USET
SOVEREIGNTY PROTECTION FUND

Nashville TN Office
711 Stewarts Ferry Pike, Ste. 100
Nashville TN 37214
P: (615) 872-7900
F: (615) 872-7417

Washington DC Office
400 North Capitol St., Ste. 585
Washington DC 20001
P: (202) 624-3550
F: (202) 393-5218

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Testimony of Chief Lynn Malerba, Secretary
United South and Eastern Tribes Sovereignty Protection Fund
Before the Senate Committee on Indian Affairs

For the Legislative Hearing of June 19, 2019, on the Following Bills:
Savanna's Act, S. 227; Justice for Native Survivors of Sexual Violence Act, S. 288; Native Youth and Tribal Officer Protection Act, S. 290; Not Invisible Act of 2019, S. 982; and Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act

Chairman Hoeven, Vice Chairman Udall, and members of the Committee, thank you for this opportunity to provide testimony on important pending legislation related to public safety in Indian Country, including: Savanna's Act, S. 227; the Justice for Native Survivors of Sexual Violence Act, S. 288; the Native Youth and Tribal Officer Protection Act (NYTOPA), S. 290; the Not Invisible Act of 2019, S. 982; and the Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act.

United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is appreciative of the efforts of this body in strengthening and improving public safety across Indian Country, and supports these bills and the goals they seek to accomplish, while highlighting limited areas of concern below. For far too long, the United States has neglected its public safety obligations to Tribal Nations —both by failing to recognize and promote our inherent sovereign authorities, as well as failing to devote adequate resources to law enforcement and judicial infrastructure. This has created a crisis in Indian Country, as our people go missing and are murdered, and are denied the opportunity for safe and healthy communities enjoyed by other Americans. These bills, if enacted, would address critical gaps in the exercise of special domestic violence criminal jurisdiction and ensure that the United States fulfills more of its obligation to Indian Country by providing necessary resources. In doing so, we envision a future in which our children, women, elders, and all Native people can live in healthy, vibrant communities without fear of violence knowing that justice will be served. While we ultimately seek the restoration of full criminal jurisdiction over our lands, these bills represent important advancements toward that goal.

USET SPF is a non-profit, inter-Tribal Nation organization representing 27 federally recognized Tribal Nations from Texas across to Florida and up to Maine.[1] USET SPF is dedicated to maintaining an active federal agenda and supporting its Tribal Nation members in their relations with local, state, federal, and international governments. USET SPF advocates for actions that will address the needs of Native people, increase the ability of Tribal Nations to exercise our inherent sovereignty and right to self-governance, and

[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and Wampanoag Tribe of Gay Head (Aquinnah) (MA).

carry out and uphold the government-to-government relationships between the United States and Tribal Nations as well as the unique obligations owed by the United States to Tribal Nations and Native people.

I. High Rate of Crime in Indian Country is Directly Attributable to U.S. Policy

As you are well aware, Indian Country currently faces some of the highest rates of crime, with Tribal citizens 2.5 times more likely to become victims of violent crime and Native women, in particular, subject to higher rates of domestic violence and abuse. Many of the perpetrators of these crimes are non-Native people. The reasons behind the increased crime in Indian Country are complicated, but the United States holds much of the responsibility and that is at the root of today's challenges.

A. Historical Trauma Caused by United States Policies and Actions

Increased crime in Indian Country flows, first and foremost, from the shameful policies of the United States. The United States took our homelands and placed us on reservations, often in remote areas with little or no resources or economies, prohibited exercise of our cultural practices, kidnapped our children, and took actions to limit the exercise of our inherent sovereign rights and authorities.

These United States policies of termination and assimilation have caused ongoing trauma for Native people, and this trauma has left scars. Dehumanization of Native people over time is a tool to justify harms done to us—including colonizing our land. It marginalizes us in a way that makes us invisible within our own lands. And the larger society is desensitized to us, turning a blind eye to its role in continued injustices to our people and our governments.

