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November 21, 2023

Testimony of United South and Eastern Tribes Sovereignty Protection Fund Submitted to the Senate Committee on Indian Affairs for the Record of the November 8, 2023 Oversight Hearing, "*Fentanyl in Native Communities: Native Perspectives on Addressing the Growing Crisis*"

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide the Senate Committee on Indian Affairs with testimony for the record of the oversight hearing "Fentanyl in Native Communities: Native Perspectives on Addressing the Growing Crisis," held on November 8, 2023. As the Committee well knows, the opioid crisis has had a devastating effect on USET SPF Tribal Nations and Tribal Nations across the country who continue to experience the destructive effects of opioid addiction at rates higher than non-Indian communities. According to the Centers for Disease Control and Prevention (CDC), American Indians and Alaskan Natives (AI/ANs) experienced the highest rates of opioid overdose deaths of any racial or ethnic group in both 2020 and 2021. Between 2020 and 2021 alone, Tribal communities experienced a staggering 33% rise in overdose deaths[1], the vast majority of which are the result of opioids, particularly synthetic opioids like fentanyl. Despite the disproportionate impact opioid use has had in Indian Country, Tribal Nations continue to lack access to sufficient, critical resources to address the damaging effects of opioid abuse in our communities. USET SPF offers the following comments and recommendations to the Committee to underscore the need for Congressional action, in accordance with trust and treaty obligations, to ensure Tribal Nations have the resources necessary to address this epidemic.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.[2] USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

[1] "Drug Overdose Deaths in the United States, 2001-2021," Centers of Disease Control and Prevention

[2] 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), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), 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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Rappahannock Tribe (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Data Collection and Access Challenges Result in Insufficient Resources

It is unquestionable that opioid abuse, deaths, and trafficking have reached epidemic levels in the United States, but particularly in Indian Country. Available statistics already show that AI/AN peoplehad the highest rates of drug related deaths in recent years, and information from the Indian Health Service (IHS) indicates that AIANs are more likely than any other race/ethnicity to have an illicit drug use disorder. According to the National Institutes of Health (NIH), opioid mortality rates for AI/AN populations have risen almost continuously for nearly two decades.

However, USET SPF suspects that rates of AI/AN opioid overdose and addiction among Tribal Nations are likely much higher than even national statistics and current data reveal. Per the CDC, misclassification of race on death certificates "results in the underestimation of death rates by as much as 34%" for AI/AN people. Further, currently available data fails to fully illustrate the impacts opioids are having in Tribal communities, as data access within the Indian Health System is limited and often incomplete. To assess the full scope of impacts opioids are having in our communities, Tribal Nations require strengthened data collection activities at all levels. However, no funding is currently available to Tribal Nations to create data systems that could more adequately and appropriately illustrate the impacts of the opioid crisis, and access to necessary federal data sets.

As we have testified in the past, an overall lack of data surrounding the opioid crisis, as well as barriers to data collection and dissemination within the Indian Health System, has not only impeded Tribal Nation prevention and treatment efforts, but also efforts to secure increased federal funding. In the absence of robust, comprehensive data demonstrating the disproportionate effects of opioid use in Indian Country, effort to expand treatment and prevention services are greatly hampered.

To remedy this, Congress must provide direct funding to Tribal Nations and Tribal Epidemiology Centers (TECs) in order to improve opioid data collection. Without access to critical data, direct funding, or Congressional champions when strategies are being developed, Tribal Nations will continue to feel the impacts of the opioid epidemic for generations. USET SPF urges the Committee to prioritize addressing this shortfall by working to ensure Tribal Nations have access to direct funding to improve opioid data and provide for the treatment and prevention of substance abuse.

Moreover, Tribal Nations and Tribal Epidemiology Centers (TECs) continue to experience frequent challenges in accessing not just public health data on both the federal and state level, but Tribal data as well, which often is not reported back to the Tribal Nation when collected by other jurisdictions. Despite being designated as Public Health Authorities, a Government Accountability Office Report, and Congressional oversight measures, both Tribal Nations and TECs continue to experience frequent challenges in accessing data on both the federal and state level—on top of the consistent lack of investment in TECs and Tribal public health capacity. As Public Health Authorities, TECs provide invaluable Tribal Nation-specific public health data and information to Tribal leaders, health directors and public health professionals in Indian Country. TECs continue to petition both the CDC and state public health departments for this vital information but have only received state data where there are positive Tribal-state relationships.

Congress must remedy this problem, including through compelling the CDC and states to share all relevant data sets with Tribal Nations and TECs. CDC must ensure that TECs have access to critical public health data from federal and state governments. Both should be statutorily required to share all available public health data with TECs and Tribal Nations. This should be made a requirement of state cooperative

agreements with CDC. CDC must also take steps to improve the quality of public health data shared with TECs and Tribal Nations. This includes requiring states work with Tribal Nations to correct racial misclassification.

