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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the Senate Committee on Indian Affairs Listening Session on “Public Safety & Justice Resources in Native Communities”

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 testimony for the record of the March 20, 2024 listening session on, “Public Safety & Justice Resources in Native Communities.” 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.

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.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and assisting its membership in dealing effectively with public policy issues.

Introduction

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. But the United States has slowly chipped away at Tribal Nations’ jurisdiction and 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 Nation criminal jurisdiction.

In that case, it held Tribal Nations lacked criminal jurisdiction over non-Native people, even for crimes committed within Indian Country. 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. 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

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi’kmaq Nation (ME), 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 Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

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.

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. In order to truly improve public safety in Indian Country, Tribal Nations must have full criminal jurisdiction over our lands, as well as the people who reside on or enter our lands, and this jurisdiction must be restored through a fix to the Supreme Court decision in *Oliphant*.

At the same time, the federal government continues its persistent underinvestment in its public safety and justice obligations to Indian Country. Despite numerous reports over the last several decades quantifying widespread underfunding, Congress and the Administration have failed to develop any proposals to address this problem. Indeed, as the Not Invisible Act Commission’s report, *Not One More*, issued in November 2023 states,

“One of the Commission’s most important overarching recommendations is for the federal government to honor its trust obligations and provide sufficient funding to fully address unmet needs in Tribal communities, targeting the most critical public safety, criminal justice, health care, and victim services needs for immediate investment. The BIA acknowledges that Tribal police, courts, and detention facilities are currently funded at a fraction of estimated need. The President’s budget, however, has never requested funding sufficient to meet the need in Tribal communities and Congress continues to appropriate funding at levels that virtually guarantee these issues will persist. While nearly 300 billion dollars of foreign aid was given to foreign nations from 2013-2018, domestic Tribal nations continue to be neglected and underfunded. Ultimately, federal funding for Tribal communities should be truly comprehensive and address the buildout of unmet essential utilities and core infrastructure needs in Tribal communities.”

It is also critically important, then, that the federal government finally do its part to address the dangerous lack of resources for public safety and justice in Indian Country – a problem for which it is responsible.

USET SPF urges SCIA and others in the Administration and Congress to work to address both gaps in Tribal criminal jurisdiction, including through a full fix to the *Oliphant* decision, and to commit to taking action to drastically increase funding and other resources for public safety and justice in Indian Country. Below, we provide several priorities and legislative opportunities that SCIA should focus on as it seeks to make advancements in this space.

Restrictive Settlement Acts

As we work to ensure that Tribal sovereignty is fully upheld, we again remind this body that some Tribal Nations, including some USET SPF member Tribal Nations, are living under restrictive settlement acts that further limit the ability to exercise criminal and civil jurisdiction over our 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 incorrectly 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 our land or give states jurisdiction over our lands, which is problematic. But, to make matters worse, there have been situations where a state has wrongly argued the existence of the restrictive settlement act. Some USET SPF member

Tribal Nations report being threatened with lawsuits should they attempt to implement the Tribal Law and Order Act's (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 continue to request the opportunity to explore short- and long-term solutions to this problem with this Committee.

Restore Jurisdiction Over Drug Crimes

USET SPF views any removal of United States-created barriers to Tribal Nations' exercise of criminal jurisdiction as a positive step in the right direction, such as enhanced sentencing and expanded criminal jurisdiction under the Tribal Law and Order Act (TLOA) and the Tribal provisions of the Violence Against Women Act (VAWA). Toward that end, it is our understanding that that a new bill, referred to as legislation "[t]o recognize Indian Tribal government authority to prosecute Drug Trafficking and Drug-related Offenses occurring in Indian Country, and for other purposes," is set to be introduced that would remove barriers to Tribal Nations' exercise of criminal jurisdiction over non-Native offenders committing drug-related offenses on Tribal Nations' lands. The legislation would amend the Indian Civil Rights Act's VAWA provision to also cover certain drug-related offenses and would authorize the Bureau of Prisons to accept, at the federal government's expense, prisoners convicted in Tribal Nation courts for such drug-related offenses