This historical trauma affects the crimes committed against us. Native people are viewed as less worthy of safety—less human. This mindset allows perpetrators to commit crimes against our bodies with less remorse. And it leads to law enforcement personnel and judicial systems not treating Native peoples' concerns as seriously. When our people go missing or are murdered, their loss is invisible, as it is most often ignored by the law enforcement community and society in general.

The current crime rate in Indian Country is not surprising. It is a continuation of the genocide Native people have endured since first contact. It is time to address these issues at their root to stop the cycle of violence.

B. Failure of United States to Recognize Tribal Nations' Sovereign Criminal Jurisdiction

One important reason for increased crime in Indian Country is the gap in jurisdiction stemming from the United States' failure to recognize our inherent criminal jurisdiction, allowing those who seek to do harm to hide in the darkness away from justice. When Tribal Nations are barred from prosecuting offenders and the federal government fails in the execution of its obligations, criminals are free to offend over and over again. And this gap is the U.S.' own doing.

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, pre-dating the founding of the Republic. A critical aspect of our inherent sovereignty is jurisdiction over our land and people, including inherent jurisdiction over crimes. Early Supreme Court decisions recognized this broad jurisdictional authority. *See, e.g., United States v.*

Wheeler, 435 U.S. 313 (1978); *Ex parte Crow Dog*, 109 U.S. 556 (1883). And Tribal Nations exercised jurisdiction over everyone who set foot on our lands, in parity with other units of government.

But the United States has slowly chipped away at Tribal Nations' jurisdiction. At first, it found ways to put restrictions on the exercise of our inherent rights and authorities. And eventually, as its power grew, the United States shifted from acknowledging Tribal Nations' inherent rights and authorities to treating these rights and authorizes as grants *from* the United States. With this shift in mindset, recognition of our inherent sovereignty diminished, including our jurisdictional authorities.

For example, in the 1978 decision of *Oliphant v. Suquamish Indian Tribe*, the Supreme Court struck what may be the biggest and most harmful blow to Tribal Nations' criminal jurisdiction. In that case, it held Tribal Nations lacked criminal jurisdiction over non-Native people, even for crimes committed within Indian Country. 435 U.S. 191 (1978). It based this harmful decision on the faulty reasoning that—while Supreme Court precedent recognizes that Tribal Nations possess aspects of our inherent sovereignty unless expressly divested—in the case of criminal jurisdiction over non-Native people the exercise of such inherent sovereignty was simply impractical for the United States. It said that, while Tribal Nations' jurisdiction flows from our inherent sovereignty, continued existence of criminal jurisdiction over non-Native people would be "inconsistent" with Tribal Nations' status, where our inherent sovereignty is now "constrained so as not to conflict with the interests of [the United States'] overriding sovereignty." *Id.* at 208-10. Not only is this decision immoral and harmful, it is also illogical, as other units of government, such as states, exercise criminal jurisdiction over non-citizens present in their boundaries as a matter of routine. It is this very exercise of jurisdiction that keeps everyone safe—something that is clearly in the United States' best interests. Following *Oliphant*, Tribal Nations were barred from exercising criminal jurisdiction over non-Native peoples' crimes on our own land and against our own people—an authority held by virtually every other unit of government in this country.

Congress, in the Indian Civil Rights Act, also acted to restrict Tribal Nations' criminal jurisdiction. Under the Indian Civil Rights Act, regardless of the crime, Tribal Nations were prohibited from imposing more than one year of incarceration and a $5,000 fine for an offense. 25 U.S.C. § 1302(a)(7)(B). After this statute was enacted, Tribal Nations were not able to exercise criminal jurisdiction even over our own people in excess of the relatively low penalty amounts. Some have even argued the Major Crimes Act bars Tribal Nations' jurisdiction over serious crimes committed by our own people.

The United States justifies its failure to recognize Tribal Nations' inherent sovereign power with legal fictions that satisfy its own interests. The federal government has continually moved to deny our authority, as it sought to build systems to reflect its assumed supremacy. It does not have this authority, and there are very real and practical consequences of the United States' wrongful taking of Tribal Nations' criminal jurisdiction; including leaving a vacuum that allows crime to grow unabated and the very need for the legislation this body is considering.

