



United South and Eastern Tribes, Inc.

Nashville, TN Office:

711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
Phone: (615) 872-7900
Fax: (615) 872-7417

Washington, DC Office:

400 North Capitol Street, Suite 585
Washington, D.C., 20001
Phone: (202) 624-3550
Fax: (202) 393-5218

USET Comments on the Senate Committee on Indian Affairs Roundtable, “The Tribal Law and Order Act 5 Years Later: Next Steps to Improving Justice Systems in Indian Communities”

March 29, 2016

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following comments regarding the status of the Tribal Law and Order Act (TLOA) in the USET SPF region. Passage of TLOA in 2010 was a major victory for Tribal jurisdiction, self-determination, and the fight against crime in Indian Country. This law provides critical opportunities for Tribal Nations to assume new authorities and responsibilities for protecting their homelands. However, five years later, there remain barriers for many Tribal Nations, including USET SPF member Tribal Nations, to the assumption of these new authorities.

USET SPF is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine.¹ USET SPF is dedicated to enhancing the development of federally recognized Indian Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people. This includes advocating for the full exercise of inherent Tribal sovereignty.

USET SPF echoes much of what was discussed during the SCIA roundtable on February 25th, including what needs to be improved if TLOA is to be truly effective in Indian Country. We agree that federal funding for many of the provisions of this law continues to be severely lacking. USET SPF strongly supports all efforts to enhance TLOA's implementation and benefit to Tribal Nations. We request that in considering reauthorization of TLOA, SCIA focus on achieving full implementation of the law for ALL Tribal Nations. In the interest of our Member Tribal Nations, we would like to underscore and urge action on the following issues:

Sentencing Authority

Many USET SPF Tribal Nations have an interest in implementing enhanced sentencing authority under TLOA, as an increase in Tribal sentencing is more likely to deter crime, which continues to rise on our reservations. However, with the exception of the Eastern Band of Cherokee Indians, no USET SPF member Tribal Nation is currently exercising this authority. Our region is not unique in this regard. Nationally, only a handful of Tribal Nations have implemented or are in the process of implementing this provision.

A primary barrier to the exertion of enhanced sentencing in the USET SPF area and beyond is the lack of federal funding to support Tribal Court systems. For Tribal Nations to fully exercise new authorities, their courts need to

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), 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 the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

comply with costly requirements. Currently, many Tribes do not have adequate funding to abide by these requirements and will not be able to assume new authorities. Through USET SPF's participation on the Tribal Interior Budget Committee (TIBC), USET SPF member Tribal Nations have consistently identified Tribal Courts as a top priority for line item funding increases within the Bureau of Indian Affairs' budget. With an average funding level of around \$75,000, Tribal Nations can barely afford the work of a part-time judge, let alone institute the other types of judicial infrastructure required by TLOA. For Fiscal Year (FY) 2017, the President's Budget Request contains just a \$2.6 million increase for Tribal Courts, with the bulk of these dollars going to the Tiwahe Initiative. USET SPF supports the Tiwahe Initiative's aims wholeheartedly. However, we have concerns that little funding will be dedicated to the judicial infrastructure necessary to implement the enhanced sentencing authority provided by TLOA. We urge this Committee to support increased funding for Tribal Courts in pursuit of this goal.

Compounding and in addition to insufficient funding are the unique circumstances faced by some USET SPF member Tribal Nations in which land claim settlement acts with their respective states are being severely misinterpreted. These land claim settlement acts were primarily intended to provide certainty to landowners concerning disputed title to claimed lands. Unfortunately, top officials in some of these states assert that these settlement acts prevent the execution of any federal law passed afterward for the benefit of Tribal Nations unless Nations with restrictive settlement acts are explicitly identified in statute. That is, these Tribal Nations are currently restricted from accessing any legislative gains made in recent years for Indian Country, including the benefits of TLOA. Some USET SPF member Tribal Nations report being threatened with lawsuits, should they attempt to implement TLOA's enhanced sentencing provisions. 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 a long-term solution to this problem with the Committee. In the short-term, we urge this Committee to include language in the upcoming TLOA reauthorization that ensures the law applies to all federally-recognized Tribal Nations.

Drug Enforcement

A stated purpose in the bill text of TLOA is, "to prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country." Yet, this objective remains elusive throughout much of Indian Country, including within the USET SPF region. USET SPF member Tribal Nations are in desperate need of adequate law enforcement resources, especially those for drug enforcement. Drug abuse and trafficking, particularly opioids, is a persistent and growing problem in Indian Country, including within the USET SPF Area. However, in our BIA Drug Enforcement Region (from ME to FL to NM to the central US), there are only 7 drug enforcement agents assigned to serve over 100 Tribal Nations.

USET SPF continues to advocate for increased funding for law enforcement (a BIA line item that was reduced in the President's FY 2017 budget request), including drug enforcement. Though our Tribal patrol officers perform a vital role in addressing drug issues within a community, drug investigations are conducted primarily by specialized units or task forces on departmental, statewide and federal levels. These units involve enhanced intelligence gathering, information sharing, controlled buys, surveillances and other factors. Our BIA Drug Enforcement Region needs much more than 7 personnel available for this purpose.

State-Tribal-Federal Collaboration

Much of the implementation of TLOA depends on collaboration between Tribal, state, and federal governments, including issues related to jurisdiction, cross-deputization, cooperative agreements, and information sharing. While USET SPF member Tribal Nations continue to have meaningful and productive collaboration with federal partners, many Nations report difficulty in achieving similar relationships with states. While USET SPF recognizes that many of these difficulties are deep-seeded, we request that this Committee and our partners within federal government seek methods of ensuring states engage in meaningful consultation with Tribal Nations we they

collaborate on the implementation of TLOA. As it considers the reauthorization of TLOA, USET SPF encourages SCIA to include provisions requiring states to meaningfully consult with Tribal Nations.

Conclusion

USET SPF thanks SCIA for conducting such a lengthy and thorough examination of the current state of TLOA via its February 25th Roundtable. Though there is still much work to be done to ensure that all Tribal Nations across the United States have the ability to exercise sovereignty through TLOA, we are hopeful that with additional funding and improved language, many more Tribal Nations will be able to implement provisions of this vital law. We appreciate SCIA's attention to our comments and look forward to further opportunities to discuss TLOA's reauthorization.

"Because there is strength in Unity"