CENTRAL COUNCIL OF
Tlingit and Haida Indian Tribes of Alaska
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Testimony of Michelle Demmert, Chief Justice of
Central Council of Tlingit and Haida Indian Tribes of Alaska Supreme Court
for the U.S. Senate Committee on Indian Affairs Legislative Hearing on
S. 288, The Justice For Native Survivors of Sexual Violence Act;
S. 290, The Native Youth and Tribal Officer Protection Act;
S. 227, The Savanna's Act; S. 982, The Not Invisible Act; and
S. __,The Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act

My name is Michelle Demmert, and I am an enrolled citizen of the Central Council of Tlingit and Haida Indian Tribes of Alaska (Tlingit & Haida), and the elected Chief Justice of our Supreme Court.

Tlingit & Haida is a federally-recognized tribal government with over 30,000 citizens worldwide, and has an active, government-to-government relationship with the United States. The Tribe serves 18 villages and communities spread over 43,000 square miles within Southeast Alaska. More than 7,000 tribal citizens reside in Juneau, with several thousand more located in Anchorage. Beyond that, a significant amount of tribal citizens reside in Washington State (more than 6,000), and smaller numbers stretch into Oregon and the rest of the world. Tlingit & Haida tribal citizens are among the largest, most isolated, and most geographically dispersed tribal populations nationwide. In Southeast Alaska, where the Tribe provides the majority of its services, most communities have no roads in or out, and must rely on planes and boats for both day-to-day needs and emergencies.

I am also the co-chair of the National Congress of American Indians' Task Force on Violence Against Women and the Alaska Native Women's Resource Center's Law and Policy Consultant. The NCAI Task Force, since its establishment in 2003 has assisted Indian tribes in advocating for national legislative and policy reforms to strengthen tribal government authority and access increased resources to safeguard the lives of American Indian and Alaska Native women. The Alaska Native Women's Resource Center is a nonprofit organization dedicated to ending violence against women in partnership with Alaska's 229 tribes and allied organizations.

Thank you for inviting me to testify on behalf of my Tribe on Savanna's Act, Justice for Native Survivors of Sexual Violence Act, Native Youth and Tribal Officer Protection Act (NYTOPA), Not Invisible Act, and Bridging Agency Data Gaps & Ensuring Safety for Native Communities Act (BADGES). I would like to clarify that unfortunately two of these bills, NYTOPA and Justice For Native Survivors, do not address the specific challenges confronting Alaska Indian tribes. The testimony I provide on these two bills will be from our perspective in the larger context of the importance to Indian tribes in the lower forty-eight. I have a unique perspective on many of these proposed laws as I was the point of contact for one of the original three Pilot Project Tribes exercising special domestic violence court jurisdiction beginning February 2014, as well as the point of contact during the Pilot User Feedback Phase of the Tribal Access Program (TAP). I saw first-hand the benefits of the restoration of jurisdiction over non-Indian perpetrators of domestic violence as well as the process for utilizing the National Crime Information Center database for purposes intended through the creation of the Tribal Access Program. Factor in my role in Alaska, I can address first-hand the importance of the enhanced

jurisdictional improvements as well as the challenges that we face, and how these laws will impact those realities in our communities.

I would like to begin by providing an overview of the challenges confronting Alaska Indian tribes in creating safe villages for our citizens, specifically women, and provide recommendations to address these challenges. In this context, I will also provide an overview of the importance of the tribal provisions of Violence Against Women Reauthorization Act, H.B. 1585, especially the provisions that open these protections to tribes in Alaska and creating a pilot project.

I. Jurisdictional challenge: exclusion of Alaska tribes under the definition of Indian country

The 2013 Indian Law and Order Commission (ILOC) issued the Report, "A Roadmap for Making Native America Safer" and devoted a chapter to the unique issues in Alaska.[1] The Report found that the absence of an effective justice system has disproportionately harmed Alaska Native women who are continually targeted for all forms of violence. The Commission found that Alaska Native women are over-represented in the domestic violence victim population by 250%; they comprise 19% of the state population but are 47% of reported rape victims. And among other Indian Tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the country. Alaska Indian tribes lack and desperately need access to tribal and state justice services, those services are centered in a handful of Alaska's urban areas, making them often more theoretical than real. As mentioned, many tribes have no advocacy services, law enforcement, no 911, no state official they could conceive of raising a complaint to, given the separation of geography, language, and culture. Jurisdictional issues in Alaska create extremely dangerous conditions for our small, remote communities.