These failures on behalf of the United States must be addressed in order to resolve the issue of crime in Indian Country and enable Tribal Nations to exercise our inherent authority as governments to care for our people. The benefits of safe, healthy, and prosperous Tribal communities stretch far beyond Indian Country. By recognizing Tribal Nations' inherent criminal jurisdiction over our land, the United States would facilitate our ability to function side-by-side with other sovereign entities in the fight to keep all Americans safe.

C. Failure of United States to Invest Resources Necessary to Fulfill Trust Obligations

As a result of the cession of millions of acres of land and natural resources, oftentimes by force, the United States has taken on unique legal and moral trust and treaty obligations to Tribal Nations and Native people. One of the most fundamental aspects of those obligations is to keep our people healthy and safe. This is especially true in the law enforcement context, where the United States has stripped Tribal Nations of the jurisdiction and resources we need to protect our people. At the same time, the United States has not invested in the infrastructure necessary to fulfill this obligation.

The federal government has long failed to allocate the resources necessary to fill the void left by its refusal to recognize Tribal Nations' criminal jurisdiction over our land. Each time a crime takes place, the legal jurisprudence created by the United States requires a time consuming and complicated analysis necessary to determine who has jurisdiction. This determination requires an analysis of the perpetrator, the victim, the land on which the crime took place, the type of crime, and whether any statute applies that shifts the jurisdictional analysis, such as a restrictive settlement act. This murkiness leads to lost time—which can be deadly when a Native person is in danger.

The federal government is also not dedicating the necessary resources to prosecuting crimes in Indian Country. Even when it is clear that the federal government (or a state government) has jurisdiction over a particular crime and the Tribal Nation does not, prosecutors often decline to prosecute, citing lack of resources or evidence. This leaves known perpetrators walking free in Indian Country, now armed with the knowledge that they are impervious to the law.

The federal government is also failing to invest the resources required to properly coordinate information sharing and decisions about investigation and prosecution across law enforcement agencies. With extremely complicated overlapping jurisdiction, swift transmission of the necessary information and decisions about who will take the lead on a case is imperative. And cooperative agreements allow governmental entities to work together as partners, including Tribal Nations.

Additionally, the federal government is not providing the resources necessary to combat crime in Indian Country. For example, Indian Country's police staffing does not meet the national police coverage standards. In FY 2020, Indian Country only had 1.9 officers per 1,000 residents compared to an average of 3.5 officers per 1,000 residents nationwide. Again, cooperation across governmental entities, including with Tribal Nations, can help resolve police staffing issues.

The federal government is also not upholding its trust responsibility and obligations to provide the funding necessary for Tribal Nations to exercise enhanced sentencing and expanded criminal jurisdiction under the Tribal Law and Order Act (TLOA) and the Tribal Nation provisions of the 2013 reauthorization of the Violence Against Women Act (VAWA). For Tribal Nations to fully exercise these authorities, Congress mandated that we must first put into place certain procedural protections for defendants. At the same time, following centuries of termination and assimilationist policy, the federal government has consistently and chronically underfunded line items and accounts dedicated to rebuild and support judicial infrastructure in Indian Country. It is incumbent upon the federal government to ensure Tribal Nations have funding and other resources to comply with these procedural requirements.

D. Restrictive Settlement Acts

Some Tribal Nations, including some USET SPF member Tribal Nations, are living under restrictive settlement acts that further limit the ability to exercise criminal jurisdiction over their lands. These restrictive settlement acts flow from difficult circumstances in which states demanded unfair restrictions on Tribal Nations' rights in order for the Tribal Nations to have recognized rights to their lands or federal recognition. When Congress enacted these demands by the states into law, it allowed for diminishment of certain sovereign authorities exercised by other Tribal Nations across the United States.