Increased, Direct Funding for the Indian Health System

The federal government has trust and treaty obligations to ensure Tribal Nations have access to resources, financial and otherwise, to combat the opioid epidemic. The federal government has affirmed many times over its requirement to "provide all resources necessary" to ensure "the highest possible health status" for Tribal Nations and citizens. This necessarily includes flexible and substantial funding to create programs and services that are responsive to the challenges facing our communities. Though the data on this issue is incomplete, that which is available shows that Indian Country is being disproportionately and significantly affected by the opioid crisis. And yet, we remain without access to critical resources, particularly direct federal dollars. USET SPF urges the Committee to prioritize addressing this shortfall by working to ensure Tribal governments have access to direct funding.

Access to funding for federal opioid grant programs is also important for Tribal Nations and communities. Programs like the Tribal Opioid Response (TOR) Grant Program at the Substance Abuse and Mental Health Services Administration (SAMHSA) are valuable tools in fighting the opioid epidemic in Indian Country. USET SPF urges Congress to increase funding for this program, as well as appropriate dedicated funding for the $80 million Behavioral Health and Substance Use Disorder Program for Native Americans authorized (but not funded) at SAMHSA last year. In addition, USET SPF continues to support and urge the immediate passage of The Native Behavioral Health Access Improvement Act, legislation authored by Senator Tina Smith that would establish and provide substantial funding for a Special Behavioral Health Program for Indians, with dollars eligible for receipt through self-governance compacting and self-determination contracting.

Further, USET SPF supports the adoption of the President's supplemental funding request to combat the opioid epidemic. This $1.55 billion request includes a $250 million transfer to the IHS via the State Opioid Response (SOR) grant program. However, it is yet unclear how the funding would be disbursed from the IHS. USET SPF asserts our expectation that these funds will be eligible for self-governance contracting and compacting so that Tribal Nations can directly access these dollars and determine how best to utilize them in our communities.

It is important to note that while existing federal programs have been valuable tools in the fight against the opioid epidemic so far, there remain significant issues with the provision of funding to Indian Country through grants and other mechanisms that do not uphold Tribal sovereignty and self-determination. Many federal grant programs require funding to pass through the states before it can be delivered to Tribal Nations if it is delivered at all. Further, when applying for these grants, states will often include Tribal population and prevalence numbers in the overall state data used to determine each state's award. Yet, Tribal Nations are not provided with outreach for these programs and are left with minimal resources to address the opioid crisis in their communities. Even when grant programs are specifically provided for Tribal Nations and organizations, the grant funding is often extremely limited, and the sheer nature of competitive grants often excludes many Tribal Nations that would benefit from the programs. Tribal Nations must not be made to compete with one another for these limited resources, as funding to Tribal Nations is provided in fulfillment of federal trust and treaty obligations – not in response to relative "need" or

circumstances. To force Tribal Nations to compete for limited resources through competitive grants is an abrogation of the trust responsibility and an affront to Tribal sovereignty.

To ensure that Tribal Nations are able to access federal funds fully and meaningfully in the future, USET SPF recommends the Committee and Congress:

- Pass and implement "The Native Behavioral Health Access Improvement Act" legislation and provide substantial funding for a Special Behavioral Health Program for Indians, with dollars eligible for receipt through self-governance compacting and self-determination contracting.
- Fully fund and implement programs such as the Behavioral Health and Substance Use Disorder Resources for Native Americans Program at SAMHSA;
- Expand language within grant funding programs to specifically include Tribal Nations such that states cannot exclude us in grant funding disbursements and are held accountable by the federal government for delivering funds directly to Tribal Nations; and
- Enact delivery of all federal dollars, including opioid funding, to Tribal Nations via self-governance contracting and compacting in recognition of Tribal sovereignty and self-determination.

Telehealth and Medication Assisted Treatment

Well before the COVID-19 pandemic increased the prevalence and availability of telehealth services, USET SPF advocated for expanded telehealth services in Indian Country to combat the rising substance abuse crisis. Existing telehealth programs within Indian Country have made significant improvements in their communities when it comes to access to care, diagnosis, and treatment. In response to the COVID-19 pandemic, the federal government eased several long-standing regulations regarding opioid treatment programs. For example, prior to 2020, people suffering from opioid use disorder were required to meet in-person with a health care provider to start medication assisted treatment. During the COVID-19 pandemic, the federal government implemented flexibilities that allowed practitioners to prescribe medications like buprenorphine remotely to new patients via telehealth. They also allowed for expanded payment for telehealth services and flexibility on accepted communication technologies (like audio-only services) to deliver care for substance use disorders via telehealth. Expanding the use of telehealth for treating substance use disorders is a vital component in efforts to address the opioid epidemic in Tribal communities. A study by the National Institutes of Health (NIH) demonstrates that opioid use disorder treatment via telehealth was associated with an increased likelihood of staying in treatment, as well as an increased in treatment access overall. USET SPF urges the permanent adoption of these temporary authorities so that expanded access to services may be maintained.