An instructive statement contained in the ILOC report states: "The strongly centralized law enforcement and justice systems of the State of Alaska . . . do not serve ***local*** and Native communities adequately, if at all. The Commission believes that devolving authority to Alaska Native communities is essential for addressing local crime. Their governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so—or to work out voluntary agreements with each other, and with ***local*** governments and the State on mutually beneficial terms."—Indian Law and Order Commission Report, 2013 (emphasis added).

Historically, Alaska tribes have been treated differently than lower 48 tribes, confusing the fundamentals of tribal court jurisdiction resulting in recognized disparities which justified the FY17 appropriations for an Alaska Native Tribal Resource Center on Domestic Violence.[2] With the passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971, the only remaining reservation in the state is the Annette Island Reserve in Southeast Alaska.[3] Rather than recognize sovereign tribal lands, ANCSA tasked the for-profit corporations to manage more than 40 million acres of fee land. ANCSA divided the state into 12 regional corporations and over 200 village corporations that would identify with their regional corporation. Many of these villages had corresponding tribal village governments, but with the passage of ANCSA, the tribal governments were left with no meaningful land base. As a result, unlike most court systems that have defined territorial jurisdiction and personal jurisdiction, Alaska Tribal courts

[1] *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013), *available at* http://www.aisc.ucla.edu/iloc/report/.
[2] "*A Tribal Perspective on VAWA 2018*," *Restoration*-V15.3- October 2018. www.NIWRC.org.
[3] 25 U.S.C. 495 (1891).

generally exercise jurisdiction through tribal citizenship, and not through a geographic space defined as "Indian country" because of ANCSA and in part due to a United States Supreme Court case.

As a result of the United States Supreme Court's unfavorable decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), most of the tribes' traditional territory is not considered "Indian country." Without the ability to tax, without Indian gaming, and without consistent and predictable tribal justice appropriations, Alaska tribes lack the revenue typically available to other tribal governments to fund and sustain essential governmental programs. All Alaska tribes are in a similar position and must find innovative ways to raise government revenue and to leverage other resources to sustain their tribal courts and public safety programs. As a result of this resource dilemma, available grants for developing and maintaining programs are incredibly important for Alaska tribes.

Domestic violence and sexual assault survivors in Alaska Native villages are often left without any means to seek help and justice for the crime against them because many villages lack advocacy services and law enforcement. When law enforcement does finally arrive, sometimes the evidence is stale, or the chain of custody can no longer meet applicable legal standards, and the case cannot be prosecuted. In addition, tribal victims of domestic violence crimes may need to leave their home village to seek safety for themselves and their children. In a 2018 case in a small remote interior village, a victim waited 17 days to get out of the village to safety. During this time the victim had been treated at the clinic, called law enforcement (Alaska State Troopers) located in a hub community one hour away by plane. The weather was unflyable for 3 weeks and the victim could not even get a charter plane to pick her up so she could go to a neighboring village to relatives, she could not get to a regional medical clinic for further treatment, or law enforcement could not get into the community for an investigative report. There was no safe home or safe housing available and so she had to wait, afraid that her partner would find out that she was trying to leave. Whether a tribe has advocacy services or public safety personnel makes a difference if victims have support and someone to call for help.

Recent studies such as the newly released, National Institute of Justice, *Research Report on the Violence Against American Indian and Native Women and Men*, document the dire safety circumstances that Alaska Native villages are in as a result of their unique geographic situation. One startling statistic is that 38% of Native victims are unable to receive necessary services compared to 15% of non-Hispanic white female victims.[4] Our young woman described above waited in fear for more than two weeks to get to safety.

