

**STATEMENT OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT AND RELATED AGENCIES**

November 20, 2024

Aanii (Hello), Chairman Simpson, Ranking Member Pingree, and members of the Subcommittee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on challenges and opportunities for addressing Missing and Murdered Indigenous People (MMIP).

The United States has a trust relationship with each of the 574 federally recognized Tribes and their Tribal citizens. Through these relationships, the United States has charged itself with obligations of the highest responsibility and trust—including the obligation to protect the existence of Indian Tribes and their citizens. This obligation is at its highest when it comes to protecting the physical safety and well-being of Indian people within Indian Country.

The Bureau of Indian Affairs (BIA) with our federal partners at Department of Justice (DOJ) and Department of Health and Human Services (HHS), play a crucial role in meeting this obligation on behalf of the United States.

Under President Biden and Secretary Haaland’s leadership, the Department has been working to improve our ability to meet our trust obligations to Indian Country, and to partner with Tribes to make their communities safer. For example, Secretary Haaland built on efforts from the previous administration and established the Missing and Murdered Unit (MMU) within the BIA Office of Justice Services (OJS) just months after taking office. The MMU works closely with the DOJ, especially the Federal Bureau of Investigation (FBI), to coordinate a centralized intake process for missing and murdered case referrals and conduct investigative activities on current and previously unsolved investigations. On May 25, 2022, President Biden issued Executive Order 14074, “Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety,” to ensure agencies across the federal government, including public health agencies, work together to improve the recruitment, retention, and mental well-being of public safety officers. On November 22, 2022, the Department executed an updated interagency agreement with the DOJ to ensure better coordination with the FBI on criminal investigations in Indian Country.

The Department has also taken other strategies to address MMIP. The Administration has worked with this Committee, and with all of Congress, to support legislation and enact laws to improve public safety in Indian Country, including the historic reauthorization of the Violence Against Women Act.

We have filled 38 positions in the MMU. The MMU and the Department’s information technology staff worked together to develop the cloud-based Solution Trust Accountability Tracker (STAT), which catalogues information on missing person, murder, and human trafficking cases related to American Indians and Alaska Natives. A referral in STAT is tracked until it is determined if the referral has an Indian Country nexus, and if not, it is referred to the proper jurisdiction. The MMU will use this information to improve suspect identification and increase public awareness of the crisis facing Indigenous communities and ensure cases are directed to the proper jurisdiction.

MMU Victim Services and BIA OJS Corrections are also working together to implement a prevention and awareness project for incarcerated juveniles at BIA OJS Correctional Facilities in Indian Country. This proactive approach will bring awareness to juveniles and the correctional staff relating to the missing and murdered risk factors of human trafficking and sex trafficking. In addition, from June 1, 2024, through September 30, 2024, the FBI, with the assistance of the MMU, BIA conducted “Operation Not Forgotten.” The primary goal of Operation Not Forgotten was to, through focused efforts by additional investigator, move cases closer to resolution, provide victim services, and to bring offenders to justice.

While we have made progress, many structural challenges still exist that make it difficult for federal agencies and Tribes to broadly address the safety of Indian people in communities across Indian Country. I would like to focus on those structural challenges below.

Funding

Presently, the Department funds public safety and justice services for only 198 out of the total 574 federally recognized Tribes. On March 4, 2024, the Department issued the “Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2021” (2021 TLOA report).¹ In 2021, total BIA spending for law enforcement was \$446.7 million, \$125 million for detention facilities, and \$65.3 million for Tribal courts. The 2021 TLOA report estimates the total cost to meet the need in Indian Country for public safety and justice programs is \$1.7 billion for law enforcement programs, \$284.2 million for existing detention centers, and \$1.5 billion for Tribal courts. Thus, the total estimated unmet obligations identified in the 2021 TLOA report for Tribal law enforcement, detention, and courts funding are just over \$3 billion. This means the federal government is only funding 13% of the estimated need. The total estimated public safety and justice staffing need for Indian Country is 29,436 full time equivalent personnel. These numbers demonstrate the continued need for additional investment to improve the ability of Tribal public safety systems to fully serve their communities.

The FY 2025 President’s Budget

Increasing the number of law enforcement officers and staff is an important investment we can make to address MMIP and other public safety challenges such as combatting illicit drugs.

