S. HRG. 116–67

S. 227, S. 288, S. 290, S. 982, AND S. 1853

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

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CONTENTS

WITNESSES

APPENDIX

S. 227, S. 288, S. 290, S. 982, AND S. 1853

WEDNESDAY, JUNE 19, 2019

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:39 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We will now call our hearing to order.

Today, the Committee will hold a legislative hearing on five bills: S. 227, Savanna's Act; S. 288, the Justice for Native Survivors of Sexual Violence Act; S. 290, the Native Youth and Tribal Officer Protection Act; S. 982, the Not Invisible Act of 2019; and S. 1853, the Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act.

On January 25, 2019, Senators Murkowski and Cortez Masto introduced A. 227, Savanna's Act. This bill has 19 co-sponsors, including myself, Senators Udall, Cantwell, Capito, Coons, Cramer, Daines, Gillibrand, Harris, Heinrich, Klobuchar, Merkley, Murray, Smith, Sullivan, Tester, Tillis and Wyden. S. 227 is named for Savanna LaFontaine Greywind from North Dakota.

On August 19th, 2017, Savanna, a pregnant 22-year old member of the Spirit Lake Tribe, disappeared. Her body was found eight days later, north of Fargo, North Dakota, in the Red River. Although Savanna was tragically killed, her daughter, Haisley Jo, survived, and is living with her father. Both abductors are currently serving life sentences for their actions against Savanna and Haisley Jo.

The bill is intended to improve cases of missing and murdered Native Americans by improving tribal access to Federal criminal data bases, requiring data collection of missing and murdered Native Americans, and directing the Attorney General to review, revise and develop law enforcement and justice guidelines for these types of cases. Today, the Committee will receive testimony on the bill, and I expect a substitute amendment to Savanna's Act be filed at a later time.

The next bill is S. 288, the Justice for Native Survivors of Sexual Violence Act, introduced by Senator Smith, on January 31st, 2019, along with Senator Udall. Similar versions of the bill were intro-

duced in the 114th and 115th Congress by former Senator Al Franken.

In 2013, Congress included a provision in the reauthorization of the Violence Against Women Act, VAWA, to allow Indian tribes to assert criminal jurisdiction over certain crimes and domestic violence committed in Indian Country by non-Indians. S. 288 will expand the Special Domestic Violence Jurisdiction to allow tribes to prosecute cases of sexual assault, sex trafficking and stalking against non-Indian member offenders. This legislation will also eliminate the requirement that offenders must have sufficient ties to the land, thereby ensuring that all non-Indian offenders can be prosecuted for their crimes against tribal members.

On January 31st, 2019, Vice Chairman Udall introduced S. 290, the Native Youth and Tribal Officer Protection Act. Senators Smith and Murkowski are co-sponsors. A prior version of this legislation was also introduced by Vice Chairman Udall in the 115th Congress.

Like the previous bill we discussed, this bill will also expand criminal jurisdiction over non-Indians for crimes against children and crimes against tribal officials. The legislation also requires an increased interagency coordination among the Indian Health Service, IHS, and the Bureau of Indian Education, BIE, and the Bureau of Indian Affairs, BIA, to increase awareness of victim services available for survivors of domestic violence. Lastly, S. 290 will require the Federal employees and IHS, BIE and BIA receive training to recognize and appropriately respond to cases of domestic violence.

On April 2nd, 2019, Senator Cortez Masto introduced S. 982, the Not Invisible Act of 2019, along with Senators Murkowski and Tester as co-sponsors. S. 982 directs the Secretary of the Interior to designate an official within the Bureau of Indian Affairs Office of Justice Services to coordinate prevention efforts, grants and programs across offices within the BIA and DOJ related to the murder, trafficking and recovery of missing persons in Indian Country. These efforts include the Office of Justice Programs, the Office of Violence Against Women, the Office of Community-Oriented Policing Services, the Office of Tribal Justice and other Federal agencies, as needed.

The Not Invisible Act of 2019 also establishes a Joint Advisory Committee on reducing violent crime against Native people, the Joint Advisory Committee within the Department of the Interior and DOJ, which is to make recommendations to the Secretary of the Interior and the Attorney General on the actions both departments can take to help combat violent crime against Indians within Indian lands.

On June 13th, 2019, Vice Chairman Udall introduced S. 1853, the Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act, along with Senators Cortez Masto, Smith, Tester, Murkowski and McSally. The failure to properly collect and share criminal justice data in Indian Country is a well-known barrier to ensuring public safety for many Native communities.

Among other things, S. 1853 will address the issue of fragmented case information and compartmentalization between different law enforcement data systems. The bill will codify the DOJ's tribal ac-

cess pilot program, which enhances the ability of tribal governments to access, enter, and obtain information from federally maintained law enforcement data bases.

The Act also authorizes a five-year demonstration program to allow BIA to conduct its own background and security clearance checks for newly hired law enforcement personnel as well as a five-year DOJ grant program to support State, tribal and non-profit organization coordination efforts related to missing and murdered persons cases of interest to Indian tribes.

Finally, S. 1853 directs the Comptroller General to review BIA and FBI evidence collection handling and processing for cases originating in Indian Country. The Comptroller General is to look for similar evidence to collection issues encountered by State and local law enforcement agencies that have assumed Federal jurisdiction over certain reservations.

Now, before I turn to Chairman Udall for his statement, I do want to express disappointment that both departments did not turn testimony in on time. The Committee first notified departments four weeks ago regarding today's legislative hearing. So the testimony needs to be in on a timely basis. That does violate our Committee Rule 4(b). So again, in your testimony, we will ask you for the record to state why your testimony was not provided timely.

Putting the testimony aside, I further understand that neither Administration witness is prepared to discuss the merits of this legislation today. The purpose of a legislative hearing is to be able to receive feedback on the legislation and not having this opportunity to hear from the witnesses on the merits of these bills is disappointing.

However, I am still prepared to go forward with today's hearing, as we have witnesses that have traveled far to be here. That being said, I am prepared to give the Administration a hard deadline of July 8th to provide in writing to the Committee a definitive conclusion about each bill today.

With that, I will turn to Senator Udall.

STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

Senator UDALL. Thank you, Chairman Hoeven, for calling this hearing, and thank you to each of our witnesses for joining us in these important discussions.

This Committee is well aware that public safety in Indian Country is a problem. We heard from tribal leaders, we have heard from law enforcement and we have heard from family members of Native victims. Today, we have an opportunity to take action and make good on our promises to improve public safety in Indian Country.

All five bills up for discussion at this hearing put forward concrete solutions to address the two core barriers at the heart of the tribal public safety issues: jurisdiction and resources. Both barriers must be addressed together for Indian Country to see meaningful change.

I think the Chairman has done a good job of summarizing the bills, so Mr. Chairman, I wanted to note my other frustration with DOI and DOJ. They are not only in violation of Committee Rule

4(b), as you have emphasized, but also, the Administration was unable to finalize its legislative reviews in time for this hearing. DOJ's testimony claims that as a direct result of Attorney General Barr's visit to Alaska, "Department leadership at the highest levels have expressed a renewed commitment to improving public safety in Indian Country."

But where is the evidence of that renewed commitment here today? If the department truly stands ready to do its part, that is their quote, on addressing the MMIW crisis, why is it not prepared for this hearing? To be clear, the Administration's part is to provide views on this legislation in a timely fashion. Both departments have failed in that duty here. Today, it is only fair to question the sincerity of claims to a renewed commitment.

As I said in my opening, these bipartisan bills are an opportunity for us to transform talk about the importance of improving tribal public safety into concrete action. I will not abide any more empty words. And Indian Country cannot and should not accept any more lip service. It is past time for the Administration to show some follow-through. Mr. Addington and Mr. Toulou, it falls to you to take this message back to your leadership. We all expect you to do your part and help move the needle forward on these priorities.

Thank you, Mr. Chairman.

[The prepared statement of Senator Udall follows:]

PREPARED STATEMENT OF HON. TOM UDALL, U.S. SENATOR FROM NEW MEXICO

Thank you, Chairman Hoeven, for calling this hearing. And, thank you to each of our witnesses for joining us for such an important discussion.

This Committee is well aware that public safety in Indian Country is a problem. We've heard from Tribal leaders. We've heard from law enforcement. And we've heard from the family members of Native victims.

Today, we have an opportunity to take action and make good on our promises to improve public safety in Indian Country.

All five bills up for discussion at this hearing put forward concrete solutions to address the two core barriers at the heart of all Tribal public safety issues: jurisdiction and resources. Both barriers must be addressed together for Indian Country to see meaningful change.

Indian Country criminal jurisdiction has been famously described as a journey through a "maze." [1]

Currently, when law enforcement is called to the scene of a crime, the officer must determine:

- the nature of the crime;
- the status of the land where the crime occurred;
- whether the victim is a member of a Tribe; and
- whether the offender is a member of a Tribe.

Only once this multifactor test is complete can the officer determine whether the federal government, the state, or the Tribe has authority to act.

It is no wonder that criminals exploit this jurisdictional maze, preying on Native women and children, and putting Tribal officers in harm's way.

Senators Murkowski, Smith, and I introduced S. 290, the *Native Youth and Tribal Officer Protection Act*, and S. 288, the *Justice for Native Survivors of Sexual Violence Act*, to cut through that maze.

These bills build on provisions in the 2013 *Violence Against Women Act* reauthorization that restored Tribal jurisdiction over domestic violence crimes.

Tribes across the country have successfully implemented VAWA 2013 authorities to get known violent offenders out of Tribal communities and off the streets.

Together, both S. 288 and S. 290 will ensure that Tribes have more tools to keep families safe.

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[1] Professor Robert N. Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 Ariz. L. Rev. 503, 504 (1976).

But, closing jurisdictional gaps is only part of the solution. Tribes need the resources to effectively deploy the tools required to improve public safety in their communities.

And as I've noted at several hearings over the last few months, lack of resources is slowing progress in the Committee's Tribal public safety response.

That's why I've fought to increase funding for public safety programs at the B-I-A. And why I pressed the Department of Justice about whether its budget lives up to its federal trust and treaty responsibilities at our hearing in May.

I'm committed to continue this work through the appropriations process. But, I also want to make sure existing federal resources are used effectively.

S. 1853, the *BADGES for Native Communities Act*, does just that.

My bipartisan bill puts forward common sense solutions to increase the efficiency of law enforcement resources. It will:

- Improve the ability of officers and Tribes to share time-sensitive crime data,
- Streamline B-I-A's officer recruitment procedures to get qualified police out in the field faster, and
- Incentivize increased cross-jurisdiction collaboration so limited resources aren't wasted on duplication.

The final two bills—S. 227, *Savanna's Act*, and S. 982, the *Not Invisible Act*—similarly tackle inefficiencies in federal resource coordination.

Taken all together, these five bipartisan bills each represent a real opportunity to make meaningful progress on Tribal public safety.

I hope we can all work together to get the provisions they contain enacted into law—either as stand-alone bills or as pieces of larger legislative packages.

Finally, Mr. Chairman, I want to note my utter frustration that D-O-I and D-O-J are not only—once again—in violation of Committee Rule "4-b", but also that the Administration was unable to finalize its legislative views in time for this hearing.

D-O-J's testimony claims that, as a direct result of Attorney General Barr's visit to Alaska, QUOTE "Department leadership at the highest levels have expressed a *renewed commitment* to improving public safety in Indian Country." END QUOTE

But, where is the evidence of that renewed commitment here today?

And if the Department truly QUOTE "stands ready to do [its] part" END QUOTE on addressing the M-M-I-W crisis, why is it not prepared for this hearing?

To be clear, the Administration's "part" is to provide views on this legislation in a timely fashion.

Both Departments have failed in that duty here today. It is only fair to question the sincerity of claims to a "renewed commitment".

As I said in my opening, these bipartisan bills are an opportunity for us to transform talk about the importance of improving Tribal public safety into concrete action.

I will not abide any more empty words.

And, Indian Country cannot—should not—accept any more lip service. It is past time for the Administration to show some follow through.

Mr. Addington and Mr. Toulou, it falls to you to take this message back to your leadership. We all expect you to do your part and help move the needle forward on these priorities.

Thank you.

The CHAIRMAN. Before proceeding, I would ask if other members have opening statements before proceeding to the witnesses. Senator Smith.

STATEMENT OF HON. TINA SMITH, U.S. SENATOR FROM MINNESOTA

Senator SMITH. Thank you very much, Chair Hoeven. I just want to say thank you to Chair Hoeven and to Vice Chair Udall for holding this hearing today on five important bills to address public safety in Indian Country, and to address violence against Native communities, and especially Native women everywhere.

So I want to just note that I introduced my bill, S. 288, the Justice for Native Survivors Act, along with Senator Udall and Senator Murkowski, to expand the authority of the 2013 VAWA special

domestic violence criminal jurisdiction to include crimes of sexual violence, sex trafficking and stalking. There is a crisis of missing and murdered indigenous because the Federal Government is not doing enough to address it. We are not responding to violence committed against Native communities, and we are not upholding our trust responsibility to keep those communities safe. So we really need to pass my legislation.

So I want to say thank you again to my colleagues on this Committee for your partnership on these issues. And to our witnesses here today, I fully support all of the bills that we will be discussing this afternoon. I look forward to hearing your testimony to make sure that these bills work in Native communities to address the problems that we face. Thank you very much.

The CHAIRMAN. Senator Murkowski.

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman, and thank you to you, Vice Chairman Udall, for the hearing today. These are important bills, and I appreciate the leadership that we have had with so many of my colleagues on this Committee, Senator Smith, Senator Cortez Masto, Chairman, the Vice Chairman here.

These are matters that I hope all of us find very, very troubling. The issue of missing and murdered indigenous women is troubling enough. The issue of women that are trafficked is awful to even think about. But part of our problem is, we don't even know what we don't know. So doing a better job in understanding and ascertaining whether it is the data, the collection, these are some of what we are trying to address with the bills that are before us.

What we are all trying to do is to improve public safety and improve the justice system for our First Peoples, whether they be in Alaska, whether they be in reservations around the Country, whether they be in our urban centers. So I want to particularly welcome Michelle Demmert, who is the Chief Justice for Tlingit and Haida. She also serves as the NCAI VAWA Task Force Chair . I appreciate it a great, great, deal, Michelle, the work that you do on that. Your perspective on the importance of tribal provisions in VAWA, the need to strengthen them, these are so important for our efforts, so that we are informed here.

I think an added benefit, and it goes beyond, that is such a weak way to term it, but the insights that you are able to provide of the unique challenges that face Alaska tribes is so important to this discussion here today. The visit that the Attorney General had to our State has already been mentioned. It will be mentioned again.

I appreciate the fact that you came to the State, along with the Attorney General, Mr. Toulou, to again see what not only Alaska natives face in our more regional hubs, like Bethel, but out in a small, isolated village like Napaskiak, and to hear the Attorney General say, I have been briefed on these matters, I have come to the State and I have listened to you tell me about it. But when I come out and I see it, and I experience it as I walk with the people, then I am able to feel it in my heart.

This is what we need to see reflected within our agencies, within the Department of Justice, within the Department of Interior. We

need to have you feel it in your heart, because these women, these children, these families, that have suffered, that have been victims and been victims not just once but two and three and multiple times over, and for some generational victims, we have to feel it in our hearts before we are able to address this. So what must happen with this Committee, the leadership that we have here, bills like the handful that we have here, the expectations are that we are going to start making a difference . I think back on those people in Napaskiak who are now reflecting that these people from Washington, D.C. came and they took pictures and now they are gone, and has anything changed. Has anything changed for that community?

I am bound and determined that we are not going to be in a situation where they say, they just came and took pictures and left. We are going to make a difference. So thank you for what you are doing, Michelle, with us, and in working to address this.

Senator Cortez Masto and I have a substitute amendment to Savanna's Act that will not only address the crisis of murdered and missing Native women addressed throughout the Country, but it is not just in Indian Country, it is in our urban centers as well. That is important. I think it is important to state very clearly that I am very supportive of a concept that Congressman Young included in the House VAWA with an Alaska pilot. I look forward to addressing that on the Senate side as well.

But whatever we can do to address the epidemic levels of violence against our indigenous women and people with my colleagues here on the Committee and in the Senate, as we work to strengthen VAWA, this is going to be very, very important . So thank you, Mr. Chairman, for advancing these.

The CHAIRMAN. Senator Cortez Masto.

STATEMENT OF HON. CATHERINE CORTEZ MASTO, U.S. SENATOR FROM NEVADA

Senator CORTEZ MASTO. Thank you. And thank you, I want to echo the comments and the passion of my colleague, Senator Murkowski. I truly believe we must do everything we can to address the epidemic of violence against indigenous women and children. This is a first start. And thank you for being here. I so appreciate it.

I do want to talk about a couple of the bills. Particularly with Savanna's Act, I was honored to work with Senator Murkowski really to continue Senator Heitkamp's legacy here in the Senate . Because of Senator Heitkamp bringing this issue forward and highlighting it, we are able to carry these bills today, and particularly Savanna's Act. The data base access, law enforcement guidelines and data collection required by this bill are essential to improving the safety and security of Native women and girls. I am proud of the bipartisan work we have done on Savanna's Act and hope we can mark up the bill soon.

I would also like to address the Not Invisible Act, and thank you again to my colleagues for joining me on this one as well. It works in tandem with Savanna's Act, addressing the crisis of missing, murdered and trafficked Native women by increasing Federal coordination and establishing an advisory committee of law enforce-

ment service providers, Federal partners and survivors to make recommendations. Thank you again to my colleagues.

Mr. Chairman, I would like to enter into the record two letters of support for the Not Invisible Act, one from the National Indigenous Women's Resource Center and one from Las Vegas Paiute Tribe.

The CHAIRMAN. Without objection.

Senator CORTEZ MASTO. Thank you. I am also proud to support the other bills before this Committee today.

The CHAIRMAN. Senator Moran.

STATEMENT OF HON. JERRY MORAN,
U.S. SENATOR FROM KANSAS

Senator MORAN. Mr. Chairman, thank you. I just want to let particularly the witnesses from the non-governmental side know that I am interested in this topic. I am leaving here in a moment . I was hoping to hear your testimony. The Veterans Affairs Committee, of which Senator Tester is also a member, is having a hearing today on veteran suicide, including legislation that Senator Tester and I authored. So I need to leave for there, and I am slower getting to the places that I need to be than I used to be. But I want you to know how interested I am in this topic.

And to the Administration witnesses, I was interested to hear, I am the Appropriations Chairman for the Department of Justice, interested in hearing how we can be of help to this cause. And to my colleagues on the Committee, particularly those who are the sponsors and co-sponsors of this legislation, please consider us an ally and reach out to us. We are interested in trying to be of help .

Mr. Chairman, thank you very much.

The CHAIRMAN. Senator, were you asking to have the non-governments proceed first, so you can stay and hear them?

Senator MORAN. I need to leave now, thank you.

The CHAIRMAN. Oh, okay. Senator Schatz.

STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII

Senator SCHATZ. Thank you, Mr. Chairman and Vice Chairman, for holding this hearing. It is clear that our system as it stands today is failing men, women and children in Native communities across the Country. We need to do more, so thank you for your leadership.

In 2017, this Committee held a hearing on human trafficking in Indian Country. One of the things that stood out to me was the significant amount of child exploitation cases in communities with high Native children populations, including Hawaii. A recent study of internet service providers and child pornography activities found that our own Department of Defense ranks 19th out of 2,891 networks nationwide when it comes to peer-to-peer file trading of child pornography. Again, 19th out of nearly 3,000 networks. That is astounding, and that is something that we can do something about.

So last Congress, Senator Murkowski and I worked together to introduce legislation called the End National Defense Network Abuse Act, also called the End Network Abuse Act. Our bill will help the Department of Defense stop the widespread abuse of the

DOD's network to traffic in child pornography. I want to thank Senator Murkowski for her leadership and her partnership and for her work as an advocate of all Native children.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Barrasso.

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you, Mr. Chairman. Mr. Chairman, it goes without saying, but I want to underscore the importance of today's discussion. The bills that we are discussing here today seek to address a problem so horrifying that often it is hard to know where to begin. This Committee has heard time and again from families whose loved ones never came home. Stories of lives irreparably changed by a violent act, murder, rape, kidnapping, domestic violence, human trafficking. They affect women and children in Indian Country at an astonishing and unacceptable level.

And those are just the cases that we know about. In 2016, the Department of Justice issued a report that said that four out of five American Indian and Alaska Native men and women have experienced violence at least once in their lives. We know that the vast majority of these crimes are personal, difficult to discuss and often do go unreported.

As then-Chairman and Ranking Member of this Committee, Senator Tester and I, requested that the GAO study human trafficking and violence in Indian Country. When the GAO issued their reports in 2018, they found that of 6,100 investigations and 1,000 prosecutions for human trafficking in the United States, during the years 2013 to 2016, that only 14 investigations and only 2 Federal prosecutions involved an American Indian and Alaska Native individual. I said it then, I will say it now, I do not believe that there were that few cases involving tribal members. Nobody in this room believes that. I believe violent crimes, like human trafficking, are underreported, under-investigated and under-prosecuted.

This is not a new problem. For years, this Committee has heard story after story of women and children who disappear without a trace. We wait, no justice is carried out for them. The families may never know what became of their son or their daughter or their sister or their mother.

Access to data about the scope of the problem has challenged this Committee, it has challenged the Department of Justice, it has challenged the Department of Interior, and it has challenged the tribes for decades. The bills we are discussing today seek to address those reporting, data sharing and data access issues. I look forward to the testimony about how those bills can be used and how they can be improved.

I would also raise one other issue. Many tribal communities need more law enforcement officials. They need more boots on the ground. in Wyoming, the Wind River police department has long struggled with an effort to fill all of their positions. There are times when all positions are filled on paper, but officers may be detailed to other reservations or in training or in some other assignment.

Wind River is 2.2 million acres. That is 3,500 square miles. It is larger than the State of Delaware. Sometimes there are as few as

10 to 15 officers on the ground to patrol that area. Response times and public safety suffers when officers may have to travel 45 minutes in order to reach an emergency.

Law enforcement officers have high-stress jobs and when so many positions are vacant or inactive, leave or sick days are not an option. So burnout is always a serious concern. Not only do these officers and these departments need access to the information, they need to have the capacity to do something with it.

As we hear this testimony today, we must listen to these witnesses, hear their suggestions and work to implement them. I look forward to working with the members of this Committee to ensure that the next several years are not filled with studies and stories. So thank you, Mr. Chairman, and thanks to all the witnesses for being here today.

The CHAIRMAN. We will now hear from our panel of witnesses. We will begin with Mr. Tracy Toulou, Director, Office of Tribal Justice

U.S. Department of Justice, then Mr. Charles Addington, Deputy Bureau Director, Office of Justice Services, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C., the Honorable Michelle Demmert, Chief Justice, Central Council, Tlingit and Haida Indian Tribes of Alaska, Juneau, Alaska, and Honorable Lynn Malerba, Secretary, United South and Eastern Tribes Protection, Washington, D.C.

I want to remind the witnesses; your full testimony will be made part of the official hearing record. Please keep your statement to five minutes, if you would, so that we have time for questions. With that, we will begin with Mr. Toulou.

STATEMENT OF TRACY TOULOU, DIRECTOR, OFFICE OF TRIBAL JUSTICE, U.S. DEPARTMENT OF JUSTICE

Mr. TOULOU. Chairman Hoeven, Vice Chairman Udall, members of the Committee, thank you for the opportunity to discuss these five bills which address a number of longstanding threats to public safety throughout tribal communities. We have worked with the Senate Committee on Indian Affairs staff on numerous occasions on the development of these bills, and we would like to express our appreciation for your efforts to address difficult and sometimes complex issues collaboratively.

Thank you for the outreach by your staff. This level of outreach is unprecedented in my 25 years of working on public safety issues with Indian communities.

Attorney General Barr's visit to Alaska villages earlier this month gave leadership at the Department of Justice an opportunity to hear directly from tribal representatives about public safety challenges in their communities, and to bear witness to the consequences of historically inadequate support. The issues that were raised by tribal leaders, service providers and community members overlap with many of the issues in the five bills under discussion today.

During the trip, Attorney General Barr promised to remain mindful of the urgency that underscores the request for support from public communities. He charged the department with moving

on an expedited basis to address the public safety issues we saw represented in Napaskiak, Galena and Bethel.

The five bills under discussion today build on an ongoing effort to meet a higher standard for supporting law enforcement and victims services in tribal communities, by making better use of resources, further improving interagency coordination, and demanding accountability for results. The department is committed to meeting a higher standard across these areas to achieve substantial, sustainable improvements in public safety in Native communities.

The Department appreciates that many of these bills under discussion today address numbers of missing and murdered people, especially women in Native communities. From a legal perspective, missing persons and murder cases are two different issues that require different law enforcement responses. However, the term "missing and murdered" outside a strict legal perspective goes far beyond investigating procedures and legal definitions. "Missing and murdered" has become a call to action to address crimes and public safety conditions that result in loved ones lost and domestic violence, sexual assault, substance abuse, and inadequate law enforcement resources. The department supports efforts by this Committee to answer the call to action and we stand ready to do our part.

The current draft of Savanna's Act reflects a number of discussions between the department and the Committee staff. The result is a series of clear and targeted actions that are intended to help the department operate more efficiently, partner more effectively with tribal, State and local agencies responding to these reports, and enhance tribal governments' capacity to develop their resources as well. The department would like to work with the Committee to address the impact of the newly drafted Section 7 on existing grant opportunities, and will reach out to Committee staff to discuss these technical issues.

The BADGES for Native Communities Act is the most recent of the five under discussion today, and is still under review by the department. We are encouraged by the language that supports further expansion of our Tribal Access Program. TAP has developed into a program of great benefit to participating tribes and their agencies, from law enforcement to courts to sex offender registries. This bill would help the department continue to develop TAP and deepen our ability to support effective law enforcement partnerships in and around Native communities.

Both the Justice for Native Survivors of Sexual Violence Act and the Native Youth and Tribal Office of Protection Act would expand tribal special domestic violence jurisdiction over non-Native offenders, which responds to feedback that we have heard for years from tribal representatives. Because exercising criminal jurisdiction is such a crucial aspect of sovereignty, the department would welcome an opportunity to work with the Committee to ensure that the legislation will weather judicial challenges.

We appreciate the sustained focus of this Committee on improving law enforcement coordination. The department would like to work with the Committee on the Not Invisible Act of 2019 to ensure that it achieves the important goals of this legislation, which

includes increasing coordination and identifying and combating violent crime in Native communities.

The Department of Justice works to enhance public safety, and continues to be shaped by our commitment to tribal governments, to improving coordination and collaboration at Federal, tribal, State and local levels, and to be appropriately accountable for the work we do. The department and tribes are partners in ensuring public safety in Indian Country. We recognize the challenges faced by tribes are generally best met by tribal solutions.

Our most effective policies and practices in Native communities are a result of the close collaboration with tribal experts and joint implementation with tribal partners. The department appreciates the work of this Committee to continue to improve public safety in Indian Country. We thank you again for the chance to provide testimony today.

[The prepared statement of Mr. Toulou follows:]

PREPARED STATEMENT OF TRACY TOULOU, DIRECTOR, OFFICE OF TRIBAL JUSTICE, U.S. DEPARTMENT OF JUSTICE

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee:

Thank you for the opportunity to discuss S. 227, Savanna's Act; S. 288, Justice for Native Survivors of Sexual Violence Act; S. 290, Native Youth and Tribal Officer Protection Act; S. 982, Not Invisible Act of 2019; and S. 1853, Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act, which address a number of long-standing threats to public safety throughout Tribal communities. We have worked with the Senate Committee for Indian Affairs staff on numerous occasions in the development of these bills. These discussions have been productive and substantive; we would like to express our appreciation for your efforts to address difficult and sometimes complex issues collaboratively. Thank you for that outreach, which we hope will continue as these bills progress and new legislation is developed.

Attorney General Barr's visit to Alaska earlier this month gave leadership at the Department of Justice (Department) an opportunity to hear directly from Tribal representatives about the public safety challenges in their communities and to bear witness to the consequences of historically inadequate support. The issues that were raised by Tribal leaders, service providers and community members overlap with many of the issues in the five bills under discussion today. During the trip Attorney General Barr promised to be mindful of the urgency that underscores requests for support from Native communities. As a result of time spent in Alaska, Department leadership at the highest levels have expressed a renewed commitment to improving public safety in Indian country and Native villages and is directly engaged in seeing that commitment through.