II. S. 290, Native Youth and Tribal Officer Protection Act & S. 288, Justice for Native Survivors of Sexual Violence Act

The expanded jurisdiction under S. 290 and S. 288, as currently written, will not benefit the 228 Alaska Indian tribes who are currently ineligible to exercise Special Domestic Violence Criminal Jurisdiction pursuant to VAWA 2013. We call on Congress for a jurisdictional fix to the Alaska Native Indian country issue, and were pleased to see the Alaska Native pilot project included in the House VAWA bill, HR 1585. I urge the Senate to include a similar provision in S. 290 and S. 288. Outside of Alaska, many tribes have been exercising jurisdiction over non-Indians pursuant to VAWA 2013 for over 6 years. I have had the privilege of working with many of the tribes through an Inter-tribal Working Group on

[4] Rosay, André B., "Violence Against American Indian and Alaska Native Women and Men," *NIJ Journal* 277 (2016): 38-45, available at http://nij.gov/journals/277/Pages/violence-against-american-indians-alaska-natives.aspx.

Special Domestic Violence Criminal Jurisdiction. They have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families. Tribes have done so while upholding the due process rights of all defendants in tribal courts. Despite these successes, there are gaps in the law. Even after implementing VAWA 2013, tribal prosecutors are unable to charge defendants for crimes related to abuse or endangerment of a child; for sexual assault, stalking or trafficking committed by a stranger or acquaintance; or for crimes that a defendant might commit within the criminal justice system like assault of an officer, resisting arrest, obstruction of justice, or perjury.

The tribes prosecuting non-Indians report that children are involved in their cases over 60% of the time as victims and witnesses. These children deserve justice. A 2016 study from the National Institute for Justice (NIJ), found that approximately 56% of Native women experience sexual violence within their lifetime, with 1 in 7 experiencing it in the past year.[5] Nearly 1 in 2 report being stalked.[6] Unlike the general population where rape, sexual assault, and intimate partner violence are usually *intra*-racial, Native women are more likely to be raped or assaulted by someone of a different race. NIJ found that 96% of Native women and 89% of male victims reported being victimized by a non-Indian.[7] Native victims of sexual violence are three times as likely to have experienced sexual violence by an interracial perpetrator as non-Hispanic White victims.[8] Similarly, Native stalking victims are nearly 4 times as likely to be stalked by someone of a different race, with 89% of female stalking victims and 90% of male stalking victims reporting inter-racial victimization.[9] S. 288, Justice for Native Survivors of Sexual Violence, would amend 25 U.S.C. 1304 to include sexual assault, stalking, and trafficking crimes committed in Indian Country. It would untie the hands of tribal governments and allow them to extend the same protections to victims of sexual violence and stalking as are available to domestic violence victims. All victims of sexual violence, child abuse, stalking, trafficking, and assaults against law enforcement officers deserve the same protections that Congress afforded to domestic violence victims in VAWA 2013. S. 290 and S. 288 would close these gaps.

The repeal of section 910 of VAWA 2013 was a victory as it was a necessary step towards removing a discriminatory provision in the law that excluded all but one Alaska tribe from enhancing their response to violence against Native women in ways afforded other federally recognized tribes. Nevertheless, because of the *Venetie* decision, additional reforms are needed before Alaska tribes will be able to increase safety for Alaska Native women and hold all offenders accountable. This is because section 904 of VAWA 2013 limits the exercise of the special domestic violence criminal jurisdiction restored to tribes to certain crimes committed in "Indian country." Yet, at the same time, the State does not have the resources to provide the level of justice needed in tribal communities and ultimately the State is not the local, tribal authority. In the NIJ report, we learned that American Indian and Alaska Native women are 3 times more likely to experience sexual violence by an interracial perpetrator than non-Hispanic White-only females.[10] Alaska Indian tribes need to be able to exercise special domestic violence criminal jurisdiction to address these staggering statistics.

H.R. 1585 begins to address these jurisdictional challenges. It recognizes a tribe's territorial jurisdiction equivalent to the corresponding village corporation's land base and traditional territory AND our own

[5] Andre B. Rosay, Nat'l Inst. of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, U.S. Dep't of Justice 11 (2016), available at https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.
[6] *Id.,* at 29.
[7] *Id.,* at 18.
[8] *Id.,* at 29.
[9] *Id.,* at 32.
[10] *Id.* at 18.