Some restrictive settlement acts purport to limit Tribal Nations' jurisdiction over their land or to give states jurisdiction over Tribal Nations' land, which is itself a problem. But, to make matters worse, there have been situations where a state has wrongly argued the existence of the restrictive settlement act prohibits application of later-enacted federal statutes that would restore to Tribal Nations aspects of our jurisdictional authority. In fact, some USET SPF member Tribal Nations report being threatened with lawsuits should they attempt to implement TLOA's enhanced sentencing provisions. Congress is often unaware of these arguments when enacting new legislation. USET SPF asserts that Congress did not intend these land claim settlements to forever prevent a handful of Tribal Nations from taking advantage of beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens. We would like to further explore short- and long-term solutions to this problem with the Committee.

II. Past Congressional Actions to Recognize Tribal Nations' Sovereign Jurisdiction

Congress can and has—at the urging of Indian Country—taken steps to remove the restrictions the United States placed on Tribal Nations' exercise of our inherent sovereign criminal jurisdiction. Through these actions, Congress has moved to legally recognize our inherent authorities even after the United States acted to stomp them out. For example, although the Supreme Court initially ruled Tribal Nations lack criminal jurisdiction over Native people who are not their own citizens, *Duro v. Reina*, 495 U.S. 676 (1990), Congress swiftly restored that inherent jurisdiction, 25 U.S.C. § 1301(2), and the Supreme Court recognized its restoration, *United States v. Lara*, 541 U.S. 193 (2004).

In 2010, Congress enacted TLOA to amend the Indian Civil Rights Act. *See* 25 U.S.C. § 1302. It increased the penalties a Tribal Nation may impose in cases where we have jurisdiction—allowing incarceration sentences of up to three years and a $15,000 fine per offense, with up to nine years of incarceration per criminal proceeding. 25 U.S.C. § 1302(a)(7)(C)-(D), (b). But TLOA requires Tribal Nations to provide certain procedural rights to defendants in order to exercise this enhanced sentencing. 25 U.S.C. § 1302(c).

In 2013, Congress included Tribal provisions when it reauthorized VAWA. *See* 25 U.S.C. § 1304. Through VAWA, Congress restored the exercise of criminal jurisdiction (called special domestic violence criminal jurisdiction (SDVCJ)) over non-Native people in limited circumstances related to domestic and dating violence. 25 U.S.C. § 1304(b)(1). VAWA allows participating Tribal Nations to exercise SDVCJ over Indian Country crimes that: are dating or domestic violence (defined to require a certain type of relationship) or in furtherance of certain protection orders, 25 U.S.C. § 1304(a)(1), (2), (5); when the victim or perpetrator is Native, 25 U.S.C. § 1304(b)(4)(a); and when the perpetrator has certain ties to the Tribal Nation, 25 U.S.C.

§ 1304(b)(4)(B). Like TLOA, VAWA requires Tribal Nations to provide certain procedural rights to defendants to exercise SDVCJ, including the right to a trial. 25 U.S.C. § 1304(d).

The Tribal Nations that have been able to exercise jurisdiction under VAWA report success in bringing perpetrators to justice and keeping our people safe. As the Department of Justice (DOJ) testified before this Committee in 2016, VAWA has allowed Tribal Nations to "respond to long-time abusers who previously had evaded justice."

Although they are steps in the right direction, these existing laws do not do enough to provide for the exercise Tribal Nations' criminal jurisdiction, which rightfully belongs to us as a function of our inherent sovereignty. And they do not do enough to protect Native people from the violence that lives in the void left by limitations placed on Tribal Nations' exercise of criminal jurisdiction.

III. USET SPF Supports Pending Legislation

Each of the bills before you today addresses some of the causes of the increased crime rate in Indian Country, as well as gaps in existing law. Some of the bills re-recognize our inherent sovereign criminal jurisdiction, while others facilitate information collection and sharing and cooperation across law enforcement agencies in furtherance of the United States' trust responsibility. USET SPF supports these bills as opportunities to support Tribal self-determination, better deliver upon the trust responsibility and obligations, and ultimately serve as pieces to the puzzle that lead to safer and stronger communities.

A. Savanna's Act, S. 227

Savanna's Act is designed to enhance the use of crime databases, increase cooperation and standardization across law enforcement agencies with overlapping jurisdiction, and facilitate gathering data on missing and murdered Native people in furtherance of the United States' trust responsibility to provide the resources necessary to keep our people safe.

