May 20, 2020

The Honorable Dusty Johnson
1508 Longworth HOB
Washington, DC 20515

Dear Congressman Johnson,

Earlier today, I sent a copy of the letter enclosed herein to the addressees listed thereon regarding the Cheyenne River Sioux Tribe ("CRST") checkpoints/blockades that are being unlawfully conducted on US/State highways.

Despite over a month of communication and our attempts to resolve this matter informally, the CRST continues to maintain the checkpoints and has refused to reach a solution that respects tribal sovereignty, state sovereignty and federal law. My letter dated May 12, 2020 to Chairman Frazier details a reasonable path forward.

I am respectfully asking for your assistance in resolving this situation. Specifically, I am asking you to assist South Dakotans by encouraging the Trump Administration to take formal action to bring a prompt end to the unlawful tribal checkpoints on US/State highways.

Thank you for serving the people of South Dakota and your efforts during this unprecedented time.

Sincerely,

Governor Noem

Enclosures

CC: Senator Thune
    Senator Rounds
May 20, 2020

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

Dear President Trump:

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

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

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

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

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

     Affidavit of Wade Eastman
     Affidavit of Tracy Eichler
Affidavit of David Martin
Affidavit of Brandon McCarthy
Affidavit of Tyler Neuharth (together with his investigative report)

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

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

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

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

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

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

A. **US/State Highways: no tribal checkpoints.** No one entering or traveling on a US or State highway should be stopped or impeded, and this means no permit would be required for such travel. Any tribal interaction with these travelers at checkpoints is unlawful and could actually increase the risk of spreading the virus on the reservation.

B. **Tribal/BIA roads: checkpoints acceptable.** It is within tribal sovereignty to establish and operate tribal checkpoints on BIA/tribal roads. This means that anyone turning off a US or State highway for a destination within a reservation could be subject to a tribal checkpoint.
C. **Reasonable tribal checkpoint accommodations.** Ideally, if a tribe decides to operate tribal checkpoints on BIA/tribal roads, the tribe would make reasonable accommodations for the good of its own people. This would include access for all people to permit emergency services, delivery of food, energy and medical supplies, and access to private property within the reservation.

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

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

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

Signed,

Kristi Noem
Governor

Electronic copy to:

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

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

Documents referenced:

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

Easements for US highway 212: https://sd.gov/governor/docs/Hwy212-easements.pdf
Easements for SD highway 20: https://sd.gov/governor/docs/Hwy20-easements.pdf
Easements for SD highway 34: https://sd.gov/governor/docs/Hwy34-easements.pdf
Easements for SD highway 63: https://sd.gov/governor/docs/Hwy63-easements.pdf
April 23, 2020

U.S. Department of the Interior
Attn: Secretary Bernhardt
1849 C Street, N.W.
Washington, DC 20240

Secretary Bernhardt,

I write to inform you about a developing situation in South Dakota that requires your immediate attention.

In response to COVID-19, the Cheyenne River Sioux Tribe (herein "CRST" or the "Tribe"), set up checkpoints on South Dakota state highways. At no time did the Tribe consult with the State or seek agreement with the State regarding the checkpoints. The Tribe established and enforces a policy at the checkpoints that goes beyond all reasonable measures to protect tribal members from COVID-19.

The following are specific examples that have been brought to the attention of my office—demonstrating the hindrance these checkpoints are having on essential personnel, non-tribal members, and many others:

- South Dakota Department of Transportation, South Dakota Game Fish and Parks, and South Dakota Housing employees and contractors are required by the Tribe to obtain travel permits for every person and every trip taken on state highways beyond the checkpoints to provide state services.
- Non-tribal members traveling to and from their homes located on non-tribal land must also obtain travel permits for each trip taken beyond the checkpoints on state highways. One individual, for example, tells us that he waits up to thirty minutes daily trying to pass through the checkpoint for his "work permit" to be reviewed.
- Similarly, the Tribe prevents those that work in and serve the farm and ranch community from traveling on state highways. Seed and equipment deliveries are interrupted, ranchers are unable to get cattle to the veterinarian, and the Tribe went so far as to prohibit a gasoline supplier from passing through the checkpoint. In the case of the gasoline delivery, I am aware that the supplier had a travel permit and was still prohibited from passing through the checkpoint.
My Secretary of Tribal Relations and I requested, on several occasions, that the Tribe work with the State to both protect the health of tribal members and ensure there is no inhibition to essential personnel, non-tribal members, and all others. Regrettably, the Tribe refuses to partner with us in this area, and so I respectfully request your assistance to rectify this situation immediately.

Specifically, I ask that
1) State employees and those providing state services be permitted to use state highways freely without a travel permit.
2) Those not intending to stop on the reservation must be allowed to freely use state highways for travel through the area without a travel permit.
3) Essential personnel must be allowed to travel on state highways to safely deliver critical supplies and services.

Thank you for your immediate assistance with this matter.

Sincerely,

[Signature]

Kristi Noem
Governor
The Honorable Harold Frazier  
Chairman, Cheyenne River Sioux Tribe  
P.O. Box 590  
Eagle Butte, South Dakota 57625  

Dear Chairman Frazier:  

It has come to our attention that the Cheyenne River Sioux Tribe ("CRST") established a checkpoint where United States Route ("US 212") enters the Cheyenne River Sioux Reservation ("Reservation") to prevent entry of non-tribal members from travelling through the Reservation in an effort to minimize exposure from locations with confirmed COVID-19 cases. Like you, the Bureau of Indian Affairs ("BIA") is working to ensure the safety and health of Indian communities like CRST during this current national health crisis. In doing so, however, we must also insure that the actions taken in response are legally authorized and do not infringe on the constitutional rights of individuals.  

