



NATIONAL CONGRESS OF AMERICAN INDIANS

U.S. Senate Committee on Indian Affairs
“Native communities’ priorities for the 118th Congress”
March 8, 2023

Written Testimony of President Fawn Sharp
National Congress of American Indians

EXECUTIVE COMMITTEE

PRESIDENT
Fawn R. Sharp
Quinault Indian Nation

1ST VICE PRESIDENT
Mark Macarro
Pechanga Band of Luiseño Indians

RECORDING SECRETARY
Stephen Roe Lewis
Gila River Indian Community

TREASURER
Shannon Holsey
Stockbridge-Munsee Band of
Mohican Indians

REGIONAL VICE PRESIDENTS

ALASKA
Mike Williams
Akiak Native Community

EASTERN OKLAHOMA
Norman Hildebrand
Wyandotte Nation

GREAT PLAINS
VACANT

MIDWEST
Rebecca Crooks-Stratton
Shakopee Mdewakanton Sioux
Community

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Melvin Sheldon, Jr.
Tulalip Tribes of Washington

PACIFIC
Jack Potter
Redding Rancheria

ROCKY MOUNTAIN
Jennifer Finley
Confederated Salish & Kootenai
Tribes

SOUTHEAST
Reggie Tupponce
Upper Mattaponi Indian Tribe

SOUTHERN PLAINS
Gonzo Flores
Lipan Apache Tribe of Texas

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Bernadine Burnette
Fort McDowell Yavapai Nation

On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing to address tribal priorities for the 118th Congress. I am Fawn Sharp, President of the Quinault Indian Nation and President of NCAI.

Founded in 1944, NCAI is the oldest and largest representative organization serving the broad interests of Tribal Nations and communities. Tribal leaders created NCAI in response to federal policies that threatened the existence of Tribal Nations. Since then, NCAI has fought to preserve the treaty and sovereign rights of Tribal Nations, advance the government-to-government relationship, and remove structural impediments to tribal self-determination.

NCAI is honored and grateful to testify in front of the 118th Congress, and wishes to highlight the following policy priorities:

I. Appropriations

The funding requests referenced in this testimony are rooted in the promises made by the U.S. Government in treaties and agreements with tribal nations. The 2018 Broken Promises Report from the U.S. Commission on Civil Rights (USCCR) found that “[f]ederal funding for Native American programs across the government remains grossly inadequate to meet the most basic needs the federal government is obligated to provide.”

Congress and the Administration have recently taken some initial steps toward making good on the federal government’s promises to tribal nations. For example, NCAI commends Congress for providing advance appropriations for certain Indian Health Service (IHS) accounts. Additionally, the President’s FY 2023 Budget Request to Congress called for a historic shift in the paradigm of nation-to-nation relations that seeks to restore the promises made between our ancestors and the United States in several key programs. It included requesting mandatory funding for: IHS, Department of the Interior (DOI) Contract Support Costs, and Section 105(1) Tribal Leases; along with a myriad of investments in Indian healthcare, education, public safety, natural resource management, and infrastructure.

However, there is much more to be done by the federal government to truly fulfill the promises made to tribal nations. Congress and the Administration must build

1 U.S. Commission on Civil Rights, Broken Promises: Continued Federal Funding Shortfall for Native Americans, at 4 (2018), https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf.

on these initial steps. Accordingly, NCAI urges Congress to fully fund the U.S. Government's treaty and trust obligations. It also urges Congress and the Administration to continue to improve how funding is delivered to DOI, IHS and other federal programs that serve Tribal Nations by providing advance appropriations until such time that all trust and treaty obligations are accounted for, and provided as, mandatory spending.

A. Indian Health Service—Expand and Sustain IHS Advance Appropriations

In an historic first, the FY 2023 Omnibus provides an advance appropriation for the Indian Health Service. Enactment of Advance Appropriations for the IHS marks a paradigm shift in the nation-to-nation relationship between Tribal Nations and the United States. This change will help protect Indian healthcare from the harmful impacts of government shutdowns and continuing funding resolutions. Until the enactment of the FY 2023 omnibus, IHS was the only federal provider of health care that was on the regular, annual discretionary appropriations process. We thank all the members and staff of the Senate Committee on Indian Affairs for their tireless support for this historic moment, decades in the making.

Until the entirety of the IHS budget is provided mandatory direct appropriations, it is critical that Congress continue advance appropriations. Advance appropriations for the IHS are consistent with the trust and treaty obligations reaffirmed by the United States in the Indian Health Care Improvement Act. The advance appropriation enacted in the FY 2023 Omnibus excluded certain accounts in the IHS budget and flat-funded the IHS accounts that it did include. While historic in its inclusion, a flat-funded IHS needs FY 2024 adjustments, at a minimum, for fixed costs and staffing for newly completed facilities and should also include the amounts requested by the IHS National Tribal Budget Formulation Workgroup. The IHS need-based funding cost estimate for Fiscal Year (FY) 2024 is approximately \$51.4 billion, and the cost estimate for FY 2025 is approximately \$53.8 billion.² Additionally, IHS advance appropriations should be expanded to include all IHS accounts and must be sustained until Congress fulfills its duty the way it was intended—as a mandatory obligation in performance of a bargained-for exchange.

Both IHS and Tribal Nations have the collaborative tools to produce reliable advance appropriation requests and implement full year advance appropriations. For this appropriations cycle, Tribes have already provided official input on the FY 2025 budget to IHS with representatives of the Office of Management and Budget in attendance. This budget will be presented to the Department of Health and Human Services in April of this year.