¹ See: https://www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf

Having sufficient staff on the ground means a greater opportunity to prevent crimes before they happen, including MMIP. To increase the number of officers in tribal communities and get the BIA budget moving in the right direction, the FY 2025 budget request includes \$651.2 million for Public Safety and Justice operations, an increase of \$95.7 million above the 2024 Enacted level. Increased operational funding will support the expanding Tribal needs in policing, detention, and Tribal courts. The budget includes a \$33.5 million operational capacity program increase in Criminal Investigations and Police Services, specifically targeted to increase the number of officers and investigators on the ground in Indian Country. The request also includes a requested increase of \$14.0 million to address operational needs at detentions and corrections facilities including adding staff at existing facilities and at two new detentions centers coming online in FY 2025.

Within the total amount requested for Public Safety and Justice activity in FY 2025, \$16.5 million is requested to address the crisis of MMIP. The budget supports costs that include law enforcement and analytical staff, equipment and operational costs for evidence collection and maintenance, information systems, and MMIP training at the Advanced Training Center. The MMU engages in cross-departmental and interagency collaboration to identify gaps in information sharing and data collection to more effectively investigate these cases. As part of the proposed expansion to the Tiwahe Initiative, the budget includes a program increase of \$1.9 million for the Office of Tribal Justice Support to provide technical assistance to Tribes looking to develop and operate Healing to Wellness courts. These courts serve as alternatives to incarceration and provide a culturally appropriate forum to support those within the criminal justice system by assisting in addressing underlying behavioral health and substance abuse issues which contribute to the MMIP crisis.

I want to thank the Subcommittee for recognizing the importance of Tribal Public Safety and Justice programs in the House passed FY 2025 appropriations bill which included a substantial increase for these programs. Consistent with the Administration's request, broadly allocated funding increases are the most effective way of enhancing capacity for all Tribes. When appropriation increases are targeted for specific program areas or a smaller set of Tribes, it limits the number of Tribes receiving increases.

For example, the FY 2023 appropriation included an \$11 million increase for Criminal Investigations & Policing but only \$4 million of the total increase was available to all BIA funded law enforcement programs. The remaining \$4 million general increase was available for allocation among the existing 198 law enforcement programs funded in the BIA's budget, which provided a budget increase of just 1.3 percent over FY 2022, or an average of \$20,202 per Tribe. The average increase amount was not sufficient to fund an additional officer at the Tribal level. Accounting for inflation, at the FY 2024 appropriated level which did not fund fixed cost increases included in the 2024 budget, all 198 Tribes experienced a five percent decrease in the purchasing power of their public safety funding. The unfortunate result is nearly all Tribes can afford fewer officers today than in 2022.

Capacity Building

In addition to funding, BIA uses different methods to increase the recruitment and retention of law enforcement officers and staff. The recruitment and retention of law enforcement officers and staff for Tribal law enforcement agencies continues to pose unique challenges. These challenges include pay parity, the length of background investigations, lack of applicants, and officer wellness.

Currently, our foremost strategy is addressing pay parity by increasing pay levels for BIA direct service law enforcement employees to match with other federal law enforcement. To accomplish this, we completed an upgrade to our uniformed police officer positions during FY 2023, which increased career advancement opportunities, along with corresponding pay increases up to an additional \$30,000 annually for BIA law enforcement officers. We are also utilizing available hiring flexibilities and recruitment and retention bonuses to increase current staffing levels and better support those interested in fulfilling the Department's unique mission in Tribal communities. These strategies are allowing us to make gradual progress.

On November 1, 2023, the Department released "Not One More: Findings and Recommendations of the Not Invisible Act Commission" report² (NIAC report) in coordination with the DOJ. The Commission provided recommendations to the Secretary of the Interior and the Attorney General on six topic areas, including the recruitment and retention of Tribal and BIA law enforcement.

To increase recruitment and retention, the Commission recommended that Congress make Tribal law enforcement eligible for federal retirement benefits. The BIA testified in several hearings in support of the proposed legislation to extend federal benefits to Tribal law enforcement. This legislation will help with Tribes' ability to recruit and retain law enforcement and increase the overall safety of their communities.