The Tribal Law and Order Act of 2010 changed the way the Department works in and provides support to Native communities. The five bills under discussion today build on current efforts to meet a higher standard for supporting law enforcement and victim services in Tribal communities by making better use of resources, further improving interagency coordination, and demanding accountability for results. The Department is committed to meeting a higher standard across these areas to achieve substantial, sustainable improvements in public safety in Native communities.

The Department appreciates that so many of the bills under discussion today address the numbers of missing and murdered people, especially women, in Native communities. From a legal perspective, missing persons and murder cases are two very different issues that require different law enforcement responses. However, the term "missing and murdered" outside of a strict legal perspective goes far beyond investigative procedures or legal definitions. "Missing and murdered" has become a call to action to address the crimes and public safety conditions that result in loved ones lost to domestic violence, sexual assault, substance abuse, and inadequate law enforcement resources. The Department supports efforts by this Committee to answer this call to action and stands ready to do our part.

Savanna's Act focuses on the need for improved protocols in responding to reports of missing persons, the need for improved access to law enforcement databases, and accountability for increased Departmental engagement in investigations and cases

of missing persons or murder cases in Indian country. Committee staff have reached out to the Department a number of times on this particular bill and we continue to appreciate the opportunities to provide technical assistance. In the course of these discussions with Committee staff, we have been able to describe ongoing efforts by the Department to better respond to these critical issues and impediments to progress, such as jurisdictional constraints and lack of law enforcement resources. The current draft language reflects those discussions and the result is a series of clear and targeted actions that are intended to help the Department operate more efficiently, partner more effectively with Tribal, State, and local agencies responding to these reports, and enhance Tribal governments' capacity to develop their responses as well. The Department would like to work with the committee to address the impact of the newly-drafted Section 7 on existing grant opportunities and will reach out to Committee staff to discuss these technical issues.

The BADGES for Native Communities Act also seeks to improve information sharing practices and programs, establishing a Tribal liaison for the National Missing and Unidentified Persons System (NamUs), addressing hiring issues at the Bureau of Indian Affairs, establishing grant resources to respond to missing persons and murder cases, and establishing accountability measures. This bill is the most recent of the five under discussion today, and is still under review by the Department. We are encouraged by the language that supports further expansion of our Tribal Access Program (TAP). TAP was created to fulfill information sharing mandates established in the Tribal Law and Order Act of 2010, thus helping Tribes protect their communities. It has developed into a program of great benefit to participating Tribes and their agencies, from law enforcement to courts to sex offender registries. This bill would help the Department continue to develop TAP and deepen our ability to support effective law enforcement partnerships in and around Native communities. This bill also responds to concerns we hear from Tribal representatives about the need for dedicated resources and better information sharing to respond more effectively to reports of crime in their communities, including missing persons reports. The Department would like to work with the Committee on some of the current language. For example, we see opportunities to address compatibility issues between Federal Bureau of Investigation Criminal Justice Information Services databases and NamUs, to ensure improved information sharing, as intended. The Department also proposes a technical fix to add "or Tribal" after "if authorized by State" and ", Tribal," after "to officials of State" in 34 U.S.C. § 41101 (commonly known as PL 92–544). This would allow Tribes, consistent with authority that States already possess through this law, to authorize the use of criminal justice databases for official non-criminal justice record checks such as checks for those working with the elderly, developmentally-disabled adults, candidates for elections, and others.

Both the Justice for Native Survivors of Sexual Violence Act and the Native Youth and Tribal Officer Protection Act would expand Tribal special domestic violence criminal jurisdiction over non-Native offenders, which responds to feedback we have heard for years from Tribal representatives. The Native Youth and Tribal Officer Protection Act in particular addresses a number of scenarios often related to incidents of domestic violence: crimes against children and crimes against first responders in these incidents. The Department has repeatedly expressed support for the existing special domestic violence jurisdiction, but has taken a measured approach to ensure that jurisdictional expansion will be supported by the courts. Because exercising criminal jurisdiction is such a crucial aspect of sovereignty, the Department would welcome an opportunity to work with the Committee to ensure that the legislation will weather judicial challenges.

The Native Youth and Tribal Officer Protection Act also mandates that Federal agencies coordinate more effectively on support for Tribal justice systems and for programs providing services to victims. Increased interagency coordination was a critical component of the Tribal Law and Order Act that has led to more effective partnerships and improvements in Federal support to Tribal governments. The Department appreciates that this bill would apply similar measures to specifically support Tribal justice systems and victims of crime in Indian country. Importantly, the Native Youth and Tribal Officer Protection Act would require that training on recognizing and responding to domestic violence be available to both Tribal and Federal employees working in Native communities. This is responsive to feedback the Department has received from Tribal representatives about the need for more community-based platforms to address public safety issues.

The Not Invisible Act of 2019 addresses the broader issue of violent crime in Native communities. In addition to forming an advisory committee to examine violent crime in Native communities, the bill would establish more centralized oversight of activities, grants, and programs at the Department of the Interior. The Department

would like to work with the Committee on the language of this bill to ensure it achieves its stated goals of increasing coordination, and identifying and combatting violent crime in Native communities.

The Department of Justice's work to enhance public safety continues to be shaped by our commitment to empowering tribal governments; to improving coordination and collaboration at the Federal, Tribal, State, and local levels; and to be appropriately accountable for the work we do. The Department and Tribes are partners in ensuring public safety in Indian country, and we recognize that challenges faced by the Tribes are generally best met by Tribal solutions. Indeed, the best success stories and the most effective policies and practices in Indian country are the result of close collaboration with Tribal experts and joint implementation with Tribal partners. The Department appreciates the work of this Committee to improve public safety in Indian country, to hold the agencies to the high standards that Tribes deserve and urgently need, and to collaborate on legislative development to ensure the best results. Thank you again for the chance to provide testimony today and we would welcome the additional opportunity to work with the Committee on the development of these bills. I would be happy to answer any questions you may have.

The CHAIRMAN. Director Toulou, I would like you to put on record the reason for the late testimony.

Mr. TOULOU. Yes. And I understand why the Committee wants that testimony in advance, and I apologize for the delay in providing the testimony. These are very complicated bills, there are a lot of different, moving pieces, has a lot of different equities for the department. That is not an excuse, but there were a lot of people that needed to weigh in. We are going to work to more effectively get it through our process in the future.

The CHAIRMAN. Thank you.

Mr. Charles Addington, Deputy Bureau Director, Office of Justice Services, BIA. Mr. Addington.

STATEMENT OF CHARLES ADDINGTON, DIRECTOR, OFFICE OF JUSTICE SERVICES, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. ADDINGTON. Thank you, and good afternoon, Chairman Hoeven, Vice Chairman Udall and members of the Committee. My name is Charles Addington, I am the Director for the Office of Justice Services for the Bureau of Indian Affairs of the Department of Interior.

Thank you for the opportunity to provide testimony on behalf of the department regarding the following bills: S. 288, Justice for Native Survivors of Sexual Violence Act; S. 290, Native Youth and Tribal Officer Protection Act; and S. 982, Not Invisible Act of 2019, and S. 1853, Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act, which is BADGES.

S. 288, Justice for Native Survivors of Sexual Violence Act, amends the Indian Civil Rights Act of 1968 to expand the definitions of domestic and dating violence to include not just violence but any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian Country where the violation occurs that is committed by a Native victim's intimate or dating partner. The bill also extends the criminal jurisdiction of tribal courts over non-Indians to cover crimes involving sex trafficking, stalking, and sexual violence. We support continued the dialogue and efforts to address these serious offenses that occur in Indian Country communities. We applaud the effort to equip tribes with additional tools to address domestic violence and sex crimes occurring within Indian Country.

S. 290, the Native Youth and Tribal Officer Protection Act, amends the Indian Civil Rights Act of 1968 to extend the criminal jurisdiction of tribal courts over non-Indians to cover crimes including violence against children committed by their caregivers and against officers who respond to calls involving the exercise of tribal criminal jurisdiction over non-Indians.

S. 290 also calls on the Secretary of the Interior and the Secretary of Health and Human Services to coordinate with the Attorney General to ensure that Federal programs to support Tribal justice systems and the provision of victim services work together, and that training materials on recognizing and responding to domestic violence are available to the Bureaus that directly serve Indian Country.

We look forward to working with the Committee to equip tribes with additional tools to address criminal offenses occurring within Indian Country.

S. 982, the Not Invisible Act of 2019, requires the Secretary of the Interior to designate an official within BIA Office of Justice Services to coordinate interagency efforts to address the issue of missing, murdered, and trafficked Indians. The bill establishes a Joint Advisory Committee composed of members from the BIA Office of Justice Services; Federal, state, local, and tribal law enforcement agencies; tribal judges and officials; health care practitioners; advocacy organizations; and Indian individuals who have been personally affected by violence or human trafficking.

The Joint Advisory Committee will develop strategies, best practices, and recommendations for the Secretary of the Interior to better address violent crime in Indian Country. We applaud the intent of the bill, but would like to work with the Committee to ensure that the bill effectively improves coordination across all Federal agencies.

S. 1853, the Bridging Agency Data Gaps and Ensuring Safety, or BADGES, for Native Communities Act, requires Federal law enforcement agencies to report on cases of missing or murdered Indians. The department provides the following comments on the draft bill.

Section 101, entitled Federal Law Enforcement Database Reporting Requirements, addresses the collection of verifiable data, which continues to be a gap in identifying crime trends in Indian Country. The department looks forward to working with the Committee on this important issue, and coordinating with other Federal partners to strengthen crime data reporting.

Section 201 establishes a demonstration program that allows the Director of BIA Office of Justice Services to conduct or adjudicate personnel background investigations for law enforcement officers. This would assist BIA in eliminating one of the biggest obstacles we face with regard to recruitment and result in the expedited hiring of qualified law enforcement officers and getting boots on the ground. I applaud the Committee for its efforts to assist BIA OJS on this critical issue.

We are also pleased that Section 204, BIA and Tribal Law Enforcement Officer Counseling Resources Interdepartmental Coordination, establishes and maintains a mental health wellness program for Indian Country law enforcement officers. These much-

needed resources would help ensure our most precious public safety resource, which is our staff, have access to the mental health resources needed when they experience occupational stress.

Section 202, Missing and Murdered Response Coordination Grant Program, establishes a grant program that will build capacity to better respond to missing and murdered cases of interest to Indian tribes. However, as drafted, entities eligible to apply for the grant program include "relevant Tribal stakeholder" which is defined in Section 2(14) and includes Indian tribes, tribal organizations, national or regional organizations that represent a substantial Indian constituency and have expertise in human trafficking, violence against women and children, or tribal justice systems.

By using "relevant Tribal stakeholder," grant eligibility is open to a variety of entities. National and regional organizations would be able to compete with Indian tribes for grant program funding. However, Indian tribes should not have to compete for this important Federal grant funding with other entities who are not directly responsible for tribal citizens in Indian Country.

The department supports the intent of S. 1853 and looks forward to working with the Committee on these and additional technical issues.

In conclusion Mr. Chairman, thank you for the opportunity to provide testimony on these important matters. We can, and must, do more to address violence in Indian Country and shine a light on this crisis. Although we have implemented some sound strategies to enhance public safety in Indian Country, we have a lot of work ahead of us. I am encouraged by Congress's efforts to address these important issues through legislation. The department will continue to work with the Committee and our Federal, tribal and state partners to strengthen our efforts to keep our Indian Country communities safe.

I am happy to answer any questions you may have. Also, for the record, I want to apologize for our testimony being late. It did get held up in the clearance process, and we were able to finally work through and resolve some testimony issues. So we do apologize, and we will do a better job of getting it to the Committee in a timely manner.

[The prepared statement of Mr. Addington follows:]

PREPARED STATEMENT OF CHARLES ADDINGTON, DIRECTOR, OFFICE OF JUSTICE SERVICES, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Chairman Hoeven, Vice Chairman Udall and Members of the Committee. My name is Charles Addington and I am the Director of the Office of Justice Services (OJS) in the Bureau of Indian Affairs (BIA) at the Department of the Interior (the Department).

Thank you for the opportunity to present this statement on behalf of the Department regarding the following bills: S. 288, Justice for Native Survivors of Sexual Violence Act; S. 290, Native Youth and Tribal Officer Protection Act; and S. 982, Not Invisible Act of 2019, and S. 1853, Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act. Each of these bills is discussed below.

S. 288

S. 288, Justice for Native Survivors of Sexual Violence Act, amends the Indian Civil Rights Act of 1968 (25 U.S.C. § 1304) to expand the definitions of domestic and dating violence to include not just "violence" but "any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian Country where the violation

occurs" that is committed by a Native victim's intimate or dating partner. The bill also extends the criminal jurisdiction of tribal courts over non-Indians to cover crimes involving sex trafficking, stalking, and sexual violence. We support continued dialogue and efforts to address these serious offenses that often occur in Indian Country communities. We applaud the effort to equip tribes with additional tools to address domestic violence and sex crimes occurring within Indian Country.

S. 290

S. 290, Native Youth and Tribal Officer Protection Act, amends the Indian Civil Rights Act of 1968 (25 U.S.C. § 1304) to extend the criminal jurisdiction of tribal courts over non-Indians to cover crimes including violence against children committed by their caregivers and against officers who respond to calls involving the exercise of tribal criminal jurisdiction over non-Indians. S. 290 also calls on the Secretary of the Interior and the Secretary of Health and Human Services to coordinate with the Attorney General to ensure that Federal programs to support Tribal justice systems and the provision of victim services work together, and that training materials on recognizing and responding to domestic violence are available to the Bureaus that directly serve Indian Country (BIA, Bureau of Indian Education and the Indian Health Service). We look forward to working with the Committee to equip tribes with additional tools to address criminal offenses occurring within Indian Country.

S. 982

S. 982, Not Invisible Act of 2019, requires the Secretary of the Interior to designate an official within BIA OJS to coordinate interagency efforts to address the issue of missing, murdered, and trafficked Indians. The bill establishes a Joint Advisory Committee composed of members from BIA OJS; federal, state, local, and tribal law enforcement agencies; tribal judges and officials; health care practitioners; advocacy organizations; and Indian individuals who have been personally affected by violence or human trafficking. The Joint Advisory Committee will develop strategies, best practices, and recommendations for the Secretary of the Interior to better address violent crime in Indian Country. We applaud the intent of the bill, but would like to work with the Committee to ensure that the bill effectively improves coordination across all federal agencies.

S. 1853

S. 1853, the Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act, requires Federal law enforcement agencies to report on cases of missing or murdered Indians. The Department provides the following comments on the draft bill:

Section 101, entitled Federal Law Enforcement Database Reporting Requirements, addresses the collection of verifiable data, which continues to be a gap in identifying crime trends in Indian Country. The Department looks forward to working with the Committee on this important issue, and coordinating with other Federal partners to strengthen crime data reporting.

Section 201 establishes a demonstration program that allows the Director of BIA OJS to conduct or adjudicate personnel background investigations for law enforcement officers (LEOs). This would assist BIA in eliminating one of the biggest obstacles we face with regard to recruitment and result in the expedited hiring of qualified LEOs. I applaud the Committee for its efforts to assist BIA OJS on this critical issue.

We are also pleased that Section 204, BIA and Tribal Law Enforcement Officer Counseling Resources Interdepartmental Coordination, establishes and maintains mental health wellness programs for Indian Country LEOs. These much-needed resources would help ensure our most precious public safety resource, our staff, have access to the mental health resources needed when they experience occupational stress.

Section 202, Missing and Murdered Response Coordination Grant Program, establishes a grant program that will build capacity to better respond to missing and murdered cases of interest to Indian tribes. However, as drafted, entities eligible to apply for this grant program include "relevant Tribal stakeholder" which is defined in Section 2(14) and includes Indian tribes, tribal organizations, national or regional organizations that represent a substantial Indian constituency and have expertise in human trafficking, violence against women and children, or tribal justice systems. By using "relevant Tribal stakeholder", grant eligibility is open to a variety of entities. National and regional organizations would be able to compete with Indian tribes for grant program funding. However, Indian tribes should not have to compete for this important federal grant funding with other entities who are not directly responsible for tribal citizens in Indian Country.

The Department supports the intent of S. 1853 and looks forward to working with the Committee on these and additional technical issues.

Conclusion

Mr. Chairman, thank you for the opportunity to provide testimony on these important matters. We can, and must, do more to address violence in Indian Country and shine a light on this crisis. Although we have implemented some sound strategies to enhance public safety in Indian Country, we have a lot of work ahead of us. I am encouraged by Congress's efforts to address these important issues through legislation. The Department will continue to work with the Committee and our federal, tribal and state partners to strengthen our efforts to keep our Indian Country communities safe.

I am happy to answer any questions you may have.

The CHAIRMAN. Thank you. Chief Justice Demmert.

STATEMENT OF HON. MICHELLE DEMMERT, CHIEF JUSTICE, CENTRAL COUNCIL TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA SUPREME COURT

Ms. DEMMERT. Good afternoon. Thank you, Chairman Hoeven, Vice Chairman Udall, Senator Murkowski, members of the Committee, for inviting me to testify today on legislation that is critically important to Indian Country.

My name is Michelle Demmert, and I am an enrolled citizen of the Central Council of Tlingit and Haida Indian Tribes of Alaska where I am also the elected Chief Justice of our Supreme Court. Tlingit and Haida is a federally recognized tribal government with over 30,000 citizens serving 18 villages and communities spread over 43,000 square miles within Southeast Alaska. Our citizens are among the largest, most isolated, and most geographically dispersed tribal populations nationwide. Most of our communities have no roads in or out, and must rely on planes and boats for both day-to-day needs and emergencies. About one-half of our citizens live in our villages, and the other half in urban areas like Seattle, Juneau and Anchorage.

The bills before you provide a path to change. We welcome many of the reforms included in the bills under discussion today, and recognize the importance of improving protocols, data sharing and coordination. However, real, lasting change will come only when the essential role that tribal governments must play in developing and implementing solutions is fully recognized.

For the 229 Indian tribes in Alaska, it requires our full inclusion under current and any future legislation. These bills continue the progress made under VAWA 2013. The VAWA 2013 tribal provisions, reaffirming the inherent authority of Indian tribes to prosecute non-Indians for some DV-related crimes, was a positive step forward. But more is needed.

The current criminal system fails to protect tribal people and tribal communities. Unfortunately, as the members of the Committee and Indian tribes know, Native victims are more likely to be injured as a result of violent victimization, more likely to need services, and are significantly less likely to have access to services compared to non-Native counterparts. Alaska Native women are especially at risk and are over-represented in domestic violence crimes by 250 percent.

The urgent question of the day is immediate passage and implementation of the necessary legislation to provide Native children

and other victims with the same protections as what was provided for women in VAWA 2013.

I also want to note that DV is rarely, if ever, a crime committed in isolation. There are often other victims. The National Congress of American Indians' five-year report on the exercise of VAWA jurisdiction has reported positive results with the recognition of the tribes' inherent authority over DV crimes. Tribal legal systems are working. People are being convicted or acquitted as the facts dictate. Many of the concerns expressed by opponents of the provisions have not come true. Tribal courts are upholding the rights of defendants, and no defendant has requested Federal court review.

On the other side, the concerns of tribes, of crimes not being punished, is still occurring. Perpetrators of crimes against children and elders in the home, crimes against law enforcement, corrections and the courts, related to the DV incident, cannot be prosecuted by tribal governments. In addition, we are seeing the lack of prosecutions within Indian Country and on Indian lands and crimes of sexual assault, stalking and/or trafficking committed by a non-Indian.

I will provide you an illustration from a tribe located in the State of Michigan. A non-Indian man in an intimate relationship with a tribal member from the Sault Ste. Marie Tribe moved in with her and her 16-year old daughter. After the man began unwanted sexual advances on the girl, sending inappropriate text messages and on one occasion groping the daughter, the tribe charged the defendant with domestic abuse and attempted to tie the sexual assault against the daughter against the mother in order to fit it into VAWA.

The tribal court dismissed the charges for lack of jurisdiction, and the defendant left the victim's home. Four months later, he was arrested by State police for kidnapping and repeatedly raping a 14-year old tribal member.

The kidnapping and rape of a minor could have been prevented if the tribe had been able to exercise jurisdiction in the first case. The 14-year old will suffer from this violence her entire life. Change did not happen in time for these victims.

Two of the bills before you today, S. 290 and S. 288, would change that, and I strongly support their passage. In Alaska, 228 of the 229 tribes are effectively unable to take advantage of the protections of VAWA 2013 because it requires a crime to have occurred within Indian Country, which Alaska does not have. Similarly, we would be unable to make use of the authorities in these two bills, and ask that you adopt H.R. 1585 language around Alaska, and create a pilot project that will enable tribes to build the infrastructure necessary for our communities.

Our communities are suffering with high rates of murders, many of which remain unsolved. In our Alaska communities, our tribal women and leaders are the first responders to crime scenes and must await hours or even days for law enforcement to arrive and begin their investigation. Sadly, the evidence is often stale or unusable even with safeguards.

As for the MMIW crisis, substantial change is needed. While increasing the response to MMIW cases is important, prioritizing the attention to providing advocacy and support to women and girls to prevent abductions and murders is critical. Support is needed at

the front line where women and girls are experiencing sexual violence from birth to death. Support from the Federal Government for these much-needed services now, in addition to the criminal justice reform, will help save Native women's lives.

I thank you for your attention to these bills and to your support for really meaningful change. The bills before you are urgently needed, and will save lives across Indian Country. I urge every member of this Committee to support them. Gunalchéesh. Háw'aa. Thank you.

[The prepared statement of Ms. Demmert follows:]

PREPARED STATEMENT OF HON. MICHELLE DEMMERT, CHIEF JUSTICE, CENTRAL COUNCIL TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA SUPREME COURT

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

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

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

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

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

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

The 2013 Indian Law and Order Commission (ILOC) issued the Report, "A Roadmap for Making Native America Safer" and devoted a chapter to the unique issues

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

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

Historically, Alaska tribes have been treated differently than lower 48 tribes, confusing the fundamentals of tribal court jurisdiction resulting in recognized disparities which justified the FY17 appropriations for an Alaska Native Tribal Resource Center on Domestic Violence.[2] With the passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971, the only remaining reservation in the state is the Annette Island Reserve in Southeast Alaska.[3] Rather than recognize sovereign tribal lands, ANCSA tasked the for-profit corporations to manage more than 40 million acres of fee land. ANCSA divided the state into 12 regional corporations and over 200 village corporations that would identify with their regional corporation. Many of these villages had corresponding tribal village governments, but with the passage of ANCSA, the tribal governments were left with no meaningful land base. As a result, unlike most court systems that have defined territorial jurisdiction and personal jurisdiction, Alaska Tribal courts generally exercise jurisdiction through tribal citizenship, and not through a geographic space defined as "Indian country" because of ANCSA and in part due to a United States Supreme Court case.

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

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

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

[2] *"A Tribal Perspective on VAWA 2018," Restoration*-V15.3-October 2018. *www.NIWRC.org.*

[3] 25 U.S.C. 495 (1891).

was trying to leave. Whether a tribe has advocacy services or public safety personnel makes a difference if victims have support and someone to call for help.

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

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

The expanded jurisdiction under S. 290 and S. 288, as currently written, will not benefit the 228 Alaska Indian tribes who are currently ineligible to exercise Special Domestic Violence Criminal Jurisdiction pursuant to VAWA 2013. We call on Congress for a jurisdictional fix to the Alaska Native Indian country issue, and were pleased to see the Alaska Native pilot project included in the House VAWA bill, HR 1585. I urge the Senate to include a similar provision in S. 290 and S. 288. Outside of Alaska, many tribes have been exercising jurisdiction over non-Indians pursuant to VAWA 2013 for over 6 years. I have had the privilege of working with many of the tribes through an Inter-tribal Working Group on Special Domestic Violence Criminal Jurisdiction. They have held serial offenders accountable and have brought justice and safety to hundreds of victims and their families. Tribes have done so while upholding the due process rights of all defendants in tribal courts. Despite these successes, there are gaps in the law. Even after implementing VAWA 2013, tribal prosecutors are unable to charge defendants for crimes related to abuse or endangerment of a child; for sexual assault, stalking or trafficking committed by a stranger or acquaintance; or for crimes that a defendant might commit within the criminal justice system like assault of an officer, resisting arrest, obstruction of justice, or perjury.

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

The repeal of section 910 of VAWA 2013 was a victory as it was a necessary step towards removing a discriminatory provision in the law that excluded all but one Alaska tribe from enhancing their response to violence against Native women in ways afforded other federally recognized tribes. Nevertheless, because of the *Venetie* decision, additional reforms are needed before Alaska tribes will be able to increase safety for Alaska Native women and hold all offenders accountable. This is because

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

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

[6] *Id.*, at 29.

[7] *Id.*, at 18.

[8] *Id.*, at 29.

[9] *Id.*, at 32.

section 904 of VAWA 2013 limits the exercise of the special domestic violence criminal jurisdiction restored to tribes to certain crimes committed in "Indian country." Yet, at the same time, the State does not have the resources to provide the level of justice needed in tribal communities and ultimately the State is not the local, tribal authority. In the NIJ report, we learned that American Indian and Alaska Native women are 3 times more likely to experience sexual violence by an interracial perpetrator than non-Hispanic White-only females.[10] Alaska Indian tribes need to be able to exercise special domestic violence criminal jurisdiction to address these staggering statistics.

H.R. 1585 begins to address these jurisdictional challenges. It recognizes a tribe's territorial jurisdiction equivalent to the corresponding village corporation's land base and traditional territory AND our own Representative Young, who voted in favor of HB 1585, expanded the jurisdiction definition of the pilot project to include "all lands within any Alaska Native village with a population that is at least 75 percent Alaska Native."[11] In addition, removing the requirement of "Indian country" to enforce a protection order would assist Alaska Tribal villages and provide stronger footing for enforcing protection order violations.

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

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

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

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[10] *Id.* at 18.

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

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

III. S. 227, Savanna's Act

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

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

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

As for missing persons, Alaska has the highest number of any state in the union and these are not per capita numbers. As of January 2019, out of the 347 missing Alaska Native and American Indian people in the NamUs system 74 of those were from Alaska—the most of any state. Overall, 92 percent have been missing for less than a year, and the majority of cases are male—about 1/3 to 2/3 respectfully. Why does it take so long to work our cases compared to other populations?

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

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

wellness of our urban American Indian and Alaska Native community by adding key elements throughout the legislation

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

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

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

- The resources under the Act are proposed by allowing tribes to use existing, limited funds they currently receive under the Tribal Governments Grant Program to address the development of a protocol to respond to MMIW cases.
- Current funding under the Tribal Governments Grant Program is inadequate and does not reach all Indian Tribes. If tribal governments had adequate funds, they would already be developing such protocols and increased responses.
- Thus, funds for the incentives to tribes complying with Savanna's Act will be taken from the funds currently received by all Indian Tribes under the grant program, these funds are already less than adequate to respond.
- Indian tribes need additional resources to broaden and address the crisis of MMIW. Further stretching of existing funds, a tribe receives to provide incentives to others, falls short of "increasing support" to Indian tribes.
- Broadening the purpose areas for these grant programs does not address the reality or restore the authority that the Supreme Court's decision in *Oliphant* erased, leaving tribes unable to investigate, arrest, and prosecute the perpetrators who commit the majority of violent crimes on tribal lands.
- We need to include references to urban Indian communities and data in the legislative findings.
- We should create or include urban conferral policies where tribal consultation is included for tribal governments, as long conference does not threaten or undermine tribal sovereignty and the government-to-government relationship.
- The Definitions section should be inclusive of urban Indian people and organizations. As mentioned, we have over 6000 citizens in Washington State, with most in the Seattle area. Other urban areas have similarly significant populations that need to be considered.
- Adopt the House approach of requiring the Attorney General to publicly list the law enforcement agencies that comply with the provisions of the legislation (rather than list those that do not comply); and
- Replace the affirmative preference subsections with an implementation and incentive section that provides grant authority to law enforcement organizations to implement the provisions of the legislation and offers an incentive for those that state and local agencies that comply, while removing the preference provision in S. 277 that will punish Tribal Nations lacking sufficient resources to implement the guidelines their local U.S. Attorney creates.