B. Department of the Interior—Bureau of Indian Affairs (BIA)

The BIA is one of the primary agencies responsible for providing services throughout Indian Country, either directly or through compacts or contracts with tribal nations. The operation of these programs and services is essential for the health, safety, and social and economic well-being of tribal and surrounding communities. Unfortunately, chronic underfunding of tribal programs perpetuates systemic issues in Indian Country that could be reduced or eliminated by

² Workgroup publications available at: https://www.nihb.org/legislative/budget_formulation.php, accessed on: February 26, 2023.

funding tribal programs in amounts that meet the federal government's treaty and trust obligations to Tribal Nations.

NCAI recommends \$20.695 billion for Indian Affairs programs in FY 2024, consistent with the official FY 2024 recommendation of the Tribal/Interior Budget Council (TIBC).³ Within TIBC's FY 2024 recommendations are robust increases for all base-funded programs, and additional funding to address public safety and justice in tribal communities; the economic and social wellbeing of our citizens and all those who visit or do business in our communities; the backlog of school, community, and government infrastructure construction and maintenance; taking land into trust; and addressing climate resiliency in tribal communities and on Indian and federal lands.

C. Environmental Protection Agency (EPA)

As place-based peoples, Tribal Nations have sacred histories and maintain cultural practices that tie them to their current land bases and ancestral territories. As a result, tribal peoples directly, and often disproportionately, suffer from the impacts of environmental degradation.

50 years after the passage of the Clean Water Act, only 47 of 82 eligible Tribal Nations have EPA-approved water quality standards,⁴ which are a cornerstone of the Clean Water Act. Given the disparate access of tribal communities to safe, clean water, NCAI recommends a five percent tribal set-aside for each of the National Safe Drinking Water State Revolving Fund (DWSRF) and the National Clean Water Act State Revolving Fund (SRF).

Additionally, NCAI recommends \$100 million be appropriated for the EPA Tribal General Assistance Program and \$30 million for the Tribal Air Quality Management Program.

D. Hold Harmless for DOI - Indian Affairs, IHS and Other Programs for the Benefit of Tribal Nations

The DOI-Indian Affairs and IHS budgets are very small when compared to the overall national budget. Spending cuts or other budget control measures that affect tribal programs can have devastating impacts on tribal nations and their citizens but would have little impact on overall federal spending. To the extent Congress considers funding reductions in FY 2024, DOI-Indian Affairs, IHS and other programs for the benefit of Tribal Nations must be held harmless.

II. Infrastructure

A. Housing

Housing infrastructure in Indian Country continues to lag behind the rest of the United States. Over 70 percent of existing housing stock in tribal communities is in need of upgrades and

³ TIBC Tribal Representatives' FY 2024 Budget Submission to the Department of the Interior, May 16, 2022, accessed at:

https://res.cloudinary.com/ncai/image/upload/v1661949853/tibc-documents/march2022/004_-_TIBC_FY_2024_Budget_Submission.pdf

⁴ Environmental Protection Agency, *EPA Actions on Tribal Water Quality Standards and Contacts*, <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

repairs, many of them extensive.⁵ In 2017, The U.S. Department of Housing and Urban Development (HUD) reported that, “the lack of housing and infrastructure in Indian Country is severe and widespread, and far exceeds the funding currently provided to tribes.”⁶

The lack of affordable housing contributes to homelessness and overcrowding. Tribal communities experience overcrowded homes at a rate of 16 percent, roughly eight times the national average.⁷ HUD research also shows that such overcrowding has a negative effect on family health and contributes to the ongoing problems of domestic violence and poor school performance in Indian Country.⁸ Funding new construction across the board will help alleviate issues of overcrowding. In addition to the historic funding shortfalls, the location of many tribal communities increases the material and labor costs of home construction and impose additional housing development costs upon communities already confronting enormous economic challenges.⁹ Building materials must often be brought into tribal communities from miles away over substandard roads or even by air, and the availability of “qualified and affordable contractors” is limited.¹⁰ Given these extensive funding needs, it is critical that Congress support (1) reauthorization of NAHASDA; (2) permanently reauthorize the Tribal HUD-VASH Program; and (3) introduce and pass legislation that aims to increase homeownership rates in Indian Country .

1. Reauthorize NAHASDA and Increase Funding for IHBG Formula Grants

The Native American Housing Assistance and Self-Determination Act (P.L. 104-330) (NAHASDA), first enacted in 1996, authorized Tribal Nations to self-determine their housing programs. It gave flexibility for Tribal Nations to develop, construct and maintain housing for their members, transforming how federal housing programs addressed housing needs in tribal communities. NAHASDA consolidated existing housing funds into a single block grant – the Indian Housing Block Grant (IHBG) – resulting in tens of thousands of additional housing units being constructed, as well as increased tribal capacity to address related infrastructure and economic development challenges. The IHBG is a formula-based grant that provides certainty and security for long-term housing and community development. Unfortunately, NAHASDA funding has only increased 31%, from \$600 to \$787 million since 1998. Tribal Nations need \$1.1 billion just to keep pace with inflation over 20 years. Meanwhile, the total HUD budget has nearly tripled in 20 years, from \$23 million in 1998 to \$70.5 million today.¹¹ IHBG is failing to

⁵ U.S. Department of Housing and Urban Development, Fiscal Year 2017 Congressional Justifications, 11-12, (2016), https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF.

⁶ Broken Promises Report, at 137, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

⁷ U.S. Department of Housing and Urban Development, Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.

⁸ Department of Housing and Urban Development (HUD), Fiscal Year 2017 Congressional Justifications, 11-4, https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF.