The Department's Law Enforcement Task Force (Task Force) also released their 2023 report on October 27, 2023, which includes a list of findings and recommendations to improve all of the Department's law enforcement programs.³ That list includes a finding from all Bureaus within the Department citing the length of time to complete background investigations as an impediment to filling open positions in a timely manner. The Task Force recommends streamlining the background investigation process to increase the timeliness of the hiring process.

The BIA has testified in strong support of streamlining the background investigation process as proposed in introduced legislation, specifically the Parity for Tribal Law Enforcement Act. The BIA OJS assists Indian Tribes in conducting background investigations for Tribal law enforcement recruits and welcomes a demonstration program to eliminate one of the biggest obstacles to recruitment—the lengthy background investigation process—which would result in

²See: [https://www.justice.gov/d9/2023-](https://www.justice.gov/d9/2023-11/34%20NIAC%20Final%20Report_version%2011.1.23_FINAL.pdf)

[11/34%20NIAC%20Final%20Report_version%2011.1.23_FINAL.pdf](https://www.justice.gov/d9/2023-11/34%20NIAC%20Final%20Report_version%2011.1.23_FINAL.pdf)

³ See: <https://www.doi.gov/sites/doi.gov/files/doi-letf-aspiration-to-action.pdf>

the expedited hiring of qualified law enforcement recruits. Currently, our team meets on a weekly basis to ensure the hiring process and background checks move as quickly as possible.

In the past 20 years, Congress has commissioned several reports assessing the state of Tribal law enforcement and public safety, including through the Not Invisible Act, Savanna's Act, and the Tribal Law and Order Act. The Department has contributed to various reports on the state of Tribal law enforcement. The Department has also provided information for many Government Accountability Office and Congressional Research Service reports. Each report reaches many of the same conclusions, including that Tribal law enforcement needs more funding. Strengthening the Department's continued support of 198 federally recognized Tribal police forces and working toward fully funding all 574 Tribes remains a top priority.

Jurisdiction

The jurisdictional framework between Indian Tribes, the federal government, and states is complex, especially with respect to determining criminal jurisdiction. Congress and the courts have tied criminal jurisdiction to several factors to determine who exercises jurisdiction. These factors include type of crime, Indian or non-Indian status of the defendant, Indian or non-Indian status of the victim, and whether or not the crime scene lies within Indian Country. These factors impose significant transaction costs on officers, policymakers, attorneys, judges, and advocates working to address public safety challenges in Indian Country. In Indian Country, determining these factors is often a complex element to be resolved before beginning an investigation.

However, Congress, has legislated to clarify and affirm criminal jurisdiction in Indian Country. These enactments include:

- The 1968 amendments to P.L. 83-280 (P.L. 280), which required states to obtain the consent of the Indian Tribe prior to exercising criminal jurisdiction in Indian Country and permitted states to withdraw from the jurisdictional arrangement;
- The 1991 amendments to the Indian Civil Rights Act, which affirmed Indian Tribes' inherent criminal jurisdiction over non-member Indians;
- The 2010 Tribal Law and Order Act, which enhanced the criminal sentencing authority of Tribal courts;
- The 2013 reauthorization of the Violence Against Women Act, which recognized and affirmed Indian Tribes' inherent jurisdiction to prosecute non-Indians for certain crimes committed in Indian Country; and,
- The 2022 reauthorization of the Violence Against Women Act, which expanded and reaffirmed Indian Tribes' inherent jurisdiction to prosecute non-Indians for additional crimes committed in Indian Country and established a pilot program for Alaska Native Villages.

These enactments demonstrate that Indian Tribes themselves can best meet the public welfare and safety needs of communities within their jurisdiction. Despite the successful restoration of jurisdiction over certain crimes, the Supreme Court of the United States (SCOTUS) added more complexities to the framework.

In *McGirt v. Oklahoma*, SCOTUS held that the Muscogee Creek Nation continued to have criminal jurisdiction over all the land reserved for the Tribe in an 1866 Treaty. This decision was complicated by the Court's decision in *Castro-Huerta v. Oklahoma*. In *Castro-Huerta*, SCOTUS determined that the federal government and states have concurrent jurisdiction over non-Indians who commit crimes against Indians in Indian Country. This recognition of states' expanded jurisdiction occurred without the consent of sovereign federally recognized Tribes, and without regard to the weight of the historical understanding of the limits on state authority in Indian Country, which Congress has relied upon in enacting legislation involving Indian Country jurisdiction, including 18 U.S.C. § 1152. These decisions combined with P.L. 280 jurisdiction make Indian Country jurisdiction more complex, confusing, and ripe for unintended consequences.