IV. S. 982, Not Invisible Act of 2019

As required by a provision included in VAWA 2005, DOJ holds an annual consultation with tribal governments on violence against women. For several years tribal leaders have raised concerns at the annual consultation about the inadequate re-

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

sponse to cases of missing or murdered Native women. DOJ summarized tribal leader testimony on this issue in 2016:

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

Recommendations to the Not Invisible Act: We support the Not Invisible Act as a bipartisan bill to increase national focus on the silent crisis of missing and murdered Indigenous women. The increased awareness and attention to the issue of missing and murdered Indigenous women is long overdue and a critical first step to fully understanding the injustices and defining solutions. However, as written, the burden falls primarily on DOI to meet the requirements of the law and there is very little included to ensure that DOJ comes to the table as a full partner; as a matter of practice, it can be extremely difficult to require meaningful coordination and collaboration across Departments, and this must be a joint responsibility. We encourage you to include language that requires DOJ to also designate a lead staffer and point of contact for the work and to include reporting requirements for each agency to facilitate ongoing congressional oversight. We also recommend clarifying that victim advocates and the tribal domestic violence and sexual assault coalitions should be represented on the Advisory Committee.

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

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

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

While there is tremendous diversity among all tribes, it is worth noting that many of the 229 tribes in Alaska experience extreme conditions that differ significantly from tribes outside Alaska. The Findings section of BADGES demonstrate that Indian Tribes are understaffed with law enforcement by about nearly 50 percent when compared to the national averages. Alaska tribes are in an even more difficult situation. Most of the Alaska Native villages are located in remote areas that are often inaccessible by road and have no local law enforcement presence. The Tribal Law and Order Commission found that "Alaska Department of Public Safety (ADPS) officers have primary responsibility for law enforcement in rural Alaska, but ADPS pro-

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

vides for only 1.0–1.4 field officers per million acres."[16] Without a strong law enforcement presence, crime regularly occurs with impunity.

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

Sec. 103. LAW ENFORCEMENT DATA SHARING WITH INDIAN TRIBES.[17] Codifies the DOJ's Tribal Access Program (TAP), which enhances the ability of Tribal governments to access, enter, and obtain information from federally-maintained law enforcement databases, in statute and authorizes $3 million per year for five years to fund continuation of the program. TAP has done everything that it is authorized to do, however, at times access is limited by federal law and tribes can access the databases for only what is authorized by federal law through TAP. Many states are legislating around data entry and collection of MMIW issues. A tribe that wanted to create a legislative process, would be unable to fully implement their laws, because there is no general federal statute that gives tribes this level of access and determination. However, you could amend 28 USC 534, to authorize this level of tribal input. So for example, federal laws allow tribes to investigate people who will work with children but it doesn't allow access for people who work with our elders or vulnerable adults. Similarly, most tribes require that elected officials, and key personnel obtain background checks. A state can legislate to authorize this access, whereas a tribe does not have that direct access and often has to use channelers or use Lexis/Nexus. Also, the TAP program needs permanent funding otherwise it could be discontinued at any time.

Report on Indian Country Law Enforcement Personnel Resources and Need

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

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

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

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

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

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

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

Another possible solution is to insert , "civil" before "background checks" and adding after "background checks," "if authorized by Tribal law and approved by the Attorney General." It is critical that civil authority be included within this section too, so that once and for all the piecemeal, inefficient barriers to full legitimate access is resolved.

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

[17] Previously Sec. 5.

Definitions

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

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

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

Addressing Jurisdictional Gaps

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

Addressing Unique Jurisdictional Challenges in Alaska

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

Improving the Response to Missing and Murdered Native Women and Girls

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

VII. Conclusion

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

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

Gunalchéesh! Háw'aa! Thank You!

The CHAIRMAN. Thank you, Chief Justice.

And now the Secretary, Lynn Malerba.

STATEMENT OF HON. LYNN MALERBA, SECRETARY, UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND

Ms. MALERBA. Chairman Hoeven, Vice Chairman Udall, and members of the Committee, thank you for the opportunity to provide testimony on this important legislation.

[Greeting in Native tongue.] I am called Chief Many Hearts, Lynn Malerba, Chief of the Mohegan Tribe, Secretary for the USET Sovereignty Protection Fund and member of the Department of Justice Tribal Nations Leadership Council.

We are here today because the Federal Government is failing in its obligation to see that justice is served for tribal nations and Native people. Native women face murder rates up to ten times the national average. Approximately 56 percent of Native women experience sexual violence in their lifetime. Murder is the third leading cause of death for Native women 10 to 24 years of age.

These statistics are a stain on a nation that purports to be a nation of laws, a nation of justice. As our people are slaughtered and go missing, the United States turns a blind eye while denying our right to prosecute offenders and access law enforcement resources. The loss of our people due to this crisis should inspire deep shame within every branch of government and every American citizen.

Through the murders of our women, we lose our sisters, our mothers, our friends, and importantly, subsequent generations of our tribal nations, and all of their potential. These losses are largely invisible, as the Federal Government neglects to even track them.

Today, we ask this body and the Federal witnesses, how will you work to ensure that generations of Native people are not lost because of government policy neglect and inaction? You must examine your own hearts, your own sense of honor and consider whether your moral compass allows you to remain silent.

Increased crime in Indian Country is a result of the shameful policies of the United States. The Federal Government took our homelands, banned our cultures, kidnapped our children and limited the exercise of our inherent sovereign rights and authorities. A gap in criminal jurisdiction stems from this failure to recognize our inherent sovereignty.

When tribal nations are barred from prosecuting offenders and the Federal Government fails in its obligations, criminals are free to offend with impunity. This gap is further compounded for some tribal nations in our region who are subject to settlement acts that States argue prevent laws like VAWA and TOLOA from applying.

The Federal Government has long failed to provide resources to fill the void left by its refusal to recognize our criminal jurisdiction. Even when it is clear that the Federal Government has jurisdiction, prosecutors often decline to prosecute. In fact, in 2019, Federal prosecutors declined a full 50 percent of cases in Indian Country.

Despite the Federal trust obligation, Indian Country's police staffing does not meet national coverage standards. In fiscal year

2010, Indian Country only had 1.9 officers per 1,000 residents, compared to a national average of 3.5 officers per 1,000 residents.

These commonsense bills, if enacted, would address critical gaps in the exercise of VAWA jurisdiction and ensure that the U.S. fulfills more of its obligations to us. We urge the bills' sponsors to ensure that they apply to all tribal nations equally.

Savanna's Act would increase the use of crime data bases, increase law enforcement cooperation, and increase data on missing and murdered Native people. We extend our appreciation to Senators Murkowski and Cortez Masto for their reintroduction of the bill and their willingness to make the requested changes.

The Justice for Native Survivors of Sexual Violence Act would extend our restored jurisdiction to include crimes related to sexual violence, addressing a critical gap under VAWA, which tribal nations, the Department of Justice and others have reported just as an oversight in the drafting in the law.

We must also do more to protect our greatest resource, our children, as well as the officers who work so hard to keep our communities safe. But due to another oversight in VAWA, tribal nations cannot prosecute crimes against them. The Eastern Band of Cherokee Indians, for example, reported that during an arrest, an offender threatened to kill the officers and carry out a mass shooting, and later struck a jailer, none of which was actionable under VAWA. We do not believe that this was the intent of those drafting the 2013 reauthorization. NYTOPA would ensure crimes against children and officers are included again in recognition of our inherent sovereignty.

The Not Invisible Act would increase coordination within the Federal Government, including through a joint advisory committee on reducing violent crimes against Native people. However, we note that only three tribal leaders would be appointed, despite a large Federal presence. We urge that full diversity of Indian Country is reflected on this Committee.

Finally, the BADGES for Native Communities Act would improve access to the Federal criminal data bases and data, promote recruitment of tribal police and improve law enforcement coordination and Federal handling of evidence. We ask that the funding mechanism for these critical provisions be reconsidered, as grants are not reflective of our government-to-government relationship.

In conclusion, we envision a future in which our children, our women, our elders and all Native people can live in healthy 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 a very important advancement toward that goal.

Thank you. I am happy to answer any questions you may have. And we do have full detailed comments in our written testimony. I would say [phrase in Native tongue], thank you very much.

[The prepared statement of Ms. Malerba follows:]

PREPARED STATEMENT OF HON. LYNN MALERBA, SECRETARY, UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND

Chairman Hoeven, Vice Chairman Udall, and members of the Committee, thank you for this opportunity to provide testimony on important pending legislation re-

lated 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 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 seri-

[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).

ously. 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 shortand 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 markup. 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 decisionmaking, 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.

The CHAIRMAN. Thank you. Now we will start with five-minute rounds of questions. We do have five votes through this, so we are going to do our best to continue. Vice Chairman Udall has already gone to cover the first vote. He will be back.

Given the number of witnesses and the number of questions that they will want to ask, we are going to try to keep going through the votes. We will see how that goes. If we get into later rounds of votes, and we need to suspend for a short period of time, we may do that. But at least for the time being, we will proceed.

My first question is for Mr. Toulou. In the proposed substitute amendment for Savanna's Act, to be offered by Senators Murkowski and Cortez Masto, there is a requirement for the Department of Justice to publicly list law enforcement agencies that are in compliance with the proposed provisions of the substitute amendment. This is different from the introduced bill that requires the DOJ to list the law enforcement agencies that do not comply with the implementation.

So I want to know if that creates any challenges for the DOJ, to publicly list law enforcement agencies that are in compliance.

Mr. TOULOU. Thank you for that question, Chairman. It is hard for me to comment for the whole department on this, but let me explain why our initial, why we initially had problems with some of the issues around announcing or not announcing grant related, I don't know, penalties is probably the wrong word, around agencies that don't comply. That is that we work closely with law enforcement, and we prefer to work them through issues when they are not doing what they need to do, rather than have a punitive result for them not doing what was included in the bill.

This seems to me, this is me personally, like a reasonable way of doing that. Because what we are doing is, we are letting the agencies who are doing the right job get the credit they deserve. But I would want to take it back to my folks at the department and discuss it with them. We deal with grants and deal with agencies directly.

The CHAIRMAN. That is exactly why I brought it up, because we would want you to work with the bill's sponsors.

Mr. TOULOU. Yes, I will do that.

The CHAIRMAN. So the Department of Justice, again for you, Mr. Toulou, the Department of Justice operates two data bases that track missing person cases. The first is the FBI's National Crime Information Center Database for Law Enforcement. The second is the National Institute of Justice's National Missing and Unidentified Persons System, the NaMus system, which is a publicly accessible data clearinghouse.

So, should both data bases be able to talk to each other, to make sure that information is being shared?

Mr. TOULOU. We think that would be, given the parameters that we would need to work through with CJIS and NaMus, we think that is a good idea.

The CHAIRMAN. And is that effort underway?

Mr. TOULOU. Yes, they are talking together. We have made efforts already to try to put those two databases in contact. Keep in mind, one is a criminal justice database, and some of the information in that should not be available to the general public, just for the reason we don't release other criminal justice information. But we think there is a way of doing it where we can get the relevant information out and shield the criminal justice information. It is underway, it is tricky. But we agree, the two databases should speak to each other.

The CHAIRMAN. All right. Mr. Addington, you testified before this Committee in December on the issue of crime data, and highlighted the fact that BIA had partnered with DOJ's missing and unidentified, the NaMus system. Can you provide the Committee with an update on how this is going?

Mr. ADDINGTON. Yes, thank you for the question, Chairman. We did work with NaMus to make those data fields for tribal affiliation and some different data fields that we could collect data. Those went live, I believe, at the end of February. The Bureau of Indian Affairs actually worked with the NaMus staff to send up our program analysts to actually be trained in how to enter data, so we could go back and start entering all the data from the Bureau of Indian Affairs direct services agencies, and then begin working with the tribal law enforcement programs to try to get them to enter their data as well.

I pulled a report from the system a couple of weeks ago, and there was about 372 Native entries in the system. Those are not all just from Indian Country; they are from everywhere. We are hoping once we get all of our data entered, that we will be able to actually pull data specifically from Indian Country locations, because that is some of the data fields that were added to it, so we can tell you how many actual people are missing from the reservations, from Indian Country, and how many people are missing that are not from Indian Country.

So we are entering our data and we are hoping as we move forward, we get the tribal programs to start entering their data. There is a lot, Alaska has done a fabulous job with entering a lot of their missing persons in the system already. But our program analysts are actually working with tribal programs to encourage them to enter the data as well.

So we are hoping this year we get most of those cases entered into the system, so we can actually pull a report and have a good idea actually how many missing persons cases are unsolved in Indian Country.

The CHAIRMAN. Same hearing back in December, you testified about the need to better equip law enforcement on collecting evidence, especially with regard to missing and murdered Indian people. Who is responsible for collecting this type of evidence for missing and murdered Indian people? Do tribal law enforcement officers need to perform better, BIA law enforcement, or the FBI? In your opinion, which entity needs the most training in this area?

Mr. ADDINGTON. I think all three could use more training in that area. It depends on who is operating the program, if it is a tribal law enforcement program, we have had issues with being able to

get the data collected, better respond to a missing person call. And if you don't process the scene like you would if someone, if it was a crime, then sometimes you miss collecting very important evidence. We have seen that across Indian Country in different pockets.

But we have put a lot better training out there in our Indian police academy, and are working with BIA and DOJ. So we do have some specific training on evidence collection and those kinds of things that we put out there. So we are providing that the best we can.

I think everybody can always use more training in those areas. As times change, and how you collect evidence, and how the missing person, we learn more all the time of different stories about a missing person case that didn't get done correctly. I think training everyone in the proper way to do it would be beneficial across the board.

The CHAIRMAN. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, and thank you to the Chairman for holding these hearings on these important bills. I appreciate it.

Mr. Toulou, let me jump back to Savanna's Act, in section 7, that you just were talking about. I think you characterized it, what we are trying to do is provide a carrot, not a stick. That is what the amended language does. I didn't hear that you had concerns about it, other than you had to run it up the chain to make sure everybody signs off on it within DOJ. Is that correct?

Mr. TOULOU. I do not personally have concerns about it. I don't speak for the entire department. I think we have had a lot of back and forth on this bill, we feel pretty comfortable where it is. There are some technical issues we want to work through with your staff on section 7.

Senator CORTEZ MASTO. And that is the only section that you have concerns or technical concerns about?

Mr. TOULOU. Yes.

Senator CORTEZ MASTO. Thank you.

Mr. Addington, Savanna's Act, do you have any concerns about Savanna's Act at all? Do you support it?

Mr. ADDINGTON. Yes, we support it. We don't have any concerns at this time.

Senator CORTEZ MASTO. Thank you. So let me then talk about the Not Invisible Act. Mr. Toulou, let me jump back to you.

In your testimony, you said the Department of Justice would like to work with the Committee on language in the bill, the Not Invisible Act, to ensure it achieves its stated goals. What it is trying to do is create the advisory committee and create a point person within the Bureau of Indian Affairs. What is your concern that it won't achieve its stated goals?

Mr. TOULOU. I think we have a complicated process where we work with other agencies and we have special responsibilities and duties at the Department of Justice. We coordinate well with the Department of Interior. But who is coordinating those activities outside the department and is the forward-facing face of the department is something we want to talk to you about, and how that gets done?

In the U.S. Attorney's offices, for instance, the U.S. attorneys are the chief Federal law enforcement in that area. We want to make sure that the existing, and the largely successful, understanding their issues, processes for communicating with our law enforcement partners are preserved in a way we can move forward.

Senator CORTEZ MASTO. Is that type of activity not happening now?

Mr. TOULOU. Yes, it is.

Senator CORTEZ MASTO. So it is happening.

Mr. TOULOU. We are talking, and I think Charlie and I have a good relationship, the people in the field have a good relationship.

Senator CORTEZ MASTO. So this would be just a codification of what you are already doing.

Mr. TOULOU. I think the way it is structured is different than what is already going on, particularly having the coordinator within the Bureau of Indian Affairs.

Senator CORTEZ MASTO. Okay. So what it is really doing is looking to not only coordinate the agencies, but looking at best practices and bringing in our Native communities to be a part of that discussion. Do you have concerns about that at all?

Mr. TOULOU. We don't have concerns as far as working with Native communities on these issues. We would, I think, want to talk to you about how the bill is structured. I can't speak for the entire department, but there were a lot of moving pieces in that bill. We think the intent of the bill, and I think I said that in my testimony, is something we applaud and support. But this is a bill that I think we would really like to sit down and talk with you about.

Senator CORTEZ MASTO. So what I would prefer, and we had asked back in March to get information from both of the agencies to go through this, and we haven't received any response until today, and what I am hearing is that you have some concerns about the structure, but that doesn't give me specifics. That is what I am looking for. So can I get a commitment from you that within the next couple of weeks you will sit down with us to identify your concerns in the Not Invisible Act so we can address those?

Mr. TOULOU. Yes, I would be happy to talk to you.

Senator CORTEZ MASTO. And Mr. Addington, the same?

Mr. ADDINGTON. Absolutely. I think we have already been in contact with someone from your staff to do that.

Senator CORTEZ MASTO. I appreciate that. Thank you very much.

Let me jump over then to Chief Justice Demmert and Ms. Malerba. Thank you so much for being here. Let me just say, I don't disagree with anything that you have said. You are living it every single day. We have really a responsibility here at the Federal level to address every single concern that you have talked about.

I can tell you, somebody that was on the ground, as the attorney general, working with our tribal communities in Nevada, this is something that is happening across the Country. Everybody should be outraged; everybody should be looking to address. And when I say everyone, not just us here in Congress that are Federal agencies. On a local, State, everybody should be working with you to address this issue and making sure that we are all communicating and talking to one another, and listening.

So I cannot thank you enough for being here. I support this legislation. Thank you for the feedback. If you have any other feedback or any other ideas or issues that we should be addressing here at the Federal level, I look forward to talking with you. Thank you again for being here.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Toulou, I want to begin with you. You indicated in your testimony that you felt that the engagement from members on these matters in front of us was unprecedented, unprecedented engagement. You mentioned a sense of urgency that the Attorney General has placed on addressing these issues of public safety and the crisis.

I would ask those of you within the Department of Justice and within the Department of the Interior, let's have an unprecedented engagement, not just amongst the members. I am looking forward, and am working with Senator Cortez Masto as we work on not only Savanna's, but on Not Invisible, and all these others, we need unprecedented engagement. Because the urgency of this situation is just not as to these bills: it is bigger, it is broader.

So I want to take my question with you. The visit that the Attorney General had, that you have had, really, it makes clear that the system that we have in place in Alaska to provide basic public safety is just not working for so many Alaskans. We know that we have to be working together with the tribes, the local residents, the State, the Federal level.

You have noted that you see the overlap in these five bills, that is good. I appreciate what you have said, that we need to have a renewed commitment to improving public safety in Indian Country and Native villages.

But back home, I am wondering, as they saw not only the build-up to the Attorney General's office played out in the evening news, and in the newspapers, they saw what happened on the ground, they saw the discussions, the expectations are high. Certainly our staffs are working, but what can you say publicly is happening within the Department of Justice in terms of next steps? I am talking with my friend, Mr. Moran here, as the chairman of the CJS subcommittee. I am saying, Jerry, we need to make sure that these programs that you have oversight on, that they are going to be working to address some of the challenges that the Attorney General and that you have seen.

Can you give me any specifics here today?

Mr. TOULOU. I should not steal my boss's thunder as these things come out, but he has been working, and tasked us to work, since we have been back, we have met on at least a weekly basis. I have reached out to the tribal partners up there, particularly the AVCP and TCC about how we can provide better support to the field.

I expect we will see something coming out in the next few weeks. He was very concerned about law enforcement resources. He has asked us to look at that very closely. We will be talking to the U.S. Attorney later this week about matters we can take in hand.

I understand the urgency, and I understand that people want to see a reaction. We wanted to make sure this trip wasn't just a

photo opportunity and we thank you for your support in making it a meaningful opportunity. We intend to take meaningful action.

Senator MURKOWSKI. And know that, again, as he works to roll things out, you have a lot of folks who are willing to work with you. We are going to need all of us to address this.

Next question is also to you, and specific to Alaska. I mentioned the pilot program that Congressman Young has included in the House VAWA bill. This is the Alaska pilot. Is DOJ supportive of this concept?

Mr. TOULOU. We understand that much of the jurisdictional issues that Alaska has is not similar to other areas.

Senator MURKOWSKI. Right.

Mr. TOULOU. We see this as an opportunity to work on that. We would like to talk to you about it, but it does seem to us to be a very good option for discussion.

Senator MURKOWSKI. Well, we do want to talk to you about it and I think the statements that have been made in the past about support for existing special domestic violence jurisdiction, there has been kind of a measured response and concern about the judicial aspect. You wanted to know that it has been supported; it is going to be supported in the courts, we understand that you have reiterated that again. But I think we know we have a unique situation in the State of Alaska. You recognize it, the Attorney General recognizes it.

Justice Demmert, I want to thank you for your comments and reiterate what Senator Cortez Masto has said. Thank you, not only for your input as it relates to the situations with Alaska tribes, but your leadership within NCAI and your work on the VAWA task force.

As you have heard, and you know, I am supportive of establishing the pilot for the exercise of the special domestic violence criminal jurisdiction in the State. You have mentioned the statistics. Over 250 percent, Native women over-represented. So our statistics almost shock the conscience. Then when you look at the level of public safety, knowing that one in three communities in the State of Alaska have no local law enforcement. For those who are sitting behind you, let me say it again, one in three communities in the State of Alaska have no local law enforcement. That means no State troopers, no VPSOs, no TPOs, tribal police officers. We have a situation that is just not sustainable.

Then of course what you have is, in these communities that don't have law enforcement, that can't be reached by the road, you have four times as many sex offenders that are there per capita than the national average. Why is that? Well, because they know they are home free. They can live the life of a perpetrator, knowing that nobody is going to be able to prosecute them.

So this is more of a thank you to you for the effort that you are doing. But know that we have work to do with the VAWA legislation moving forward. I know that the narrowness of the VAWA 2013 is an ongoing source of frustration for implementing by the tribes. We know we have some gaps that we need to fill.

There is legislation out there that would allow for expansion to crimes against children, law enforcement officers. I think that is a specific piece of it. But know that this is a time for us to address

the deficiencies that we know exist with VAWA 2013. So we want to work with you on that.

Mr. Chairman, my time is well over, and we have votes. I am going to try to come back, though, because these are big issues. Thank you all for your testimony here today.

Senator UDALL. [Presiding] Thank you, Senator Murkowski.

Chief Malerba and Chief Justice Demmert, in 2018, the National Congress of American Indians published a report on lessons learned from the first five years of VAWA 2013 tribal jurisdiction. Notably, tribes reported that about 58 percent of domestic violence they deal with involved children, yet children are not protected under the 2013 Tribal Special Domestic Violence Criminal Jurisdiction provisions.

Have either of you seen the impact of this jurisdictional gap on Native communities? Chief, why don't you start?

Ms. MALERBA. Absolutely. What you see is there is a term, my background is nursing. So there is a term called ACEs, and it is Adverse Childhood Events. What happens is that affects that child right throughout their entire life. You see more substance abuse, you see less achievement in school, you see children that will then also become perpetrators, because that has been their way of life.

So it is something that is pervasive. It not only affects that child, but it affects the next generations, and it affects the entire family. So this is something that needs to be corrected, it just can't continue to be sustained.

The CHAIRMAN. Great. Thank you. Chief Justice?

Ms. DEMMERT. Yes, I would echo those comments. One of the implementing tribes in NCAI's five-year report says that an Indian woman who was assaulted and raped by the non-Indian father of her children, the couple's eight-year old son disclosed in his statement to police that he was punched in the face by his father. That is not an unusual situation. Children are in the home. Very often, we look at law enforcement and medics as being the first responders. Our children are really the first responders. They are the ones who are in the home when these situations are happening.

The rate is about 60 percent of the cases involve children in our Special Domestic Violence Court Jurisdiction cases. To not have those cases picked up by any other authority is just really a tragic situation that fuels the perpetrators and emboldens them to commit these crimes. Thank you for the question, Senator Udall.

Senator UDALL. Thank you. According to the data I have seen, some of the most dangerous calls police respond to are related to domestic violence and domestic disturbances. One of my home State tribes, the Navajo Nation, has had five of its police officers die in the line of duty since 2011. Three of those deaths were related to domestic violence incidents.

Mr. Addington, does BIA have any data on the total number of OJS and tribal officers assaulted or killed in the line of duty as a result of domestic disturbance calls?

Mr. ADDINGTON. Thank you for that question, Chairman. We don't have specific data just on domestic violence calls, but we do have the data on the number of officers, tribal officers or officers in Indian Country, that have been assaulted. In just over the last

eight years, it is about 5,150 officers that have been assaulted in Indian Country, a very high number.

A lot of these are responding to domestic violence calls. When they get there, responding to domestic violence calls, it is one of the most extremely dangerous calls that an officer will go on. Because when they get there, things have already escalated to the point where someone has to call law enforcement. So you have one or both parties that is already agitated, and sometimes they become aggressive toward the law enforcement officer.

So we try to tailor our training as well to these types of calls in rural settings, because the officers are responding to these calls with little or no backup. That is what we are trying to mirror our training, tailor it to those types of calls and try to expand our training footprint, not only throughout the United States and put in more training for the tribes up north. We already have our Indian Police Academy down in New Mexico as well. So we are trying to expand those training opportunities, so we can get it out to the field, get those officers trained, as times change, and they are responding to more violent calls.

Senator UDALL. Do you think it makes sense for tribal jurisdiction to be able to be assumed over these kinds of law enforcement assaults that we are talking about?

Mr. ADDINGTON. Absolutely. Absolutely. Our tribal law enforcement out there is some of the best law enforcement. I would put them up against anyone in the Nation. They are extremely talented law enforcement officers. But they are sometimes put in rural areas where they have little or no backup and they deal with it every day. These calls are extremely dangerous that they go on. Lots of domestic violence calls in Indian Country. So we need to give them the tools and the training so they can make sure that they are keeping it as safe as possible out there.

Senator UDALL. And my additional point was tribal courts, and what this legislation does give them authority to prosecute, assaults against law enforcement officers.

Mr. ADDINGTON. Absolutely.

Senator UDALL. Yes. Senator Daines.

STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA

Senator DAINES. Thank you, Senator Udall.

I want to thank you all for coming here today as we continue to work to put an end to the missing and murdered indigenous women crisis. As I travel around Montana, I often hear, too often, that it takes up to two weeks to receive reports of missing family members, because of inefficient law enforcement. I also know many of these horrendous crimes in Indian Country are related to substance abuse, meth, alcohol, other.

That is why today I am introducing two bills to address both these issues, both supported by tribal communities in Montana. First, the Finding and Investigating Native Disappearances Act, or the FIND Act, would help improve trust between tribal families, law enforcement and other agencies so that reporting from families in Indian Country will increase. It also confronts the impacts of meth and other drugs on violent crimes in Indian Country and will

help ensure that tribes and Congress fully understand this tragic connection between the two.

I also introduced the Tribal Accountability and Reporting to Congress Act, or the TRAC Act, which would require the tribal liaisons at the U.S. Attorneys' offices to provide Congress with an annual report on incidences of missing and murdered people in Indian Country. This transparency and accountability will compel Federal law enforcement to prioritize this growing crisis and hopefully will save lives.

Mr. Addington, does the Office of Justice Services at the BIA have a specific program to put in place to work on building trust in the community so that families feel more confident and more comfortable coming to law enforcement?

Mr. ADDINGTON. Thank you for that question, Senator. We do have community policing programs that we do training to tribal officers to try to engage them with the tribal communities, to make sure that officers are not just someone that you see in the car driving by, they are actually getting out and getting in touch with the communities that they work in. In some areas, it depends on the level of participation.

Senator DAINES. Is there room for improvement?

Mr. ADDINGTON. There is always room for improvement, and a lot of times what we see is the tribal officer just doesn't have the resources. They are too busy going on calls, rather than to do something proactive.

Senator DAINES. My question is, would you work with me on this FIND Act, to help address these shortcomings?

Mr. ADDINGTON. Absolutely.

Senator DAINES. The most vital resource in any missing persons case is time. We simply have to find ways to increase trust between our tribal communities to ensure we protect this very valuable resources. Thank you, Mr. Chairman.

Senator UDALL. Thank you very much, Senator Daines.

Let me ask Chief Malerba, I recently spoke on the Senate Floor about an incident on the Eastern Band of Cherokee Indian Reservation where a non-Indian individual charged with beating and strangling his girlfriend assaulted a corrections officer after his arrest. The tribe referred this case for Federal prosecution, but the U.S. Attorney's office ultimate dropped the case.

Chief, do you believe that tribes need the authority to hold domestic violence defendants accountable if they assault tribal justice personnel during the course of their arrest, trial or incarceration?