⁹ Broken Promises Report, at 138, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

¹⁰ *Ibid.*

¹¹ National American Indian Housing Council, “Legislative Priorities in the 118th Congress”, (2023).

even keep pace with inflation while costs continue to increase and a housing crisis overwhelms tribal housing entities.¹²

In the 117th Congress, Senator Brian Schatz introduced S. 2264: The NAHASDA Reauthorization Act of 2021. S. 2264 proposed to reauthorize NAHASDA programs through 2032, create an Assistant Secretary for Indian Housing at HUD, and update several key provisions including: re-establishing a Drug Elimination program for tribal communities; streamlining environmental review requirements; allowing housing assistance for students; recognizing tribal sovereignty to govern maximum rent requirements; allowing tribal housing programs to access IHS sanitation funding; tribal eligibility for HUD Housing Counseling and Homelessness Assistance grants; and reauthorizing Native Hawaiian housing programs. NCAI strongly urges Congress to reintroduce and pass legislation that reauthorizes NAHASDA through 2032¹³ and provides increased funding appropriations for IHBG formula grants upwards of \$1 billion to help address the ongoing housing crisis in Indian Country.

2. Permanently Reauthorize the Tribal HUD-VASH Program

Native veterans have a long history of distinguished service to this country. Per capita, they serve at a higher rate in the Armed Forces than any other group of Americans and have served in all the nation's wars since the Revolutionary War. Native veterans have even served in several wars before they were even recognized as U.S. citizens or eligible to vote. Despite this esteemed service, homelessness is a concern for our Native veterans. To combat this issue, Congress created the HUD-Veterans Affairs Supportive Housing (HUD-VASH) program. The program has been a nationwide success because it combines rental assistance, case management, and clinical services for at-risk and homeless veterans. Unfortunately, this program is not fully available to Native veterans living on tribal lands.

In the 117th Congress, S. 5140 was introduced, which would codify and make permanent the Tribal HUD-VASH program within the larger HUD-VASH program and ensure adequate funding for the program. In addition, the bill would make all Tribal Nations and their tribal housing programs eligible for the HUD-VASH program, which to date has remained limited to the original 26 recipients. The bill would also call on IHS to assist the program as requested by HUD or the Department of Veterans Affairs (VA). NCAI has a standing resolution supporting this legislation.¹⁴ Accordingly, NCAI urges this Committee to pass similar legislation early in the 118th Congress.

3. Support Legislation for Increased Homeownership in Indian Country

¹² U.S. Department of Housing and Urban Development, Fiscal Year 2017 Congressional Justifications, 11-12, (2016), https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF.

¹³ NCAI Resolution PDX-20-055, NAHASDA Reauthorization, 2020, https://www.ncai.org/attachments/Resolution_zLcDLBJazSdLkmeWKIMhDmfuqZKQgveoNYpUaKaMUwGZFKNYzw_PDX-20-055%20SIGNED.pdf.

¹⁴ NCAI Resolution ECWS-14-001, Support for Indian Veterans Housing Rental Assistance Demonstration Program in the Native American Housing and Self-Determination Act Reauthorization https://www.ncai.org/attachments/Resolution_rGJmzKMOpmpXCODBFDEimNAVXIDwbXbVyXGHmPeVbMNxICXSRjF_ECWS-14-001%20resolution.pdf.

American Indians and Alaska Natives (AI/ANs) on tribal lands or in remote areas face significant barriers to homeownership. These barriers include AI/ANs having some of the highest rates of unemployment and poverty, lacking access to credit services, and lacking education about what it takes to become a homeowner. In 2019, the Federal Deposit Insurance Corporation (FDIC) found that 16.3 percent of AI/AN households were unbanked, compared to only 5.4 percent of the general population.¹⁵ Banks and credit institutions are less likely to have branches in tribal areas, which is due in part to the jurisdictional complexity of lending on tribal lands. A 2016 Native Nations Institute study found that Indian Country faces “high interest rates on loans, the inability to use trust land as collateral on loans, and a general unwillingness on the part of financial institutions to lend to reservation-based applicants.”¹⁶ Economic and social constraints like lower borrower incomes and limited or blemished credit histories broadly impede the expansion of mortgage credit to underserved populations.¹⁷

In the 117th Congress, there were several legislative proposals introduced to address the lack of homeownership among Native Americans and Alaska Natives. Among these proposals, S. 70: The Tribal Trust Land Homeownership Act of 2023, has already been re-introduced by Senator John Thune. This bill seeks to improve the BIA land title procedures for home loans on trust lands. The unique status of trust lands being inalienable makes it difficult for private lenders to obtain security interests in individual plots and most private lenders are uneducated on what practices they can employ to lend to AI/ANs residing on tribal lands.¹⁸ This makes lenders reluctant to lend to either individual AI/ANs, Tribal Nations, and Tribally Designated Housing Entities (TDHE) interested in developing housing. Further exacerbating the issue, the Bureau of Indian Affairs must review all trust land leases and provide verification of land ownership via a title status report. This verification has historically taken several weeks, months, or even years to complete.¹⁹ This bill would set forth requirements for response times for certain reports required by the BIA.

Additionally, S. 4505: The [Veterans Administration (VA)] Native American Direct Loan Improvement Act, introduced by Senators Rounds and Tester in the 117th congress, is a bi-partisan bill that proposes to increase the number of home loans to Native Veterans returning home. The VA’s NADL program has only provided 190 loans to Native Americans nationwide over the past 10 years. This legislation would help to increase the number of NADL-administered loans by allowing veterans to refinance existing non-VA mortgages utilizing the NADL product, and would also allow veterans who have built homes with other sources of construction financing (e.g. a Native CDFI loan) to still use NADL as permanent

¹⁵ Federal Deposit Insurance Corporation, *How American Banks: Household Use of Banking and Financial Services*, 2019 FDIC Survey, <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

¹⁶ Native Nations Institute. 2016. *Access to Capital and Credit in Native Communities (digital version)*. Tucson, AZ: Native Nations Institute, available at: https://nni.arizona.edu/application/files/8914/6386/8578/Accessing_Capital_and_Credit_in_Native_Communities.pdf.

¹⁷ HUD, *Mortgage Lending on Indian Land: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, p. vii, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/NAHSG-Lending.pdf>.

