

United States Senate

WASHINGTON, DC 20510

February 18, 2025

The Honorable Kristi Noem
Secretary of Homeland Security
Washington, DC 20528

Dear Secretary Noem:

We write to express our growing concern over reports that, since President Trump issued the Executive Order on birthright citizenship,¹ United States-born citizens of federally recognized Tribes have been stopped and questioned by Immigration and Customs Enforcement (ICE) agents on suspicion of being undocumented migrants.² These incidents have stoked fear and panic for many Tribal citizens living on and off reservation, resulting in at least one Tribal government issuing its own guidance and standing up a citizen hotline to report incidents and receive assistance.³ Whether it is simple ignorance or worse -- outright disrespect for and harassment of Tribal citizens -- ICE's law enforcement tactics reflect an abdication of U.S. trust and treaty responsibility with Tribal nations and their citizens, and cannot stand.

Accordingly, we ask that the Department issue guidance and training to ICE agents on forms of Tribal identification that are acceptable as proof of United States citizenship (alone or in tandem with other documents). We also ask that your Department communicate and consult with Tribal governments to ensure they are given timely and accurate information to inform and protect their Tribal citizens from unnecessary searches, interrogation, and detention related to immigration enforcement efforts.

Both Congress, exercising its plenary authority over Indian Affairs,⁴ and the United States Supreme Court have established that Indians born in the United States are United States citizens.⁵ Indians may also be citizens of federally-recognized Tribes, making them dual citizens of both the United States and their Tribal nations.⁶ As such, Tribal citizens may possess multiple forms

¹ Exec. Order No. 14, 160, 90 Fed. Reg. 8449 (Jan. 29, 2025).

² We understand that these incidents occurred during traffic stops, at check points, and in public spaces, homes, and schools, resulting in at least one detainment of a U.S. born Tribal citizen. *See e.g.*, <https://www.cnn.com/2025/01/27/us/navajo-detained-ice-indigenous-immigration-trump/index.html>

³ *See* <https://nativenewsonline.net/sovereignty/navajo-citizens-facing-identity-challenges-during-ice-deportation-raids>; Press Release, Navajo Nation President Buu Nygren (Jan. 24, 2025), available at <https://www.navajonnsn.gov/Portals/0/Press%20Releases/2025/Jan/President%20Nygren%E2%80%99s%20statement%20on%20ICE%20concerns.%20for%20Jan.%202025.pdf>

⁴ *United States v. Lara*, 541 U.S. 193, 200 (2004) (the treaty clause, commerce clause, and structure of the United States Constitution provide Congress with "plenary and exclusive" with respect to Indian affairs).

⁵ 8 U.S.C. § 1401(b) (Indian Citizenship Act of 1924, guaranteeing birthright citizen to Native Americans born in the United States); *see, Goodluck v. Apache County*, 417 F. Supp. 13 (D. Ariz. 1975), *aff'd*, 429 U.S. 876 (1976).

⁶ *See e.g., Ex parte Green*, 123 F. 2d 862 (2d Cir. 1941), *cert denied*, 316 U.S. 668 (1942); *Totus v. United States*, 39 F. Supp. 7 (E.D. Wash. 1941) (finding native-born Indians were U.S. citizens and thus subject to the Selective Training and Service Act of 1940); *see generally, United States v. Mazurie*, 419 U.S. 544 (1975); *Mescalero Apache Tribe v. Jones*, 411 U.S. 164 (1973); *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164 (1973) (establishing the authority of state and tribal governments to tax tribal citizens and non-citizens within and outside reservation

of identification, including Tribal government-issued identification, such as enrollment cards and Certificates of Indian Blood (CIB), and state-issued or federally-issued identification. However, it is not uncommon for Tribal citizens to only carry their Tribal government-issued identification, which is often accepted as valid proof of United States citizenship for purposes of federal benefits.⁷

In addition to consulting with, and issuing guidance for, Tribes on what forms of identification ICE will accept as valid proof of United States citizenship, including Tribal identification, we also request that your Department issue internal guidance for ICE agents on how to lawfully engage with federally recognized Tribes and their citizens, including on Tribal lands. Lastly, we request that you reply, in detail, to the following questions:

- Does ICE policy accept of Certificates of Indian Blood (CIBs), Tribal enrollment, or other Tribal identification documents as valid proof of United States citizenship?
 - If yes, please provide a full description of these policies and how they are communicated within your Department, and with Tribal governments.
 - If no, please clarify what information needs to be present on Tribally-issued identification documents for those to be accepted as valid proof of United States citizenship.
- What training are ICE agents given about different forms of valid identification and documentation of United States citizenship for enrolled members of federally recognized Tribes, including CIBs, Tribal enrollment, or other Tribal identification?
- What training are ICE agents, and other law enforcement personnel in your Department, given about interactions with citizens of federally recognized Tribes?
- What specific corrective actions are you taking to ensure that the rights of United States-born Tribal citizens, as American citizens, are being upheld and respected by your Department?
- How does ICE justify the use of taxpayer dollars and its limited resources to conduct enforcement actions involving United States-born citizens of federally recognized Tribes?
- What has been the estimated cost of ICE enforcement actions within reservation boundaries thus far? Will ICE enforcement actions occur within community locations such as schools, hospitals, clinics, and religious institutions that are on Tribal lands, including trust land, restricted fee, and fee simple lands, or located off of Tribal lands?

boundaries); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) (finding a Tribes' power to tax derives, in part, from its governmental power to exclude); *U.S. Const. amend. XIV*, § 1 (by operation of law, citizens of Indian Tribes are also citizens of the states in which they reside).

⁷ See e.g., Children's Health Insurance Program Reauthorization Act (CHIPRA), Pub. L. No. 111-3, tit. II, 123 Stat. 52§. 211, (2009) (codified at 42 U.S.C. § 1396b(x)(3)(B)(v), 42 C.F.R. §§ 436.407(b)(7), (d)(1) (clarifying acceptance of documents issued by a federally-recognized Indian Tribe for documentation of citizenship or nationality, including a document issued by a federally-recognized Indian Tribe evidencing membership, enrollment in, or affiliation with such Tribe); Exec. Order No. 11935, 41 Fed. Reg. 37301 (1976), re-designated under Exec. Order No. 13197, Fed. Reg. 7853 (2001), (amending 5 C.F.R. § 7, to require citizenship for employment by the federal competitive services).

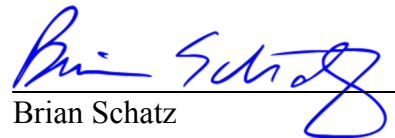
- What implications do ICE enforcement actions have for Tribal nations whose historic lands transcend the U.S.-Mexico and U.S.-Canada borders, including Tribes with members living in Mexico or Canada and/or having transborder migratory privileges using special identification documents, such as the Tohono O’odham Nation and the Kickapoo Traditional Tribe of Texas? What will ICE do to ensure that tribal members residing in Mexico or Canada are not inappropriately detained as a result of these enforcement actions? And how is ICE educating its agents about the access guaranteed in the Jay Treaty to the United States for Canadian First Nations members for cultural, trade, and other purposes?

We ask that your response include documentation of all Department policies and practices related to the questions above by March 4, 2025, along with evidence of any actions your Department is taking to communicate and consult with Tribes on ICE enforcement efforts, both on and off of Tribal lands.

Sincerely,



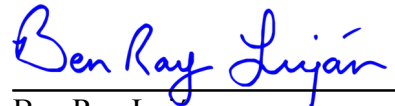
Martin Heinrich
United States Senator



Brian Schatz
United States Senator



John Hickenlooper
United States Senator



Ben Ray Lujan
United States Senator



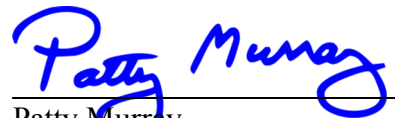
Kirsten Gillibrand
United States Senator



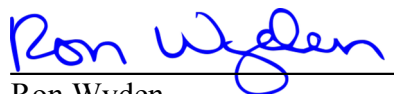
Jeffrey A. Merkley
United States Senator



Michael F. Bennet
United States Senator



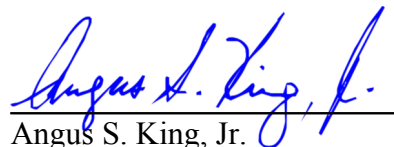
Patty Murray
United States Senator



Ron Wyden
United States Senator



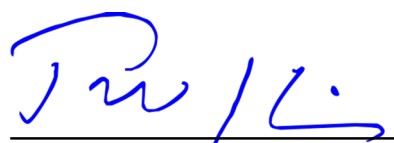
Alex Padilla
United States Senator



Angus S. King, Jr.
United States Senator



Catherine Cortez Masto
United States Senator



Tim Kaine
United States Senator



Tina Smith
United States Senator



Mark R. Warner
United States Senator