



**Navajo Nation Statement
To the
U.S. Senate Committee on Indian Affairs 108th Congress
Committee Oversight Hearing on
Indian Tribal Detention Facilities
June 23, 2004**

Mr. Chairman, Mr. Inouye and members of the Committee, thank you for the opportunity to provide the Navajo Nation's statement on Indian Tribal Detention Facilities. The Navajo Nation personally thanks the Committee for its support of Indian detention facilities and for funding adult and youth detention facilities in Indian country. The Navajo people directly benefit from the support the Committee has given to Indian detention facilities.

For the record, my name is Hope MacDonald-LoneTree. I am an elected Navajo leader and serve as the Chairperson to the Public Safety Committee of the Navajo Nation Council. In addition, I've been appointed by the Speaker of the Navajo Nation Council to serve as the Navajo Nation tribal leader representative to the joint Bureau of Indian Affairs/Tribal Budget Advisory Council's Workgroup on Indian Law Enforcement, a national workgroup assembled to advocating Indian law enforcement budgetary needs.

Today's hearing marks an historic meeting for Indian governments, as it involves the participation of Indian leader's comment and offer recommendations on federal-Indian policy on Indian detention facilities. As we will present and have been a participant to, the funding of Indian detention facilities construction success reaches as far as the willingness of the Bureau of Indian Affairs promotes detention facility parity in Indian country. And as the Nation with the largest population on the largest Indian reservation, certainly we bring various unique sets of geographical, demographical and intergovernmental features that require significant congressional awareness and leadership.

For the Navajo Nation, new facility construction and facility maintenance and repair funding is a paramount issue. This is because of several factors and trends that have been longstanding, unresolved and now to a significant degree, recent. First, the Navajo Nation rests in between three separate state jurisdictions and is a major commercial corridor to the southwestern portion of the United States. In addition, major homeland security efforts underway by the Bureau of Indian Affairs' Office of Law Enforcement Services (OLES) and the Navajo Nation of sharing criminal data between the three state jurisdictions, and numerous surrounding counties and a host of surrounding Indian law enforcement agencies point toward increased incarceration trends in our immediate future. These agreements, while it pursues to confront and subdue criminal activity through the use of technology, adds a whole new set of criminal population into our already over-populated capacity and dilapidated facilities much of which were built in late 1950's and early 1960's.

Most certainly, we welcome homeland security efforts and the application of technology to curb criminal activity on the Navajo Nation. We, like the Committee, understand that there is a strong relationship between the rate of criminal activity and the budgetary resources applied. We've seen the outcome of this relationship, when Congress appropriated funding for the Community Oriented Policing (COPS) grants program. Prior unreported criminal incidences became reported incidences

due to additional funding for law enforcement personnel. Yet, increased incidence reporting and correspondingly their arrests and convictions, did not naturally convert to their incarcerations. Our dilemma was that we did not have the facility capacity or the funding for detention center personnel to incarcerate convicted individuals over the course of their sentences.

Further, since 1992, our courts recognized the conditions of our facilities that it mandated our detention facilities to comply with the provisions set forth pursuant within the *Silver v. Pah* Consent Decree. The consent decree's goal is to ensure that incarcerated inmates are free from any structural, physical safety and health hazards while incarcerated within Navajo Nation operated detention facilities. Unfortunately, continual findings of non-compliance incidences continue to plague any attempts to meet the court-ordered standards over a sustained period of time. And failure to comply with court-ordered mandates has resulted in facility closures and allowing convicted criminals to return back to our their communities. Recently, the Tohatchi, New Mexico youth detention facility was closed in October 2003, to repair the fire alarm system and to date is still closed due to insufficient funding to pay for repairs.

Because convicted criminals are allowed back into their communities, criminal incident recidivism rates are certain to increase. We are faced with criminals who have total disregard for our criminal justice system, because their government cannot incarcerate them without putting them at significant physical and health risk. It is a customary occurrence in our criminal justice system that upon a conviction being rendered, almost immediately the convicted criminal is let go moments, not days or weeks later, minutes rather. And it would be within a month, even a week, the same released criminal is processed through for conviction and only to be let go without serving the conviction.