¹⁸ U.S. Department of Agriculture (USDA), *Lending on Native American Land: A Guide for Rural Development Staff*, (2006), <http://www.ruralhome.org/storage/documents/nativeamerguideforusda.pdf>.

¹⁹ *Ibid.*

financing. It also provides grant funding for Native CDFIs, Tribal Nations, Tribally Designated Housing Entities (TDHEs), and nonprofits to assist with outreach, homebuyer education, and other technical assistance to Native veterans seeking homeownership financing.

Finally, last session's S. 2092: The Native American Rural Home-ownership Improvement Act utilizes Native CDFIs to deploy USDA Section 502 Single Family Home Loan funds to Native Americans. Support for Native CDFIs is essential to solving low rates of lending and homeownership on tribal lands. They provide extensive financial and homebuyer education to help their clients become self-sufficient private homeowners. The proposed expanded relending pilot program would increase the flow of mortgage capital to Indian Country by allowing Native CDFIs to be eligible borrowers under the 502 Direct Loan Program and enable them to relend to eligible families for the construction, acquisition, and rehabilitation of affordable housing. While this last bill does not fall neatly into the jurisdiction of the Senate Committee on Indian Affairs, we strongly encourage the members of this committee to support this legislation and work to get improvements to USDA housing programs included in the 2023 Farm Bill.

B. Education Facilities

Schools operating within the BIE system are woefully outdated and, in some cases, dangerous for students and staff. At the end of FY 2019, BIE reported 71 schools in poor condition,²⁰ which puts Native students at a significant, unfair learning disadvantage. The current cost as estimated by Interior's Office of Inspector General for replacing or rehabilitating BIE school facilities exceeded \$4.6 billion.²¹ Further, Interior identified \$629 million in deferred maintenance for BIE-funded education facilities and \$86 million in deferred maintenance for BIE educational quarters. To begin to address this issue, Congress passed H.R. 1, the American Recovery and Reinvestment Act (ARRA) of 2009, allocating \$200,000,000 for calendar year 2009 and \$200,000,000 for calendar year 2010 in tax credit bonds for purpose of construction, rehabilitation, and repair of schools funded by the BIA.

While this funding was appreciated, no Tribal Nations were able to use the ARRA tax credit bonds due to a lack of capital outlay and an escrow account to support the issuance of school modernization bonds. Tribal Nations recognize the need for adequate school facilities for students in their communities and have been working with the Administration and Congress to come to solutions for alternative school construction funding options under existing statutory authority. Some Tribal Nations have discussed and even developed a school construction/lease-back proposal whereby the community takes over the school design and construction function, and, when completed, leases the facility back to Interior. While this is a great solution for Tribal Nations that have the resources and capital to complete school design and construction, additional innovative solutions must be made.

²⁰ Bureau of Indian Education, FY 2021 Congressional Budget Justification, <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/2021%20BIE%20Greenbook.pdf>.

²¹ U.S. Department of the Interior, Office of Inspector General, Condition of Indian School Facilities, C-EV-BIE0023-2014, 2016, https://www.doioig.gov/sites/doioig.gov/files/FinalEval_BIESchoolFacilitiesB_093016.pdf.

In the Consolidated Appropriations Act of 2023, Congress allocated \$267,887,000 to be used for construction, improvement, and maintenance of BIE facilities. While every dollar of funding is needed and useful, the reality is that a significant funding increase is required to bring BIE schools into parity with non-Native public schools across the country. Therefore, NCAI urges this committee to work with Tribal Nations to develop additional innovative models of funding for BIE school construction and related infrastructure, provided that new funding sources or methods must supplement and not supplant existing funding methods.

C. Hold Oversight Hearings on Infrastructure Bill Funding

As we rapidly approach the two-year anniversary of the Infrastructure Investment and Jobs Act (IIJA), NCAI encourages the Senate Committee on Indian Affairs to hold several oversight hearings on IIJA funding that is being deployed to Tribal Nations. IIJA included a record number of program eligibility and spending amounts allocated to Tribal Nations, and while the deployment of such large amounts takes time, we must be steadfast in our efforts to ensure that this funding is being deployed in the most effective and efficient manner possible.

We encourage SCIA to hold oversight hearings on IIJA, including but not limited to: broadband funding in Indian Country, the Indian Water Rights Settlement Completion Fund, and clean drinking water and water infrastructure funding through the EPA and Department of the Interior. This funding for infrastructure is a once in a lifetime opportunity to deliver infrastructure funding to the communities who need it most. Congress has a responsibility to ensure that Tribal Nations are not only receiving the funding in a timely manner, but also receiving the technical assistance and guidance necessary to make the most of this historical funding.

III. Public Safety and Justice

A. Funding

Among the fundamental components of the federal government's treaty and trust responsibilities to Tribal Nations is the obligation to protect public safety on tribal lands. Congress has long acknowledged this obligation, which Congress reaffirmed in the Tribal Law and Order Act (TLOA) expressly "acknowledging the federal nexus and distinct federal responsibility to address and prevent crime in Indian Country."²²

The inadequate funding for tribal criminal justice and public safety has resulted in staggering rates of violent crime and victimization on many Indian reservations. A Department of Justice (DOJ) study found that more than four in five American Indian and Alaska Native (AI/AN) adults have experienced some form of violence in their lifetime.²³ Among AI/AN women, 55.5 percent have experienced physical violence by intimate partners in their lifetime, and 56.1 percent have experienced sexual violence.²⁴ NCAI appreciates Congress' enactment of the Violence Against Women Act ("VAWA") Reauthorization Act of 2022, which will help address

²² Tribal Law and Order Act, 34 U.S.C. § 10381(j).

²³ U.S. Department of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, 2, (2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

²⁴ *Ibid.*

violent crime in Indian Country, as it provides resources for the exercise of, and affirms, tribal nations' authority to address crime in their communities. Going forward, robust funding for these VAWA-related programs and tribal police departments and justice systems is absolutely essential for improving public safety on the ground in tribal communities.