Collecting and sharing criminal justice data in Indian Country is a well-known barrier to ensuring public safety for many Native communities, with criminal case information still fragmented and compartmentalized between different law enforcement agency data systems. Savanna's Act would require the DOJ, in consultation with Tribal Nations, to take certain actions to increase access to and use of crime databases to track Indian Country crimes. It would also require DOJ to train law enforcement agencies on how to take and record pertinent information and to train Tribal Nations and the public on how to access these databases. And it would require DOJ to collect and then report to Congress on information related to missing and murdered Native people.

The high rate at which the federal government declines to prosecute crimes in Indian Country, including those over which Tribal Nations are not permitted to exercise their inherent jurisdiction, is a significant problem and a deep failure to uphold the sacred duty to our Nations and people. Savanna's Act would require DOJ to direct United States Attorneys with jurisdiction to prosecute Indian Country crimes.

Coordination in information collecting and sharing across law enforcement agencies is a major barrier to solving crimes in Indian Country, which is made even more significant due to the complicated overlapping jurisdiction in Indian Country. Savanna's Act would require DOJ in consultation with Tribal Nations and

others to develop standardized guidelines for responding to cases of missing and murdered Native people. The guidelines would include ways to better coordinate among law enforcement agencies and to increase response and follow up rates, best practices for conducting searches and identifying and handling remains, standards for collecting, reporting, and analyzing data and inputting it into criminal databases, and ways to ensure access to culturally appropriate victim services. Each Tribal Nation, federal, state, and local law enforcement agency would be directed to adopt the guidelines, and DOJ would be required to offer trainings.

However, we note some language in S. 227, as currently drafted, that would serve to penalize Tribal Nations lacking the resources necessary to adopt and implement the guidelines DOJ creates. We support Savanna's Act as a tool for facilitating information collection and sharing as well as cooperation between law enforcement agencies for crimes in Indian Country in furtherance of the United States' trust responsibility to provide the resources necessary to keep our people safe. USET SPF has been informed that the bill's sponsors intend to correct this oversight during mark-up. We strongly support this amendment and extend our appreciation to Sens. Murkowski and Cortez-Masto for the reintroduction of the bill and their willingness to make requested changes.

B. Justice for Native Survivors of Sexual Violence Act, S. 288

The Justice for Native Survivors of Sexual Violence Act would extend Tribal Nations' restored jurisdiction over non-Native people, as authorized under VAWA, to include crimes related to sexual violence. In this way, it would recognize Tribal Nations' inherent sovereign authority to exercise criminal jurisdiction over our lands to address a critical gap in the SDVCJ under VAWA.

According to a 2016 study by the National Institute for Justice, approximately 56 percent of Native women experience sexual violence in their lifetime, with one in seven experiencing that violence within the past year. Almost one in two Native women report being stalked. And the vast majority of these perpetrators are non-Native, preventing Tribal Nations from exercising criminal jurisdiction over them outside VAWA. However, VAWA as currently enacted does not extend to these crimes, which Tribal Nations, DOJ, and others involved in implementation of VAWA's SDVCJ have reported as an oversight in the drafting of the law. One such area is its application to sexual violence outside of a domestic relationship. The Justice for Native Survivors of Sexual Violence Act would extend VAWA's SDVCJ to include sex trafficking, sexual violence, and stalking. It would also add crimes of related conduct, defined to include violations of a Tribal Nation's criminal law occurring in connection with the exercise of VAWA SDVCJ.

Additionally, Tribal Nations exercising VAWA's SDVCJ report that certain actions, such as attempted assaults, are difficult to prosecute because they may not qualify as "violence" under VAWA. Instead, law enforcement officers are forced to wait until the perpetrator comes back to inflict more violence on the victim. The Justice for Native Survivors of Sexual Violence Act would replace references to "violence" within the definitions of dating violence and domestic violence with references to violations of the Tribal Nation's criminal laws, thereby making it clear the perpetrator need not have actually physically assaulted the victim. The crime of sexual violence added by the legislation is similarly defined by reference to nonconsensual sexual acts or contact prohibited by law.