Representative Young, who voted in favor of HB 1585, expanded the jurisdiction definition of the pilot project to include "all lands within any Alaska Native village with a population that is at least 75 percent Alaska Native."[11] In addition, removing the requirement of "Indian country" to enforce a protection order would assist Alaska Tribal villages and provide stronger footing for enforcing protection order violations.

We have a desperate need for the reforms included in S. 290 and S. 288 as is illustrated in the following story from an implementing tribe: A non-Indian man in an intimate relationship with a tribal member from the Sault Sainte Marie tribe moved in with her and her 16-year-old daughter. After the man began making unwanted sexual advances on the girl, sending inappropriate text messages, and on one occasion groping the daughter, the tribe charged the defendant with domestic abuse and attempted to tie the sexual assault against the daughter to a pattern of abuse against the mother. The tribal court dismissed the charges for lack of jurisdiction and the defendant left the victim's home. Four months later, he was arrested by city police for kidnapping and repeatedly raping a 14-year old tribal member. Unfortunately, he was ultimately allowed to plead no contest to two less serious charges and was sentenced to 11 months in jail. This kidnapping and rape of a minor could have been prevented if the tribe had been able to exercise jurisdiction in the first case. Her life will never be the same.[12]

The United States has a federal Indian trust responsibility to the first people of the United States. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes. However, since Alaska entered the Union, the State has been ceded the federal jurisdiction among tribes and as a result left us without access to necessary resources.

NYTOPA and Justice for Native Survivors Act Recommendations: We strongly support the Native Youth and Tribal Officer Protection Act. NYTOPA recognizes that Native children and law enforcement personnel involved in domestic violence incidents on tribal lands are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. We also strongly support the Justice for Native Survivors of Sexual Violence Act to close another loophole in the SDVCJ provision of VAWA 2013 to ensure that Tribes have authority to prosecute sexual assault, sex trafficking, and stalking crimes. We appreciate Senator Udall, Senator Murkowski, and Senator Smith's effort to advance legislation that will fill some of the gaps in jurisdiction that continue to leave women and children without adequate protection on tribal lands. As the Committee continues its work, we have some technical suggestions to strengthen these bills—many of which were included in the tribal provisions included in HR 1585—that we look forward to discussing with you.

III. S. 227, Savanna's Act

[11] A federal regulation was developed after the U.S. District Court for the District of the Columbia held that exclusion of Alaska tribes from the land-into-process was not lawful. *See Akiachak Native Community v. Salazar*, 935 F. Supp. 2d 195 (D.D.C. 2013). The State of Alaska appealed the decision and its motion to stay was granted to prevent the DOI from considering specific applications or taking lands into trust in Alaska until resolution of the appeal. On December 18, 2014, the DOI published its final rule rescinding the "Alaska Exception," which became effective on January 22, 2015. 79 Fed. Reg. 76888. However, this process was essentially suspended by Solicitor's opinion, M- 37043, June 29, 2018, which withdrew the Solicitor's Opinion on taking land into trust in Alaska.

[12] VAWA 2013'S Special Domestic Violence Criminal Jurisdiction Five-Year Report," p. 24, (March 2018), *available at*http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf.

The outrage and anguish of the Native families who have lost loved ones to violence—who's mothers, daughters, sisters, and aunties have disappeared or been murdered—has recently propelled a conversation about missing and murdered indigenous women to the national level. But these deaths, these missing women, are the devastating manifestation of centuries of oppression and broken systems that have failed to protect Native women and children from birth to death for generations. It is the outgrowth of imposed poverty, institutional and individual racism that stems from the colonialism that as recently as my father's generation required attendance at boarding schools and forbade him from speaking his native language. Today we have no closure with many of our women dying unexpectedly and unnaturally. The manner of death, while it is far too often considered "suspicious" and often with visible injuries, they are classified as accidental, suicidal, or undetermined. In the village of Klawock, where my family is from, police suspected "foul play" in the unnatural death of Francile Ella Turpin (37) on January 14, 2018, a year later, there is no resolution.[13] Why is it that our women and families do not get the closure regarding the cause of death that other nationalities and the general population take for granted? Many of our communities lack law enforcement or even any 911 services to speak of, so who do they call? The first responders are often volunteer medics whose first inclination is to address the injury. The possibility that there could be a crime committed is not even contemplated, and the scene can easily be contaminated before a semi-qualified individual can preserve the scene. Other potential first responders are tribal leaders, and our volunteer women advocates go to attempt to preserve any crime.