The underfunding of tribal law enforcement and justice systems is well-documented. In 2022, BIA submitted a report to Congress (for FY 2019) estimating that to provide a minimum base level of service to all federally recognized tribal nations: \$1.3 billion is needed for Tribal Law Enforcement Programs, \$1.2 billion is needed for Tribal Courts, and \$240.6 million is needed to adequately fund existing Detention Centers.²⁵ FY 2023 funding levels fall far short of BIA's estimates.

Due to the inadequacy of BIA base funding, tribal nations often seek short-term, competitive grants to try to make up a portion of the shortfall. This is especially true with regard to funding for the non-incarceration aspects of justice systems, such as tribal courts, which, are even more severely underfunded than policing and detention.

In 2018, the USCCR found that there continues to be “systematic underfunding of tribal law enforcement and criminal justice systems, as well as structural barriers in the funding and operation of criminal justice systems in Indian Country” that undermine public safety.²⁶ Tribal justice systems must have resources so they can protect women, children and families, address substance abuse, rehabilitate first-time offenders, and put serious criminals behind bars. Well-functioning criminal justice systems, basic police protection, and services for victims are fundamental priorities of any government—Tribal Nations are no different.

As stated above, NCAI supports TIBC's FY 2024 recommendations, which include \$2.924 billion for Public Safety and Justice funding, with approximately \$1.766 billion for BIA Law Enforcement and \$1.155 billion for tribal courts.

B. Criminal Jurisdiction

Tribal communities continue to be plagued by the highest crime victimization rates in the country. A study by the National Institute of Justice found that more than 80 percent of AI/AN people will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime.²⁷ The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator.²⁸ The complicated jurisdictional framework at play in Indian Country, which limits tribal authority to prosecute non-Indians, continues to undermine safety for victims of violence in tribal communities. Tribal Nations are the only governments in America whose authority to

²⁵ U.S. Department of the Interior, *Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2019*, at 5 (Oct. 2021), <https://www.bia.gov/sites/default/files/dup/assets/bia/ojs/ojs/pdf/2019%20TLOA%20Report%20Final.pdf>.

²⁶ U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, at 32, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

²⁷ Rosay, A. B. (2016). *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*. Washington, DC: US Department of Justice.

²⁸ Rosay, A. B. (2016). *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*. Washington, DC: US Department of Justice.

protect their communities from domestic and sexual violence, child abuse, stalking, and trafficking is limited by federal law based on the political status/race of the defendant.

When Congress passed the Violence Against Women Act (VAWA 2013), it included a provision that reaffirmed the inherent sovereign authority of Tribal Nations to exercise criminal jurisdiction over certain non-Indians who violate qualifying protection orders or commit domestic violence against AI/AN victims on tribal lands. However, victims of sexual violence, stalking, and trafficking, and AI/AN children and elders were left out. The historic passage of VAWA 2022 earlier this year included provisions that reaffirm tribal jurisdiction over non-Indians for certain crimes involving children and elders, sexual violence, stalking, sex trafficking, obstruction of justice, and assaults against law enforcement and corrections personnel. Now, resources and technical assistance are required to allow opportunities for more Tribal Nations to exercise their sovereignty in this space.

While VAWA 2022 was a huge victory for Tribal Nations, the Supreme Court's recent decision in *Oklahoma v. Castro-Huerta* overturned the long-held understanding that states do not have authority to prosecute non-Indians who commit crimes against Indians in Indian country. In that case, the Supreme Court held that "the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country" which strikes against tribal sovereignty and jurisdiction to protect tribal citizens.

In response to the *Castro-Huerta* decision, NCAI adopted several resolutions related to criminal jurisdiction in Indian Country, including Resolution #SAC-22-043, "Calling on Congress to Enact the Legislative Proposal to Improve Public Safety in Indian Country".²⁹ Congress has the power to meaningfully strengthen tribal jurisdiction and improve public safety for all people who live on reservations and other tribal lands. When Congress passed the "*Duro* fix" after the Supreme Court's decision in *Duro v. Reina*, 495 U.S. 676 (1990), Congress was recognizing and protecting tribal sovereignty from a Supreme Court decision that attempted to weaken tribal sovereignty. Over the years, other attempts to weaken tribal sovereignty have taken place and in the interest of both protecting tribal sovereignty and public safety, now is the time for Congress to once again take action. Specifically, NCAI calls on Congress to relax restrictions regarding tribal authority over non-Indian criminal activity and to remove sentencing limitation by amending the Indian Civil Rights Act; and to amend Public-Law 280 (and other relevant statutes) to ensure that states, other than those six states with mandatory criminal jurisdiction under 18 U.S.C. 1162 (a), have no criminal jurisdiction in Indian country unless they have first obtained tribal consent to that state criminal jurisdiction and, where necessary, have amended their state constitutions or statutes to permit that jurisdiction, all in compliance with procedures outlined in 25 U.S.C § 1324.

C. Child Welfare

The Indian Child Welfare Act (ICWA) is a 45-year-old federal law widely considered to be the gold standard of child welfare policy and practice. Since ICWA state court guidelines were updated and the first-ever legally binding regulations were promulgated under the Obama

²⁹ NCAI Resolution #SAC-22-043, "Calling on Congress to Enact the Legislative Proposal to Improve Public Safety in Indian Country", available at: <https://ncai.assetbank-server.com/assetbank-ncai/assetfile/3164.pdf>.

Administration in 2016, ICWA has faced a wave of litigation from a small but well-resourced and well-coordinated group of opponents, including the Goldwater Institute and other conservative think tanks focused on states rights as well as some private adoption attorneys and agencies. Since 2015, the Goldwater Institute alone has filed lawsuits or amicus briefs in more than a dozen cases challenging ICWA.

