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Statement of
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on behalf of the
PIRO/MANSO/TIWA INDIAN TRIBE,
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LAS CRUCES, NEW MEXICO

Submitted to the
SENATE INDIAN AFFAIRS COMMITTEE
Regarding
S. 297,
FEDERAL ACKNOWLEDGMENT PROCESS REFORM ACT OF 2003
April 21, 2004

Good morning, Chairman Campbell and distinguished members of the Senate Committee on Indian Affairs. My name is Edward Roybal, II, and I am the Governor of the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe of Las Cruces, New Mexico. It is a great honor to represent my tribe here today and to submit this testimony on S. 297, the Federal Acknowledgment Process Reform Act of 2003.

The Piro/Manso/Tiwa Tribe, although unrecognized, is a traditional Pueblo. While there are currently two other groups from New Mexico in the administrative process for recognition[1], we are the only traditional Pueblo, with our own Indian

ceremonial and civil governing structures, which has sought recognition through the acknowledgment process under the Office of Federal Acknowledgment (or OFA), formerly the Branch of Acknowledgment and Research (BAR).

I was elected to serve as Governor of Piro/Manso/Tiwa at our annual elections in December, 2002, and again in 2003. My father, Edward Roybal, Sr., is our Cacique. In this position, which he holds for his lifetime, my father carries the core of thousands of years of tribal traditions and ceremonies, and maintains a lineage that has been documented as being in my family for more than 300 years. In addition to our traditional structure of Cacique and War Captains, since 1965, we have had a Tribal Council form of government, which combines the administrative (Governor, etc.) and traditional offices of the Pueblo under the guidance of the Cacique.

Although we are currently unrecognized, we have long been known as an Indian Pueblo. In 1888, Eugene Van Patten, a United States land commissioner and census officer in Dona Ana County, NM, helped our Cacique, Felipe Roybal, and two other tribal commissioners obtain a land grant of 120 acres to establish the Town of Guadalupe on behalf of the Tribe which was later confirmed by a Deed from the territorial government in 1908. From 1890 to1910, 110 children from our Pueblo were taken to Indian boarding schools in Albuquerque, Santa Fe, California, Oklahoma, and Arizona – a form of what might be called the Tribe being recognized and receiving federal services as an Indian tribe. The boarding school experience impacted two generations of Piro/Manso/Tiwa children, who were enrolled because federal agents such as Van Patten identified them as children of an existing Indian Pueblo which had not abandoned tribal relations.

Currently, certain members of our Tribe receive some health care benefits from the Indian Health Service based on certification of enrollment issued by the Tribe. The states of New Mexico, Arizona, California and Nevada periodically contact our tribal officials in connection with child and family services agencies' compliance with the Indian Child Welfare Act. Our Cacique and War Captain have testified in state Family and Child Custody Court on behalf of the Tribe in child placement proceedings. The magistrate for the City of Las Cruces cross-deputizes our five war captains as local law enforcement officers for tribal gatherings after their selection each December. The Tribe receives permits from the Bureau of Land Management (BLM) to harvest traditional plants for our ceremonies, and has an ongoing relationship with White Sands National Monument for the protection of ancient burial grounds which tie to our people. We also have a land access agreement to our sacred mountain and ceremonial grounds with New Mexico State University and BLM. We will be one of the tribes with which the National Park Service conducts consultation as part of the El Camino Real de los Tejas heritage trails project in Texas.

My uncle, Louis Roybal, who served as Governor for ten years (1992-2002), testified before this Committee in May, 2000, on Chairman Campbell's earlier acknowledgment reform legislation (S. 611). As this Committee knows from his

testimony then, the Piro/Manso/Tiwa first sent a letter to the Department of the Interior in 1971, requesting federal recognition as an Indian tribe.