How do we track the missing and murdered? We don't. NamUs is about the only database that tracks MMIW and while it does contain valuable information, it is a volunteer system and it does not currently talk to the FBI CJIS's Missing persons file, which is the system law enforcement is most likely to use. Anyone can have access to NamUs. All they have to do is set up an account and enter the information they want to enter about a missing person. The NamUs staff take that information and confirm with Law Enforcement before it can go out publicly. There are fewer missing Native persons in NamUs than there are in FBI CJIS's missing persons file, likely because law enforcement does not use it in the same way. NamUs is completely voluntary and was originally set up to try to match remains found with people who were missing. FBI CJIS's database is also voluntary except for entry of missing persons under age 18 which is mandatory, and then some states have mandatory missing person reports to CJIS by their state law, but it is way less than half. A tribe, and every person, have access to initiate cases in NamUs, however, the net effect of going that route is unknown. In addition, what does reliance on NamUs tell our MMIW families? Law enforcement has failed you, therefore you must now take on this duty. If they do not embrace this philosophy what happens? Will they be blamed for the lack of data?

According to National Institute of Justice, the NamUs team was in Alaska October 2018 to do outreach with several law enforcement agencies, the Alaska medical examiner, Department of Public Safety, and others. During those discussions it was raised that there is a backlog in digitizing about 200 missing persons cases. Apparently, there is only one person currently working the backlog (Search and Rescue Program Coordinator, Missing Persons Clearinghouse Manager, Alaska State Troopers). That is not to say those cases are not being worked, .just that they are not digitized thus unknown how many of those 1200 cases are American Indian and Alaska Natives.

As for missing persons, Alaska has the highest number of any state in the union and these are not per capita numbers. As of January 2019, out of the 347 missing Alaska Native and American Indian people in the NamUs system 74 of those were from Alaska—the most of any state. Overall, 92 % have been

[13] https://www.ktva.com/story/37289178/klawock-police-say-foul-play-suspected-in-womans-death

missing for less than a year, and the majority of cases are male—about 1/3 to 2/3 respectfully. Why does it take so long to work our cases compared to other populations?

As for the murder epidemic, the Violence Policy Center reports that Alaska is ranked first among states with the highest homicide rates of women by men and is the most violent state, with Anchorage as the most violent city within the Union. The Seattle-based Urban Indian Health Institute reports that Alaska is among the top ten states with the highest number of missing and murdered Native Americans and Alaska Natives. We respectfully request that we protect the health and wellness of our urban American Indian and Alaska Native community by adding key elements throughout the legislation

The House version of Savanna's Act, H.R. 2733, contains provisions that amended and corrected errors identified by tribes and tribal advocates in the original Senate version of the bill, S. 277. While we support the passage of Savanna's Act, our support currently extends to H.R. 2733. As to both versions of the bill, we remain concerned that both bills lack new funding—a resource that has been identified as critical in addressing the crisis of MMIW.

Significant changes in H.R. 2733 from the S.277 include provisions that expand the requirement for the creation of law enforcement guidelines to all U.S. Attorneys, not just those with Indian Country jurisdiction, and require such guidelines to be regionally appropriate. This change is critical as is demonstrated by a recent OIG study that found that the Tribal Law and Order Act requirements to the US Attorney's Offices has not worked well and creates inconsistent programs.[14] Requiring all US Attorneys to create regionally appropriate guidelines will not accomplish what you all intend if there is not more local participation and control from the tribes.

Recommendations to Savanna's Act: We urge the Senate to utilize H.R. 2733 as a starting point, but we continue to express concerns regarding the lack of new funds and recommend the Senate address these concerns in the mark-up of the bill.