Opioids generally, and now fentanyl more recently, remain a persistent problem within the USET SPF region and across Indian Country. Criminal jurisdiction to prevent drug traffickers from making such drugs available in our communities is, thus, critically important to the public safety and public health of Tribal Nations. With this in mind, USET SPF calls upon Congress to pass, and the President to sign into law, legislation containing: (1) an amendment to the Indian Civil Rights Act's Violence Against Women Act provision to also cover drug-related offenses; (2) an authorization for the Bureau of Prisons to accept at the federal government's expense prisoners convicted in Tribal Nations' courts for such drug-related offenses; and (3) language making clear the legislation applies to Tribal Nations with Restrictive Settlement Acts.

BIA Public Safety & Justice Funding

As you are aware, the Tribal Law and Order Act (TLOA) of 2010 requires the Bureau of Indian Affairs to produce an annual report that includes (1) the number of full-time employees of BIA and Tribal governments who serve in Public Safety and Justice programs; (2) the amount of appropriations obligated for Public Safety and Justice programs, including the methodology used to determine the allocation of funds; (3) estimates of unmet staffing obligations of law enforcement, corrections, and court personnel; and (4) a summary of BIA technical assistance, training, and other support provided to Tribal law enforcement and corrections agencies that operate relevant programs. The most recent report, for Fiscal Year (FY) 2021, revealed the total obligation of BIA for public safety and justice funding is \$3.5 billion – over one billion more than the entire BIA budget. And yet, in FY 2024 Congress allocated a total of just \$556 million to the BIA's public safety and justice lines—a decrease from FY 2023 enacted. Something must change. In accordance with our advocacy around full funding for all federal Indian agencies and programs, USET SPF calls upon Congress to develop a plan to fully fund these budget lines, along with entire BIA as whole.

BADGES for Native Communities Act – S. 465

Our lack of access to criminal and other public safety information hinders the ability of Tribal Nations to keep our communities safe. It is critical that we have parity in access to federal crime information. We support the Bridging Agency Data Gaps & Ensuring Safety (BADGES) for Native Communities Act as it seeks to provide parity for Tribal Nations in access to federal crime information, collection, and tracking.

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.

This is an important step toward building a stronger public safety foundation in Indian Country. The lack of data and coordination presents burdens to address and overcome the public safety and justice issues across our communities and our federal partner must do more.

Parity for Tribal Law Enforcement Act – S. 2695

As former Penobscot Police Chief, Bob Bryant, stated during his 2015 testimony before the President's 21st Century Task Force on Policing Officer Safety and Wellness Session,

“The men and women serving as police officers across Indian Country are often asked to perform duties and responsibilities outside the norms of the profession due to inadequate resources. These duties often include tasks such as civil dispute mediation, social work, family counseling, substance abuse counseling, and grief counseling, as well as many others. As police officers, we perform these additional duties with limited training, resources, or compensation due to our dedication to the communities we serve. However, these obligations often come at the expense of the overall wellness, safety, and family needs of the officer.”

These issues are compounded by the chronic underfunding of law enforcement in Indian Country, with Tribal Nations often finding themselves unable to compete with other units of government, including the federal government in benefits such as injury, death, retirement, and pension benefits. Law enforcement officers in Indian Country experience low rates of morale and high rates of attrition.

The Parity for Tribal Law Enforcement Act would ensure that Tribal law enforcement officers operating under Indian Self-Determination and Education Assistance Act contracts or compacts have access to training and certification to ensure they are able to enforce federal law on Tribal lands. And it would further provide these officers access to federal injury, death, retirement, and pension benefits. USET SPF supports this legislation, as it would both expand the recognition the authority of Tribal law enforcement and ensure the federal government is better delivering upon its obligations to Tribal Nations exercising our right to contract or compact law enforcement services.

Conclusion

We strongly urge this Committee to work to provide meaningful levels of public safety and justice resources to Tribal Nations, in accordance with trust and treaty obligations. We further urge SCIA 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 this listening session and look forward to further opportunities to discuss improved public safety in Indian Country.