In 1976, in the second session of the 94th Congress, and soon after the Tribe had submitted to the Department of the Interior the letter requesting acknowledgment, Senator Domenici introduced recognition legislation for our Tribe. No action was taken on this legislation. During this time, the Tribe's effort to achieve judicial relief in order to receive Snyder Act services was proceeding in the case Avalos v. Morton in U.S. District Court. The court held, however, that it was not able to determine our tribal status judicially. Two years later, in 1978, the Bureau of Indian Affairs issued the acknowledgment regulations that are now found at 25 CFR Part 83.

In 1992, the Tribe submitted a revised documented petition to the Department under the new regulations . The documentation we submitted in 1992 was extensive – regarding history, references in local newspapers and Spanish, Mexican and American documents, genealogy, tribal events and meetings, named political and religious leaders, maps, examples of how the Tribe and its members have interacted, etc. Under the acknowledgment process, BAR conducted a preliminary assessment of the petition, and, in 1993, advised the Tribe of the "obvious deficiencies" its preliminary assessment had found. In 1996, the Tribe submitted extensive additional material in response to this "obvious deficiencies" assessment, and in January, 1997, was deemed by BAR to have presented a complete petition. Since January, 1997, the Tribe has been in the "Ready, Waiting for Active Consideration" part of the petition "queue" – waiting for BAR staff to complete their reviews of other petitions and become available to begin review of the material presented by Piro/Manso/Tiwa.

Where the Recognition Process Has Bogged Down for Us: If I may offer just one comment which sums up this tribe's experience in the recognition process, it would be this: When Governor Louis Roybal testified before the Senate Indian Affairs Committee in May, 2000, Piro/Manso/Tiwa was seventh on the "Ready, Waiting for Active Consideration" list maintained by the Branch of Acknowledgment and Research. Today, nearly four years to the day later, we are still seventh on "Ready and Waiting."

In the intervening years, BAR staff has been gracious in agreeing to meet with us. In 1999, a delegation of Piro/Manso/Tiwa representatives met with Director Lee Fleming regarding the release of certain sensitive information in our petition to an outside party, and how to insure that certain material was protected from disclosure to third parties in the future. BAR has been available to legal counsel to allow review of our administrative file from time to time. More recently, in 2002, our Cacique and Federal Recognition Project Director, Andy Roybal, met to inquire when BAR thought we might go on "Active Consideration," and to discuss both the submission of additional materials and the retention of other sensitive materials by legal counsel. Our meetings with BAR have been infrequent, at our initiative and provided no certainty of a timeline for "Active Consideration." Mr. Fleming has indicated to us that OFA/BAR's priority is those petitions under "Active Consideration," and getting those petitions all the way

through the process, not on simultaneously juggling the petitions under "Active Consideration" and moving petitioners on "Ready, Waiting" on to "Active Consideration". With the trend in petitions going on to litigation or the Interior Board of Indian Appeals, that has meant that petitioners in the "Ready" part of the queue (including several of us deemed ready for review in 1995, 1996, 1997 or 1998) have had even longer to wait.

Our experience in the recognition process is also one of "what is enough?" in terms of documentation to substantiate the seven mandatory criteria.

Our initial petition was supplemented in 1996 with our response to the "obvious deficiencies" review. Subsequent to that submission, our researcher, Al Logan Slagle[2], before his unexpected death in November, 2002, was conducting an elaborate social networking survey of tribal activities; mapping an expanded residency study (since at the present time 75% of all enrolled Piro/Manso/Tiwa members live within a six-mile radius of the original Pueblo settlement); and analyzing our tribal members' experiences at Indian boarding schools from 1893 to 1914. Following BAR's venture into the Federal Acknowledgment Information Resource System (or FAIRS), Logan was in the process of scanning on to computer disks all the documents referenced in and submitted as part of our petition, so that BAR staff would have those extensive materials available electronically. (I should note that some of these documents required special care since they date back to the 16th century with the entradas and the early Catholic missions established to Christianize our people.)

Mr. Slagle was also following the format of recent BAR decisions [3] and plotting each piece of evidence in a chart that noted its date, criterion addressed, relevant BAR precedent, analysis and conclusion. Upon his passing, this "long chart" ran over 3,000 pages on legal-sized paper.