However, though Tribal telehealth continues to make strides, Indian Country continues to fall behind in establishing sustainable, standard telehealth system due to limited, or often, lack of existing infrastructure and bandwidth. The same NIH study referenced above found that the "benefits of telehealth are not reaching all populations equitably." It is crucial that Congress invest not only in opioid addiction telehealth services within Tribal Nations and communities, but also in infrastructure and bandwidth capabilities. Telehealth funding and expanded authorities will not be beneficial if barriers to access, such as infrastructure and bandwidth issues, are not addressed.

Increased Law Enforcement Resources

In addition to health and treatment resources, USET SPF member Tribal Nations require adequate law enforcement infrastructure to combat the opioid epidemic. Opioid trafficking is a persistent and growing problem in Indian Country, as several witnesses noted, and the USET region is not an exception. In order sufficiently address the growing opioid abuse and trafficking within our Tribal Nations, our BIA Drug Enforcement Region needs additional resources, including human capital.

Tribal Nation law enforcement agencies, much like other entities operating in Indian Country, face chronic underfunding, understaffing and other challenges due to inadequate federal appropriations. Additional resources must be made available to Tribal Nations when it comes to critical drug enforcement investigations. These services are conducted primarily by specialized units or task forces on departmental, statewide and federal levels and involve enhanced intelligence gathering, information sharing, controlled buys, surveillances and other factors. As the Committee approaches this crisis, it must not forget the importance of stopping the supply of opioids on Tribal lands through well-equipped law enforcement.

In a March 2023 report to Congress (as required under the Tribal Law and Order Act), the Bureau of Indian Affairs (BIA) indicated that, "the total estimated costs for public safety and justice programs is $1.4 billion for law enforcement programs, $247.7 million for existing detention centers, and $1.2 billion for Tribal courts." At approximately $2.9 billion, this exceeds the entire current BIA budget. This underscores the chronic underinvestment in law enforcement and other public safety programs, and the need for this Committee to support full and mandatory funding for Tribal programs, including Public Safety & Justice line items.

Culturally Competent Treatment and Services

The incorporation of traditional healing practices and a holistic approach to health care are fundamental to successful opioid treatment and aftercare programs in Indian Country. Culturally appropriate care has had positive, measurable success within Tribal communities, and the incorporation of traditional healing practices and holistic approaches to healthcare has become central to many Tribal treatment programs. Tribal communities have unique treatment needs when it comes to substance abuse disorders, as AI/ANs experience high levels of substance abuse disorders, with a strong link to historical trauma. Opioid addiction treatment in Indian Country, then, must be cognizant of this trauma, respectful of community factors, and utilize traditional health care practices. Additionally, opioid addiction treatment within Tribal communities must include adequate culturally appropriate aftercare programs to help prevent substance abuse relapse. These services must be accessible through the Indian Health Care Delivery System.

Even though culturally competent care has been successful across Indian Country, treatment options that incorporate cultural healing aspects are oftentimes not available within or near Tribal communities due to a lack of resources. However, some USET SPF member Tribal Nations are engaging in innovative practices that have the potential to be replicated across Indian Country. For example, one Tribal Nation's treatment program incorporates a culturally-based recovery model that has had great success, including in preventing early relapse following treatment. Other best practices within USET SPF member Tribal Nations include:

- Extended, culturally-based recovery support in a sober living environment
- Trauma informed care training for health and behavioral health staff

- Establishment of innovative, culturally-appropriate Tribal restorative justice models, such as the Penobscot Nation's Healing to Wellness Court.

With additional funding and guidance, Tribal Nations could expand these best practices and incorporate additional practices such as rapid entry into acute care facilities and additional prevention and control interventions. USET SPF encourages the Committee to explore how it might expand these models through legislative action and provide direct funding to support the best practices that have already been implemented.

Conclusion

USET SPF appreciates the Committee holding a hearing to hear specifically from Tribal Nations and leaders as the opioid crisis continues to disproportionately affect our communities. Opioid addiction is unquestionably causing devastating effects and suffering in Indian Country. As Congress considers legislative action on combatting the opioid crisis nationwide, as well as Fiscal Year 2024 federal funding, it must prioritize Tribal Nation access to all the resources necessary to address this crisis. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.