The most serious challenge ICWA is currently facing is *Haaland v. Brackeen*, a case filed in 2017 and now before the US Supreme Court. In this case Texas Attorney General Ken Paxton and a handful of non-Native foster and adoptive parents challenged the constitutionality of ICWA. The most potentially far-reaching of their claims is that ICWA violates the equal protection clause of the Fourteenth Amendment and is based on race. This is an intentional misunderstanding of the fact that ICWA's protections for American Indian and Alaska Native children are based on their political status, their citizenship in—or eligibility for citizenship in—a federally recognized tribe. The Supreme Court heard oral argument in the case on November 9, 2022, and a decision will be rendered by June 30, 2023, at the latest. Whatever the outcome of the case, NCAI encourages Congress to continue to work with Tribal Nations and others partners to strengthen Native families and to do everything within its power to ensure that the literal future generations of Native people are not separated from their communities and cultures.

IV. Farm Bill

Agriculture is a major economic, employment, and nutrition sector in Indian Country. According to the 2017 Census of Agriculture, there were at least 79,198 American Indian or Alaska Native (AI/AN) producers on more than 59 million acres of tribal homelands for the production of crops, livestock or both. These farms and ranches sold over \$3.5 billion of agricultural products, including more than \$1.4 billion of crops and \$2.1 billion of livestock and poultry. Agriculture remains the second leading employer in Indian Country and is the backbone of the economy for many Tribal Nations.

NCAI is a founding and executive committee member of the Native Farm Bill Coalition, along with the Intertribal Agriculture Council, the Shakopee Mdewakanton Sioux Community, and the Indigenous Food and Agriculture Initiative. NCAI stands with the Native Farm Bill Coalition, who will also be testifying, but we want to emphasize the need for more opportunities for self-governance, co-management, funding flexibility, and direct management and implementation of programs.

The nutrition title is of particularly high importance to Indian Country. With 24 percent of AI/AN households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 276 Tribal Nations administering the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of AI/AN children qualifying for free and reduced price lunches, and American Indians and Alaska Natives making up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) the importance of food assistance in Indian Country cannot be overstated. Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. Additionally, food assistance programs

like FDPIR must be provided the means and support to purchase traditional, locally grown food in their food packages. Traditional and locally grown foods from Native American farmers, ranchers, and producers encourage healthy living, cultural sustainability, and a return to traditional practices all while supporting economic development. NCAI urges Congress to support the expansion and making permanent of the Food Distribution Program on Indian Reservations (FDPIR), tribal eligibility to administer the Supplemental Nutrition Assistance Program (SNAP), and to allow the dual use of both SNAP and FDPIR. To realize many of these priorities there needs to be an expansion of 638 authority broadly across the Department of Agriculture (USDA) and its programs, as well as the reduction and elimination of match requirements.

V. Climate Change and Energy

A. Climate Change

The cultures, traditions, lifestyles, communities, foods, and economies of Tribal Nations are often dependent upon natural resources that are disappearing faster than they can be restored because of dramatic shifts in weather and climate.³⁰ As such, they are disproportionately affected by even incremental environmental changes.³¹ Tribal Nations are at the front lines of the climate crisis responding to sea level rise, coastal erosion, ocean acidification, increased frequency and intensity of wildfires, extended drought, and altered seasonal duration.³² These weather events have dramatic impacts on traditional cultural and subsistence practices and sacred places, tribal fisheries, timber harvesting and agricultural operations, eco-tourism, and infrastructure.³³ Despite these challenges, Tribal Nations are leading the way in climate action mitigation, adaptation, and resiliency responses for their communities and are integral to the global and national responses to the climate crisis.³⁴ Tribal Nations have the following, non-exhaustive list of priorities and goals for Congressional climate responses:

- Legislation must include full and meaningful consultation with decision makers that requires Tribal Nations' free, prior, and informed consent and includes enforcement mechanisms;³⁵
- Tribal Nations must be integrated into Congressional and Executive Branch climate planning, including on federal climate committees and working groups;³⁶

³⁰ Broken Promises Report, at 193 (2018).

³¹ Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

³² Broken Promises Report, 193-194 (2018); Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

³³ Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

³⁴ NCAI, Climate Action Resource Center, <https://www.ncai.org/ptg/climate>, (last visited, Feb. 19, 2021).

³⁵ NCAI Resolution PHX-16-058, United States Federal Agency Consultation, Consent, Funding, and Actions to Address Climate Change Impacts to Tribal Treaty and Trust Resources, https://www.ncai.org/attachments/Resolution_RQIEDgHAWYpzQLoUKEdwjuxDCxyGCwKeLQhGWLAKzxTUA AUehsK_PHX-16-058%20final.pdf.

³⁶ NCAI Indians Resolution SD-15-024, Support for the Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change document and its Swift Implementation by the Federal Government,

- Restoring tribal land, water, wildlife and fisheries resources is critical to tribal climate responses. This includes identification and assessment of the full cost of climate impacts on Tribal Nations;³⁷
- Co-management and co-stewardship opportunities should be created and furthered to support intergovernmental partnerships and integrate tribal traditional knowledge in climate responses;
- Any inclusion of Traditional Ecological Knowledge must be conditioned on Tribal Nations' free, prior, and informed consent;³⁸
- Tribal Nations must be included in climate financing action through increased appropriations, grants, public-private financing opportunities, and removal of barriers to tribal climate responses, including competitive grants and matching fund requirements;
- Financing climate mitigation and adaptation measures must be comprehensive and support a wide range of climate-related activities, including wildfire management, coastal restoration, drought resiliency, and for the development and repair of tribal infrastructure;
- Financing must also be flexible and responsive to tribal needs and decision making, and national efforts towards a carbon-neutral economy must ensure that the socio-economic needs of tribal energy producers are addressed;³⁹ and
- Any federal assistance provided to state and local governments should also be provided to tribal governments through tribal-specific funding mechanisms.