Ms. MALERBA. Thank you, Senator Udall. I absolutely believe that the tribes have jurisdiction and should have jurisdiction no matter who is committing the crime on our reservation. In fact, the statistic is that 96 percent of assaults on reservations occur and are perpetrated by non-Natives.

Connecticut would no longer be responsible for jurisdiction for a crime committed in Rhode Island by a Connecticut citizen. So why wouldn't it be the same for Indian Country, to be able to prosecute the crimes that happen within their territory? We have the resources. We have the ability. And I think that it is time that our sovereignty has been recognized in just that way.

I really appreciate your asking that question.

Senator UDALL. Great. Thank you for that answer.

Mr. Toulou, what does the Department of Justice's research into officer assaults and fatalities tell us about the dangers of responding to domestic disputes?

Mr. TOULOU. Unfortunately, I can't respond to the specifics about the report. I can get back to you on that. I will say that as a former assistant U.S. Attorney who used to do domestic violence cases, I knew from the officers I dealt with that one of the most dangerous calls they could take was a domestic violence call. It was frightening, and the work they do is amazing.

So I will get back to you on that issue, but we understand it is an issue.

Senator UDALL. Thank you. Give us a good answer for the record, that will be terrific. Thank you.

The BADGES for Native Communities Act seeks to remove the barriers that prevent the BIA from getting trained officers out in the field, as well as provide officers who are already out in Native communities with the resources, they need to keep doing their jobs effectively. Section 204 of my bill would require the Departments of Justice and Health and Human Services to work with BIA's office of Justice Services to make certain BIA and tribal police departments have access to Federal resources for PTSD and other line of duty related mental health traumas they might encounter.

Mr. Addington, do your officers and tribal officers need additional mental health resources to address on the stress they encounter in the line of duty and do you believe access to more culturally appropriate resources would decrease officer burnout?

Mr. ADDINGTON. Thank you for the question, Senator. I absolutely believe it will decrease officer burnout. Our police officers in Indian Country, they are work in a very, very stressful, dangerous environment where they respond to a myriad of calls involving a lot of visual trauma to adults and children. Officers a lot of times, this causes PTSD or depression or anxiety, or as they work a lot of hours without days off just because of shortage. And there is not any real counseling or services out there for those tribal officers.

I talked to one of the tribes in your district, and they were asking me, look, we have to drive a long way just to contract services with a counselor in another town, a long way away. And that is unacceptable. Officers need to have those resources at their fingertips. And it needs to be culturally appropriate. Just bringing someone in, we have tried it in the past, we would bring a contractor in to talk to some of our officers. And of course, they come in and say the wrong thing and offend someone, the officers are not going to talk to those folks.

So we do need the resources out there. We don't have them. We have a peer support group that goes around after we have officer involved shootings or traumatic incidents. But that is after the fact. We need some mental health first aid for our folks, so they know who to call if they need something and get that support.

Senator UDALL. Would BIA support having the Department of Justice and HHS assistance in building up these resources?

Mr. ADDINGTON. Absolutely. I have, with the assistance of the Administration of Native Americans Commissioner, we have already been in a few calls with SAMHSA about resources as well.

I welcome any support from any programs that we can get as much help for our officers out in Indian Country that we can. It is a much-needed resources.

Senator UDALL. Yes. Mr. Toulou, do you have any thoughts on the role of the Department of Justice in this?

Mr. TOULOU. I know that the department, through the Office of Justice Programs, has funds available for tribal officers. I am not sure how they interface with another Federal agency, but these are Federal partners. We understand the stress that is on them. I would be willing to talk to BIA after this and the folks back in our grant-making components, and figure out if there are any compatibility issues. Because it is an important need.

Senator UDALL. Great. Thank you. The 2017 Indian Country Investigations and Prosecutions Report from the Department of Justice says that the declination rate has been relatively steady at 37 percent. In April, I received a letter from 16 former U.S. Attorneys expressing their full support for the Native Youth and Tribal Officer Protection Act, and linking the disproportionately high rates of violent crime in Indian Country to this near-static Federal declination rate.

So I would like to add this letter to the record, and without any objection, I would see that it has been added.

Reading from the letter now, they note that, "Too often, United States Attorneys offices with jurisdiction declined to prosecute a non-Indian perpetrated crime committed on tribal lands. The fact that many violent crimes committed against American Indians are never prosecuted is contributing to the high rates of violence Native women and children face." These former U.S. Attorneys go on to stress that restoring tribal jurisdiction over crimes against tribal law enforcement and children, like S. 290 proposes to do, is critically important.

So Mr. Toulou, as a former assistant U.S. Attorney in Montana, do you agree with your colleagues that the low prosecution rates are linked to higher rates of violence in Indian Country?

Mr. TOULOU. I think the more we can do with prosecutions, the better. That is going to probably have positive results on what happens in Indian Country moving forward.

Senator UDALL. Yes. And I know you gave testimony in 2016 before the Committee, and you said too many cases of domestic violence and dating violence committed by non-Indians against their Indian spouses and dating partners went unprosecuted and unpunished. As a result of this jurisdictional gap, as well as other factors, Native American women have suffered some of the highest rates of violence at the hands of intimate partners in the United States. So you, I think, stated it pretty strongly there.

Chief Justice Demmert, do you agree that restoring tribal jurisdiction over violent crimes like those covered by S. 290 and S. 288 is necessary to get known violent offenders off the streets of Indian Country before their dangerous behavior escalates to deadly levels?

Ms. DEMMERT. Absolutely. We need to have all the tools that our Federal and State counterparts have, and the ability to prosecute. So we need that authority and resources to combat these issues. And authority is to describe the jurisdiction in a way that is meaningful and doesn't provide loopholes to these perpetrators who seem

to just understand those problems in our ability to hold them accountable. So thank you for the question, but absolutely.

Senator UDALL. Mr. Addington, the Tribal Law and Order Act of 2010 requires the BIA to submit an annual report to Congress on the unmet staffing needs of law enforcement, corrections and tribal court programs. The 2017 annual report reflects the BIA's direct service law enforcement program's staffing, but leaves several open questions. Mr. Addington, for example, what are the current national and regional law enforcement vacancy rates for BIA, and does the department track officer attrition rates or causes?

Mr. ADDINGTON. Thank you for that question, Senator. Yes, our direct service programs and tribal law enforcement programs across the Nation may vary anywhere still from 1.8 to 3.2 officers per 1,000 residents. A lot of that is attributed to being able to get law enforcement officers recruited and get them through the background. Of course, the BADGES will help us with that, because that is one of the biggest obstacles we have under the Tribal Law and Order Act. We do have to do tribal backgrounds for tribal law enforcement officers if requested by the tribe, the BIA has to do those.

So getting them through a background process and getting them boots on the ground quicker, we do track, if we do have folks that leave, if we can do an exit interview with them, if it is not something abruptly, and then we do track why they left, and an attrition rate, to say, okay, why are you leaving. We have a lot that leave just because of working long hours and then family issues as well, which has contributed to some of the things that they go through as law enforcement officers.

Senator UDALL. Yes. Chief Justice Demmert, do you have any recommendations for how Congress might improve the usefulness of BIA's Law Enforcement Unmet Staffing Needs report?

Ms. DEMMERT. Well, interestingly, we really don't have BIA law enforcement in Alaska. So give us some of those staff, and that would greatly improve a lot of our situation.

As you heard Senator Murkowski say, one in three or nearly 40 percent of our communities lack any law enforcement whatsoever. Because of how P.L. 280 has been funded and applied, many of the law enforcement and tribal court resources fail to reach us in Alaska. We would really like to see that change.

So we thank you for the question. I just want to say, if I could, about the declination issue, our tribal liaisons are working very hard to meet the requirements of their jobs, which includes training and education, as well as prosecuting cases that may be all around the State, and many hours away. It is no wonder that the declination rate is so high, and that they are unable to reach the communities that they need to.

So again, getting back to your original question to me about would this benefit our communities, having this improved jurisdiction, absolutely. Because no one is doing it, especially in Alaska. We have so many crimes that go unprosecuted and uninvestigated. So we look forward to these improvements in the jurisdictional components of both of those bills. Thank you very much, Senator Udall, for the question.

Senator UDALL. We are in the middle of back and forth in votes and everything, so from everything we can tell, everybody has asked all their questions. There will be, from what you can tell, no more questions today. I want to remind all of you that the hearing record will be open for two weeks. We really appreciate your time and effort here.

With that, the hearing will be adjourned. Thank you.

[Whereupon, at 4:08 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER

On behalf of the National Indigenous Women's Resource Center (NIWRC), we are pleased to provide testimony to the Senate Committee on Indian Affairs on Savanna's Act, the Justice for Native Survivors of Sexual Violence, the Native Youth and Tribal Officer Protection Act (NYTOPA), the Not Invisible Act, and the Bridging Agency Data Gaps & Ensuring Safety for Native Communities Act (BADGES). NIWRC is also using this opportunity to urge the Committee to support bringing the House version of the Violence Against Women Act (VAWA), H.R. 1585, to a vote on the Senate floor.

NIWRC is a Native nonprofit organization that was created specifically to serve as the National Indian Resource Center (NIRC) Addressing Domestic Violence and Safety for Indian Women. NIWRC is dedicated to reclaiming the sovereignty of Native Nations and safeguarding Native women and their children. Through public awareness and resource development, training and technical assistance, policy development, and research activities, we provide leadership across the Nation to show that offenders can and should be held accountable and that Native women and their children are entitled to: (1) safety from violence within their homes and in their community; (2) justice both on and off tribal lands; and (3) access to services designed by and for Native women based on their tribal beliefs and practices.

The National Institute of Justice, through the USDOJ, released an alarming study in May 2016,[1] confirming what many of us working to protect Indian women and children already knew. American Indian and Alaska Native (AI/AN) women experience severe rates of violence in their lifetimes, including:

- 38 percent who were unable to receive necessary services, including medical care and legal services
- 56.1 percent have experienced sexual violence;
- 55.5 percent have experienced physical violence by an intimate partner;
- 48.8 percent have experienced stalking; and
- 66.4 percent have experienced psychological aggression by an intimate partner.

These are not just statistics. These numbers represent the lived experiences of many Native women. Continued systemic change is needed if we are to address this violence in a meaningful way for AI/AN women. It is in these numbers that we see the effect of the devastatingly complex legal framework and various intersections that Native survivors of this violence must confront. It is also in these numbers that we are able to fully grasp the failure of the Federal Government to completely fulfill its federal trust responsibility to Tribes and Indian people. The Federal Government is obliged under the doctrine of trust responsibility to Tribal Nations, as the United States "has charged itself with moral obligations of the highest responsibility and trust, . .. to the fulfillment of which the national honor has been committed.",[2] This trust relationship originates from the hundreds of treaties and other agreements that the United States government entered into with Tribal Nations.,[3]

Current System Response Inadequate

As the Committee is aware, there are countless examples of missing and murdered Native women and children where insufficient resources and lack of clarity on jurisdictional responsibilities have exacerbated the efforts to locate those that are missing.

In 2006, Vicky Eagleman went missing, just after the 2005 reauthorization of the Violence Against Women Act and inclusion of the historic Title IX Safety for Indian Women. It really seemed change was coming. The events that took place over the days following Vicky's disappearance, however, made clear that all of the changes won through VAWA fell short of what was needed. June Left Hand, Vicky's mother, reported her disappearance. Deep within her, June felt strongly that something was wrong. When she called the BIA, their response was: "Vicky was off partying, don't

worry Vicky will show up, she ran off with a biker to Sturgis." The lack of response and regard for a missing Native woman was unacceptable then, and it is unacceptable now. The response has always been slow and ineffective. 27 days later, community members found Vicky's body, and 13 years later, the case remains unsolved with no one held accountable for her murder.

Her disappearance created a sinking feeling that it would take decades, lifetimes—even generations—to overhaul this system that has never protected Native women, and that many more lives would be taken before the Federal Government would take action to right this wrong.

In 2013, Malinda Limberhand, on the Northern Cheyenne reservation, also tried to report her daughter Hanna Harris as missing. The similarities in the response—or lack of response—from law enforcement between Vicky and Hanna are so close that it is a gut punch. Malinda was told, "Hanna is just too scared to come home." Like June, Malinda was told she could search for Hanna herself. And, like in Vicky's case, Malinda and the community did find Hanna, but it was too late.

NIWRC has covered the crisis of MMIW consistently over the years, since 2008, through our quarterly publication *Restoration*. The outrage of the families, the Tribes, and so many others across the United States and the world has finally elevated this issue from a local to a national level, and from an issue most treated as merely a family responsibility to an issue many now recognize as one of Congressional and United Nations' responsibility. Now that the injustices are in the public's eye, has the response of the system changed? The answer is a resounding no, it has not changed. Kimberly Loring Heavy Runner's recent testimony before the Senate Committee on Indian Affairs hearing on MMIW described the same failures in her sister's disappearance and murder.,[4] Ashley Loring Heavy Runner went missing June 12, 2017, on the Blackfeet Reservation. The family received the same response Malinda and June received. They were not taken seriously and told: "Ashley is of age and can leave whenever she wants to."

From Vicky's disappearance on July 28, 2006, to Hanna's disappearance on July 4, 2013, to Ashley's on June 12, 2017, little has changed, and the system's failed response remains the same.

During this period of more than a decade, it is apparent that not much has changed; hundreds of Native women and girls have gone missing and have been murdered.

The current system response is inadequate and the rate at which we are losing Native women is unacceptable. NIWRC calls on this Committee and all of Congress to provide a deeper and broader response to the crisis of MMIW. In 2018, the U.S. Commission on Civil Rights released the *Broken Promises Report*,[5] which continued to affirm the need for the Federal Government to fulfill its trust responsibility with appropriate allocation of resources to law enforcement and Tribal Nations. MMIW and the perpetuation of injustice impacting Native women disproportionately reflects the lack of resources available to Tribes to provide victim services and justice and the failure of local, state and federal responses to these crimes. NIWRC is committed to working with federal lawmakers to strengthen local, tribal authority to respond to these crimes and ensure availability of resources for Tribes. Addressing the injustices Native women endure adequately will require reforming the legal framework which diminishes tribal authority. To truly meet its trust responsibility to assist Tribes in safeguarding Native women, the Federal Government will have to provide adequate resources for victims through the tribal advocacy programs they need. Ultimately, the Federal Government must restore local tribal authority and jurisdiction.

Challenges Created by Legal Framework

The crisis of missing and murdered Native women in the context of gender-based violence is the result of legal barriers rooted in the federal legal framework. This on-going crisis has been raised by tribal leaders at every VAWA mandated government-to-government annual consultation since 2006. A strong national response is needed to respond to the countless reports of missing and murdered Native women and girls. Tribal Nations and family members continue to witness daily reports of another sister, mother, daughter, granddaughter, relative, or community member lost to violence, which sends shock waves across all of Indian Country.

Although the Supreme Court made clear in *Oliphant* that Congress has the constitutional authority to restore the tribal criminal jurisdiction that the Supreme Court has removed,,[6] until tribal criminal jurisdiction over non-Indian perpetrated crimes of murder is restored, whether a Tribal Government has authority to investigate, arrest, and/or prosecute when a Native woman is missing depends upon the Indian/non-Indian status of the offender, the location of the crime, the nature of the crime, and the status of the land where the crime was committed.[7]

The consequence of this current jurisdictional quagmire is that, most times, when a Native woman goes missing on tribal lands and the local Tribal Government cannot demonstrate that the perpetrator was Indian-or that the crime took place on lands that qualify as "Indian country" under 18 U.S.C.

- 1151(a)—then the Tribal Government is without jurisdiction, although the Federal Government could have jurisdiction, the Federal Government most often declines to intervene or take on the case. [8]

The non-existent response of law enforcement leaves the responsibility of a search effort to the family members or tribal community. There is no question that the pillars beneath the crisis of missing and murdered are the restrictions on tribal authority to prosecute non-Natives for crimes committed on tribal lands and the severe resource disparity in Indian Country at large. The current legal framework fails to respond to the abduction, disappearance and murder of Native women and girls because that same framework was born during an era of termination of Indian Tribes and a prejudiced belief that Tribal Nations' responses to such crimes were not just as defined by Western standards of justice. We often speak of a "broken system" or of legal reform, but the truth is that the legal framework that applies in Indian Country was not designed to protect Native women and girls.

We know that the restoration of tribal criminal jurisdiction over non-Indians works. Five years ago, when Congress passed the Violence Against Women in 2013, the re-authorization of VAWA included a provision, known as Special Domestic Violence Criminal Jurisdiction (SDVCJ), that reaffirmed the inherent sovereign authority of Tribal Governments to exercise criminal jurisdiction over certain non-Indians who criminally violate qualifying protection orders or commit domestic or dating violence crimes against Indian victims on tribal lands. [9]

In the six years since VAWA was reauthorized in 2013, over two dozen Tribal Governments have begun exercising criminal jurisdiction over non-Indians and several dozen more are in varying stages of planning to implement the law.

From 2013 to 2018, the implementing Tribes reported making 143 arrests of 128 non-Indian abusers. These arrests ultimately led to 74 convictions, 5 acquittals, and as of 2018, there were 24 cases then pending. There has not been a single petition for *habeas corpus* review brought in federal court in an SDVCJ case. Although some argued, prior to VAWA 2013's passage, that Tribal Courts would be incapable of fairly implementing SDVCJ, the absence of even a single habeas petition in the first five years reveals that those arguments were unfounded and likely based on prejudice alone. Moreover, for the Tribes that have implemented SDVCJ, their juries acquitted more often than they convicted non-Indian defendants. The bias that many previously asserted should prevent Tribal Nations from arresting and prosecuting non-Indians simply does not exist.

The National Congress of American Indians has issued a report summarizing the experiences of the Tribal Nations that implemented VAWA SDVCJ, showing the true difference that the 2013 Reauthorization has been making on the ground for Native victims. NIWRC encourages you to review this report in its entirety as the information, data, and analysis contained in the report demonstrates that the restored tribal criminal jurisdiction in VAWA 2013 (SDVCJ) increased public safety for all of those-both Indian and non-Indian- living on tribal lands and in tribal communities. By all accounts, it has been an incredible success.

Until or unless the inherent authority of Tribal Nations to protect their citizens on tribal lands is fully restored, our Native women and children will not be safe living in their own homes. The restoration of tribal criminal jurisdiction is a critical and requisite component to effectively addressing the murdered and missing indigenous women's crisis in the United States.

Meeting the Federal Trust Responsibility

We applaud the efforts of members of this Committee and other Congressional champions for demanding accountability and proposing amendments to federal law to safeguard Native women and their children and address the injustices of missing and murdered Indian women. NIWRC is hopeful that these actions are just the beginning of the reforms to come.

Reforms in Indian Country are rooted in the federal trust responsibility to assist Indian Tribes in safeguarding the lives on Indian women. It is imperative that reforms address the entire spectrum of violence Native women experience—birth to death.

It is critical to have tribal programs in place that provide meaningful interventions to Indian victims before domestic and sexual violence, including sex trafficking, escalates to abductions, homicide or murder. Funding for such services is needed in Indian Country and urban areas. Less than one-half of all Indian Tribes receive funding to serve victims of crimes enumerated under VAWA. The vast ma-

jority of Indian Tribes lack any services for victims and many of these Tribes are geographically isolated in rural or remote areas. Generally, more funding is available for victim services programs in urban areas than for Indian Tribes. Many Tribes continue to serve their people wherever they are located, including urban areas, with what limited resources they have.

However, the funding for tribal services remains insufficient. According to the National Institute of Justice, 38 percent of Indian victims were unable to receive necessary services, including medical care and legal services.,[10] Resources like the StrongHearts Native Helpline, a culturally appropriate, confidential service for Native Americans affected by domestic violence and dating violence, have found that there is a severe tribal resources disparity that limits how and what advocacy and justice services Tribal Governments are able to develop and provide to citizens and non-Indian residents.

This resource disparity is, in large part, due to the fact that Tribes did not have direct access to the Crime Victims Fund (CVF) through the Victims of Crime Act (VOCA) until 2018. Though the FY18 Omnibus Spending Bill included a 3 percent set aside for Tribal Governments, a permanent fix is needed. There must be a government-to-government funding stream legislatively established for Tribal Governments accessing the CVF, and DOJ must consult on the best ways to distribute these direly needed funds to Indian Country.

While Tribes were grateful for the opportunity to access VOCA funds to improve services in their communities, DOJ failed to consult on the administration and distribution of the funding; this failure to consult resulted in funding being returned to the CVF. Of the $133.1 million appropriated for tribal crime victim services in FY 2018, less than $100 million of it was disbursed to Tribes as directed by Congress. It is very concerning that $24 million of appropriated funds were returned to the CVF. Tribes have worked for years to educate members of Congress and the Administration about the dire need for victim services in tribal communities. At every opportunity over the past several years, Tribes have urged DOJ to administer this funding on a non-competitive, streamlined basis, in order to ensure that these funds are disbursed efficiently and equitably in a way that works for the tribal communities they are intended to serve. DOJ's attempts to administer this funding to date raises grave concerns about DOJ's capacity to successfully administer this funding.

In 2019, DOJ unilaterally made the decision to utilize CTAS process for FY 2019 funding. As such, DOJ received only 59 applications for funding through the CTAS process, which at most would allow DOJ to allocate about $29 million of the $167 million available.

Critical resources like the StrongHearts Native Helpline, Tribal Domestic Violence and Sexual Assault Coalitions, tribally-run or Native based shelter and sexual assault services, services designed to address sex trafficking, tribal housing, legal services, comprehensive medical and forensic services, mental health services, services for Native children and youth affected by domestic and sexual violence, other culturally appropriate programs and services, and technical assistance supporting tribal response development are absolutely vital to any meaningful response to violence in tribal communities. The current funding available in Indian Country is inadequate to address these needs—from the provision of basic, emergency services and responses to more comprehensive, long term services—the failure to distribute the funding to Tribal Nations who administer these services and programs constitutes a breach of the federal trust responsibility to assist Indian Tribes in safeguarding the lives of Indian women.,[11] Without adequate federal assistance and improved distribution of existing resources for Indian Tribes, Indian women will continue to go missing and be murdered at the highest rates in the country.

Key Policy Recommendations to Improve System Response

NIWRC's technical expertise and experience makes clear that an effective response to the crisis of missing and murdered Indian women is inextricably linked to the restoring the inherent authority of Tribal Nations to prosecute all five of the crimes identified in VAWA Title IX—domestic violence, dating violence, sexual assault, stalking and sex trafficking. Native women experience a continuum of violence, with MMIW at the extreme end of the continuum.

Responding to MMIW is not an issue that can be addressed in isolation, but rather needs to be seen as one manifestation of the violence that threatens Native women and girls throughout their lifetimes. In doing so, the policy recommendations that we put forward below relate heavily to reforms that are needed in the context of gender-based violence. NIWRC's response to MMIW centers on following essential standards of safety: access to local support services for victims, local authority to

respond and hold offenders accountable, coordination between law enforcement agencies, and access to national victim services resources.

To achieve these standards, specific reforms are required to increase protections to safeguard Native women and their children, and address the injustices of missing and murdered Indian women:

1. Access to local support services: Legislation should focus on prevention by addressing underlying infrastructure concerns as represented by tribal leaders, advocates, and survivors. It is particularly important to address the current housing and shelter deficiency that exists in tribal communities. To ensure there is access to local support services, the long-standing resource disparity faced by Indian Tribes must be addressed.
2. Local authority to respond and hold offenders accountable: Experts agree that to achieve accountability of offenders, an immediate, consistent, and appropriate response is required. In order to be immediate and consistent in tribal communities, the local Tribal Government must be able to respond. It is necessary to consider adopting legislation that would strengthen the local tribal response, including but not limited to:
   a. Closing the non-Indian offender loophole: We urge the Senate to enact legislation to strengthen tribal sovereignty by addressing the remaining jurisdictional gaps with respect to the Special Domestic Violence Criminal Jurisdiction (SDVCJ) provisions in the Violence Against Women Act (VAWA) by adopting provisions in VAWA 2019 included in House bill H.R. 1585, including provisions in the Native Youth and Tribal Officer Protection Act and in the Justice for Native Survivors Act House bill, as well as ensuring Tribes in Maine and Alaska are able to exercise SDVCJ like the rest of Indian Country;
   b. Improving tribal access to national crime information systems: Expand and create a dedicated funding stream to support permanent authorization for the Department of Justice's Tribal Access Program (TAP) to ensure that all Tribes have access to federal Criminal Justice Information Service systems;
3. Coordination between law enforcement agencies: It is imperative that tribal, federal, and state law enforcement agencies coordinate their response to cases of missing and murdered Native women and girls. Coordination includes the development of local and inter-jurisdictional protocols, establishing standardized protocols based on best practices, in consultation with Tribal Governments as mandated by VAWA, and improving data collection without hampering funding for Tribal Governments and tribal programs; and
4. Access to national victim services resources: To increase access to victim resources at the local level, Indian Tribes must have access to funding resources. Establishing permanent funding for victim services in tribal communities is key. Set aside resources for local, tribal responses to MMIW, such as a permanent tribal Victims of Crime Act (VOCA) set aside for tribal victim assistance and compensation programs.

When implementation is considered in the context of the 229 Indian Tribes located in Alaska, these standards require reforms to address the unique jurisdictional challenges Alaska Tribes face. The proposed pilot project for Alaska Tribes to exercise SDVCJ over non-Indian perpetrators committing acts of domestic and sexual violence, as contained within the House bill H.R. 1585, sets into motion the beginning of the complex set of reforms required to achieve these standards of safety.

NIWRC Position on Proposed Legislation

Reauthorization of the Violence Against Women's Act

NIWRC strongly supports H.R. 1585, the "Violence Against Women's Act of 2019" (VAWA), which passed the House on April 4, 2019, and urges the Senate Committee on Indian Affairs to support bringing VAWA to the Senate floor.

Since its enactment in 1995, each reauthorization of VAWA, has resulted in significant victories in support of tribal authority, and each VAWA reauthorization has secured resources needed for increasing the safety of Native women across the United States.

- 1994—VAWA included a 4 percent dedicated funding stream for American Indians and Alaska Natives Tribes with a statutory purpose of "developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes, including sexual assault and domestic violence, against women;"

- 2000—VAWA increased the tribal dedicated funding stream from 4 percent to 5 percent, provided increased clarity regarding Tribal Court protection orders and enforcement, and created a tribal coalition grant program;
- 2005—VAWA included a *Safety for Indian Women Title*, recognizing the unique legal relationship of the United States to Indian Tribes and women. Congress explicitly provided that the title was "to strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against women." It authorized the creation of a single VAWA tribal grant program, increased the tribal funding to 10 percent generally, created a Deputy Director for Tribal Affairs, and mandated annual tribal-federal VAWA consultations. VAWA 2005 also added dating violence as a new purpose area; and
- 2013—VAWA included a historic amendment affirming inherent tribal authority over non-Indians committing specific acts of domestic violence, dating violence or violation of certain protection orders in the Indian country of the Tribe, provided increased funding for the tribal coalitions program, and recognized sex trafficking as a new purpose area under the tribal grants program.

H.R. 1585 includes important life-saving enhancements that Tribes and NIWRC have repeatedly called for including:

Addressing Jurisdictional Gaps

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

As discussed in their recent analysis of H.R. 1585,,[12] the DOJ has expressed support for section 903(5) amending 25 U.S.C. § 1304(b)(1) to permit participating Tribes in the State of Maine to exercise SDVCJ. This provision addresses an omission in the original legislation, which failed to explicitly mention Maine Tribes, as required by the Maine Indian Claims Settlement Act.

Addressing Unique Jurisdictional Challenges in Alaska

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

DOJ has also expressed support for section 903(9) of H.R. 1585, authorizing a pilot project to allow up to five Indian Tribes in Alaska to implement SDVCJ.

Improving the Response to Missing and Murdered Native Women and Girls

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

Dedicated Funding Stream for DOJ's Tribal Access Program

- Creates a dedicated funding stream to support permanent authorization for the Department of Justice's Tribal Access Program (TAP) to ensure that all Tribes have access to federal Criminal Justice Information Service systems.