Those implementing VAWA also report that it does not function to protect Native people against sexual crimes committed while perpetrators are only briefly in Indian Country—such as during a visit to a casino.

The legislation would remove VAWA's requirement that a defendant has ties to the Tribal Nation. In this way, Indian Country would no longer be open to perpetrators seeking out safe harbors for crime.

However, the Justice for Native Survivors of Sexual Violence Act raises important implications for Tribal Nations living under restrictive settlement acts. To avoid any wrongful arguments that the legislation does not apply to Tribal Nations with restrictive settlement acts, we request you include the following language: "All provisions of this Act apply to all federally recognized tribes, no matter where located, notwithstanding any prior acts of Congress limiting tribal jurisdiction or the application of federal law."

USET SPF supports the Justice for Native Survivors of Sexual Violence Act as an opportunity for this Congress to fix a dangerous oversight in the SDVCJ VAWA provision through the affirmation of inherent Tribal sovereignty and authority. We request the Committee consider amending the bill to include language that would prevent any wrongful arguments that it does not apply to Tribal Nations with restrictive settlement acts.

C. Native Youth and Tribal Officer Protection Act (NYTOPA), S. 290

NYTOPA would address another serious gap in the SDVCJ VAWA provision by ensuring that it includes crimes against children and law enforcement officers—again, in recognition of our inherent sovereign rights and authorities. It would also provide important funding for VAWA implementation in furtherance of the United States' trust responsibility and obligations to provide the resources necessary to keep our people safe.

Another oversight in the drafting of VAWA is its inapplicability to children involved in cases where a Tribal Nation is otherwise exercising VAWA's SDVCJ. Tribal Nations implementing VAWA report that children have been involved as victims or witnesses in nearly 60 percent of the instances in which they exercised VAWA's SDVCJ. But VAWA does not extend to protect them. NYTOPA would amend VAWA to extend Tribal Nations' SDVCJ to crimes committed against a child by a caregiver that are related to physical force and violate a Tribal Nation's law.

Yet another oversight in the drafting of VAWA is its inapplicability to police officers involved in cases where a Tribal Nation is otherwise exercising VAWA's SDVCJ. Implementing Tribal Nations have reported assaults on officers and other personnel involved in the criminal justice system. Domestic violence cases are the most common and most dangerous calls to which law enforcement respond, and VAWA does not give Tribal Nations the tools to protect officers when they carry out VAWA's SDVCJ. The Eastern Band of Cherokee Indians, for example, reported that a perpetrator during arrest under VAWA's SDVCJ threatened to kill officers and carry out a mass shooting and later struck a jailer—none of which was actionable under VAWA's SDVCJ. To remedy this problem, NYTOPA would amend VAWA to extend jurisdiction to crimes committed by a perpetrator already covered under VAWA's SDJPC against a Tribal Nation's officer or employee in the course of carrying out VAWA's SDJPC when the crime is related to exercise of VAWA's SDJPC and violates the Tribal Nation's law.

Additionally, like the Justice for Native Survivors of Sexual Violence Act, NYTOPA would ensure crimes beyond actual assault are actionable under VAWA. It would do so by clarifying that attempts at and threats of physical force that violate a Tribal Nations' laws are covered.

NYTOPA would also carry out important functions related to funding and coordination. It would authorize additional appropriations through 2024 to carry out VAWA's SDJPC. And it would call for increased interagency coordination to ensure that federal programs that support Tribal Nations' justice systems and victim services are working effectively together and training on recognizing and responding to domestic violence. It would also require federal agencies to report to Congress on the effectiveness of federal programs intended to build the capacity of Tribal Nations to respond to crimes covered by VAWA as well as on federal coordination and training efforts.

However, NYTOPA raises similar concerns for Tribal Nations with restrictive settlement acts that the Justice for Native Survivors of Sexual Violence Act raises, and we therefore request addition of the language provided above.