Tribal Nations have the solutions to the climate crisis and we request that SCIA support legislation in the 118th Congress that incorporates the above tribal principles.

B. Energy

Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence, reduce greenhouse gasses, and promote economic development for both Indian Country and the United States as a whole. These resources include: one quarter of the nation's on-shore oil and gas reserves, one-third of the nation's western low-sulfur coal,⁴⁰ almost 3.5 percent of the nation's wind energy, and approximately five percent of the nation's total solar energy potential.⁴¹

https://www.ncai.org/attachments/Resolution_NZdlSoySpGDwyQAPQHLWnPZLOBFtqiQXqWoQXOVmdKCaPLkzSqm_SD-15-024.pdf

³⁷ See e.g., NCAI Resolution ABQ-19-036, Calling on Congress to Support and Pass Recovering America's Wildlife Act, or Similar Legislation with a Tribal Wildlife Conservation and Restoration Account,

https://www.ncai.org/attachments/Resolution_wdmLQIFJtJWBerRSGeAYFkjXqdVikLhFyqxMmWUrHzSQVdFGGjo_ABQ-19-036.pdf

³⁸ NCAI Resolution PDX-11-036, Traditional Ecological Knowledge and Climate Change,

https://www.ncai.org/attachments/Resolution_MZlrscMWUDNfPdJGEJQVODCZZtiNPdZRRrWVaNmDdEYtmqgYqTat_PDX-11-036_final.pdf

³⁹ See, e.g., NCAI Resolution ATL-14-050, Support the Wildfire Disaster Funding Legislation,

https://www.ncai.org/attachments/Resolution_QpVTbEqVjmigrNAPeUJdzfXCaXahfjUDwgkIXihJcGGiWidclwo_ATL-14-050.pdf

⁴⁰ See e.g., Property and Environment Research Center, PERC Policy Perspective: Unlocking the Wealth of Indian Nations: Overcoming Obstacles to Tribal Energy Development, (2014),

<https://www.perc.org/wpcontent/uploads/old/pdfs/IndianPolicySeries%20HIGH.pdf>

⁴¹ National Renewable Energy Laboratory, Techno-Economic Renewable Energy Potential on Tribal Lands, (2018), <https://www.nrel.gov/docs/fy18osti/70807.pdf>.

Despite the energy potential in Indian Country, Tribal Nations face many challenges, including that approximately 14% of homes on reservations lack access to electricity⁴² and unique federal laws, regulations, and policies create additional burdens for energy development on tribal lands.⁴³ Given the historic, social, and economic impediments Tribal Nations and citizens face, and the relatively short time in which they have been involved in energy development, the successes of Indian Country are clear indicators of future potential. Tribal Nations have several energy related priorities for the 118th Congress.

First, Tribal Nations need assistance financing energy development through use of tools such as loans, grants, and technical assistance.⁴⁴ For example, Interior's Indian Energy and Economic Development (IEED) Indian Loan Guarantee Program (ILGP) promotes tribal renewable and conventional energy development and mineral resource development for the purposes of economic development. IEED is responsible for many creative and successful initiatives that encourage energy resource development on tribal lands, spur economic and business development assistance and training, expand job and skills training opportunities, and leverage limited federal funding to provide access to capital for business development. However, there is a strong need for additional appropriations. With additional funding, the program could develop additional tribal capacity in managerial and technical capabilities, develop resource integration projects, and establish and maintain environmental programs in support of economic development.

Relatedly, Interior needs additional resources to enter into and help implement Tribal Energy Resource Agreements (TERAs). Tribal Nations can, and should, play a role in regulating the energy services industry on their lands and TERAs would assist in that endeavor. Without this authority, Tribal Nations, tribal citizens, and tribal enterprise utility customers located on tribal lands are, in effect, subject to state regulatory practices and decisions that have substantial impacts on energy development on tribal lands.⁴⁵ To this end, Tribal Nations should not be subject to non-statutory funding eligibility requirements. These demands are a barrier to tribal participation in energy development funding programs and stifle Indian country's energy potential.⁴⁶

Finally, any energy-related legislation must include principles of parity and meaningful tribal consultation. This is critical since Tribal Nations must have the opportunity to provide their energy resources in an open market. Doing so will assist Tribal Nations and America in

⁴² Department of Energy Department of Energy FY 2017 Congressional Budget Request – Volume 3. (Feb. 2016), p. 755. <https://energy.gov/sites/prod/files/2016/02/f30/FY2017BudgetVolume3.pdf>.

⁴³ Broken Promises Report, at 182, (2018).

⁴⁴ NCAI Resolution FTL-04-110, Support for Legislation to Enhance the Development of Indian Tribes' Energy Resources, https://www.ncai.org/attachments/Resolution_QJdbbwFnrWmGVaJqGSHocjqjFSErRkvVBOJzsMmkGfVBtLNwMrp_ftl04-110.pdf.

⁴⁵ *Id.*

⁴⁶ NCAI Resolution TUL-13-043, Support for Removal by Congress and the President of Barriers to Full Control by Tribal Nations of the Development of Their Renewable and Non-renewable Energy Resources, https://www.ncai.org/attachments/Resolution_ttpWzJwjtHdUfEAcemlckTRjoAGzZhJvZoAOdLMxjazDEdHsjYQ_TUL-13-043%20Final.pdf.

addressing critical energy needs.⁴⁷ With respect to consultation, Tribal Nations are best suited to make culturally and economically relevant decisions about the development and use of their energy resources. As such, Tribal Nations must be fully and meaningfully consulted with respect to the development of their energy resources. This includes both on and off-reservation development of energy resources that impact tribal interests.⁴⁸ Despite the energy potential in Indian Country, Tribal Nations face many challenges, including underfunding, and unique federal laws, regulations, and policies that apply to energy development on tribal lands. Investing in and empowering Tribal Nations provides strong returns and outcomes for tribal and rural communities.