Additionally, based on guidance from BAR staff, we hope to undertake transcriptions of the more than 100 audio and video tapes of interviews with tribal members and of tribal meetings and ceremonies. This is in order to submit both videos/audios and hard copies as evidence for our petition. We also plan to submit an extensive chronological exhibit of documents of tribal council meetings from 1886 to the present, even as we assemble documentation regarding the most recent decade. We also understand that BAR staff would find valuable in their review the actual field notes of our anthropologist and other researchers, and plan on submitting that material as well.

Comments on Recognition Reform Legislation and S. 297: In our previous testimony before this Committee, the Piro/Manso/Tiwa Tribe noted that the current recognition process is lengthy, literally, in our case, taking generations. Secondly, and in general, the federal acknowledgment process is too expensive, for some petitioners costing millions of dollars for the professional services of genealogists, anthropologists, attorneys and others – most of whom, I would note, are non-tribal members and do not reside in the unacknowledged tribe's local area – needed to prepare a petition that can

confidently meet the criteria. Our Tribe has been fortunate in the last decade to enjoy the support and assistance of professionals and others dedicated to our recognition, despite our Tribe's impoverished status.

As a traditional Pueblo, Piro/Manso/Tiwa has also faced a unique aspect in that our traditions and ceremonies, our religious practices and sacred sites are traditionally not revealed to outsiders, because to do so would violate our traditions and our elders' teachings. Yet in order to prove to OFA/BAR that we are who we know ourselves to be – a traditional Pueblo – we must submit information about our sacred knowledge, traditions and practices, which is passed down orally from generation to generation, our leaders, internal governmental matters and other issues in which the Tribe has been involved.

Before offering some specific comments on the provisions of S. 297, I would like to make a general statement that the bill is somewhat confusing in its current form in terms of its relationship to --either supplement to or replacement of --the current regulations. The language of section 9, Regulations, seems to suggest that S. 297 represents a blend of the current process with additional steps, timelines and options set forth in the bill. Given that this acknowledgment process is confusing enough as it is, if Congress were to enact this legislation as the statutory framework for recognition, we believe this relationship between the bill and the regulations should be made clearer.

Turning now to specific provisions of S. 297, I would like to offer the following comments:

Sec. 2. Findings and Purposes.

We support the purpose of the Federal Acknowledgment Process Reform Act to ensure that decisions to recognize an Indian tribe are made with a "consistent legal, factual and historical basis." We recognize that BAR/OFA and the Department of the Interior undertake a serious task in determining and establishing a government-to-government relationship between the petitioner and the federal government.

Sec. 3. Definitions.

We appreciate that the definition of "Treaty" has been revised from the earlier bill, S. 611, to include a recognition of agreements made with colonial governments which were the predecessor to the United States government.

Sec. 4. Acknowledgment Process.

We support the idea of what might be called an "expanded" letter of intent, which

provides additional information about the petitioner in a brief narrative. The language of this subsection might be clarified regarding the Committee's intent whether this "expansion" is intended to apply retroactively to the 130 current "petitions" pending before OFA (according to the February 10, 2004 status summary) which are only letters of intent and for which no documentation has been submitted.

As this Committee has held hearings over the past 13 or more years on various legislative proposals to make the recognition process fairer and more streamlined, and particularly in the past several years, two important themes have emerged which I want to address briefly with respect to the provisions of S. 297: the role of interested parties and the mandatory criteria.

The role of interested parties may be addressed with regard to section 4. Although Piro/Manso/Tiwa is privileged to enjoy a cordial relationship with the State of New Mexico and the City of Las Cruces, we know that for other petitioners, state and local governments often register concerns – often not focusing on the petitioner or their petition until after the issuance of a Proposed Finding (for acknowledgment, generally, I would note). It is our view that the current regulations provide sufficient input for interested parties. Interested parties should not be given veto authority. Hopefully, the provision for an expanded letter of intent will provide opportunities for state and local governments to receive information and, in the best of all possible scenarios, continue to build a good relationship with their tribal neighbors.