DOJ supports this proposed amendment but also requests an additional amendment.,[13] The proposed amendment would authorize an annual appropriation of $3 million to enhance the ability of Tribal Governments to access, enter information

into, and obtain information from Federal criminal information databases. Since August 2015, the Department has supported such access through its Tribal Access Program for National Crime Information (TAP), but has lacked a stable and consistent funding source for the program, which this amendment would provide. DOJ also requested that the proposed amendment authorize the Attorney General to use prior year unobligated balances appropriated under 34 U.S.C. § 20903 (for tribal protection order and sex offender registries) to support TAP with the following language. NIWRC strongly supports the proposed amendment DOJ includes in their analysis quoted below:

> "(b)ADDITIONAL FUNDING.—
>
> The Attorney General is authorized to use any balances remaining under the heading "State and Local Law Enforcement Activities, Office on Violence Against Women, Violence Against Women Prevention and Prosecution Programs" from prior year appropriations for tracking violence against Indian women, as authorized by section 905 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109–162), to enhance the ability of tribal government entities to access, enter information into, and obtain information from, federal criminal information databases, as authorized by section 534 of title 28, United States Code. Some or all of such balances may be transferred, at the discretion of the Attorney General, to any Department of Justice account, as needed to support the tribal access program for national crime information in furtherance of this purpose."
>
> Addressing the Resource Disparity
>
> • Alleviates the costs Tribes incur due to the expansion of criminal jurisdiction and allows the Attorney General to reimburse Tribes for costs incurred from implementing SDVCJ.

Violence Against Women's Act 2019 Recommendations: Pass a Senate bill identical to H.R. 1585 in support of the tribal authority and resources needed for increasing the safety of Native women across the United States.

S.277 Savanna's Act 2019

NIWRC appreciates the attention to these issues and would like to see the Senate version amended to reflect the changes that are included in the House bill, H.R. 2733, which we support.

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

Significant changes in H.R. 2733 from the S.277 include provisions that:

- Expand the requirement for the creation of law enforcement guidelines to all U.S. Attorneys, not just those with "Indian country" jurisdiction, and require such guidelines to be regionally appropriate;
- Require the Attorney General to publicly list the law enforcement agencies that comply with the provisions of the legislation (rather than listing those that don't comply); and
- Replace the affirmative preference subsections with an implementation and incentive section that provides grant authority to law enforcement organizations to implement the provisions of the legislation and increases the amount of those grants for those that comply, while removing the preference provision in S. 277 that will punish Tribal Nations lacking sufficient resources to implement the guidelines their local U.S. Attorney creates.

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

- The resources under the Act are proposed by allowing Tribes to use existing, limited funds they currently receive under the Tribal Governments Grant Program to address the development of a protocol to respond to MMIW cases.
- Current funding under the Tribal Governments Grant Program is inadequate and does not reach all Indian Tribes. If Tribal Governments had adequate funds, they would already be developing such protocols and increased responses.

- Thus, funds for the incentives to Tribes complying with Savanna's Act will be taken from the funds currently received by all Indian Tribes under the grant program, and without increased or new funding, the other lifesaving services that Tribes provide with this grant funding will be reduced.
- Indian Tribes need increased, additional resources to broaden and address the crisis of MMIW. Further stretching of the existing funds that a Tribe receives, to provide incentives to others, falls short of "increasing support" to Indian Tribes.
- Finally, broadening the purpose areas for these grant programs does not address the reality or restore the authority that the Supreme Court's decision in Oliphant decision erased, leaving Tribes unable to investigate, arrest, and prosecute the perpetrators who commit the majority of violent crimes on tribal lands.

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

NIWRC strongly supports protecting Native children and law enforcement personnel involved in domestic violence incidents on tribal lands. Native children and law enforcement personnel are equally in need of the protections that were extended to adult domestic violence victims in VAWA 2013.

The expanded jurisdiction under S. 290, as currently written, will not benefit the 228 Alaska Indian tribes who are currently ineligible to exercise Special Domestic Violence Criminal Jurisdiction pursuant to VAWA 2013. We call on Congress for a jurisdictional fix to the Alaska Native Indian country issue, and were pleased to see the Alaska Native pilot project included in the House VAWA bill, H.R. 1585.

We have additional concerns with NYTOPA as written. Amending the current VAWA 904 to limit the restored jurisdiction to-as drafted in NYTOPA—crimes that constitute "covered conduct" will place many of our tribal police officers, as well as domestic violence victims, in harm's way. The current draft of NYTOPA defines "covered conduct" as:

> (4) COVERED CONDUCT.—The term 'covered conduct' means conduct that—
>
> (A) involves the use, attempted use, or threatened use of physical force against the person or property of another; and
>
> (B) violates the criminal law of the Indian tribe that has jurisdiction over the Indian country where the conduct occurs.

Thus, NYTOPA amends the definitions of "dating violence" and " domestic violence" in the current VAWA 904, and instead states that VAWA 904's restored tribal criminal jurisdiction only extends to "covered conduct," which requires "the use, attempted use, or threatened use of physical force."

Tethering restored tribal criminal jurisdiction to this definition will require Tribes, for jurisdictional purposes, to establish that the non-Indian perpetrator "threatened the use of physical force" before the Tribe can determine whether the domestic violence crime committed against the tribal citizen is a crime for which the police officer may arrest. This ambiguity may seem negligent on paper, but in real life, our law enforcement officers—especially when answering a domestic violence call—should not be put in a place where they have to determine whether a perpetrator's threats or acts of violence incorporate sufficient "physical force" such that they can exercise tribal jurisdiction and permit the officer to arrest the perpetrator and protect the victim. Prior to NYTOPA, the definition of "dating violence" and domestic violence" under VAWA 904 simply referred to "violence committed by a person who is" in a specified relationship with the victim, in line with the understanding that many domestic violence perpetrators use various means of violence and intimidation against their victims that do not all fall within the narrowly defined window of "physical force." [14]

Native Youth and Tribal Officer Protection Act Recommendations: To address our concerns with regard to Alaska Tribes' inability to exercise SDVCJ, we urge the Senate to include a provision similar to the Alaska Native Pilot Project included in H.R. 1585 in both S. 290 and S. 288.

To address our concerns regarding definitions within NYTOPA, we suggest first amending section 1304(c) "CRIMINAL CONDUCT" to include the following crimes (in addition to the three crimes of dating violence, domestic violence, and violations of protective orders already listed: (1) assault of a law enforcement or correctional officer; (2) attendant crime. Next, we recommend eliminating the reference to "covered conduct" altogether, as well as "related conduct," and using the following proposed amended definitions instead:

Amend 25 U.S.C. 1304 to read as follows:

(a) Definitions.—In this section:

(1) Assault of a law enforcement or correctional officer.—The term 'assault of a law enforcement or correctional officer' means any criminal violation of the law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves the threatened, attempted, or actual harmful or offensive touching of a law enforcement or correctional officer.

(2) Attendant Crime.—The term 'attendant crime' means any criminal violation of the law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that occurs with, as a result of, or near in time to an act which there is reasonable suspicion to believe is a crime of dating violence, domestic violence, violation of a protection order, sex trafficking, sexual violence, or stalking.

(3) Dating Violence.—The term 'dating violence' means violence any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(4) Domestic Violence.—The term 'domestic violence' means violence any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs where

(A) The act is committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence act occurs; or

(B) The victim is a child, an individual under the age of 18, or an elder as defined by tribal law who resides or has resided in the same household as the defendant.

These proposed definition changes would keep NYTOPA more closely tied to VAWA's purpose and would also encompass attendant crimes, crimes against cops, and crimes involving threats to court staff, witness tampering, lying to police, juror intimidation, etc., that can and do arise during prosecution of VAWA cases. These proposed definitions would also extend tribal criminal jurisdiction to domestic violence crimes committed against children, in line with the purpose behind NYTOPA.

S.288 Justice for Native Survivors of Sexual Violence Act

NIWRC supports the Justice for Native Survivors of Sexual Violence Act to close another loophole in the SDVCJ provision of VAWA 2013. Passage of S. 288 will ensure that Tribes have authority to prosecute sexual assault, sex trafficking, and stalking crimes; however we express concern that the expanded jurisdiction under S. 288, as currently written, will not benefit the 228 Alaska Indian Tribes who are currently ineligible to exercise Special Domestic Violence Criminal Jurisdiction pursuant to VAWA 2013. We call on Congress for a jurisdictional fix to the Alaska Native Indian country issue, and were pleased to see the Alaska Native pilot project included in the House VAWA bill, H.R. 1585.

Justice for Native Survivors of Sexual Violence Act Recommendations: NIWRC recommends that the Senate pass the Justice for Native Survivors of Sexual Violence Act as an important enhancement to VAWA to hold non-Indian offenders accountable for sexual assault, sex trafficking, and stalking crimes through the passage of a bill with provisions identical to those found in H.R. 1585, including the Alaska Native Pilot Project.

S. 982 The Not Invisible Act

NIWRC supports the Not Invisible Act as a bipartisan bill to increase national focus on the injustice of missing and murdered Indigenous women. The increased awareness and attention to the issue of missing and murdered Indigenous women is long overdue and a critical first step to fully understanding the injustices and supporting tribal defined solutions. As affirmed in the 2009 Apology to Native Peoples, the U.S. recognized that there have been years of official depredations, ill-conceived policies, and the breaking of covenants by the Federal Government regarding Indian tribes; and apologized for the many instances of violence, maltreatment, and neglect inflicted on Native Peoples. In 2018, the U.S. Commission on Civil Rights released the *Broken Promises Report* which continued to affirm the need for the Fed-

eral Government to fulfill its trust responsibility with appropriate allocation of resources. MMIW and the perpetuation of injustice impacting Native women disproportionately reflects the lack of resources for Tribes to provide victim and justice service, as well as the failure of local, state and federal responses to these crimes. NIWRC is committed to working with federal lawmakers to strengthen local, tribal authority to respond to these crimes and ensure availability of resources for Tribes.

Not Invisible Act Recommendations: NIWRC recommends increasing the number of elected tribal leaders on the advisory committee to at least 1 per DOI region to ensure that perspectives from across Indian Country are included.

S.1853 Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act

NIWRC supports aspects of the Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act (BADGES), as the NIWRC acknowledges that database access continues to be of concern, however, BADGES does not address the lack of access to the extent that is needed or necessary to effectively address the MMIW crisis.

Addressing Criminal Justice Information System Access Issues

While in the Tribal Law and Order Act of 2010 Congress required the Attorney General to ensure that tribal agencies that met applicable requirements would be permitted access to national crime information databases, the ability of Tribes to fully participate in national criminal justice information sharing via state networks has been dependent upon various regulations, statutes and policies of the respective state in which a Tribe's land is located. Tribes have learned during implementation of the Tribal Access Program (TAP) that tribal access is piecemeal and incredibly challenging.

We need a legislative fix that addresses the barriers Tribes face in accessing the Criminal Justice Information System (CJIS) for governmental purposes. Currently access may be authorized through federal statutes providing some access for certain situations to Tribes and then deferring to state law to define and provide that access. Such access is difficult for Tribes to map out, determine who at what agency needs to authorize, develop a process, get User Agreements, Memoranda of Understandings, or Management Control Agreements in place just to ensure that those who are employed in positions of trust are safe to be around sensitive data concerning our most vulnerable populations.

28 USC 534(d) authorizes release of criminal history information to tribal law enforcement agencies, but doesn't allow release of criminal information to other tribal agencies for important, legitimate civil purposes, such as Emergency Placement of Children or "Purpose Code X," the evaluation of employees that work with elders and vulnerable adults, etc.

CJIS interprets the appropriations rider language from 92–544 (and in the notes of 28 USC 534) as a permanent statute that prevents sharing this information with Tribal Governments. In their view, for example, criminal history for the emergency placement of children (Purpose Code X) can only be shared "if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing."

We need to amend federal law to authorize the sharing of this information with Tribal Governments for any legitimate purpose.

Report on Indian Country Law Enforcement Personnel Resources and Need

NIWRC agrees that it is important to gain an understanding of existing personnel resources and case load to truly understand the needs for increased recruitment of agents. We also suggest including law enforcement agencies within DOI and other federal agencies that interface with Indian Country.

Missing and Murdered Response Coordination Grant Program

NIWRC supports the development of new resources for Tribal Governments to address the MMIW crisis at a local level. We are concerned with eligible entities for this important new source of funding. In the definitions section of BADGES, the definition of "relevant tribal stakeholder" raises significant concern as it is inclusive of "Indian Tribes." Indian Tribes, as separate sovereigns, should never be considered a "relevant stakeholder" because they are eligible for federal funding based on the unique relationship Tribes maintain with the federal government and the concomitant federal trust duties and responsibilities that are the result of this continued relationship.

NIWRC has significant concerns that new funding addressing a tribal issue is being offered to states and non-tribal national or regional organizations. New funding to address a tribal issue should first and foremost be distributed to Tribes as

sovereigns. States have had multiple sources of funding for law enforcement to contribute to this work without dipping into the limited funding that Tribes have.

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

Bridging Agency Data Gaps and Ensuring Safety for Native Communities Act Recommendations:

Addressing Criminal Justice Information System Access Issues

The most direct and effective route to improve tribal access to CJIS would be to simply amend the Tribal Law and Order Act by renumbering 534(d) and adding a new subsection:

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

Another possible solution is to insert on Page 10, line 5, the addition "civil" before "background checks" and adding after "background checks," "if authorized by Tribal law and approved by the Attorney General." It is critical that civil authority be included to ensure full tribal governmental access.

Report on Indian Country Law Enforcement Personnel Resources and Need

NIWRC recommends the report be inclusive of DOI and other law enforcement agencies that interface with Indian country.

Missing and Murdered Response Coordination Grant Program

- Focus eligibility on Indian Tribes and tribal organizations.
- Include Indian Tribes as eligible entities outside of the relevant tribal stakeholder definition.

Conclusion

As discussed above, the current system response is inadequate and the rate at which we are losing Native women is devastating to our tribal communities and to the Nation as a whole. The federal Indian legal framework is complex and creates many barriers for victims and Tribes working to protect their citizens. Furthermore, resources are scarce, and culturally appropriate resources are practically non-existent. In this context, we appreciate this Committee's work to improve the system response and ask you to seriously consider the recommendations set forth in this testimony to further improve each of these important pieces of legislation. Tribal sovereignty and safety for Native women are wholly intertwined, and we wish to close by reminding Congress of their obligation to assist Indian Tribes in safeguarding the lives of Native women.

Thank you for the opportunity to provide testimony on the crisis that our Tribal Governments face in protecting our women and children.

ENDNOTES

1. DEPARTMENT OF JUSTICE, NAT'L INST. OF JUSTICE, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN: 2010 FINDINGS FROM THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 26 (May 2016), *https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.*

2. *United States v. Jicarilla Apache Tribe*, 131 S. Ct. at 2324, citing *Seminole Nation v. United States*, 316, U.S. 286, 296–97 (1942) and *Heckman v. United States*, 224 U.S. 413, 437 (1912).

3. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831), *Worcester v. Georgia*, 31 U.S. 515 (1832).

4. *https://www.indian.senate.gov/sites/default/files/Kimberly%20Loring%20Heavy%20Runner%20Final.pdf.*

5. *https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf*

6. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) at 206–212 ("Congress has the constitutional authority to decide whether Indian tribes should be authorized to try and to punish non-Indians.")

7. *See* The General Crimes Act, 18 U.S.C. § 1152 (providing that federal courts have jurisdiction over interracial crimes committed in Indian country); the Assimilative Crimes Act, 18 U.S.C. § 1; the Major Crimes Act, 18 U.S.C. § 1153 (providing federal criminal jurisdiction over ten enumerated major crimes committed in Indian country that is exclusive of the states); Public Law 83–280, 18 U.S.C. § 1162 (delegating federal jurisdiction to six states over most crimes throughout most of Indian

country within their state borders); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (holding that Tribes lack criminal jurisdiction over non-Indian defendants); *Violence Against Women Reauthorization Act* of 2013, S. 47, 113th Congress, Title IX (2013) (expanding tribal criminal jurisdiction to non-Indians for the crimes of domestic violence, dating violence and the violation of protection orders so long as the defendant has certain ties to the community and the tribe provides certain due process protections).

8. From 2005–2009, the Government Accountability Office (GAO) found that U.S. Attorneys declined to prosecute nearly 52 percent of violent crimes in Indian country. U.S. GAO, U.S. Department of Justice Declinations of Indian Country Criminal Matters, Report No. GAO–11–167R, 3 (2010).

9. 5 U.S.C. § 1304.

10. *Andre B. Rosay, Violence Against American Indian and Alaska Native Women and Men*: 2010 Findings from the National Intimate Partner and Sexual Violence Survey. Washington, D.C.: U.S. Dept. of Justice, National Institute of Justice, 2016, NCJ 249736.

11. 34 USC § 10452 Note

12. Administration Comments on H.R. 1585, The Violence Against Women Reauthorization Act of 2015, page 22. File attached.

13. Administration Comments on H.R. 1585, The Violence Against Women Reauthorization Act of 2015, pages 19—21.

14. NYTOPA's proposed amendment to VAWA 904s definition of "dating violence" and "domestic violence" is all the more concerning now, given the Supreme Court's recent decisions in Johnson and Castleman where the Supreme Court, in a separate federal statute, interpreted "physical force" to be more narrow than the common law definition of assault and common understanding of what constitutes "domestic violence." *See United States v. Castleman*, 527 U.S. 157 (2014); Johnson v. United States, 559 U.S. 133 (2010).

PREPARED STATEMENT OF LACINA TANGNAQUDO ONCO, CONGRESSIONAL ADVOCATE ON NATIVE AMERICAN POLICY, FRIENDS COMMITTEE ON NATIONAL LEGISLATION

The Friends Committee on National Legislation urges members of the Senate Committee on Indian Affairs to support all five bills pertaining to the public safety of Native communities that will receive testimony today. We ask that this statement be included in today's hearing record.

Thank you for receiving testimony today on five paramount bills which address the violence against Native Americans and Alaska Natives that currently afflicts Indigenous communities across the nation. The Indian Affairs Committee has clearly listened to and responded to what you have heard from Indian Country in order to introduce legislation that is effectual and constructive. The recent introduction of B.A.D.G.E.S. (S. 1853) demonstrates the priority that the Committee is giving to the issue of the advancement of Native public safety.

The Friends Committee on National Legislation supports the passage of the following legislation: The Justice for Native Survivors of Sexual Violence Act (S. 288), Savanna's Act (S. 227), the Not Invisible Act of 2019 (S. 982), the Native Youth and Tribal Officer Protection Act (S. 290), and Bridging Agency Data Gaps and Ensuring Safety for Native Communities (S. 1853). These bills ameliorate communications between tribal and non-Native law enforcement agencies, improve how homicide and missing persons cases are carried out in Indian Country, provide protections for children and tribal officers who are also victims of domestic violence, and honor the memory of these victims through powerful legislation designed to curb this high prevalence of violence committed against Indigenous women by largely non-Native perpetrators.

FCNL has committed itself as a Quaker organization to the improvement of the historic relationship between tribes and faith groups while speaking out on current concerns for tribes. Recently FCNL has advocated for the introduction of a Senate version of H.R. 1585, the Violence Against Women Reauthorization Act of 2019. We are particularly supportive of that bill's tribal provisions. It is essential that non-Native allies support legislation that secures equal rights for Indigenous peoples. Several of the bills being discussed into today's hearing were included in H.R. 1585 and have made this reauthorization of VAWA crucial for the protection of Native women.

This epidemic of violence against Native women must be more than simply addressed by Congress; it must be acted upon. We urge you to support these five bills and encourage their passage through the Senate whether as a part of VAWA reauthorization or as stand-alone bills.

PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

We are pleased to offer testimony on five pending bills aimed at improving public safety in Indian Country. As this Committee has long recognized, the system for administering justice on tribal lands is simply not working. The federal government has drastically underfunded tribal justice systems for decades. At the same time, under federal law, the hands of tribal governments to administer justice on their own lands are often tied, and Indian communities are largely dependent on the Department of Justice or state law enforcement agencies for investigation and prosecution of violent crimes and other felonies committed on Indian reservations. For too long these outside agencies have had, at best, a culture of apathy toward their responsibilities in Indian Country. As a result, Native people in the United States are left with little protection from violent crime and often no access to justice when they are victimized.

Twelve years ago, the National Congress of American Indians (NCAI) passed a resolution at its Midyear conference in Anchorage, Alaska, and provided testimony to this Committee calling for Congress to empower tribal justice systems to address crime in their communities. This was followed by several years of hearings and legislative drafting in the Senate Committee on Indian Affairs. From that resolution, as well as a great deal of effort from many tribes and the leadership of this Committee, Congress enacted the Tribal Law and Order Act of 2010 (TLOA) and set the stage for a partial reaffirmation of inherent tribal jurisdiction through the Violence Against Women Act Reauthorization of 2013 (VAWA 2013). We recognize your commitment in introducing the legislation that is the subject of this hearing, and greatly appreciate your continuing efforts to build on those laws as a partner supporting and assisting our tribal governments in fulfilling our governmental responsibilities to our citizens. This testimony addresses each of the bills included on the hearing agenda.

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

> "We'll give you a head start." In 2014 a man attacked his wife in a public parking lot. He bit and hit her in a car. When she ran out of the car and rushed into a women's restroom to seek shelter, he followed her and continued to hit, punch, and kick her. The police were called. In any other case, the man would have been arrested and charged. But this assault took place on the Sisseton-Wahpeton Oyate's reservation land and the Native victim was assaulted by a non-Indian. Under federal law, neither the tribal nor the state government had jurisdiction to prosecute the man. So, the tribal and state police who responded did the best they could do. They held the man in custody and told the woman they would try to give her a "head start." Fortunately for the victim during this particular incident, the non-Indian perpetrator caused enough of a scene in the presence of the state police that he was arrested for disorderly conduct, which is considered a victimless crime that falls under state jurisdiction. Ultimately, after the enactment of VAWA 2013, Sisseton-Wahpeton Oyate was finally able to bring the man who beat his wife in the parking lot to justice. When he beat his wife again, the tribal government was able to arrest and charge the man with assault. He eventually pled guilty in tribal court.

We share this story because it demonstrates that the tribal jurisdiction provisions that were included in VAWA 2013, commonly referred to as Special Domestic Violence Criminal Jurisdiction (SDVCJ), are making a real difference for victims in Indian Country. Quite simply, that change in the law is saving lives. Since passage of VAWA 2013, NCAI has been providing technical assistance to the tribes who are implementing the law. Through this work, we have witnessed the ways in which the reaffirmation of inherent tribal jurisdiction has transformed safety for some victims in Indian Country and also the ways in which it falls short. We have included as an attachment to this testimony a detailed report that analyzes the impacts of VAWA 2013's landmark tribal jurisdiction provision in the six years after its enactment.

Our examination of the tribal nations' early exercise of SDVCJ demonstrates that the law has enhanced the ability of tribal governments to combat domestic violence perpetrated by non-Indians on tribal lands, while at the same time protecting non-Indians' rights in impartial, tribal forums.[1] As the above example from Sisseton-

[1] *See* Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. REV. 1564, 1572 (2016) ("[I]mplementation has been a success in several respects. Tribes have provided defend-

Continued

Wahpeton illustrates, by exercising SDVCJ, many tribal communities have increased safety and justice for victims who had previously seen little of either. Implementation of SDVCJ has had other positive outcomes as well. For many tribes, it has led to much-needed community conversations about domestic violence. For others it has provided an impetus to more comprehensively update tribal criminal codes and court processes. Implementation of SDVCJ has also resulted in increased collaboration among tribes and between the local, state, federal, and tribal governments.

Implementation of VAWA 2013 has also revealed, however, places where the jurisdictional framework continues to leave victims—including children, law enforcement, and victims of sexual violence, stalking, and trafficking—vulnerable.

The tribes implementing SDVCJ report that children have been involved as victims or witnesses in SDVCJ cases nearly 60 percent of the time. These children have been assaulted or have faced physical intimidation and threats, are living in fear, and are at risk for developing school-related problems, medical illnesses, post-traumatic stress disorder, and other impairments.[2]

Like many state codes, many tribal codes define "domestic violence" to include crimes committed against children by their caregivers or others in the household.[3] Federal law, however, currently limits SDVCJ to crimes committed only against intimate partners or dating partners, and tribes are therefore unable to prosecute crimes involving children against non-Indian offenders. The common scenario reported by tribes is that they are only able to charge a non-Indian batterer for violence against the mother, and can do nothing about violence against the children. Instead, tribes are left to refer these cases to state or federal authorities, who may or may not pursue them.

This frustration is further compounded by the prevalence and severity of this problem. According to DOJ, American Indian and Alaska Native children suffer exposure to violence at rates higher than any other race in the United States.[4] This violence has immediate and long term effects, including: increased rates of altered neurological development, poor physical and mental health, poor school performance, substance abuse, and overrepresentation in the juvenile justice system. Children who experience abuse and neglect or witness violence are at higher risk for depression, suicidal thoughts, and suicide attempts. Indian youth have the highest rate of suicide among all ethnic groups in the U.S.[5] Due to exposure to violence, Native children experience post-traumatic stress disorder at a rate of 22 percent—the same levels as Iraq and Afghanistan war veterans and triple the rate of the rest of the population.[6] There is a growing trend among the states to recognize that even when children are not the direct victims of domestic violence, they experience real and lasting harm from witnessing it.[7] According to the National Conference of State Legislatures, "approximately 23 states address child witnessing of domestic violence somewhere in statute. While some consider it an aggravating circumstance when sentencing a perpetrator, other states have created a separate offense that may be levied."[8]

The legislation under consideration today responds to many of the gaps identified in NCAI's report, and we appreciate Senator Udall, Senator Murkowski, and Senator Smith's leadership in introducing the Native Youth and Tribal Officer Protection Act (NYTOPA), S. 290, and the Justice for Native Survivors of Sexual Violence Act (JNSSV), S. 288, both of which NCAI strongly supports. Both of these bills

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ants with the requisite procedural protections, and the preliminary data reveal that the laws are improving the safety and security of reservation residents.").

[2] *See* U.S. Department of Justice, ATTORNEY GENERAL'S ADVISORY COMMITTEE ON AMERICAN INDIAN AND ALASKA NATIVE CHILDREN EXPOSED TO VIOLENCE, REPORT OF THE ADVISORY COMMITTEE ON AMERICAN INDIAN AND ALASKA NATIVE CHILDREN EXPOSED TO VIOLENCE: ENDING VIOLENCE SO CHILDREN CAN THRIVE (Nov. 2014).

[3] Child Welfare Information Gateway. (2017). Definitions of Domestic Violence: State Statutes. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. Available at *https://www.childwelfare.gov/pubPDFs/defdomvio.pdf#page=1&view=Introduction.*

[4] AG Advisory Committee, *supra*, note 2.

[5] Centers for Disease Control and Prevention, "Suicides Among American Indian/Alaska Natives—National Violent Death Reporting System, 18 States, 2003–2014," (2018), available at *https://www.cdc.gov/mmwr/volumes/67/wr/mm6708a1.htm.*

[6] AG Advisory Committee, *supra*, note 2, at 38.

[7] Child Welfare Information Gateway. (2016). Child Witnesses to Domestic Violence: State Statutes. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau. Available at *https://www.childwelfare.gov/pubPDFs/witnessdv.pdf.*

[8] National Conference of State Legislatures, "Domestic Violence/Domestic Abuse Definitions and Relationships," June 13, 2019, available at *http://www.ncsl.org/research/human-services/domestic-violence-domestic-abuse-definitions-and-relationships.aspx.*

would build on the success of the VAWA 2013 provision that reaffirmed the inherent sovereign authority of Indian tribal governments to exercise criminal jurisdiction over certain non-Indians who criminally violate qualifying protection orders or commit domestic or dating violence crimes against Indian victims on tribal lands.[9] NCAI has long supported full reaffirmation of tribal authority on tribal lands, and we welcome the important steps in that direction in these bills.

NYTOPA, would amend 25 U.S.C. § 1304 to remove barriers that currently prevent tribes from exercising their inherent tribal jurisdiction over certain non-Indians who commit crimes against Native children in Indian Country. A recent case from the Sault Sainte Marie Tribe of Chippewa Indians, located in Michigan, illustrates how this gap in the law has real consequences for Native victims:

> A non-Indian man in an intimate relationship with a tribal member moved in with her and her 16 year-old daughter. After the man began making unwanted sexual advances on the girl, sending inappropriate text messages, and on one occasion groping the daughter, the tribe charged the defendant with domestic abuse and attempted to tie the sexual assault against the daughter to a pattern of abuse against the mother. The tribal court dismissed the charges for lack of jurisdiction and the defendant left the victim's home. Four months later, he was arrested by city police for kidnapping and repeatedly raping a 14-year old tribal member. Unfortunately, he was ultimately allowed to plead no contest to two less serious charges and was sentenced to 11 months in jail. This kidnapping and rape of a minor could have been prevented if the tribe had been able to exercise jurisdiction in the first case. If NYTOPA had been law, the tribe could have protected this victim.