USET SPF strongly supports NYTOPA as another opportunity for a more complete and appropriate application of VAWA's SDVCJ, as well as a more thorough recognition of Tribal jurisdiction in this space. We also support NYTOPA for its VAWA funding, does more to deliver upon the United States' trust responsibility and obligations to provide the resources necessary to keep our people safe. As with the Justice for Native Survivors Act, USET SPF requests the Committee consider amending the bill to include language that would prevent any wrongful arguments that it does not apply to Tribal Nations with restrictive settlement acts.

D. Not Invisible Act of 2019, S. 982

The Not Invisible Act of 2019 would increase coordination within the federal government in furtherance of the United States' trust responsibility and obligations to provide for public safety in Indian Country. It would also provide a mechanism for Tribal Nations, Native people, and others with relevant expertise to advise the federal government on combatting violent crime within Indian Country and against Native people, addressing some of the historical trauma that leads to crime in Indian Country.

Like lack of coordination between law enforcement agencies, lack of coordination within the federal government hampers efforts to keep Indian Country safe. The various agencies and bureaus with specific programs or grants aimed at reducing crime in Indian Country do not coordinate with each other to maximize efficiency. The Not Invisible Act of 2019 would require the Department of the Interior (DOI) to designate an official who reports directly to the Secretary to coordinate efforts related to violent crime in Indian Country and against Native people. This official would coordinate programs and grants across agencies and would work to provide training on how to effectively identify, respond to, and report violent crime in Indian Country or against Native people.

The absence of Native peoples' voices in the federal government's decision making regarding efforts to reduce crime in Indian Country makes the federal government's efforts doomed from the beginning and flies in the face of its consultative responsibilities to Tribal Nations. The Not Invisible Act of 2019 would establish a DOI and DOJ joint advisory committee on reducing violent crime against Native people, which would include Tribal Nation representatives and other Native people with relevant expertise and life experience. However, USET SPF notes that only three Tribal leaders will be appointed to the Committee, despite the large federal presence provided for in the Act. Since this Committee would be broadly charged with making recommendations to DOI and DOJ on combatting violent crime in Indian Country and against Native people, it is vital that the full diversity of be reflected in its representation. We urge that the bill

language be amended to include on the Committee representatives from each of the Bureau of Indian Affairs' 12 regions.

USET SPF supports the Not Invisible Act of 2019 as a tool for enabling the federal government to increase its efficiency with regard to addressing the issue of crime in Indian Country in furtherance of the United States' trust responsibility to provide the resources necessary to keep our people safe. We also support the legislation for its efforts to ensure Native voices are part of decision making, for it is through facilitating our voices to be heard that we will stop being invisible. However, we maintain that the Committee must reflect the full diversity of Indian Country, if it is to be successful.

E. Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act

The BADGES for Native Communities Act would address inefficiencies in federal criminal databases, increase Tribal Nations' access to those databases, and improve public data on crimes and staffing. The legislation would also promote more efficient recruitment and retention of Bureau of Indian Affairs law enforcement personnel, provide resources to Tribal Nations for improved coordination with other law enforcement agencies, and mitigate federal law enforcement mishandling of evidence.

While DOJ operates two databases for missing person cases—the National Crime Information Center database for law enforcement and the publicly accessible National Missing and Unidentified Persons System—the systems do not share data with each other. And Tribal Nation, federal, state, and local authorities are not required to add missing adults to the systems. This leads to high numbers of our missing falling through the cracks. An Urban Indian Health Institute found that of 5,712 reported missing Native women and girls in 2016, only 116 had been logged in DOJ's database. This is unconscionable.

The BADGES for Native Communities Act would ensure the National Missing and Unidentified Persons System contains information related to Indian Country cases and facilitate Indian Country access to it. It would call on DOJ to transmit information on missing persons and unidentified remains contained in national crime information databases to the National Missing and Unidentified Persons System, thereby sharing information between the systems. In the interim, it would require DOJ to enter into the National Missing and Unidentified Persons System information related to missing persons and unidentified remains when the victim is a Native person or last seen on Indian land. It would require DOJ, with the help of designated Tribal Nation liaisons, to ensure Tribal Nations gain access to the National Missing and Unidentified Persons System. The legislation would require DOJ to report to Congress on these efforts.