On April 8, 2020, I issued a memorandum regarding Temporary Guidance-Road Closures or Restrictions on Tribal Lands. The memorandum clearly identifies situations where tribes must consult and obtain agreement with other road owners. It is my understanding that this memorandum has been shared with you and other tribal leaders throughout South Dakota. As described in the guidance, failure to consult is violation of 25 C.F. R. § 170.114 (a)(1) and (b). We are becoming increasingly concerned that these requirements, and others, have not been satisfied to date by CRST, particularly with regard to roads that are not owned by CRST.  

I note that the State of South Dakota ("State") owns US 212 and CRST cannot legally close or restrict travel on US 212 without first consulting with the State as detailed in my memorandum. If the State has not been consulted and has not agreed to the closure of US 212, CRST should immediately reopen the highway for motorists and take the necessary steps to come into compliance with Federal law. To not do so could have serious consequences.  

It has further come to our attention that the checkpoint was not established by, and is not being operated by, CRST law enforcement officers. Any individual that is not a
legally authorized CRST, BIA, or state law enforcement officer that is blockading a federal or state roadway may be found to be in violation of numerous federal and state laws. CRST should immediately notify such individuals of their criminal jeopardy and order them to no longer block any state or BIA roads.

Following these measures, I invite you to consult with BIA on a process and mechanism to assist CRST in protecting public health on the reservation. We understand that CRST’s actions with respect to US 212 are in response to the COVID-19 pandemic. However, unless the State agrees to temporarily close or otherwise restrict access along US 212, CRST’s checkpoint and roadblock continues to unauthorized, and must be immediately removed. Failure to do so may result in conflicts between CRST and motorists and violations of motorists’ constitutional rights.

We strongly encourage CRST to meet with the State of South Dakota and attempt to reach a mutually acceptable plan for the portion of US 212 that runs through the Reservation that both protects the CRST community from COVID-19 while also facilitating safe passage of motorists along US 212.

Our office is willing and able to help facilitate a conversation with the State. Please advise within the next 24 hours whether CRST intends to comply. Notification can be made in writing to Timothy LaPointe, BIA Regional Director for the Great Plains Region.

We look forward to working with you to resolve this matter.

Sincerely,

Darryl LaCounte
Director, Bureau of Indian Affairs

Enclosed: Temporary Guidance-Road Closures or Restrictions on Tribal Lands.
May 8, 2020

The Honorable Harold Frazier
Chairman, Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, South Dakota 57625

Dear Chairman Frazier,

I understand the Cheyenne River Sioux Tribe continues to interfere with traffic on US and State Highways through its travel checkpoints. As such, the Cheyenne River Sioux Tribe remains out of compliance with the April 8, 2020 memorandum from the United States Department of the Interior. The State of South Dakota objects to tribal checkpoints on US and State Highways regardless of whether those checkpoints take into consideration the safety measures recommended by the SD DOT. Safety recommendations do not constitute consultation and certainly do not equal agreement.

I request the Tribe immediately cease interfering or regulating traffic on US and State Highways and remove all travel checkpoints. If the checkpoints are not removed within the next 48 hours, the State will take necessary legal action.

Sincerely,

Kristi Noem
Governor

CC: Director, Daryl LaCounte, Bureau of Indian Affairs
May 12, 2020

The Honorable Harold Frazier  
Chairman, Cheyenne River Sioux Tribe  
PO Box 590  
Eagle Butte, South Dakota 57625

Dear Chairman Frazier,

I received your statement dated May 8, 2020 responding to my letter earlier in the day stating the objections of the State of South Dakota to the Cheyenne River Sioux Tribe’s checkpoints. Thank you for your response, and your agreement that we work together in confronting this crisis with "science and facts".

I continue to want our governments to work together cooperatively, and believe we can both accomplish our goals. As we combat this pandemic, I am proposing a plan that respects tribal sovereignty, federal law and state sovereignty as well. The three part plan is as follows:

A. US/State Highways: no tribal checkpoints. No one entering or traveling on a US or State highway will be stopped or impeded. This traffic is otherwise passing through the reservation and tribal interaction with these travelers at checkpoints is unlawful and could actually increase the risk of spreading the virus on the reservation.

B. Tribal/BIA roads: checkpoints acceptable. I understand and support your desire to protect your people, and it is within your tribal sovereignty to establish checkpoints on BIA/tribal roads. To be clear, the state has no objection to tribal checkpoints on BIA/tribal roads.

This means that anyone turning off a US or State Highway for a destination within your reservation could be subject to a tribal checkpoint.

C. South Dakota requests for reasonable tribal checkpoint accommodations. If you decide to operate tribal checkpoints on BIA/tribal roads, the State of South Dakota is asking you to make reasonable accommodations for the good of your own people. This would include access for all people to permit emergency services, delivery of food, energy and medical supplies, and access to private property within the reservation.
We want to work with you on this and understand these restrictions will need to vary based on science, data and facts.

I ask that you immediately adjust your policies as they apply to the public entering or traveling through your reservation on US/State Highways ("A" above), and let's talk on how we can work together on "C".

We both want what is best for South Dakota and all of its residents (both tribal and non-tribal) in this fight against COVID-19, and I believe this is a reasonable pathway forward. Please contact me if you are willing to find a way forward given my position.

Sincerely,

[Signature]

Governor Kristi Noem

cc. Director, Daryl LaCounte, Bureau of Indian Affairs
   U.S. Senator John Thune
   U.S. Senator Mike Rounds
   U.S. Representative Dusty Johnson