NYTOPA would similarly address another significant gap in VAWA 2013. Since SDVCJ is limited to domestic violence, dating violence, and protection order violations, tribes also lack jurisdiction to charge a non-Indian offender for crimes that may occur within the context of the criminal justice process. These crimes might include resisting arrest, assaulting an officer, witness tampering, juror intimidation, or obstruction of justice. Several tribes have reported assaults on their officers or bailiffs committed by non-Indian SDVCJ defendants that the tribe is unable to prosecute given the restrictions on tribal jurisdiction under federal law. Domestic violence cases are both the most common and the most lethal calls that law enforcement responds to, and the limits on tribal authority to prosecute these crimes creates an obvious public safety concern.

An example from the Eastern Band of Cherokee Indians illustrates the need for the provision in NYTOPA that addresses this issue:

> Tribal police for the Eastern Band of Cherokee Indians responded to a domestic violence call that involved strangulation of a female tribal member by a non-Indian. When officers arrived on the scene, the defendant threatened to kill the officers and to come back with a gun to shoot up the reservation. In custody he struck a jailer, who was also an enrolled tribal member, causing bruising and a split lip. Because the tribe could not charge for the non-DV crimes, the case was referred for federal prosecution. The defendantultimately pled guilty to strangulation in federal court, but the charges related to the assault on the jailer and the threats of retaliation were dismissed.

JNSSV also includes important amendments that will help bring justice to victims of violence in Indian Country. Federal law currently prevents tribal governments from prosecuting crimes of sexual assault, trafficking, and stalking when those crimes are committed by a non-Indian against an Indian victim. A 2016 study from the National Institute for Justice (NIJ), found that approximately 56 percent of Native women experience sexual violence within their lifetime, with 1 in 7 experiencing it in the past year.[10] Nearly 1 in 2 report being stalked.[11]

Unlike the general population where rape, sexual assault, and intimate partner violence are usually intra-racial, Native women are more likely to be raped or assaulted by someone of a different race. NIJ found that 96 percent of Native women and 89 percent of male victims reported being victimized by a non-Indian.[12] Native

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[9] 25 U.S.C. § 1304.

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

[11] *Id.*, at 29.

[12] *Id.*, at 18.

victims of sexual violence are three times as likely to have experienced sexual violence by an interracial perpetrator as non-Hispanic White victims.[13] Similarly, Native stalking victims are nearly four times as likely to be stalked by someone of a different race, with 89 percent of female stalking victims and 90 percent of male stalking victims reporting inter-racial victimization.[14] JNSSV would amend 25 U.S.C. § 1304 to include sexual assault, stalking, and trafficking crimes committed in Indian Country. It would untie the hands of tribal governments and allow them to extend the same protections to victims of sexual violence and stalking as are available to domestic violence victims. A case from the Pascua Yaqui Tribe illustrates the importance of this provision:

A female tribal member who worked at the tribal casino was fixing slot machines when she was harassed by a group of intoxicated, non-Indian patrons. As casino security personnel arrived to remove the men from the casino, one of them grabbed the female employee by her genitals and squeezed. The casino surveillance system captured the incident on camera and the employee wanted charges to be filed. Because the offender was non-Indian, the tribe lacked jurisdiction and could only refer the case to federal prosecutors. The U.S. Attorney's Office did charge the case, but pled it down to a non-sex offense misdemeanor despite the clear evidence and willingness of the victim to cooperate. The tribe has said that while they are grateful that the U.S. Attorney's Office charged the case, they are disappointed that the criminal record will reflect only a simple assault and have stated that this is a far more generous plea than the tribe would have offered if they had jurisdiction to prosecute the case.

We appreciate Senator Udall, Senator Murkowski, and Senator Smith's efforts to advance legislation that will fill some of the gaps in jurisdiction that continue to leave vulnerable victims—including children and law enforcement officers—without adequate protection on tribal lands. NYTOPA and JNSSV will give tribal governments additional tools to provide justice and safety to victims in Indian Country, and we urge the Committee to prioritize passage of these bills.

As the Committee continues its work, we have some technical suggestions to further strengthen these bills that have been developed in conjunction with the tribal attorneys and prosecutors who have spent the past six years implementing the underlying statute that these bills seek to amend. Many of these suggestions have been incorporated in the tribal provisions of H.R. 1585, which passed in the House with bi-partisan support earlier this year. Specifically, we recommend that NYTOPA be amended as follows:

- *Change the definition of "domestic violence" to refer to the tribal code's definition.* One of the primary concerns tribal nations have had in implementing VAWA 2013 relates to confusion about what the phrase "violence committed" means in the definition of "domestic violence" used in 25 U.S.C. § 1304. For example, the question has recently arisen whether stalking of a victim by a domestic violence offender constitutes "violence committed" for purposes of SDVCJ. The tribal prosecutor who has raised the question thinks it likely does not meet the federal definition and the tribe is in the position of waiting for the defendant's conduct to escalate before he can be punished. We urge you to change the language in NYTOPA to replace "violence committed" with "any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs." This language is very similar to what was included in the Tribal Youth and Community Protection Act several years ago. This definition will allow for prosecution of all crimes typically deemed domestic violence under state and tribal domestic violence codes.
- *Allow tribes to prosecute all crimes occurring in a conjunction with a domestic violence incident.* Another significant issue tribes have faced in implementing VAWA 2013 is the inability to prosecute all of the crimes that occur within a domestic violence situation. When someone assaults their domestic partner, they often commit crimes beyond the common law definition of assault. Those crimes often include destruction of property, false imprisonment, endangering the welfare of minors by committing the assault in front of children (giving rise to lifelong trauma in those children), reckless endangerment, assaults and threats against significant others or loved ones intended to intimidate and harass the domestic partner, and countless other crimes. Those crimes are often easier to prosecute than the underlying domestic violence assault, as domestic violence assaults often depend on the cooperation of the victim, which can be difficult in a domestic violence situation. Other accompanying crimes that often

[13] *Id.*, at 29.
[14] *Id.*, at 32.

occur in a domestic violence incident, however, are easier to prove and thereby provide a mechanism for prosecutors to successfully hold the perpetrator accountable. Tribal prosecutors have described the limitations they face in prosecuting non-Indians as trying some of the most difficult cases a prosecutor confronts with one hand tied behind their back. For these reasons, we encourage you to consider adding the ability to prosecute crimes that are attendant to crimes of domestic violence. A case from the Confederated Tribes of the Umatilla Indian Reservation illustrates the importance of this recommendation:

The defendant was a repeat domestic violence offender, and when law enforcement arrived, he attempted to flee the scene in his vehicle. He was intoxicated, however, and crashed the vehicle into the neighbor's fence. If Umatilla had jurisdiction to charge him for DUI and for destruction of property they would have been able to charge and convict him quickly and easily given the evidence. The tribal prosecutor may have also been able to leverage the additional charges to secure a plea on the domestic violence charge. Instead, the tribe was only able to charge the domestic violence offense, which put the most pressure on the victim to testify. Over the eight months that the tribe spent prosecuting him for domestic violence, the victim, who suffered a severe concussion in the incident, changed her mind multiple times about whether to testify. Eventually the defendant was sentenced to 24 months, one month in custody, 23 months suspended sentence, followed by three years probation.

- *Include obstruction of justice crimes.* Protecting law enforcement would be best accomplished by removing existing restrictions on the ability of tribal nations to prosecute assaults on law enforcement or correctional officers, and obstruction of justice related crimes, generally. This approach is simpler than attempting to define covered individuals and related conduct under the current NYTOPA language and would not require having to prove a domestic violence assault beyond a reasonable doubt before establishing jurisdiction to prosecute an assault on law enforcement as we believe could be required under NYTOPA. It would also cover issues like witness intimidation, jury tampering, lying to law enforcement, threats to court staff, and other related crimes and issues that can arise in investigations and prosecutions of domestic violence crimes and undermine the integrity of the process.
- *Include children in the definition of domestic violence.* Finally, to best protect children, rather than attempting to define caregiver, child violence, and covered conduct, we recommend that a paragraph be added to the existing definition of domestic violence to include situations where the victim is a child (or elder) that resides or has resided in the same household as the defendant or the defendant's current or former partner as was done in H.R. 1585. We believe that this would cover all of the crimes involving children that the implementing tribes have encountered to date, many of which involve endangering the welfare of a minor by committing the act in their presence, which is a crime that NYTOPA does not currently address.

We look forward to discussing these suggestions further as the Committee considers this important legislation.

S. 227, Savanna's Act

When a Native woman goes missing or is murdered, her family, friends, and community are devastated by the loss. Oftentimes her family and community are left searching for answers for years, with little help from local authorities. Many times tribal law enforcement does not have the resources or the jurisdiction to investigate these cases. The families of victims have no resources or services to turn to and are left organizing their own searches and conducting their own investigations. The outrage and pain of these families has propelled the issue of missing and murdered Indian women from the local to the national level, and we appreciate the various bills that have been introduced at the state and federal levels in response.

In 2016, NCAI adopted a resolution, PHX–16–077, Addressing the Crisis of Missing and Murdered Native Women, that called for increased coordination across agencies; the review and revision of protocols for responding to the disappearance of Native women; and access to services for victims and their families. Savanna's Act would help to increase accountability for federal and state officials with jurisdiction in these cases and would improve information sharing among jurisdictions. We appreciate the broad bipartisan support for the bill.

NCAI and other stakeholders have been in discussions with the sponsors of the legislation in both the House and Senate about the possible unintended consequences of some of the provisions currently included in S. 227. We appreciate the changes that have been made to the bill in the House and the Senate sponsors' will-

ingness to adopt those changes as well. There is also a need for new resources for tribes to address these issues. Given the magnitude of this need, Congress should provide new programming in addition to expanding tribal access to existing grant programs. Finally, we understand that urban Indian organizations have made recommendations to ensure that the needs of the urban Native population are met. We support the inclusion of additional language to ensure that Native women are protected across the country and look forward to discussing specific recommendations with you as the bill moves forward.

S. 982, Not Invisible Act of 2019

The Not Invisible Act is another important piece in the effort to improve the response to missing and murdered Indians. The Advisory Committee it creates will be an important mechanism for identifying best practices and increasing collaboration and coordination among stakeholders. The designated coordinator at the Department of the Interior (DOI) will also help ensure that these issues are prioritized. However, as written, the burden falls primarily on DOI to meet the requirements of the law, and there is very little included to ensure that the DOJ comes to the table as a full partner. We recommend similarly requiring the Attorney General to designate a coordinator who can work in partnership with the DOI designated coordinator.

S. 1853, BADGES Act

NCAI appreciates the attention to the issues addressed in the BADGES Act. We are particularly pleased to see the inclusion of a $3 million authorization for DOJ's Tribal Access Program (TAP), which we have previously supported. Ensuring that tribal governments have access to the National Crime Information Center (NCIC) databases has been a priority for NCAI for many years. With the TAP program, DOJ has finally begun to make headway in addressing the challenges that have long prevented tribal access, and this funding will help more tribal nations to access the program.

We also echo the recommendations made by Justice Demmert on behalf of the Central Council of Tlingit and Haida Indians of Alaska with regard to the definition of "tribal stakeholder" used in the bill. We recommend removing Indian tribes from that definition and changing "tribal stakeholder" to "Indian tribes and tribal stakeholders" as appropriate throughout the bill. We think this approach more appropriately recognizes the sovereignty of tribal nations and the government-to-government relationship.

Conclusion

NCAI greatly appreciates the work of the Senators and the Committee on these important bills. We urge continuing dialogue with tribal leaders on the legislation and look forward to working with the Committee as the bills move forward.

PREPARED STATEMENT OF THE PORT GAMBLE S'KLALLAM TRIBE

The Port Gamble S'Klallam Tribe (Tribe) thanks Chairman Hoeven, Vice Chairman Udall, and members of the Committee for holding a legislative hearing to consider important bills related to public safety in Indian Country: 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, S. 1853. Our Tribe supports these bills as they will help address important issues related to the safety of Native people.

Our Tribe also supports the testimony presented by the United South and Eastern Tribes and the Chief Judge of the Central Council Tlingit and Haida Indian Tribes of Alaska. We incorporate their testimony by reference into our testimony.

I. Causes of Crime Against Native People

The high rates of crime in Indian Country and against Native people are attributable to the United States' policies towards tribes and Native people over time. Two elements of those policies are especially detrimental to the effort to keep Native people safe:

(1) The limitations the United States has placed on tribes ' exercise of criminal jurisdiction on their land, especially over non-Native people, which they possess as an aspect of their inherent sovereignty; and

(2) The United States' failure to fulfill its trust responsibility to ensure Native people are able to live in safe and healthy communities, including by providing adequate law enforcement and court resources.

Both of these elements must be addressed to successfully reduce the rate of crime against Native people and in Indian Country.

II. Support for Pending Legislation

A. Restoration of Tribes' Inherent Criminal Jurisdiction

The Justice for Native Survivors of Sexual Violence Act, S. 288, and NYTOPA, S. 290, would restore tribes' criminal jurisdiction over domestic violence and sexual violence crimes, including when committed by non-Native people. This legislation would serve as a step towards the United States recognizing tribes' inherent criminal jurisdiction over their land, and is an important step forward to fill certain gaps left by the 2013 reauthorization of the Violence Against Women Act (VAWA 2013).

In VAWA 2013, Congress included provisions specifically related to tribes. See 25 U.S.C. § 1304. Congress restored tribes' inherent criminal jurisdiction over non-Native people in limited circumstances related to domestic and dating violence. 25 U.S.C. § 1304(b)(l). This is known as special domestic violence criminal jurisdiction (SDVCJ). Notably, to exercise this criminal jurisdiction, VA WA requires tribes to provide certain procedural rights to defendants. 25 U.S.C. § 1304(d).

In exercising VA W A criminal jurisdiction, tribes have found that there are certain crimes that regularly occur alongside the crimes that tribes can prosecute under VA W A 2013 that are shielded from tribal law enforcement and prosecution. The Justice for Native Survivors of Sexual Violence Act and NYTOPA would extend tribes' jurisdiction as authorized under VA WA 2013's SDVCJ to cover some of these specific types of crimes, thus filling an important gap in law enforcement and protection for some of the most vulnerable tribal members.

The Justice for Native Survivors of Sexual Violence Act would extend SDVCJ to sexual violence occurring outside a domestic relationship, including sex trafficking, sexual violence, and stalking as well as crimes of related conduct. NYTOPA would extend SDVCJ to certain crimes committed against a child by a caregiver as well as to certain crimes against law enforcement personnel that take place during a domestic violence scenario.

Both bills would also make changes to VA W A 2013 to ensure it extends to crimes that do not necessarily involve an actual physical assault—such as attempted or threatened violence. Thus, tribes exercising SDVCJ would not be forced to wait until a perpetrator succeeded in his efforts to commit physical assault on his victim.

Additionally, the Justice for Native Survivors of Sexual Violence Act would remove VA W A 2013's SDVCJ requirement that a defendant have specific enumerated and long-lasting ties to the tribe. With the passage of this bill, Indian Country would no longer be open to perpetrators seeking out safe harbors for crime.

In its testimony, the Department of Justice (DOJ) noted its desire to work with the Committee to ensure the Justice for Native Survivors of Sexual Violence Act and NYTOP A "weather judicial challenges." Yet, as DOJ said in its testimony, exercising criminal jurisdiction is a crucial aspect of sovereignty, and Congress has authority to restore to tribes the criminal jurisdiction they possess as an aspect of their inherent sovereignty. *See, e.g., United States v. Lara,* 541 U.S. 193 (2004) (holding that Congress, via 25 U.S.C. § 1301(2), was within its authority to restore tribes' inherent criminal jurisdiction over Native people who are not citizens of the particular tribe exercising jurisdiction, even after the Supreme Court in *Duro v. Reina*, 495 U.S. 676 (1990), concluded such jurisdiction had been divested). Further, in VAWA 2013, Congress was careful to require tribes to provide defendants certain due process rights when exercising SDVCJ. *See* 25 U.S.C. § 1304(d). Thus, the Justice for Native Survivors of Sexual Violence Act and NYTOP A would withstand any judicial challenges that may be raised.

Our Tribe supports the extension of SDVCJ that these bills would make. Tribes have the right as part of our inherent sovereignty to exercise criminal jurisdiction over our land to keep our people safe. Enactment of the Justice for Native Survivors of Sexual Violence Act and NYTOPA would be a step toward restoring of this jurisdiction.

B. Increased Federal Resources As Required by Trust Responsibility

The bills before the Committee would also take steps to ensure the United States fulfills its trust responsibility to ensure Native people are able to live in safe and healthy communities, including by providing resources to facilitate law enforcement and prosecution.

Significantly, some of the bills before the Committee would provide federal funding. NYTOP A, S. 290, would authorize additional appropriations through 2024 to aid tribes in carrying out VA W A's criminal jurisdiction. The BADGES for Native Communities Act, S. 1853, would create a grant program for information sharing and coordination. It would also provide additional funding for tribes to access the National Crime Information Center database.

Additionally, some of the bills would facilitate information gathering for crimes against Native people or taking place in Indian Country. Savanna's Act, S. 227, would call on the DOJ to create standardized guidelines for responding to cases. The Not Invisible Act of2019, S. 982, would require the Department of the Interior (DOl) to designate an official to provide training on how to effectively identify, respond to, and report crimes. The BADGES for Native Communities Act would call on the Government Accountability Office to conduct a study on federal law enforcement evidence collection, handling, and processing.

Some of the bills would also facilitate information sharing across law enforcement agencies. The BADGES for Native Communities Act would direct the DOJ to ensure information related to certain cases is added to the publicly accessible National Missing and Unidentified Persons System. It would also direct the DOJ to facilitate tribes' access to that database and the National Crime Information Center database. Savanna's Act would also direct the DOJ to take certain actions to increase access to and use of crime databases.

The bills would also work to ensure coordination across law enforcement agencies and federal agencies relevant to the safety ofNative people and in Indian Country. NYTOPA calls for increased coordination between federal agencies, including by ensuring federal programs supporting tribes' justice systems and victim services are working effectively together. The Not Invisible Act of 2019 would establish a DOI/DOJ joint advisory committee on reducing violent crime against Native people, which would include tribal representatives. The bill also calls for a DOl-designated official to coordinate programs and grants across agencies.

The bills would also deal with federal prosecution of crime in Indian Country. Savanna's Act would require the DOJ to direct United States Attorneys with jurisdiction to prosecute Indian Country crimes. The BADGES for Native Communities Act would examine the extent to which federal law enforcement evidence collection, handling, and processing affects the rate at which United States Attorneys decline to prosecute cases.

Additionally, the BADGES for Native Communities Act would address law enforcement personnel operating in Indian Country. It would streamline the process for hiring law enforcement officers and provide resources for mental health and wellness programs for them.

The Tribe supports these efforts to fulfill the federal government's trust responsibility. Through provision of funding to tribes, enhanced crime information gathering and sharing, increased cooperation across law enforcement agencies and federal agencies, increased federal prosecution, and law enforcement personnel retention, the federal government will be taking a step towards fulfilling its trust responsibility to keep Native people safe.

III. Conclusion

The United States must act to stop the crime Native people are forced to live with every day. This can only be done through recognizing tribes' inherent criminal jurisdiction over their land and through providing the federal resources the federal trust responsibility demands. One step towards addressing the ongoing crisis is passage of the bills pending before the Committee. We urge you to act quickly to move these bills forward to enactment. We also urge you to work in the Senate to pass a comprehensive VAWA reauthorization bill like H.R. 1585, which the House passed and includes many of these bills' provisions.

PREPARED STATEMENT OF HON. VICTOR JOSEPH, CHIEF, TANANA CHIEFS CONFERENCE

The Tanana Chiefs Conference (TCC) is an intertribal consortium of 37 federally-recognized Indian tribes and 4 additional Alaska Native communities located across the Interior region of Alaska. Our region stretches from the Brooks Range on the north, to the Alaska Range on the south, from the Canadian border on the east to almost Norton Sound on the west. Our area covers some 235,000 square miles—150,400,000 acres—half again as large as California and almost as large as Texas. With no roads to most of our communities, travel is by boat in the summer, snow machine in the winter, and otherwise by small plane when weather permits.

Our villages live a highly successful subsistence way of life, and our languages, cultures and lifeways are intact. But historical events outside of our control have made life particularly difficult. First, the federal government turned over its own law enforcement functions to the State through Public Law 280, saddling the State with a law enforcement burden it had insufficient resources to carry out. Then when Congress settled our land claims in 1971, the Alaska Native Claims Settlement Act created new corporations to hold and invest most village lands. As part of ANCSA, the core of our communities were designated for current or future state-chartered municipal governments—governments which in many villages were never formed. As a result, most of the "Indian country" of our villages was eliminated (as the Supreme Court would later hold in the *Venetie* case), severely curtailing the ability of the villages to govern their own affairs.

With these changes in legal status and governing authority, along with other pressures, our village governments have suffered and our communities entered a period of increasing dysfunction and danger, especially for women. Today, the statistics in Alaska are stunning:

- Alaska domestic violence rates are 10 times the national average, and sexual assaults against Alaska Native women are 12 times the national average. Many offenders are non-Native.
- Alaska Native women are over-represented by 250 percent among domestic violence victims. Although Alaska Natives comprise just 19 percent of the state population, Native women constitute 47 percent of all reported rape victims. Every 18 hours an Alaska Native woman is sexually assaulted.
- One out of every 4 Alaska Native youth suffers post-traumatic stress (PTSD) due to childhood exposure to violence—the same rate as Afghanistan War veterans.
- State-based law enforcement is virtually nonexistent in most Alaska Native villages. State troopers are only present in hub cities. VPSOs are only present in 40 out of 229 villages.
- The suicide rate in village Alaska is 6 times the national rate, the alcohol-related mortality rate is 3.5 times the national rate, and 95 percent of rural crimes in Alaska are alcohol related.
- Although some laws and law reform proposals are tied to "Indian Country," tribal territorial jurisdiction vanished almost entirely with the enactment of the 1971 Alaska Native Claims Settlement Act. Most crimes do not occur on the few remaining lands that constitute "Indian country" under federal law (allotments, townsite lots, trust lands). While some law reform measures are also keyed to lands owned by Alaska Native Corporations (ANCs), almost no one lives on ANC lands.

In short, today there is a law enforcement crisis in our communities of epic proportions. But under current law, there is no effective means to combat it and the tribal governments who are closest to the problem have virtually no tools whatsoever to address the issue themselves.

It is with these observations that TCC has examined the several bills now pending before this Committee. While all four bills are very well-intentioned and all mention Alaska Natives, there is little in these bills that is actually workable as a means for improving local tribal law enforcement in our communities, and for protecting our most vulnerable tribal members.

For instance, S. 227 (Savannah's Act) notes in section 2(a)(7) that "the complicated jurisdictional scheme that exists in Indian country" " has a significant negative impact on the ability to provide public safety to Indian communities;" is "exploited by criminals;" and demands "a high degree of commitment and cooperation among Tribal Federal, and State law enforcement officials." It also recites the importance of "empower[ing] tribal governments" "to effectively respond to cases of missing and murdered Indians."

Yet the bill's operative provisions are then tied to the very jurisdictional hooks regarding "Indian lands" that have proven to be so problematic for Alaska Tribes. For instance, Section 3(4) defines Indian lands to include "Indian country" under 18 U.S.C. 1151, even though for most practical purposes there isn't any Indian country in Alaska outside of a few isolated tracts of trust and restricted fee lands, and hardly any people actually live on those lands. Section 3(4)(B) also mentions Alaska Native corporation (ANC) lands, but again virtually no people live on ANCSA lands. This makes the bill's limitations to "Indian land" extremely problematic in Alaska. Alaska Native villages are left out.

Later, section 5 of S. 227 builds on the federal government's existing jurisdiction over "Indian country" crimes, but that jurisdiction is again of little help in village

Alaska, both because of the small amount of Indian country in Alaska villages and because Public Law 280 transferred the federal government's jurisdiction over those areas to the State. Here, too, Alaska villages are left out.

S. 288 is similarly problematic for Tribes in Alaska because sections 2(2) and 2(4)(C) focus on enhancing tribal criminal jurisdiction in "Indian country," thereby excluding Alaska Native villages.

S. 290 in section 3(2)(G) seeks to expand tribal jurisdiction but defines the term "covered conduct" to mean certain conduct that "violates the criminal law of the Indian tribe that has jurisdiction over the Indian country where the conduct occurs," again making these measures largely ineffective in Alaska. Ultimately, with these limitations it is difficult to see how the Report addressed in Section 5(b)(1) will help Alaska tribes, despite the critically important need to focus on the "effectiveness" of "Federal programs. . .intended to build the capacity of criminal justice systems of Indian tribes to investigate and prosecute offenses relating to dating violence, domestic violence, child violence, and related conduct."

S. 982 carries some of the same problems as the other bills, including S. 227, such as by limiting "Indian lands" to Indian country (including reservation and trust) lands or ANC-owned lands (sec. 3(4)). The bill softens this limitation by frequently focusing its provisions to speak of crimes "within Indian lands and of Indians," but this hardly overcomes the core problem that just as with the other bills, S. 982 bill fails to focus on the extreme law enforcement problems confronting Alaska Native villages.

As Congressman Young correctly noted earlier this year, the current situation confronting Alaska Native villages, combined with the unique history of congressional treatment of these areas, demands an Alaska solution to a unique Alaska problem. Either the term "Indian country" needs to be redefined to include all lands within each Alaska Native village, or Congress needs to simply declare that tribes shall have criminal and civil jurisdiction in and around their villages without regard to the term "Indian country." Alaska Tribes cannot enforce the rule of law in their communities and provide for civil society according to tribal customs, traditions and laws without a fresh declaration from Congress clearly declaring their authority to do so.

Alaska tribal authority should be declared to be broad and plenary with respect to tribal members. In the case of non-Natives present in the villages, it should at a minimum cover sexual violence, child violence, alcohol, and related crimes, including the crimes identified in S. 288. This should be done, not on a limited or pilot basis, but on a broad basis to protect all women and children in all Alaska Native villages. The time to wait while more women are raped or murdered is over. While greater federal assistance is also critically needed, first and foremost our tribes must be empowered to protect their own. They are the front line, the first responders, and as a matter of basic self-governance they must be returned the tools they need to protect their communities.

Thank you for the opportunity to offer these views on S. 277, S. 288, S. 290 and S. 982.

PREPARED STATEMENT OF HON. RYAN JACKSON, CHAIRMAN, HOOPA VALLEY INDIAN TRIBE OF CALIFORNIA

Chairman Hoeven, Vice Chairman Udall, and members of the Committee, thank you for this opportunity to provide testimony on important bills relating to public safety in Indian Country, including: 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, S. 1853.

The Hoopa Valley Indian Tribe of California appreciates the efforts of the committee to strengthen public safety in Indian Country. We support these bills and the goals they seek to accomplish.

In the past, the United States has neglected its public safety obligations to Indian Tribes by failing to recognize and promote our inherent sovereign authority as well as failing to devote adequate resources to law enforcement and judicial infrastructure. These bills, if enacted, would address gaps in the exercise of special domestic violence criminal jurisdiction and help the United States fulfill more of its obligations to Indian country by providing necessary financial resources. We envision a future in which our children, women, elders, and all Native people can live in healthy, vibrant communities without fear of violence and with confidence that justice will be served. These bills represent advancements toward that goal.

For thou sands of years before the white men came, the people of Hoopa Valley occupied the area among the coastal mountains ofN01them California along the final reaches of the Trinity River and its confluence with the Klamath River. Theirs was a peaceful land, rarely troubled by violence or threatened by outsiders. Although it was a rich land, its abundant resources did not tempt the Hoopa people's neighbors because the surrounding areas also had plentiful fish and game, and anything they lacked could easily be obtained from trade. The coming of European settlers, beginning with the Spanish in 1775, the British of the Hudson's Bay Company in the 1820s, and ultimately the Americans and the goldminers of the 1850s changed all of this.

The huge influx of white men had a disastrous impact on California Indians. The State of California and Governor Newsom have recently issued a formal apology for the genocide committed against California Indians. In 1850, only two years after the United States acquired the territory from Mexico, the federal government saw that something would have to be done quickly for the Native people. Legislation in 1864 authorized the President to set apart tracts of land in California "for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said State, and shall be located as remote from white settlement as should be found practicable, having due regard to their adaptation to the purposes for which they were intended." Under this act, the original Hoopa Valley Reservation was deliniated as a 12-mile square. It currently encompasses approximately 100,000 acres.