- The resources under the Act are proposed by allowing tribes to use existing, limited funds they currently receive under the Tribal Governments Grant Program to address the development of a protocol to respond to MMIW cases.
- Current funding under the Tribal Governments Grant Program is inadequate and does not reach all Indian Tribes. If tribal governments had adequate funds, they would already be developing such protocols and increased responses.
- Thus, funds for the incentives to tribes complying with Savanna's Act will be taken from the funds currently received by all Indian Tribes under the grant program, these funds are already less than adequate to respond.
- Indian tribes need additional resources to broaden and address the crisis of MMIW. Further stretching of existing funds, a tribe receives to provide incentives to others, falls short of "increasing support" to Indian tribes.

[14] "We found that not all districts ensure that TLOA requirements are being met and most Tribal Liaisons work autonomously and carry out duties at their own discretion." OIG Review of the Department's Tribal Law Enforcement Efforts Pursuant to the *Tribal Law and Order Act of 2010, Evaluations and Inspections Division 19 (December 2017).*

- Broadening the purpose areas for these grant programs does not address the reality or restore the authority that the Supreme Court's decision in *Oliphant* erased, leaving tribes unable to investigate, arrest, and prosecute the perpetrators who commit the majority of violent crimes on tribal lands.
- We need to include references to urban Indian communities and data in the legislative findings.
- We should create or include urban conferral policies where tribal consultation is included for tribal governments, as long conference does not threaten or undermine tribal sovereignty and the government-to-government relationship.
- The Definitions section should be inclusive of urban Indian people and organizations. As mentioned, we have over 6000 citizens in Washington State, with most in the Seattle area. Other urban areas have similarly significant populations that need to be considered.
- Adopt the House approach of requiring the Attorney General to publicly list the law enforcement agencies that comply with the provisions of the legislation (rather than list those that do not comply); and
- Replace the affirmative preference subsections with an implementation and incentive section that provides grant authority to law enforcement organizations to implement the provisions of the legislation and offers an incentive for those that state and local agencies that comply, while removing the preference provision in S. 277 that will punish Tribal Nations lacking sufficient resources to implement the guidelines their local U.S. Attorney creates.

IV. S. 982, Not Invisible Act of 2019

As required by a provision included in VAWA 2005, DOJ holds an annual consultation with tribal governments on violence against women. For several years tribal leaders have raised concerns at the annual consultation about the inadequate response to cases of missing or murdered Native women. DOJ summarized tribal leader testimony on this issue in 2016:

"At the 2016 consultation, many tribal leaders testified that the disappearance and deaths of American Indian and Alaska Native (AI/AN) women are not taken seriously enough, and that increased awareness and a stronger law enforcement response are critical to saving Native women's lives. They noted that missing AI/AN women may have been trafficked, and they also provided examples of abusers who murdered their partners after engaging in a pattern of escalating violence for which they were not held accountable. Tribal leaders also raised concerns that cases involving Native victims are often mislabeled as runaways or suicides, and that cold cases are not given sufficient priority. Recommendations included the creation of a national working group to address these issues and an alert system to help locate victims soon after they disappear, as well as the development of an Indian country-wide protocol for missing Native women, children, and men."[15] With the creation of the task force within this act, you will be acting on the recommendations of tribal nations at the 2016 OVW Consultation.

Recommendations to the Not Invisible Act: We support the Not Invisible Act as a bipartisan bill to increase national focus on the silent crisis of missing and murdered Indigenous women. The increased awareness and attention to the issue of missing and murdered Indigenous women is long overdue and a critical first step to fully understanding the injustices and defining solutions. However, as written, the burden falls primarily on DOI to meet the requirements of the law and there is very little included to ensure that DOJ comes to the table as a full partner; as a matter of practice, it can be extremely difficult to require meaningful coordination and collaboration across Departments, and this must be a joint

[15] U.S. Department of Justice, Office on Violence Against Women, "2017 Update on the Status of Tribal Consultation Recommendations," (20).

responsibility. We encourage you to include language that requires DOJ to also designate a lead staffer and point of contact for the work and to include reporting requirements for each agency to facilitate ongoing congressional oversight. We also recommend clarifying that victim advocates and the tribal domestic violence and sexual assault coalitions should be represented on the Advisory Committee.

V. Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act or "BADGES"

BADGES contains proposals that will offer many remedies to the data access issues. We need to go further and include a legislative fix that addresses the concerns of the Criminal Justice Information System (CJIS) about tribal access to federal databases for governmental purposes. Currently access may be authorized through federal statutes providing some access for certain situations to tribes and then deferring to state law to define and provide access. Such access is difficult for tribes to map out, determine who at what agency needs to authorize, develop a process, get User Agreements, Memoranda of Understandings, or Management Control Agreements in place; many of these barriers could be addressed by providing general authority to tribes to legislate access for governmental purposes just as the states and the federal government.

28 USC 534(d) authorizes release of criminal history information to tribal law enforcement agencies, but doesn't allow release of criminal information to other tribal agencies for important, legitimate civil purposes, such as Emergency Placement of Children or "Purpose Code X," employees that work with elders and vulnerable adults, etc. CJIS interprets the appropriations rider language from 92-544 (and in the notes of 28 USC 534) as a permanent statute that prevents sharing this information with tribal governments. In their view, for example, criminal history for the emergency placement of children (Purpose Code X) can only be shared "if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing." We should be authorized to define our needs within the given parameters to legislate according to our needs.

While there is tremendous diversity among all tribes, it is worth noting that many of the 229 tribes in Alaska experience extreme conditions that differ significantly from tribes outside Alaska. The Findings section of BADGES demonstrate that Indian Tribes are understaffed with law enforcement by about nearly 50% when compared to the national averages. Alaska tribes are in an even more difficult situation. Most of the Alaska Native villages are located in remote areas that are often inaccessible by road and have no local law enforcement presence. The Tribal Law and Order Commission found that "Alaska Department of Public Safety (ADPS) officers have primary responsibility for law enforcement in rural Alaska, but ADPS provides for only 1.0-1.4 field officers per million acres." [16] Without a strong law enforcement presence, crime regularly occurs with impunity.

Recommendations BADGES: We need to amend federal law to authorize the sharing of this information with tribal governments for any legitimate purpose.

Sec. 103. LAW ENFORCEMENT DATA SHARING WITH INDIAN TRIBES.[17] Codifies the DOJ's Tribal Access Program (TAP), which enhances the ability of Tribal governments to access, enter, and obtain information from federally-maintained law enforcement databases, in statute and authorizes $3 million

[16] *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States* (November 2013), *available at* http://www.aisc.ucla.edu/iloc/report/.
[17] Previously Sec. 5.

per year for five years to fund continuation of the program. TAP has done everything that it is authorized to do, however, at times access is limited by federal law and tribes can access the databases for only what is authorized by federal law through TAP. Many states are legislating around data entry and collection of MMIW issues. A tribe that wanted to create a legislative process, would be unable to fully implement their laws, because there is no general federal statute that gives tribes this level of access and determination. However, you could amend 28 USC 534, to authorize this level of tribal input. So for example, federal laws allow tribes to investigate people who will work with children but it doesn't allow access for people who work with our elders or vulnerable adults. Similarly, most tribes require that elected officials, and key personnel obtain background checks. A state can legislate to authorize this access, whereas a tribe does not have that direct access and often has to use channelers or use Lexis/Nexus. Also, the TAP program needs permanent funding otherwise it could be discontinued at any time.

Report on Indian Country Law Enforcement Personnel Resources and Need
We agree that it is important to gain an understanding of existing personnel resources and case load to truly understand the needs for increased recruitment of agents. We also suggest including law enforcement agencies within DOI and other federal agencies that interface with Indian Country.

In addition Sections 101 and 102 of BADGES leave out tribes in PL 280 states who will not be able to participate with the law because it specifies BIA, FBI, etc., who exercise law enforcement in Indian country, which Alaska does not have.

We support the development of new resources to address the MMIW crisis. We do express concern with eligible entities for this important new source of funding. In the definitions section of BADGES, the definition of "relevant tribal stakeholder" raises significant concern as it is inclusive of "Indian Tribes," Indian Tribes as sovereigns should never be considered a relevant stakeholder, but generally eligible based on the unique relationship Tribes have with the federal government.

We have significant concern that new funding addressing a tribal issue is inclusive of states and non-tribal national or regional organizations as eligible entities. New funding to address a tribal issue should first and foremost be distributed to tribes as sovereigns. States have sufficient funding to contribute to this work without dipping into the limited funding that tribes have.