The NIAC report contained recommendations on addressing the jurisdictional complexities within Indian Country. These recommendations include 1) amending P.L. 280 to allow Tribes to opt out of state jurisdiction and 2) restoring jurisdiction to Tribes to be able to prosecute all crimes that occur on Tribal lands.

Tribal Courts

Tribal courts are an essential aspect of Tribal sovereignty and are an opportunity for Tribes to run their own justice systems. There are approximately 400 Tribal justice systems throughout the nation. The focus of all these courts is to address the underlying causes of issues "upstream" to prevent tragic crimes from occurring which debilitate Native communities. Tribes are better suited to provide best practices and discuss challenges with their peers.

Many Tribes are reforming or creating judicial systems which incorporate traditional and cultural aspects to create a more effective measure to address trauma induced circumstances within their communities through Healing to Wellness Tribal Courts.

Healing to Wellness courts have provided positive results in healing and strengthening Tribal communities. These courts address child dependency and family matters brought by the Tribal Social Service Directorate and play an essential role in family reunification by providing support and services needed for parents who wish to complete a family reunification plan. Tribes have seen an improvement in the reunification process when relatives and community members provide encouragement and support to those families needing assistance. Reunification is more successful through the Healing to Wellness court process, as is addressing addiction issues, which often go hand in hand with child dependency cases.

Additional resources are needed to ensure the continued success of Tribal courts. The NIAC report recommended increasing funding for Tribal Courts for safety, equipment, and technology.

Other Resource Challenges

Many resources are needed to help fully staff Tribal public safety agencies. This includes housing, updated equipment, and the improvement of Tribal public safety data collection.

Housing for Tribal public safety staff is important for recruitment and retention. Many Tribal communities are in remote areas and law enforcement recruits often must relocate to those communities for their jobs. It is no secret that housing needs within Tribal communities are very high. Housing conditions vary from community to community, but homes are often overcrowded, lack running water and heat, and need replacement. These conditions combined with traveling long distances from home to work contribute to fatigue on Tribal law enforcement staff and the faster deterioration of public safety equipment.

The Task Force report and NIAC report specified that Department law enforcement officers identified having updated equipment and technology resources as one of the top priorities needed to support their safety. Ensuring all Tribal officers have access to reliable, top-tier equipment can contribute to their safety in the field. Because many Tribal communities and homes are located in remote areas with unpaved roads, public safety vehicles accumulate greater wear and tear and need to be routinely replaced. Tribal law enforcement officers often respond to high-risk calls alone in remote areas and face greater rates of death in the line of duty. They heavily rely on field communications, like land mobile radios, to respond to calls and maintain officer safety. Expanded radio coverage would minimize “no coverage” areas, and video and data capabilities should be included to increase officer safety and reduce the stress of uncertainty regarding whether assistance will be available.

Another component to ensuring Tribal law enforcement officer safety is access to law enforcement data systems. State and federal law enforcement agencies utilize their own data systems to track important information like warrants, missing individuals, unsolved crimes, evidence, and the level of danger a person charged with or convicted of a crime poses. These systems often do not communicate with each other and contribute to data gaps in Tribal communities. Tribal law enforcement agencies also do not always have access to these systems. Even if they do have access, individuals must be trained to use federal systems and many Tribal law enforcement agencies often do not have the staff to take advantage of that training. Consolidating those existing law enforcement systems would improve the capture of public safety data, and allowing Tribal law enforcement agencies to access that consolidated system would also ensure Tribal officer safety in the field.

Conclusion

Under the historic leadership of Secretary Haaland, the Department and BIA continue to develop and work on meaningful solutions to assist Tribal law enforcement and Tribal communities. This work includes prioritizing and reinforcing Tribal sovereignty and self-determination by supporting Tribal Nations and delivering important resources to increase public safety in Tribal communities.

Chairman Simpson, Ranking Member Pingree, and members of the Subcommittee, thank you for the opportunity to provide the Department's views. We look forward to working with Congress to affirm and support Tribal sovereignty and public safety within Tribal communities to support a comprehensive approach to address MMIP. I am happy to answer any questions that you may have.