The Hoopa Valley Tribe, along with other Indian Tribes in California, was victimized by Public Law 280, which, in 1953, transfeiTed criminal jurisdiction over the lands and peoples of the Hoopa Valley Reservation from the United States to the State of California, without any additional funding. Because of the Tribe's isolation from more populated portions of Humboldt County, the transfer of jurisdiction did nothing good for the preservation of law and order within the Reservation. As a result, under the strong leadership of the Hoopa Valley Tribal Council, the tribe has taken matters into its own hands and has become a leader in exercising civil and criminal jurisdiction over its Reservation. In the 1990s, the Hoopa Valley Tribe obtained state legislation to facilitate the cross-deputization of Hoopa Tribal Police with the Humboldt County Sheriffs Office. But that arrangement bas proved inadequate as county authorities several times have allowed the agreement to lapse due to shifting local politics. Passage of the Tribal Law and Order Act of 2010 changed this by authorizing federal reassumption of concurrent criminal jurisdiction over the Hoopa Valley Reservation, a status that the Hoopa Valley Tribe quickly sought.

Federal criminal jurisdiction over the Hoopa Valley Reservation became effective in 2017, whereupon the Hoopa Valley Tribe entered into a deputation agreement with the United States Department of the Interior to provide law enforcement services to all persons who reside, work, or visit the Reservation. Under that agreement, the Secretary of the Interior issued Special Law Enforcement Commissions to officers of the Hoopa Valley Tribal Police to enforce federal laws on the Reservation and as well to enforce and make arrests under certain circumstances for violation of California's criminal laws. However, access to criminal information databases, such as the California Law Enforcement Telecommunications System (CLETS) has been difficult, sporatic, or nonexistent. Tribal Officer lives are put in danger when they do not have access to criminal history information in CLETS and cannot, for example, know whether a person who has been stopped or detained is a violent felon for whom an outstanding arrest warrant has been issued. In short, the Hoopa Valley Tribe has done its level best to protect and promote public safety within the Hoopa Valley Reservation under the constraints of current federal, state, and Tribal law. The bills before this committee will ease some of those constraints and help the tribe advance toward that goal.

Despite the Tribe's efforts, there are serious public safety concerns in tbe mountains and bill sides of Hoopa Valley. Hoopa people rely on gathering natural products such as acorns, mushrooms, bear grass, hazel shoots, maple bark, and other materials for basket weaving, food, and medicinal use. Yet, women and children are often confronted by armed men guarding illegal drug sites up in our hills. Our police lack the resources to patrol remote areas of the reservation and, since many of the offenders are non-Indians, their detention and prosecution is complex and expensive.

Savanna's Act will improve protocols for responding to reports of missing persons and improve access to law enforcement databases. This is urgently needecl We recommend adoption of the House version of that Act, H.R. 2733. BADGES seeks to improve information sharing and to help the Bureau of Indian Affairs respond to missing persons and murder cases. Expansion of the Justice Department's Tribal Access Program will assist in this process. There is an urgent need to address com-

patibility issues between the Federal Bureau oflnvestigation Criminal Justice Information Services databases and to increase training and use by Tribal and state databases.

The Justice for Native Survivors of Sexual Violence Act and the Native Youth and Tribal Officer Protection Act will improve Tribal special domestic violence criminal jurisdiction over nonnative offenders. As the committee is aware, the abi lity of Tribes to exercise special domestic violence criminal jmisdiction of non-natives requires substantial funding to rebuild and support Tribal judicial infrastructure. That funding is not yet available. In addition, the expanded jmisdiction was limited in unfortunate ways under the 2013 Reauthorization of the Violence Against Women Act (VAWA). Thus, VAWA did not extend to sex trafficking, sexual violence, stalking, ctimes against children, and attempted assault. These bills will address those oversights.

Finally, the Not Invisible Act of 2019 addresses broad issues of violent crime in Native communities and will establish more centralized oversight of activities, grants, and programs at the Interior Department.

For far too long, the United States has neglected its public safety obligations to Tribal Nations. We urge the committee to address the public safety crisis affecting Indian Country through enactment of these bills. There is not one family in our small community that has not been directly affected by the loss of a murdered or missing indigenous woman.

Thanks for your consideration.

TULALIP TRIBES
Tulalip, WA, June 19, 2019

Senator Jon Hoeven, Chairman;
Senator Tom Udall, Vice Chairman,
U.S. Senate Committee on Indian Affairs,
Washington, DC.

Dear Chairman Hoeven and Vice-Chainnan Udall

On behalf of the Tulalip Tribes, the successors in interest to the Snohomish, Snoqualmie, and Skykomish tribes and others tribes and bands signatory to the Treaty of Point Elliot of 1855, we submit this letter for the hearing held June 19, 2019 on pending legislation aimed at improving tribal safety and criminal justice in Indian communities. We thank the Committee for holding this hearing and supporting the "Special Domestic Violence Criminal Jurisdiction" (SDVCJ) provision in VAWA 2013 which reaffirmed the inherent sovereign authority of Indian tribes to prosecute non-Indians for certain domestic violence related crimes. We look forward to the opportunity to build on these efforts in VAWA reauthorization legislation.

> Out of 25 cases prosecuted under the Tulalip SDVCJ program, 18 of the incidents involved one or more children, and 8 children were victims of crime. Of these 8 cases, only 1 case was prosecuted by the federal government because of the egregiousness of the crime. The remaining 7 cases went unprosecuted because Tulalip had no authority under SDVCJ and the State did not prosecute. These child victims did not see justice. See example case incidents.

The Tulalip community is located on a 22,000-acre Reservation bordering on the east to Interstate 5 Corridor 35 miles north of Seattle. This area has recently experienced rapid population growth and development. Tulalip has 4,000 enrolled members, but most Reservation residents are non-Indian due to the history of allotments. Today, the Tribe or Tribal members hold approximately 60 percent of the Reservation lands with the balance being in non-Indian ownership. The large number of non-Indian residents on the Tulalip Indian reservation and the geographic location of the reservation increases leads to an increased risk of being perpetrated on by non-Indian persons.

The Tulalip Tribes was selected as one of the first three pilot tribes to implement SDVCJ under VAWA 2013. Since February 2014 Tulalip has prosecuted 25 total cases under the SDVCJ authority against 18 defendants. The race of these defendants are as follows: 10 Caucasian; 2 African American; 4 Hispanic; 1 Middle Eastern; and 1 non-enrolled Canadian Indian. Prior to their arrest and prosecution by the Tulalip Tribes, the Tulalip Tribes Police Department had over 171 contacts with these defendants since 2008.

Of the 25 cases, there have been 15 convictions, 1 acquittal, 5 cases pending, and 4 cases dismissed. These statistics demonstrate that Tulalip ensures that each defendant is provided due process protections as cases are dismissed if there is insufficient evidence, are uncooperative witnesses, or for other legal reasons. To date, no

defendant has filed a petition for a writ of habeas corpus in federal court. Overall, with the reaffirmed inherent authority under the SDVCJ provisions, Tulalip's program has been extremely successful and has greatly assisted in our efforts to combat domestic violence on the Tulalip Indian reservation. The law is working as Congress intended. However, there is more work to be done.

While we have had significant success in implementing the SDVCJ provisions, our efforts have exposed significant gaps in the statute's provisions that leave victims vulnerable, most often our children. Short of a full Oliphant fix, the exercise of criminal jurisdiction in domestic violence cases must include crimes perpetrated against children, sexual violence, stranger rape, sex trafficking, stalking, among other crimes so often associated with domestic violence situations so that we can address the totality of the circumstances. It is unconscionable that a four-year-old can be assaulted when she comes to the aid of her mother as her mother is being assaulted, yet charges are not brought against the non-Indian defendant for this assault.

Examples of cases of non-Indians were not prosecuted for crimes committed against Tulalip children.

DEFENDANT 1

CASE 1—Victim Age: 2 years-old

Incident Details: 36 year-old non-Indian male commits DV against his wife. The Defendant forcefully grabbed the baby out of his wife's arms while assaulting the wife. He was intoxicated. Tulalip initially charged the Defendant with Negligent Endangerment against a child. The charges were later dropped because the harm to the child was not covered by SDVCJ.

CASE 2—Victim Age: 3 years-old

Incident Details: 38 year-old non-Indian male commits Assault 1° DV (strangulation) on wife. The victim's 11 year-old daughter witnesses' mom being strangled. Defendant also damaged property belonging to the daughter. Tulalip could not charge because the harm was not covered by SDVCJ.

Children present: Male: Age 13 Female: Age 11 Female: Age 11 Male: Age 4 Male:1

DEFENDANT 2

CASE 1—Victim Age: 20 months

Incident Details: 21 year-old male commits Assault 1° DV mother of his 20 month old child while mother is holding the child. We originally charged Criminal Endangerment, but could not proceed with the charge on the child's endangerment because the harm to the child was not covered by SDVCJ.

DEFENDANT 3

CASE 1—Victim Age: 13 months old and 4 years-old

Incident Details: 27 year-old non-Indian male Assault 1° DV mother of his children. He threw knives at the wall above mom's head while she sat in a chair holding their 13 month-old child. He also struck the 4 year-old with a lamp cord, causing injury. The incident occurred over a period of 3 days as Defendant held them as virtual hostages. The United States took the case against the 4 year-old but did not vindicate the victimization of the 13 month-old. Tulalip could not charge the defendant because the harm to the child was not covered by SDVCJ.

DEFENDANT 4

Case 1—Age of Child: 5-years-old

Incident Details: 43-year-old non-Indian male commits Assault DV against the mother of his child. Had her down on the floor with arm on her face holding her down. The 5 year-old daughter awoke and came to investigate. She attempted to get dad off of mom. Dad thrust her aside onto the floor causing physical harm. Could not charge assault on 5 year-old because the harm to the child was not covered by SDVCJ.

These children live in fear. And the perpetrators feel emboldened to continue to commit these crimes. It is unfathomable that jurisdictional gaps allow non-Indian perpetuators to evade accountability for their criminal actions against native children. According to the Department of Justice, American Indian and Alaskan Native children suffer exposure to violence at rates higher than any other race in the United States.

The provisions in S. 290, the "Native Youth and Tribal Officer Protection Act," would reaffirm inherent tribal authority to prosecute non-Indians against Indian children in some circumstances. We urge the Committee to build on the provisions

in this bill and include this language in the VAWA reauthorization legislation so that we can adequately protect our children.

Another significant jurisdictional gap that currently exists is the inability to prosecute non-Indians for sexual violence or date rape committed against Indian women. Tulalip has dismissed multiple cases that were not prosecuted because they did not meet the definition of Domestic Violence under the current statute. The definition of Domestic Violence limits criminal charges to acts committed by one intimate partner against another. In other words, a relationship must already exist between the victim and the perpetrator. A number of sexual assaults occur between persons who are acquainted with each other but who do not otherwise have a relationship, let alone an "intimate relationship." These victims, often minors targeted by adult men, are unprotected by the current law. Tulalip Police have investigated nearly a dozen cases since the beginning of 2019 in which non-Native adult men have preyed upon native girls as young as 12 and 13 years old. Often, younger girls with few resources or dysfunctional home situations are particularly vulnerable to men with money who the girls often view as sophisticated protectors.

This month, a case of stalking was reported. The non-Native perpetrator and Tulalip victim had the required prior intimate relationship, but the victim had ended the relationship. The perpetrator continued to contact her, then came to her workplace, confronting her as she left work. The perpetrator took victim's car keys from her (a theft) and followed her in her own car as she fled. Although there had been unreported violence in the relationship, the stalking incident itself did not involve a crime of violence, so could not be prosecuted by the Tribes. The provisions inS. 288, the "Justice for Native Survivors of Sexual Violence Act," would allow tribes to prosecute non-Indians for these types of crimes. We urge the committee to include these provisions in VAWA reauthorization legislation.

The increased responsibility Tulalip has embraced in addressing crime and prosecuting cases under its SDVCJ program has strained tribal budgets. The expense of hiring prosecutors, providing indigent defense, DV investigators, and the costs of incarceration is very expensive. Furthermore, prosecuting cases in which a defendant may face up to three years in custody carries higher costs. In addition, these defendants high a higher need for appropriate re-entry programs as these crimes are severe and the perpetrators need more DV focused reeducation and treatment to return to the tribal community. Tribal governments must balance these needs with other important unmet needs for their own citizens such as housing, education, and health care. We urge the appropriation of additional financial resources in VAWA reauthorization legislation to ensure adequate funding is available to cover costs incurred by tribes who exercise SDVCJ.

It is imperative that Congress fill in the jurisdictional gaps that have allowed non-Indian perpetuators to evade accountability for their criminal actions against tribal members, particularly children. We appreciate the opportunity to submit this letter and we urge the Committee to support VAWA reauthorization legislation that will allow us to better protect our children and tribal members.

Respectfully,

HON. TERI GOBIN, TULALIP CHAIRWOMAN.

LAS VEGAS PAIUTE TRIBE
Las Vegas NV, March 26, 2019

Hon. Catherine Cortez Masto,
U.S. Senate Committee on Indian Affairs,
Washington, DC.

Dear Senator Cortez Masto:

I am writing on behalf of the Las Vegas Paiute Tribe to express our appreciation and support for your legislation. the Not invisible Act of 2019.

As the title of this bill implies. sadly. we as a nation have paid insufficient attention to the unacceptably high levels of violence, historical trauma. and other factors that account for the elevated risk of trafficking, murder, and missing persons in Indian Country and of Native Americans and Alaska Natives.

When 80 percent of American Indian and Alaska Native men and women have experienced violence in their lifetimes (and 56 percent of women sexual violence) their plights—and the conditions that cause them—can no longer be invisible.

As your legislation attempts to remedy. the lack of a comprehensive effort by the federal government to address what can truly be described as a crisis may. in part. be due to the paucity of data about its extent and contributing factors.

The legislation's requirement that the Secretary of Interior coordinate violent crime prevention efforts between the Bureau of Indian Affairs (BIA) and the Department of Justice (DOJ) w1ll provide vital assistance to tribes.

Such an effort could encourage training of tribal law enforcement, health care providers and other tribal community members to identify. respond to. and report on cases of missing persons, murder and human trafficking.

Also noteworthy is the legislation's establishment of a joint DOJ/Interior advisory committee composed of tribaL state. and local law enforcement. advocacy organizations. representatives of relevant federal agencies. tribal leaders. and survivors and family members.

Only through a coordinated effort led by the federal government with tribes. states. communities and relevant outside organizations can we begin to address this national problem.

Thank you again for all your work on behalf of Nevada tribes and other American Native people. Please let me know if there is anything the Las Vegas Paiute Tribe can do to assist you.

Sincerely,

HON. CHRIS SPOTTED EAGLE. TRIBAL CHAIRMAN

NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER
April 2, 2019

Hon. Catherine Cortez Masto,
U.S. Senate Committee on Indian Affairs,
Washington, DC.

RE: SUPPORT FOR NOT INVISIBLE ACT

Dear Senator Cortez Masto:

We write to express the urgent need to define the scope and address human trafficking of American Indian and Alaska Native survivors (AI/AN). We write to express our support for your proposed legislation, the "Not Invisible Act."

As stated in the findings of your proposed bill, Native women and girls experience a heightened risk of victimization of trafficking due to the multiple vulnerabi lities that AllAN individuals continuously face. High rates of unemployment, the unavailability of affordable or transitional housing (including shelter housing for human trafficking victims), the lack of resources available to AI/AN tribal governments and communities, the high rates of Native children who age-out of foster care, the jurisdictional gaps created by long stand ing federal law, and the high rates of victimization that AI/AN women face (which increases risk of future victimization), are all illustrative of this fact. Though anecdotally we know that human trafficking is a serious and frequent issue affecting AI/AN communities, both on tribal land and in urban settings, reliable data on the magnitude of this issue is not available. Furthermore, the Government Accountability Office, from 2013–2016, found that there were only 14 federal investigations and 2 prosecutions of human trafficking offenses where at least one victim was Indian. The federal response is inextricably at the root of the disparities of human trafficking for AllAN communities: the perception that this crime will go unpunished and that AI/AN victims continue to be invisible in trafficking as they are in other forms of violence. Professor Sarah Deer's testimony from 2011 before the Senate Committee on Indian Affairs provides additional information.

These victims deserve better; they deserve safety. The National Indigenous Women's Resource Center knows that any approach to human trafficking in our communities, must be intersectional and focused on prevention. By including victims, victim advocates, law enforcement, the judicial system, tribal housing and various federal agencies, this proposed legislation is a meaningful first step. We thank you for your office's support of AI/AN victims of human trafficking, including your staffer Jordan Warner who has consistently been available to our organization and staff. We thank you, Senator Cortez Masto for your dedication to continue the important work addressed by your proposed legislation. The title of your bill implies that a meaningful response to this issue will mean having to seriously address the erasure of our communities by colonization and genocide, to address the way in which violence on our communities has created generational trauma, and to address that not all survivors are treated equally as they engage with systems that were historically created to severely disadvantage them. We hope that this legislation and its implementation continues to prioritize the role of sovereign tribal responses and the role of the federal government in carrying out its trust responsibility to assist Indian tribes in safeguarding the lives of Indian people.

Respectfully,

LUCY SIMPSON, EXECUTIVE DIRECTOR

APRIL 10, 2019

John Hoeven, Chairman, Senate Committee on Indian Affairs;
Tom Udall, Vice Chairman, Senate Committee on Indian Affairs;
Lindsey Graham, Chairman, Senate Judiciary Committee;
Diane Feinstein, Ranking Member, Senate Judiciary Committee,
U.S. Senate, Washington, DC.

RE: NATIVE YOUTH AND TRIBAL OFFICER PROTECTION ACT, S. 2233 (NYTOPA)

Honorable Chairman Hoeven, Honorable Vice-Chairman Udall, Honorable Chaitman Graham and Honorable Ranking Member Feinstein:

We greatly appreciate the goals and objectives ofthe "Native Youth and Tribal Officer Protection Act," S. 2233 (NYTOPA). As former United States Attorneys who prosecuted crimes committed in "Indian country" (as defined in 18 U.S.C. § 1151), we have a unique understanding of why the restoration of tribal criminal jurisdiction is so critical to improve public safety in Tribal communities.

Because of the Supreme Court's 1978 decision in *Oliphant v. Suquamish*, federal law severely limits Tribal Nations' ability to prosecute crimes committed against Indians by non-Indians. At the urging of the Department of Justice, Congress recognized the safety concerns created by this arrangement and removed federal limits on the inherent authority of tribal governments to prosecute certain non-Indian domestic violence offenders in the 2013 reauthorization of the Violence Against Women Act.

While United States Attorneys, in most circumstances, do have jurisdiction over some nonIndian perpetrated crimes on tribal lands, or "Indian country," the absence of tribal criminal jurisdiction over some non-fndian perpetrated crimes contributes to the high rates of violence against Native people living on tribal lands. Too often, United States Attorney's Offices with jurisdiction decline to prosecute a non-Indian perpetrated crime committed on tribal lands. This could be for any number of reasons, ranging from competing priorities, lack of sufficient resources to track and prosecute such crimes, to the challenges in investigating crimes in remote tribal communities where federal law enforcement may not be familiar with the population or terrain. In our experience, public interest, safety, health, and welfare all support the concept that, if possible, crimes committed on tribal lands should be prosecuted by the local government—and in "Indian country," that is the presiding tribal government. The fact that the many, many violent crimes committed against American Indians are never prosecuted is contributing to the high rates of violence Native women and children face.

Additionally, NYTOPA reaffirms inherent tribal criminal jurisdiction over non-Indian perpetrated crimes committed against tribal law enforcement. We know all too well that law enforcement officers face a serious safety risk when responding to a domestic violence call involving a non-Indian perpetrator. Under the current legal framework—and without the reaffirmation of tribal criminal jurisdiction over non-Indian perpetrated crimes against law enforcement—the tribal justice system has the authority to arrest and prosecute a non-Indian domestic violence offender, but is completely powerless if that same offender commits a crime against the responding tribal public safety officer. That is nonsensical, and it is dangerous. Likewise, all too often, when domestic violence crimes are committed, children are victims too. Thus, the goal of NYTOPA—restoring tribal criminal jurisdiction over crimes committed against tribal police officers and children citizens of Tribal Nations—is critically important. In the course of our time serving as United States Attorneys, we had the opportunity to work with many tribal law enforcement officers, prosecutors, and judges and have seen firsthand the professionalism and integrity they bring to their work. They are committed to serving their communities and are in the best position to do so. Thus, we write to express our full support for NYTOPA. We thank you for your time and consideration of this important legislation.

Sincerely,

Timothy Q. Purdon, Former United States Attorney, District of North Dakota
Troy A. Eid, Former United States Attorney, District of Colorado
Brendan V. Johnson, Former United States Attorney, District of South Dakota
Thomas B. Heffelfinger, Former United States Attorney, District of Minnesota
David C. Iglesias, Former United States Attorney, District ofNew Mexico
John W. Vaudreuil, Former United States Attorney, Western District of Wisconsin
Wendy J. Olson, Former United States Attorney, District of Idaho

Dennis K. Burke, Former United States Attorney, District of Arizona
Danny C. Williams, Former United States Attorney, Northern District of Oklahoma
Jenny Durkan, Former United States Attorney, Western District of Washington
Michael W. Cotter, Former United States Attorney, District of Montana
Patrick A. Miles, Jr., Former United States Attorney, Western District of Michigan
Anne M. Tompkins, Former United States Attorney, Western District of North Carolina
John F. Walsh, Former United States Attorney, District of Colorado
Daniel G. Bogden, Former United States Attorney, District of Nevada
Paul K. Charlton, Former United States Attorney, District of Arizona

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO CHARLES ADDINGTON

Unmet Law Enforcement Staffing Needs

Question 1. Section 3 of the Indian Law Enforcement Reform Act (25 U.S.C. 2802) requires the Office of Justice Services (OJS) to submit a list of "unmet staffing needs of law enforcement, corrections, and court personnel (including indigent defense and prosecution staff) at tribal and Bureau of Indian Affairs justice agencies" to Congress each year. Is the report dated September 12,2017, the only unmet needs report produced to date by the OJS?

Answer. No. Prior to September 12, 2017, we submitted reports on appropriations for fiscal years 201 0 through 2013. The report dated September 12, 2017, detailed the allocation and expenditure of our FY 20 I 4 and 2015 appropriations. A report submitted on June 11, 2018 was for our FY 2016 appropriation. The report detailing our FY 2017 appropriation has been prepared and is under review by the Department and will be provided to Congress in the coming weeks.

Question 1a. If the Office has not produced an unmet need report each year since enactment of this requirement, what factors contributed to the Office's challenges in complying with statute and publishing the report annually?

Answer. We are currently delivering a report each year. With regard to timing, a complete and accurate report cannot be produced until the two-year availability of our appropriation has expired and all obligations are recorded. Our latest expired appropriation is FY 2017, and the corresponding report is under review.

Question 1b. How does the Office calculate or estimate unmet staffing needs for Triballyoperated justice programs?

Answer. Law enforcement programs and Tribal courts are usually sized to meet the needs of a resident service population range. Cost estimates assume that all tribes of similar size have law enforcement agencies or courts with the same composition. The report groups tribes by population size, and then uses scalable cost models to create estimates for operating law enforcement programs and Tribal courts for each group. Cost estimates for BIA-funded detention/corrections centers differ in that only existing centers are considered. Estimated total costs are based on individual staffing models developed for each BIA-funded facility, which is influenced by National Institute of Corrections standards in connection with building layout, type of prisoners housed, and programs/services offered.

Question 1c. How does the Office estimate the unmet staffing needs for tribal and Bureau of Indian Affairs investigators?

Answer. Because of their similar structure and function, we utilize the same scalable budget models to estimate costs for both tribal and BIA programs.

Question 2. At the hearing, I asked for information on the current law enforcement vacancy rates and officer attrition causes. You responded, "For direct service programs and Tribal law enforcement programs across the nation, they vary anywhere from 1.8 to 3.2 officers per thousand residents. . .We do track, if we do have folks that leave. . .we do track why they left and attrition rate." Can you provide specific information on the current national and regional law enforcement vacancy rates for the BIA?

Answer. The current estimated vacancy rates for the Bureau oflndian (BIA), Office of Justice Services (OJS) sworn staff in the field are displayed in the below table.

Organizational Unit	Vacancy Rate percentage
District 1	44
District 2	21
District 3	41
District 4	34
District 5	45
District 6	33
District 7	25
District 8	67
District 9	0
OJS Overall (Field/Sworn)	39

Question 2a. Would the OJS be able to include this information in its annual unmet needs reports if directed to do so by Congress?

Answer. Yes.

Question 2b. Can you further clarify or provide any statistics on the most frequently cited causes for officer attrition at the Bureau of Indian Affairs?

Answer. In FY 2018, BIA–OJS hired 65 new personnel, but lost 96. The respective figures for FY 2017 are 72 and 63. Retirement, misconduct, remote location without adequate services (including housing), competition from higher paying State and Federal law enforcement agencies, and burn out were the most common reasons for attrition.

Question 3. You noted at the hearing, "Under the Tribal Law and Order Act, we do have to do Tribal backgrounds for tribal law enforcement if requested by the Tribe." Approximately how many Tribes ask the OJS to conduct law enforcement background checks?

Answer. OJS has conducted background investigations for up to 20 tribes in a single year. However, the number of Tribes served annually varies and is dependent on background cycles. For example, new hires are normally done locally unless there is a mass hiring at a tribal department. Five-year background updates may also be batched, which increases Tribal requests of OJS. For example, the Seminole Tribe requested that OJS conduct five-year background investigation renewals for approximately 100 tribal officers.

Question 3a. Would section 201 of the BADGES for Native Communities Act allow OJS to conduct law enforcement personnel background checks for Tribal law enforcement, when requested to do so by Tribes, using the new in-house demonstration authority?

Answer. No, the general purpose is for "law enforcement positions in the Bureau of Indian Affairs." See Section 201(a)(l). However, under the Tribal Law & Order Act, if a tribal law enforcement program operating under a P.L. 93–638 contract or selfgovernance compact requests that OJS conduct background investigations for a tribal officer, OJS has 60 days to do so after receiving all required information. Funding for this mandate was not included in TLOA.

Committee Rule Compliance

Question 4. According to Committee Rule 4b, witnesses must submit testimony to the Committee 48 hours before the start of a hearing. Your testimony was received after the deadline. Please provide the date and time you submitted testimony to the Office of Management and Budget for clearance pursuant to Circular A–19.

Answer. Draft testimony was submitted to the Office of Management and Budget on June 14,2019 at 11:33 am Eastern Time.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO CHARLES ADDINGTON

Question 1. A 2017 Senate Committee on Indian Affairs hearing highlighted the prevalence of child sexual exploitation, including the online trading of child pornography, in communities with close proximity to Native lands or within Native communities. From your work with human trafficking investigations affecting Indian Country, is there a need to support legislation that works to improve state, local, tribal, and military law enforcement training and tools to further investigate and prosecute child pornography? If so, is the Bureau of Indian Affairs—and the Office of Justice Services specifically— willing to collaborate with Congress in this effort?

Answer. The Bureau of Indian Affairs (BIA), Office of Justice Services (OJS) has not encountered many child sexual abuse material cases in Indian Country. Most

sex crimes against children in Indian Country that we are aware of are cases ofhands-on-only sexual abuse or molestation. However, we would like to refer you to Homeland Security Investigations and the Federal Bureau of Investigations for more information on child sexual abuse material investigations. With ever changing crime trends, BIA OJS welcomes any collaboration with Congress and additional training that would enhance the skills of our Special Agents in efforts to identify and prosecute child sexual exploitation cases in Indian Country.

Question 2. A 2017 Government Accountability Office report found that while data on child sexual exploitation is collected by Department of Justice grantee programs, and by the Office of Juvenile Justice and Delinquency Prevention for minors, but the only easily accessible data comes from the National Human Trafficking Hotline. How can we improve both the data collection and reporting on these crimes, to better help policymakers craft effective solutions?