VI. Additional Priorities

A. Address Dual Taxation and Other Barriers to Economic Self-Sufficiency

Across Indian Country, Tribal Nations are building sustainable tribal economies—including through nation-owned and tribal citizen owned businesses—to provide for the economic and social well-being of their growing communities. This development is grounded by tribal self-determination, which includes the ability of each tribal nation to create a viable, robust economy based on its cultural values, distinct challenges, particular circumstances, and short-and long-term community development priorities. In the area of tribal taxation, state and local governments have been allowed by the federal courts to encroach upon tribal sovereignty and jurisdiction. Consistent with the United States' treaty and trust responsibilities, the federal government must take action to protect tribal economies and prevent further escalation of the taxation problem. NCAI urges Congress to pass legislation that promotes Native American tax parity; expands the Indian Employment Tax Credit and other tax credits; and removes barriers while promoting access to capital, credit, and other financial products that support growth of tribal economies.

B. Pass a Clean *Carcieri* Fix to Support Tribal Lands

On February 24, 2009 the Supreme Court held in *Carcieri v. Salazar*, 129 S.C. 1058 (2009) that the Secretary of the Interior lacked authority to take land into trust under Section 5 of the Indian Reorganization Act (IRA) for Indian tribes that were not under federal jurisdiction at the time of

⁴⁷ NCAI Resolution RAP-10-050, In Support of the Indian Energy Promotion and Parity Act of 2010, https://www.ncai.org/attachments/Resolution_qIVBoCiVrzspHsvbVtxDGRAkCIWuwPTgnRpGrZyiFMpCrCwqBga_RAP-10-050.pdf.

⁴⁸ NCAI Resolution SD-15-038, Indian Country's Priorities for Federal Energy Legislation, https://www.ncai.org/attachments/Resolution_qMHMstHTzqxRxfyszNHLJtQWsJwCTsRfxceShlONcPiSBAVith_SD-15-038.pdf; see also, NCAI Resolution, REN-19-001, Opposing Mining on Public Lands and Around the Grand Canyon without Tribal Nations' Free Prior and Informed Consent, https://www.ncai.org/attachments/Resolution_fEBoYKOrTODFcWRgdViPRcbNmdjBuOuhGLIbNztNyaAqDLIALfA_REN-19-001%20FINAL.pdf; NCAI Resolution REN-19-024, Staying Mineral Leasing and Paleontological Use Permitting in Areas of Tribal Interest, such as the Buffalo Strip and Ball Ranch Area of Critical Environmental Concern, Where Tribal Nations Do Not Consent, https://www.ncai.org/attachments/Resolution_AgWCYVGVVOfVmUHPUmQqpmRGwechoEDblkAfdngPpHJPvAwfICv_REN-19-024%20FINAL.pdf

the Act's passage in 1934. Since the 111th Congress,⁴⁹ Members of SCIA have either co-sponsored or introduced legislation to "fix" the Supreme Court's flawed decision. Such legislation has had bipartisan support and has sought to amend the IRA to undo the damage *Carcieri v. Salazar* has inflicted on Indian country. NCAI supports an amendment that would (1) restore the Interior Secretary's authority to take land into trust for all federally recognized Tribal Nations; and (2) re-affirm existing trust lands. NCAI strongly supports passage of a clean *Carcieri* fix in the 118th Congress.⁵⁰

C. Pass the Native American Voting Rights Act to Create Equity in Voting for Native People

Despite being the first inhabitants and sovereigns of what is now the United States, American Indians and Alaska Natives were the last people granted the right to vote. Native people were not even recognized as United States citizens with a right to vote until the Indian Citizenship Act in 1924, and it took more than three decades after that before all Native Americans were able to fully participate in state elections.⁵¹ Because many Native American reservations are rural with poor infrastructure, we still face unique barriers to making our voices heard at the ballot box.⁵² With recent court decisions and state laws increasingly taking advantage of our isolated conditions in order to make it more difficult for tribal citizens to vote, federal legislation is needed to provide Native people with fair and equal access to voting.⁵³ NCAI applauds the bipartisan introduction during the 117th Congress of the Native American Voting Rights Act (NAVRA), and calls on Congress to reintroduce and pass NAVRA or similar legislation designed to put Native American voters on equal footing with the rest of the nation.

Conclusion

NCAI appreciates the opportunity to present Indian Country's priorities for the 118th Congress to the Committee. We look forward to working with the Indian Affairs Committee and its members during this Congress to advance the interests of Tribal Nations in accordance with the federal trust responsibility.

⁴⁹ Indian Country Today, "Tester Re-Introduces a 'Clean Carcieri Fix,'" <https://indiancountrytoday.com/archive/tester-re-introduces-clean-carcieri-fix-4hr-jxvB-E6Z8EU3sZkZOw>.

⁵⁰ NCAI Resolution RAP-10-024, To Support Legislation to Address the Supreme Court Decision in *Carcieri v. Salazar*,

https://www.ncai.org/attachments/Resolution_oiGOSYZkdNCzZHOUkmLuFtLzAGVAKgIERwWMYEKWqiSixNMKwJq_RAP-10-024.pdf.

⁵¹ rican Bar Association, Resolution 112 (adopted: February 17, 2020) (available at:

<https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2020/2020-midyear-112.pdf>).

⁵² Native American Rights Fund, *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters* (2020) (available at: https://vote.narf.org/wpcontent/uploads/2020/06/obstacles_at_every_turn.pdf).

⁵³ National Congress of American Indians, Resolution MSP-15-030 (2015) (available at: <https://www.ncai.org/resources/resolutions/tribal-equal-access-to-voting>).