Section 4 also provides for petitioners to have access to the Library of Congress and the National Archives. We strongly support this provision, noting that information reviewed at the National Archives, as well as in various church and Mexican repositories, was key to documenting our petition.

We also see a shift toward the role of interested parties in provisions of subsection (c)(B) which would afford an interested party an opportunity to submit evidence regarding a petition and have it be considered by the Assistant Secretary prior to the issuance of a Proposed Finding, as currently provided for under the regulations. We would recommend that interested parties be required to comply with established timeframes in submitting evidence, so that their participation does not slow the process down.

The language of the subsections related to Review of Petitions and the Final Determination is somewhat unclear in whether or not it incorporates the various steps currently set forth under the regulations. It is also not clear whether the steps under the current process for a request for reconsideration to be filed with the Interior Board of Indian Appeals still would apply, or whether the petitions would go directly to U.S. District Court for a judicial review of a final determination.

We also wish to note our support for the bill's increased level of appropriations that would be authorized for the processing of petitions: $5 million for each FY 2004 through 2013. This level should be quite a boost to OFA from its current level around

$1.7 million, and hopefully will enable that office to hire not only FOIA specialists but additional teams of historians, genealogists and anthropologists so that more petitions can be reviewed in a more timely manner.

Sec. 5. Documented Petitions

Section 5 of the bill relates to Factors for Consideration in a documented petition. It is here that I wish to address a second theme of recent hearings dealing with recognition, and that is the seven mandatory criteria that a petitioner must satisfactorily meet in order for the Assistant Secretary to issue a positive Proposed Finding and/or Final Determination for recognition.

With respect to the criteria, given the current climate of scrutiny around acknowledgment decisions, I believe that it will be hard for any legislation to be approved by Congress which would change the current seven mandatory criteria that a petitioner must meet now. By saying this, I do not mean to suggest that I believe the current criteria are fair or even the most appropriate. I am just concerned with opening up the criteria to revision. Representatives of both local government and recognized tribes have expressed their strong opposition on the legislative record to proposals to change the criteria. I would even suggest for the Committee's consideration that the language of section 5 of S. 297 be amended to track precisely the language of 25 CFR 83.7, and also to include specifically in that section the criteria of the current regulations that the petitioner's membership is composed principally of "persons who are not members of any acknowledged North American Indian tribe" (criterion f), and that the petitioner has not been the subject of termination legislation or legislation which prohibited a relationship with the federal government (criterion g).

Sec. 6. Additional Resources.

The Independent Review and Advisory Board could prove to be very helpful in its consideration of unique questions raised by a petitioner's evidence and in providing another level of peer review for the work performed by the OFA. However, we would offer the suggestion of the addition of meaningful timelines for the review of a documented petition by the Advisory Board, so that this review does not become a source of substantial delays.

With respect to this section's provisions for assistance to petitioners and interested parties, we would prefer that not less than 75% of grants authorized under this section be reserved for petitioners.

The Federal Acknowledgment Pilot Project could bring an exciting new level of expertise to the assistance of petitioners. Since the Committee is exploring in S. 297 the kinds of expertise various institutions might offer in the petitioning process, I wish to note that our 1996 submission greatly benefitted from the assistance of Dr. Howard Campbell, a cultural anthropologist with the University of Texas at El Paso. Tribal

members' concerns regarding Privacy Act matters were handled through the signing of confidentiality statements with Dr. Campbell. His students, in particular, who eagerly expended countless hours in the drudgery of organizing scores of documents, were a real asset to our petition effort. Our experience, however, also showed that a university requires a substantial "cut" of such research funds, so that the balance available for our researcher, students, supplies and travel was actually less than half the grant amount.

In closing, the Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, thanks you for the privilege of being invited here today to submit testimony on S. 297. We deeply appreciate the efforts of the Chairman and the Vice Chairman and this Committee to champion voices largely not heard – that of unacknowledged tribes.

I will be pleased to answer any questions the Committee may have.

Thank you very much for this opportunity.