Furthermore, the lack of clarity in what constitutes "represents substantial Indian constituency" for a non-tribal national or regional organization also raises concern. Without clarity, any national or regional organization could claim that they represent a tribal constituency.

Specific Recommendations for Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act: *Addressing Criminal Justice Information System Access Issues*
To improve Tribal access to CJIS is to amend 28 U.S.C. 534 by adding a new subsection:

> "If authorized by tribal law and approved by the Attorney General, the Attorney General shall also permit access to officials of tribal governments for non-criminal justice, non-law enforcement employment, licensing purposes or any other legitimate government purpose identified in tribal legislation."

Another possible solution is to insert , "civil" before "background checks" and adding after "background checks," "if authorized by Tribal law and approved by the Attorney General." It is critical

that *civil* authority be included within this section too, so that once and for all the piecemeal, inefficient barriers to full legitimate access is resolved.

Definitions
We recommend removing tribal governments from the definition of "tribal stakeholder" and inserting "Indian tribes and relevant tribal stakeholders" throughout the bill wherever relevant.

VI. Support for the Reauthorization of the Violence Against Women's Act

Tlingit & Haida strongly supports the "Violence Against Women's Act of 2019" (VAWA) (H.R. 1585) which passed the House on April 4, 2019, and urges the Senate Committee on Indian Affairs to support bringing VAWA to the Senate floor. Since its enactment in 1995, each reauthorization of VAWA, has resulted in significant victories in support of the tribal authority and secured resources needed for increasing the safety of Native women across the United States. H.R. 1585 includes important life-saving enhancements Tribes have repeatedly called for including:

Addressing Jurisdictional Gaps

- expands prosecution of non-Indians to include obstruction of justice-type crimes, sexual assault crimes, sex trafficking and stalking;
- Recognizes that Native children are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013. The tribes implementing VAWA 2013 report that children have been involved as victims in their cases nearly 60% of the time, including as witnesses. However, federal law currently limits tribal jurisdiction to prosecute these crimes. H.R. 1585 would recognize tribal authority to protect our children in tribal justice systems; and
- Contains important amendments to clarify that Tribes in Maine are able to exercise SDVCJ under VAWA 2013 and any amendments.

Addressing Unique Jurisdictional Challenges in Alaska

- Creates pilot project for five Alaska Tribes and expands the definition of Indian Country to include ANCSA lands, townsites and communities that are 75% native.

Improving the Response to Missing and Murdered Native Women and Girls

- Directs the Government Accountability Organization (GAO) to submit a report on the response of law enforcement agencies to reports of missing or murdered Indians, including recommendations for legislative solutions; and
- Addresses MMIW off tribal lands by amending the DOJ STOP Formula Grant Program for states (authorized by 34 U.S.C § 10441) to address the lack of victim resources for Native American women in urban areas by providing for the inclusion of victim advocates/resources in state courts for urban American Indians/Alaskan Natives where 71 percent of the Native American population resides due to federal relocation and termination policies.
- Clarifies that federal criminal information database sharing extends to entities designated by a tribe as maintaining public safety within a tribe's territorial jurisdiction that have no federal or state arrest authority.

VII. Conclusion

There is a unique opportunity to recognize these issues and make corrections to the laws.

In Lingít Yoo X'atángi, the Tlingit Language, as with other language groups in Alaska, we had no words or description for violence within a family home. We had traditional forms of justice that kept our community in check and women valued as the life giver of the family. We had community justice, which we are now returning to. Restoring and enhancing local, tribal governmental capacity to respond to violence against women provides for greater local control, safety, accountability, and transparency. We will have safer communities and a pathway for long lasting justice. We believe that it is critical that we work together to change laws, policies and that the federal government create additional funding opportunities to address and to eradicate the disproportionate violence against our women. We welcome many of the reforms included in the bills under discussion today and recognize the importance of improving protocols, data-sharing, and coordination. Our tribal governments are the frontline, and we need the federal government to uphold its responsibilities to assist us in safeguarding the lives of Native people by respecting our inherent authority while also adequately funding its trust and treaty responsibilities.

Gunalchéesh! Háw'aa! Thank You!