These unresolved and longstanding issues have put our communities and our officers at immense risk. Our effort to make our communities safe is a battle we cannot win if criminals cannot serve their sentences at detention facilities deemed unsafe. On March 16, 2003, the U.S. Attorney's Office in Flagstaff, Arizona stated that violent crime on the Navajo Nation was six times higher than the national average. Imagine that in mainstream America, where neighborhood children and families do not feel safe in their communities, where businesses would not want to invest and where criminal activity festers new generations of criminal individuals. Imagine, in America, where an arresting law enforcement officers risk their life, limb and family, when a released convicted criminal wants nothing more than to get back at the arresting officer and knows that their crime will go unpunished. It is our opinion, that the U.S. Attorney's statement validates our understanding that crime if unpunished, will raise or continually stay at high levels, similar to what the Navajo Nation has been experiencing. And certainly our crime rate will continue to rise due to our rising on-reservation population, insufficient economic opportunities and the inadequate federal policy on criminal abatement on Indian lands.

How else is America's largest populated Indian reservation ever to turn around its rate of crime? How else is our criminal justice system ever to adequately partner with other jurisdictions, when all we do is release our criminals back into our communities?

We are certain we can make significant contributions not only to our jurisdiction, but also to those of surrounding jurisdictions as well. We have learned that other jurisdiction's criminal justice

system can be put under significant amount of strain simply because of the Navajo Nation's systemic problem of being unable to sentence its convicted criminals. Our Nation must be provided the opportunity to administer a criminal justice system the way it was meant to be carried out and as it is carried-out in a lot of places in America.

The Navajo Nation does not see any distinct resolution to our unique problem. We have witnessed that in the Fiscal Year 2005 President's budget is now the third consecutive year where no new detention facility construction funding is requested. We have also noted that within the FY2003 President's budget request, eleven (11) detention center facility lists (as approved by Congress) were scheduled to be funded. The following table reported in the FY2003 President's budget request lists the eleven remaining facilities, by ranked order:

Table 1. Unfunded Detention Facility Priority List

Rank	Tribe/Reservation
7.	Salt River Pima
8.	Colville Confederated Tribes
9.	Navajo—Crownpoint, NM
10.	Navajo-Kayenta, AZ
11.	Navajo-Shiprock, NM
12.	Mississippi Band of Choctaw Indians
13.	Tohono O'odham
14.	Confederated Tribes of the Umatilla Indians
15.	Eight Northern Pueblo
16.	San Carlos Apache Tribe
17.	Three Affiliated Tribes of Ft. Berthold

As the Committee can see, the Navajo Nation would have been scheduled for three detention facility construction projects after FY2003, according to the priority listing approved by Congress. In contrast, OLES' "Draft Strategic Plan," dated April 1, 2004, while it does not recommend a facility construction priority listing, the plan does categorize BIA and Tribal detention facilities into three categories: poor, fair and good. Only the Kayenta, Arizona project was reported. The Crownpoint and Shiprock projects were not reported. OLES' draft plan also provides facility "regional" construction funding estimates at \$18 million for each year starting in FY2007 through FY2010. The plan does not distinguish if tribes or OLES' own facilities are planned for facility construction funding.

Inconsistencies between the Congressional approved priority listing and OLES' draft plans draw concerns for the Navajo Nation. Another citation noteworthy to the Committee is the Department of Interior's (DOI) Office of Inspector General and an Independent Auditor report on "Top Management Challenges" The report consistently states that the BIA has not corrected its facilities maintenance backlog reporting. This finding is again cited in the recent Independent Audit Report, dated November 28, 2003.

In February 2002, DOI estimated that the deferred maintenance backlog was between \$8.1 billion and \$11.4 billion. The maintenance needs for the National Park Service (NPS) and the Bureau of Indian Affairs (BIA) facilities alone account for over 85 percent of the DOI-wide

deferred maintenance backlog. DOI's February 2002 report stated that the repair and maintenance on these assets have been postponed for years due to budgetary constraints and that the deterioration of facilities adversely impact public health and safety, reduce employee morale and productivity, and increases the need for costly repairs or early replacement of structures and equipment.

Mr. Chairman and members of the Committee, the Navajo Nation does not agree with the OLES' draft strategic plans of addressing the Indian detention facilities construction funding estimates, because they were not considered as a part of or referenced to the 2003 Audit Report. If there are any corrective action plans, tribes like the Navajo Nation have not been informed.

In a December 2001 report (No. 2002-I-0008), OIG outlined a comprehensive approach to maintenance management within DOI. The report stated that DOI needs to implement a comprehensive maintenance management system to effectively plan, prioritize, conduct, and track the condition and maintenance of facilities within all bureaus. Also, DOI needs to provide long-term leadership to keep money available to address the long-standing issues of deferred maintenance.

