com/2015/12/15/us/politics/maryland-man-accused-of-tapping-money-from-isis-operatives-for-a-us-attack.html?_r=0).

<sup>243</sup> See Judicial Watch, *ISIS Camp a Few Miles from Texas, Mexican Authorities Confirm* (April 14, 2015), available at: <http://www.judicialwatch.org/blog/2015/04/isis-camp-a-few-miles-from-texas-mexican-authorities-confirm/> “According to these same sources, “coyotes” engaged in human smuggling – and working for Juárez Cartel – help move *ISIS* terrorists through the desert and across the border between Santa Teresa and Sunland Park, New Mexico. To the east of El Paso and Ciudad Juárez, cartel-backed “coyotes” are also smuggling *ISIS* terrorists through the porous border between Acala and Fort Hancock, Texas. These specific areas were targeted for exploitation by *ISIS* because of their understaffed municipal and county police forces, and the relative safe-havens the areas provide for the unchecked large-scale drug smuggling that was already ongoing. Mexican intelligence sources report that *ISIS* intends to exploit the railways and airport facilities in the vicinity of Santa Teresa, NM (a US port-of-entry). The sources also say that *ISIS* has “spotters” located in the East Potrillo Mountains of New Mexico (largely managed by the Bureau of Land Management) to assist with terrorist border crossing operations.”).

<sup>244</sup> *Id.*

Canada and Mexico. He also has nowhere demonstrated knowledge or understanding of the documented illicit behaviors of federally recognized Native American Tribes and their receptiveness to dealings with Middle Eastern and domestic terrorist elements, both here in the United States (as discussed above and in connection with the Standing Rock protests which have been reported by Al Jazeera<sup>245</sup>) and in Canada.<sup>246</sup>

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<sup>245</sup> See Aaron Labaree, *NoDAPL: Standing Rock and the 'Deep North'*, Al Jazeera (Jan. 17, 2017), available at: <http://www.aljazeera.com/indepth/features/2017/01/nodapl-standing-rock-deep-north-170109063857178.html>; Frances Kai-Hwa Wang, *Native Hawaiians, Asian Americans Show Support for North Dakota Pipeline Protest*, NBCNews (Sept. 26, 2016), available at: <http://www.nbcnews.com/storyline/dakota-pipeline-protests/native-hawaiians-asian-americans-show-support-north-dakota-pipeline-protest-n654321> (“Muslim Americans are also showing solidarity with a crowdfunding campaign on LaunchGood, with the support of the Muslim Anti-Racism Collaborative and M Power Change, to raise funds to send a Native Muslim delegation with supplies and support to the Sacred Stone Camp.”).

<sup>246</sup> See Government of Canada, House of Commons Standing Committee on Finance, 41<sup>st</sup> Parliament, NUMBER 079 2nd SESSION (May 5, 2015), *Testimony, of Professor Martin Rudner*, (Distinguished Research Professor Emeritus, Carleton University), at p. 11, available at: <http://www.parl.gc.ca/content/hoc/Committee/412/FINA/Evidence/EV7959233/FINAEV79-E.PDF> (“The discourse focused on Canadian oil and gas development in Alberta, which at the time—we’re talking three or four years ago — was seen by Saudi Arabia as a distinct threat to their market share in the United States. The discourse on this was that Saudi Arabia was using, and I’ll use this phrase, ‘front organizations’ as financial intermediaries between Saudi Arabia and Canadian activist organizations to try to prevent the development of competition from Alberta and elsewhere in Canada to Saudi exports to the United States market. It’s a classic example. One other example I might mention is Iran. The Iranian leader, Ali Khomeini, the Supreme Leader, recently introduced what he calls the resistance economy with a strategy that is specifically directed at a pivot to Asia and which also calls for active measures to prevent other countries, specifically Canada, from accessing the Asian market in competition with Iranian intentions. As we speak, Iranians are making a major effort to access Asian markets: China, India, and elsewhere. They see the Canadian effort to export oil and gas through British Columbia as competition for market share. I believe we know that the Iranians have a very strong intelligence capability to commit sabotage through Hezbollah directly under Iranian aegis as well as through the Iranian Revolutionary Guards organization and the Quds group within it to commit and support political violence directed at preventing competition.”). See also *Id.*, at p. 12 (“I wouldn’t tie deep green resistance necessarily to the Iranians. We do know that an organization exists in British Columbia and Alberta called Deep Green Resistance. It’s on the web, it is well known, and it is explicitly dedicated to political violence to overthrow capitalism, and specifically the oil and gas economy. As a politically violent organization, I think Deep Green Resistance would accept this. Where their funding comes from I don’t know. I do hope that the Canadian security and intelligence community does know but they’re not going to share their methods of sources and means to tell us.”).