The BADGES for Native Communities Act would also ensure Indian Country has access to the National Crime Information Center. Through VAWA, Tribal Nations were authorized to access the National Crime Information Center database, but DOJ did not facilitate this access until launching the Tribal Access Program (TAP) pilot project in 2015. Many Tribal Nations remain on the waitlist to access TAP. The BADGES for Native Communities Act would require DOJ to ensure Tribal law enforcement officials have access to the National Crime Information Center. It would also codify TAP and authorize additional funding for the program, which we continue to support.

Additionally, the BADGES for Native Communities Act would create a grant program for addressing the issue of missing and murdered Native people. Grants would be available for establishing centers to document and track missing and murdered person cases when the victim is a Native person or last seen on Indian land, for establishing a commission to coordinate between Tribal Nation, federal, state, and local law

enforcement regarding such cases, and to develop resources related to such cases. While we strongly support dedicated funding for these activities, we request that the mechanism be reconsidered. Grant funding fails to reflect the unique nature of the federal trust obligation and Tribal Nations' sovereignty by treating Tribal Nations as non-profits rather than governments. Further, all Tribal Nations, and not only those with funding to participate in grant-writing processes, should have access to this important funding.

The BADGES for Native Communities Act would also address the issue of law enforcement personnel in Indian Country. It would provide a streamlined system for obtaining background checks on Bureau of Indian Affairs law enforcement applicants, making the hiring process easier. It would also address retention by creating resources for mental health wellness programs for Indian Country law enforcement officers. The legislation would require DOJ to report to Congress on Indian Country law enforcement personnel resources and need.

Last, the legislation would call for the Government Accountability Office to conduct a study on federal law enforcement evidence collection, handling, and processing and the extent to which it affects the rate at which United States Attorneys decline to prosecute cases.

As with other legislation before you today, BADGES would likely benefit from language confirming its application to all federally-recognized Tribal Nations notwithstanding existing settlement acts. We look forward to working with Vice Chairman Udall to ensure final legislative language accomplishes this goal.

USET SPF supports the BADGES for Native Communities Act as it seeks to provide parity for Tribal Nations in access to federal crime information, collection, and tracking. This is an important step toward building a stronger public safety foundation in Indian Country. USET SPF also supports the legislation for its efforts to resolve cases related to missing and murdered Native people take steps towards increasing acquisition and retention of law enforcement personnel and understanding the issue of mishandling of evidence. As with other legislation before you today, these provisions seek to do more to uphold the federal trust responsibility and obligations, as well as support Tribal Nation efforts to see that justice is served for our people.

IV. CONCLUSION

The public safety crisis facing Tribal Nations and our people is directly attributable, at least in part, to U.S. policies of colonialism, termination, and assimilation, as well as the chronic failure to deliver upon the trust responsibility and obligations. These policies stole our homelands, tried to steal our cultures, and limited our ability to exercise our inherent sovereign rights and authorities. The United States, including all branches of government must act to provide parity to Tribal Nations in the exercise of our inherent sovereign rights and authorities. Our people cannot remain invisible and forgotten, as Tribal Nations work to navigate the jurisdictional maze that has grown up around Indian Country while the United States turns a blind eye.

USET SPF supports the legislation before you for consideration today and believes it represents a major step in the right direction toward the United States recognizing Tribal Nations' inherent sovereign rights and authorities. These bills recognize Tribal Nations' inherent sovereign right to exercise criminal jurisdiction over our land, and they provide the resources the United States owes to keep our people safe. As sovereign governments, Tribal Nations have a duty to protect our citizens, and provide for safe and productive communities. This cannot truly be accomplished without the full restoration of criminal

jurisdiction to our governments through a fix to the Supreme Court decision in *Oliphant*. While we call upon this Congress to take up and pass today's legislation, we strongly urge this Committee to consider how it might take action to fully recognize Tribal criminal jurisdiction over all persons and activities in our homelands for all Tribal Nations. Only then will we have the ability to truly protect our people. We thank you for holding today's important hearing and look forward to further opportunities to discuss improved public safety in Indian Country.