In FY2003, the DOI reported it lacked consistent, reliable, and complete information to plan, budget, and account for resources dedicated to maintenance and construction activities. DOI planned to identify and implement a comprehensive maintenance management system with an appropriate linkage to the accounting system; conduct comprehensive condition assessments; make determinations to repair, replace, or relocate facilities; develop a five-year Deferred Maintenance Plan and Capital Improvement Plan; repair and/or replace facilities to good condition, and reduce deferred maintenance to established goals by FY2005.

While the DOI plan has made demonstrable strides in developing a framework to address Indian detention facilities management issues, Indian detention facility maintenance and construction in DOI remains an enormous challenge.

The Navajo Nation extends to the Committee our recommendations directed specifically as policy measures, aimed at addressing the National Indian Detention Facilities crisis, that:

- A. the Committee direct OLES, BIA and the Department to jointly work with the Department of Justice on Submitting FY2006 and FY2007 Facility Construction Funding Needs and Budget Strategy back to the Committee, to the House Interior on Appropriations Subcommittee and oversight committee for the Department of Justice;
- B. the Committee direct OLES, BIA and the Department to jointly work with the Department of Justice on Submitting FY2006 Facility Construction Funding Needs and Budget Strategy as a part of the Department's FY2006 Budget Request Submission to the Office of Management and Budget;
- C. the Committee monitors the OLES recommendations to revise OLES' Strategic Plans, specifically as it pertains to constructions of detention facilities located on Indian lands; and

D. the Committee directs OLES to coordinate Regional/District Tribal Consultation on the office's recommended revision(s) to its' Strategic Plans, specifically as it relates to Indian Detention Facilities;

Thank you for the opportunity to convey our concerns and we respectfully request an opportunity to work with the Committee regarding this issue.

APPENDIX II

Contract Support Costs (CSC). The FY 2005 President's budget requests \$133,314,000 for CSC, \$334,000 or .25% decrease from FY 2004 enacted level. The Administration has consistently not funded CSC at 100%. Rather, this now-Congressional sanctioned impasse has produced nothing more than capping CSC at 89% since FY 2003.

The Navajo Nation strongly urges the Administration to restore 100% CSC funding for tribes in FY 2005, and to consider restoring CSC funding not received for FY's 1999-2004 as a special appropriation.

FY 2003 Estimated Carry-Over. The President's FY2005 budget requests a one-time \$5,400,000 reduction as a result anticipated carry-over from FY 2003. The Administration must note that the FY 2003 Interior bill was signed into law until and that disbursement to tribes and the BIA was not made fully available until late March 2003, causing all BIA operations to expend their appropriated funds within approximately 75% of the fiscal year remaining.

The Navajo Nation requests the Administration to add any FY2006 anticipated carry-over reduction and all future carry-over reductions be added to ISDA funding base for ISDA programs.

Restore Full 638 Pay Cost Funding. The Administration must restore full 638 Pay Cost funding for tribes. Tribes count on the cost of living pay increase, which is similar to what the Administration and Congress provide for federal employees each year. Due to the Administration's budget decision, tribes like the Navajo Nation received only 30% of their pay cost adjustment in FY 2004, 15% in FY 2003 and 75% in FY2002. The shortfall of 638 Pay Cost funding for these years have caused ISDA programs to absorb the cost by reducing operations and direct services to ISDA clients.

The Navajo Nation strongly urges the Administration to restore 100% 638 Pay Cost funding for tribes in FY 2005 and FY2006, and to consider restoring 638 Pay Cost funding not received for FY's 2002-2004 as a special appropriation.

Provide Training to Tribes of Base Line Data for Budgets and Performance. Since FY 2002, Indian tribes have been left out of the discussions regarding the implementation of the Administration's Management Agenda. Our ISDA programs have been left to defend for themselves when the Program Assessment and Rating Tool (PART) assessment were being administered in FY 2003 and as more are scheduled in FY 2004 and FY 2005. And all the while, the Office of Management and Budget continues to rate Bureau and Tribal-operated programs with yellow on progress and red on status, linking budget decisions to performance measures and cost management information to improve budget performance integration.

We request the BIA to establish high-level coordination with Tribes on their reporting requirements and with their method of processing tribal financial and performance accomplishment reports for purposes of developing the annual budget. By that token, we request new funding be provided to the BIA and Tribe's ISDA programs for training on the various report requirements and requests the Performance Assessment Rating Tool demands.