Answer. BIA OJS recommends enhancing Federal statutes to require all Indian Country law enforcement programs receiving any federal funds to use the same reporting format and submit the same statistical reports to the BIA OJS as prescribed by the OJS Director and as are required of all BIA law enforcement programs. This would assist BIA OJS in standardizing and collecting the required crime statistics from Indian Country law enforcement programs and allow public safety programs to collect adequate crime data to be analyzed so they can identify crime trends and apply resources to address the identified trends. BIA OJS 's Indian Country crime data is compiled from the monthly crime statistics submitted to BIA OJS by Tribal law enforcement programs. However, Tribal law enforcement programs often submit incomplete data or none at all. 25 CFR Part 12 requires Tribes to submit the monthly crime data but it has little consequences if they do not.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO HON. LYNN MALERBA

Question 1. There is a correlation between the number of IP addresses associated with the peer-to-peer trading of child pornography in a given area, and communities with a high native population. It is imperative that law enforcement officers be well trained and equipped to identify, track, and prosecute these offenders. As an official within your community, do you see the benefit of comprehensively training all law enforcement—tribal, federal, state, local, and military-on the best practices and tools to tackle online child pornography offenses?

Answer. Tribal law enforcement must have access to the same training and infrastructure opportunities as law enforcement for other units of government, and in accordance with the trust responsibility and obligations, the Administration and Congress must work to ensure full funding is appropriated for this purpose. The funding must be available to Tribal Nations directly and on a non-competitive basis. With regard to child pornography specifically, Indian Country's greatest and most precious resource is our children, as they represent the future of our Tribal Nations. The federal government must do more to ensure our children are protected from violence and exploitation. This includes restoring criminal jurisdiction to Tribal Nations for crimes against our children. As I noted in my verbal testimony during the hearing, it is a stain upon the United States and fundamentally immoral that our children continue to experience such disproportionately high rates of violence and exploitation. Every member of the Senate Committee on Indian Affairs and every member of Congress should take swift action to correct this injustice.

Question 2. A 2017 Government Accountability Office report found that while data on child sexual exploitation is collected by Department of Justice grantee programs, and by the Office of Juvenile Justice and Delinquency Prevention for minors, but the only easily accessible data comes from the National Human Trafficking Hotline. How can we improve both the data collection and reporting on these crimes, to better help policymakers craft effective solutions?

Answer. As with all data related to violence against and the exploitation of Native people in the United States, the reasons for poor quality, incompleteness, and under-collection are myriad. These include underreporting, racial misclassification, Tribal Nation lack of access to crime information and reporting mechanisms, bias and poor relationships with Tribal Nations on the parts of other units of government, poor record-keeping protocols at all levels of government, and a failure of the federal government to deliver upon the trust responsibility and obligations—including ensuring the proper funding is directly available to Tribal Nations for data collection. Currently, Tribal Nations must navigate a maze of funding vehicles and mechanisms, including negotiating agreements for the interagency transfer of funds to improve data and reporting. All of these issues must be examined and addressed

in consultation with Tribal Nations, if we are to improve data on Native child exploitation, as well as missing and murdered Native people.

Question 3. An element of improving data collection and reporting is the significance of identifying the Native status of women and youth who are victims of trafficking and sexual exploitation. Do you agree that it is necessary to include Native status in demographic data? Could this disaggregated data be used to improve culturally appropriate treatment and support programs for Native victims?

Tribal Nations, Congress, and the Administration all recognize that poor data collection and reporting is a contributing factor to the shameful injustice of missing, murdered, and exploited Native people throughout the United States. Put simply, it is impossible for the federal government to understand the full scope of this problem and its own failures to address it without committing to the collection of accurate data. That the federal government has not dedicated itself and its resources to improving data collection and tracking of missing, murdered, and exploited Native people is a violation of the trust responsibility and obligations. Including Tribal affiliation, in accordance with the unique government-to-government relationship between the United States and Tribal Nations, in data collection is but one step in correcting this failure. Improved data would have a variety of critical applications, including ensuring Congress and the Administration are appropriating critical resources for prevention, law enforcement, Tribal judicial infrastructure, and prosecution, as well as treatment and support.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO HON. MICHELLE DEMMERT

Question 1. There is a correlation between the number of IP addresses associated with the peer-to-peer trading of child pornography in a given area, and communities with a high native population. It is imperative that law enforcement officers be well trained and equipped to identify, track, and prosecute these offenders. As an official within your community, do you see the benefit of comprehensively training all law enforcementtribal, federal, state, local, and military-on the best practices and tools to tackle online child pornography offenses?

Answer. Yes, we do see a benefit to comprehensive training of all law enforcement—tribal federal, state, local and military—on the best practices and tools to tackle online child pornography offenses. If a tribal community is being targeted by these offenders, we ask that you engage, inform and collaborate with the nearby tribal communities so that all will be informed and will be approaching the situation from a unified approach to the extent possible.

The United States Department of Justice has testified to Congress that jurisdictional complexity has made the investigation and prosecution of criminal conduct in Indian country very difficult and that some violent crimes' convictions are thrown into doubt, recommending that the energy and resources spent on the jurisdictional questions would be better spent on providing tangible public safety benefits.[1] The Indian Law and Order Commission, a bi-partisan commission created by the Tribal Law & Order Act of 2010, concluded that "criminal jurisdiction in Indian country is an indefensible morass of complex, conflicting, and illogical commands."[2] While our attention has been largely placed on combating the disproportionate rate of domestic violence against our American Indian and Alaska Native women, we know that the jurisdictional complexities make our women and children targets for deviants and criminals.

For over three decades before amendments included in the reauthorization of the Violence Against Women Act in 2013 (VAWA 2013), tribes did not have jurisdiction over any crimes committed by non-Indians on their reservations.[3] In 1978, the Supreme Court ruled in *Oliphant v. Suquamish* that, absent specific direction from Congress, tribal nations do not have jurisdiction over crimes committed by non-Indians in Indian country.[4] Congress recognized the impacts of this ruling. According to the Senate Committee on Indian Affairs' Report on this issue, "Criminals tend

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[1] Testimony of The Honorable Thomas B. Heffelfinger, U. S. Attorney, Minneapolis, Minneapolis, Oversight Hearing before the Senate Committee on Indian Affairs on Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the United States Supreme Court, July 11, 2002.

[2] INDIAN LAW & ORDER COMM'N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER, (2013).

[3] *See, e.g.*, Angela R. Riley, *Crime and Governance in Indian country*, 63 UCLA L. REV. 1564, 1567 (2016) (discussing the history of criminal justice in Indian country, the resulting "jurisdictional maze," and the impacts of this maze on Native women).

[4] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

to see Indian reservations and Alaska Native villages as places they have free reign, where they can hide behind the current ineffectiveness of the judicial system. Without the authority to prosecute crimes of violence against women, a cycle of violence is perpetuated that allows, and even encourages, criminals to act with impunity in Tribal communities and denies Native women equality under the law by treating them differently than other women in the United States."[5] Numerous researchers and policy commissions have concluded for decades that jurisdictional complexities in Indian country were a part of the problem. And again, Alaska has a uniquely complex jurisdictional arrangement and no solution has yet been legislated.[6] As the Ninth Circuit summarized in a 1994 report, "Jurisdictional complexities, geographic isolation, and institutional resistance impede effective protection of women subjected to violence within Indian country."[7] Unfortunately, the amendments included in VAWA 2013 creating a framework for some tribes to exercise jurisdiction over domestic violence crimes are limited in scope and do not reach sex crimes.

Each of the three sovereigns has less than full jurisdiction, and the consequent need for multiple rounds of investigation often leads to a failure to act. Overall, law enforcement in Indian country requires a degree of cooperation and mutual reliance between federal, tribal, and state law enforcement that—while theoretically possible—has proven difficult to sustain. As described by Theresa Pouley, former Chief Judge at the Tulalip Tribes of Washington, "The combination of the silence that comes from victims who live in fear and a lack of accountability by outside jurisdictions to prosecute that crime, you've created if you will, the perfect storm.which is exactly what all of the statistics would bear out."[8] We need a unified approach and Tribes need to be part of the solutions.

Question 2. A 2017 Government Accountability Office report found that while data on child sexual exploitation is collected by Department of Justice grantee programs, and by the Office of Juvenile Justice and Delinquency Prevention for minors, but the only easily accessible data comes from the National Human Trafficking Hotline. How can we improve both the data collection and reporting on these crimes, to better help policymakers craft effective solutions?

Answer. As for human trafficking, we firmly believe that tribes need to be at the table to discuss solutions to human trafficking, data collection and reporting on these crimes to help policymakers craft effective solutions. Recently, there has been an increase in interest from Congress regarding human trafficking in tribal communities. The Government Accountability Office (GAO) released two reports on this topic in 2017.[9] On September 27, 2017, the Senate Committee on Indian Affairs held a hearing on "the GAO Reports on Human Trafficking of Native Americans in the United States."[10] Witnesses at that hearing included the GAO, the Bureau of Indian Affairs' Office of Justice Services (BIA OJS), the Department of Justice's Office of Tribal Justice and the Executive Director of the Minnesota Indian Women's Sexual Assault Coalition. I encourage you to review the testimony from that hearing to get a greater understanding of how the federal government attempts to address trafficking in tribal communities and statistics from a tribal perspective in an urban area.[11]

Prevalence of trafficking on tribal lands

In the United States, as well as in Canada, "there is no data collection/tracking method that provides a complete picture of sexual exploitation or human trafficking."[12] The data that is available supports the conclusion that AI/AN women are

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[5] S. Rep. No. 112–265, at 7 (2012).

[6] INDIAN LAW & ORDER COMM'N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER, (2013).

[7] John C. Coughenour et al., *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 745, 906 (1994).

[8] Tribal Justice: Prosecuting non-Natives for sexual assault on reservations, PBS NEWS HOUR (Sept. 5, 2015), *https://www.pbs.org/newshour/show/tribal-justice-prosecuting-non-natives-sexual-assault-indian-reservations.*

[9] GAO, Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-funded Services, GAO–17–325 (Washington, D.C.: Mar. 30, 2017), and GAO, Human Trafficking: Information on Cases in Indian country or that Involved Native Americans, GAO–17–624 (Washington, D.C.: July 24, 2017).

[10] *https://www.indian.senate.gov/hearing/oversight-hearing-gao-reports-human-trafficking-native-americans-united-states.*

[11] Farley M., N. Matthews, N. , Deer, S., Lopez, G., Stark, C, Hudon, E., (2011)Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota.

[12] Sweet, V. (2014). Rising Waters, Rising Threats: The Human Trafficking of Indigenous Women in the Circumpolar Region of the United States and Canada. Social Science Research Network. Retrieved from: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2399074.*

trafficked at disproportionately high rates. Across four sites surveyed in the U.S. and Canada as part of a 2015 report, an average of 40 percent of the women who had been trafficked identified as AI/AN or First Nations:

> "In Hennepin County, Minnesota, roughly 25 percent of the women arrested for prostitution identified as American Indian.In Anchorage, Alaska, 33 percent of the women arrested for prostitution were Alaska Native.In Winnipeg, Manitoba, 50 percent of adult sex workers were defined as Aboriginal. and 52 percent of the women involved in the commercial sex trade in Vancouver, British Columbia were identified as First Nations." [13]

It is important to note that in not one of these cities and counties do Native women represent more than 10 percent of the general population. And while these data are only snapshots of sex trafficking in major cities, similar trends are emerging in more remote, reservation communities. In 2015 alone, the White Earth DOVE Program (Down On Violence Everyday), which serves the White Earth, Red Lake, and Leech Lake Reservations in northwestern Minnesota, identified 17 adult victims of sex trafficking. [14] In northeastern Montana, the Montana Native Women's Coalition reported that they have observed a 12 to 15 percent increase over the previous year's program base (between 2014–2015) regarding the number of Native women who have been trafficked. [15]

In my home state of Alaska, the FBI and the BIA have warned tribal leaders that traffickers were preying on Native women and would be targeting young women who traveled to Anchorage for the Alaska Federation of Natives conference. [16] There has also been a great deal of discussion about the dangerous situation created for Native women by the oil boom in the Bakken region of North Dakota. [17] "Specifically, the influx of well-paid male oil and gas workers, living in temporary housing often referred to as 'man camps,' has coincided with a disturbing increase in sex trafficking of Native women." [18]

Human trafficking is a highly underreported crime for a variety of reasons, including the fact that "many trafficking victims do not identify themselves as victims. Some may suffer from fear, shame, and distrust of law enforcement. It is also not unusual for trafficking victims to develop traumatic bonds with their traffickers because of the manipulative nature of this crime." [19] Human trafficking also intersects with intimate partner violence in a way that can obscure the scope of the problem. According to the National Network to End Domestic Violence "there is a marked overlap in the pattern of behaviors that both abusers and traffickers use to exert power and control over a victim. Intimate partner trafficking occurs when an abuser '[compels] their partner to engage in commercial sex, forced labor, or involuntary servitude.' Alternatively, trafficked individuals sometimes live with their trafficker and are subjected to the physical violence, emotional manipulation, and overbearing control that are hallmarks of domestic violence." [20] Domestic and sexual violence are crimes that also disproportionately impact AI/AN women. The National Institute for Justice has found that 84 percent of AI/AN women will experience intimate partner violence, sexual violence, or stalking in their lifetime, and one in three have experienced it in the past year. [21]

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[13] Sweet, V. (2015). Trafficking in Native Communities. Published on 5/24/2015 by *Indian Country Today Media Network*. Retrieved from: *http://indiancountrytodaymedianetwork.com/2015/05/24/trafficking-native-communities-160475.*

[14] Dalrymple, A. and Lymn, K. (2015). Native American populations 'hugely at risk' to sex trafficking. Published on 1/5/2015 by the *Bismarck Tribune*. Retrieved from: *http://bismarcktribune.com/bakken/native-american-populations-hugely-at-risk-to-sex-trafficking/article_46511e48–92c5-11e4-b040-c7db843de94f.html.*

[15] Armitage, L. (2015). 'Human Trafficking Will Become One of the Top Three Crimes Against Native Women.' Published on 7/15/2015 by Indian country Today Media Network. Retrieved from: *http://indiancountrytodaymedianetwork.com/2015/07/15/human-trafficking-will-become-one-top-three-crimes-againstnative-women-161083.*

[16] *https://www.adn.com/rural-alaska/article/i-can-t-get-my-sister-back-investigators-warn-sex-traffickers-targeting-natives/2010/12/03/*

[17] *http://harvardjlg.com/wp-content/uploads/2012/01/jlg-winter-3.pdf*

[18] *Id.*

[19] PRC brief *http://www.ncai.org/policy-research-center/research-data/prc-publications/TraffickingBrief.pdf*

[20] *https://nnedv.org/latest_update/intersections-domestic-violence-human-trafficking/*

[21] DEPARTMENT OF JUSTICE, NAT'L INST. OF JUSTICE, VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN: 2010 FINDINGS FROM THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 26 (May 2016), *https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.*

Heightened Risk for American Indians and Alaska Natives

Traffickers prey on persons perceived to be vulnerable.[22] AI/AN women and girls have many of the indicators that increase vulnerability, including being a relatively young, high-poverty population, high rates of homelessness and substance abuse, exceptionally high rates of past violent victimization, and a lack of resources and support services.[23] An FBI agent involved with prosecuting trafficking cases in Anchorage has said that Native women are also particularly vulnerable because "[t]here have been traffickers and pimps who specifically target Native girls because they feel that they're versatile and they can post them (online) as Hawaiian, as Native, as Asian, as you name it."[24]

Compounding these demographic vulnerabilities is the lack of an effective law enforcement and criminal justice system in many places. Current federal law limits the authority of Indian nations to fully protect victims of crime and respond to crimes of trafficking that occur on their lands. Criminal jurisdiction in Indian country is divided among federal, tribal, and state governments, depending on the location of the crime, the type of crime, the race of the perpetrator, and the race of the victim. The rules of tribal jurisdiction were created over 200 years of Congressional legislation and Supreme Court decisions—and are often referred to as a "jurisdictional maze."[25]

The complexity of the jurisdictional rules creates significant impediments to effective law enforcement in Indian country. Each criminal investigation involves a cumbersome procedure to establish who has jurisdiction over the case according to the nature of the offense committed, the identity of the offender, the identity of the victim, and the exact legal status of the land where the crime took place. The first law enforcement officials called to the scene are often tribal police or BIA officers, and these officers may initiate investigations and/or detain a suspect. Then a decision has to be made—based on the race of the individuals involved in the crime, the type of crime committed, and the legal status of the land where the crime occurred—whether the crime is of the type warranting involvement by the FBI or state law enforcement.

The United States Department of Justice has testified to Congress that jurisdictional complexity has made the investigation and prosecution of criminal conduct in Indian country very difficult and that some violent crimes convictions are thrown into doubt, recommending that the energy and resources spent on the jurisdictional questions would be better spent on providing tangible public safety benefits.[26] The Indian Law and Order Commission, a bi-partisan commission created by the Tribal Law & Order Act of 2010, concluded that "criminal jurisdiction in Indian country is an indefensible morass of complex, conflicting, and illogical commands."[27] These challenges are not unique to trafficking cases, but they undoubtedly complicate the justice response and make reservations an attractive target for traffickers. Native women as a population are often viewed as unprotected prey and the pleas of victims and their families for help go unheard. One mother in Alaska, reported:

> "[m]y daughter was and still is a victim of sex trafficked women. I reported it to the authorities and received no help. I told them the address, location, and names of her traffickers. The Anchorage Police Department would not listen to me until I got my two white friends to make a call for me. I contacted Priceless Alaska but they would not help me unless a State Trooper investigates and makes a referral to their organization. No one would help me. I also called the FBI, three times, and they did not respond. Through, my 2 white friends, I reported her missing. My daughter was held, by traffickers, at Eagle River, Alaska, for 4 months."
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> —Martina Post, Testimony of the Native Village of Alakanuk, USDOJ Tribal Consultation, December 6, 2016

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[22] Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, Fiscal Year 2015.

[23] *https://www.indian.senate.gov/sites/default/files/upload/Tracy%20Toulou%20Testimony_0.pdf*

[24] *https://www.adn.com/rural-alaska/article/i-can-t-get-my-sister-back-investigators-warn-sex-traffickers-targeting-natives/2010/12/03/*

[25] See Robert N. Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 ARIZ. L. REV. 503, 508–13 (1976).

[26] Testimony of The Honorable Thomas B. Heffelfinger, U. S. Attorney, Minneapolis, Minneapolis, Oversight Hearing before the Senate Committee on Indian Affairs on Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the United States Supreme Court, July 11, 2002.

[27] INDIAN LAW & ORDER COMM'N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER, (2013).

In Alaska 28 percent of the youth at Covenant House Alaska were survivors of human trafficking and Alaska experiences the most heinous cases of sex trafficking in the nation. The researcher, Dr. Laura Murphy of Loyola University's Modern Slavery Research Project, reported that from among all the Covenant House sites across the country, Alaska had the most brutal cases of sex trafficking—worse than the big, crime-filled cities of Los Angeles, Detroit, New Orleans and even New York.[28]

Question 3. An element of improving data collection and reporting is the significance of identifying the Native status of women and youth who are victims of trafficking and sexual exploitation. Do you agree that it is necessary to include Native status in demographic data? Could this disaggregated data be used to improve culturally appropriate treatment and support programs for Native victims?

Answer. When it comes to collecting data and reporting, it is critical to identify the Native status of women and youth who are victims of trafficking and sexual exploitation. Our women and especially our women targeted with these crimes have great need for assistance, as not only do they need services, but they also need stable housing, medical and legal services. This disaggregated data can be used to improve culturally appropriate treatment and support programs for Native victims and also tell the true story of the grossly disproportionate rate that our women are subjected to in crimes of violence, trafficking and sexual exploitation.

Federal Response

Investigating and prosecuting trafficking crimes in tribal communities is largely the responsibility of the federal government, although in some cases the tribal or state government will have concurrent jurisdiction. According to the GAO, there are four federal agencies that investigate or prosecute human trafficking in Indian country—the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Attorneys' Offices (USAOs).[29] GAO reports that the BIA, FBI, and USAOs record whether a trafficking case occurred in Indian country in their case systems, but ICE does not. None of the federal agencies track whether the victim is Native American or not.[30] In its recent report, the GAO found that from 2013–2016, there were only 14 federal investigations, and 2 federal prosecutions of human trafficking offenses in Indian country.[31] Given what we know about the prevalence of trafficking in tribal communities and the responsibility of the federal government to investigate and prosecute this crimes, this is extremely concerning. The GAO released a second report in July 2017 examining the extent to which local law enforcement agencies or tribal governments were filling the void left by federal law enforcement agencies and investigating and prosecuting trafficking cases. The GAO surveyed 203 tribal law enforcement agencies and 86 major city law enforcement agencies. Of the 132 tribal law enforcement agencies who responded, 27 of them reported that they initiated human trafficking investigations between 2014–2016, for a total of 70 investigations involving 58 victims. The GAO asked tribal law enforcement agencies about the number of human trafficking investigations they conducted in Indian country. The question posed to major city law enforcement agencies differed, however. They were asked about the number of human trafficking investigations that involved at least one Native American victim. Only 6 of the major city law enforcement agencies reported human trafficking cases with at least one Native American victim. Those 6 reported a total of 60 investigations involving 81 Native American victims from 2014–2016. The Minneapolis Police Department reported 49 of the 60 total investigations. GAO reported that the Minneapolis Police "made a concerted effort, starting in 2012, to meet with tribal elders and service providers who worked with the Native American population to demonstrate their willingness to investigate human trafficking crimes. The officials stated that, following those meetings, the number of human trafficking crimes involving Native American victims that were reported to the department increased."[32]

GAO reported that tribal law enforcement agencies believe that human trafficking is occurring at a higher rate than is being reported. Unsurprisingly, when tribal law enforcement were asked to identify factors that hampered their ability to hold traf-

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[28] Murphy, L.T., (2017) Labor and Sex Trafficking Among Homeless Youth 12.

[29] *https://www.indian.senate.gov/sites/default/files/upload/Gretta%20Goodwin%20Testimony.pdf*

[30] *https://www.indian.senate.gov/sites/default/files/upload/Gretta%20Goodwin%20Testimony.pdf*

[31] *https://www.indian.senate.gov/sites/default/files/upload/Gretta%20Goodwin%20Testimony.pdf*

[32] *https://www.gao.gov/assets/690/687396.pdf,* at 10.

fickers accountable several themes emerged: (1) victims are unwilling to cooperate; (2) lack of resources, such as necessary training, equipment and funding for sex crime investigations; (3) inter-agency cooperation is absent or deficient; and (4) a lack of appropriate laws in place.

Conclusion

While human trafficking effects every community, there is a growing awareness and concern that Native women and girls are particularly vulnerable and are victims of sex trafficking at an alarming rate. We have no reason to believe that given these facts, that when it comes to online pornography, our women and children will be targeted by those individuals too. There is a particular concern about the relationship between both intimate partner violence and the extractive industries and sex trafficking. It is important that Congress take action to hold federal officials accountable for their failure to adequately investigate and prosecute trafficking crimes in tribal communities, while also ensuring that tribal governments have the resources and authority that they need to address these issues. Gunalchéesh, Háw'aa, or in other words, thank you for asking these important questions.

RESPONSES TO THE FOLLOWING QUESTIONS FAILED TO BE SUBMITTED AT THE TIME THIS HEARING WENT TO PRINT

WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO TRACY TOULOU

Officer Response to Domestic Violence Calls

Question 1. According to an April 9, 2018, article by USA Today, FBI data shows that more officers died responding to domestic disturbances than during drug-related arrests between 1986 and 2016.[1] What does the Department's research into officer assaults and fatalities indicate about the dangers of responding to domestic violence and domestic disturbance calls?

Unmet Law Enforcement Staffing Needs

Question 2. The FBI's Uniform Crime Report estimates police employee data by calculating the number of sworn officers and law enforcement personnel per 1,000 inhabitants. The Bureau of Indian Affairs used this same metric as the basis for determining its unmet officers staffing need in its 2017 "Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country". Does the Department of Justice measure staffing levels for criminal investigators and prosecutors? b. What research, if any, is the Department of Justice aware of that suggests minimum or recommended staffing levels for criminal investigators and prosecutors?

Jurisdiction

Question 3. In your written testimony on S. 288 and S. 290, you state, "Because exercising criminal jurisdiction is such a crucial aspect of sovereignty, the Department would welcome the opportunity to work with the Committee to ensure that [S. 288 and S. 290] will weather judicial challenges."

a. Is the Department aware of any judicial challenges to date regarding Tribal exercise of special domestic violence criminal jurisdiction?
b. What suggestions would the Department make to ensure that S. 288 and S. 290 can "weather judicial challenges"?

Federal Criminal Databases

Question 4. The Government Accountability Office's recent report GA0–16–515 included a recommendation that the Department of Justice evaluate options to share information between NCIC and NamUs. According to the report, the Department indicated that NamUs does not qualify under federal law for access to the NCIC and is not authorized to receive NCIC data. Does the Department still assert that it needs statutory authorization from Congress to allow NamUs to access and receive data from NCIC?

Question 5. In response to a question at the hearing about linking the National Crime Information Center (NCIC) and the National Missing and Unidentified Persons System (NamUs) to share information, you stated, "We've made efforts already

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[1] Natalie Schreyer, *Domestic Abusers: Dangerous for Women—and Lethal for Cops*, USA TODAY, Apr. 9, 2018, *https://www.usatoday.com/story/news/nation/2018/04/09/domestic-abusers-dangerous-women-and-lethal-cops/479241002/*.

to try to put those two databases in contact. . .it's underway—it's tricky—but we agree the two databases should speak to each other." Please describe the current efforts underway at the Department of Justice to coordinate between NCIC and NamUs you referenced in this response.

Question 6. According to testimony from Central Council Tlingit and Haida Indian Tribes Chief Justice Michelle Demmert, "28 USC 534(d) authorizes release of criminal history information to Tribal law enforcement agencies, but doesn't allow release of criminal information to other Tribal agencies for important, legitimate civil purposes, such as Emergency Placement of Children or 'Purpose Code X,' employees that work with elders and vulnerable adults, etc. CJIS interprets the appropriations rider language from 92–544 (and in the notes of 28 USC 534) as a permanent statute that prevents sharing this information with Tribal governments. . .A state can legislate to authorize this access, whereas a Tribe does not have that direct access and often has to use channelers or use Lexis/Nexus."

a. Can states access federal criminal databases for the civil purposes referenced by Chief Justice Demmert? And, if so, what federal statutory authority grants this access?
b. Can all Tribes with Tribal Access Program (TAP) terminals access the FBI's criminal databases for the civil purposes referenced by Chief Justice Demmert?
c. If Tribes cannot use these databases for civil purposes, what statutory changes would Congress need to make to grant Tribes access for these purposes?

Committee Rule Compliance

Question 7. According to Committee Rule 4b, witnesses must submit testimony to the Committee 48 hours before the start of a hearing. Your testimony was received after the deadline. Please provide the date and time you submitted testimony to the Office of Management and Budget for clearance pursuant to Circular A–19.

WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO TRACY TOULOU

Question 1. Communities with a high Native population, including Hawaii, continue to have a disproportionately high number of child sexual exploitation—including child pornography, child sexual abuse, and child sex trafficking—victims. In many areas, this stems from a lack of coordination between federal, state, local, tribal, and military law enforcement agencies on issues stemming from child pornography to child sex trafficking. For example, while the Federal Bureau of Investigation, Homeland Security Investigations, 61 Internet Crimes Against Children (ICAC) Task Forces, and over 4,000 state and local law enforcement agencies are both trained on and use the ICAC Child Online Protective Services (ICACCOPS) program to identify unique Internet Protocol (IP) addresses used for the peer-to-peer file trading of child pornography. Military criminal investigative organizations, however, do not train on or use the ICACCOPS program. Would the department be supportive of working with military law enforcement agencies—in addition to continuing the current work with state and local law enforcement—to incorporate training on how best to identify, track, and combat the trading of child pornography?

Question 2. In discussions with stakeholders in Hawaii, a consistent problem with addressing child sexual exploitation is the issue of collecting and managing data on the number of victims identified or rescued each year. Anecdotally, we have heard from service providers that Native Hawaiian children make up over 90 percent of victims of in Hawaii. What percentage of domestic child sexual exploitation victims are Native American, including American Indian, Alaska Native, and Native Hawaiian children?

Question 3. A 2017 Government Accountability Office report found that while data on child sexual exploitation is collected by Department of Justice grantee programs, and by the Office of Juvenile Justice and Delinquency Prevention for minors, but the only easily accessible data comes from the National Human Trafficking Hotline. How can we improve both the data collection and reporting on these crimes, to better help policymakers craft effective solutions?

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