USET
SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 909
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

Transmitted Electronically
To OTJ@usdoj.gov

April 20, 2026

Gina L. Allery
Director
Office of Tribal Justice
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

RE: Written Comments of United South and Eastern Tribes Sovereignty Protection Fund to U.S. Department of Justice re Tribal Consultation on Public Safety Legislative Proposals

Dear Director Allery:

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultation sessions held by the Office of Tribal Justice (OTJ) of the U.S. Department of Justice (DOJ) on March 16–20, 2026, regarding a number of legislative proposals aimed at improving public safety in Indian Country. USET SPF commends OTJ's attention and dedication to these critical issues. We strongly support efforts to remove barriers to Tribal Nations' exercise of criminal jurisdiction, close jurisdictional gaps, improve Tribal parity with other units of government, and better deliver on the United States' debt-based trust and treaty obligations to provide public safety resources to Indian Country. USET SPF supports many of DOJ's legislative proposals, as discussed herein, and we emphasize the need for ongoing Tribal consultation as we work to address public safety in Indian Country together—for there is much more work to be done.

USET SPF is a non-profit, inter-Tribal organization advocating on behalf of 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Turtle Island.[1] USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and to assisting its membership in dealing effectively with public policy issues.

[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).

I. Background

The United States Has Created Many Barriers to Tribal Nations' Exercise of Criminal Jurisdiction.

Tribal Nations are and always have been inherently sovereign governments, a status that predates the arrival of colonizing forces. This inherent sovereignty, while existing independently from the United States' affirmation, is recognized in the U.S. Constitution, by the U.S. Supreme Court, in treaties and legislation, and via other legal proclamations.

A critical aspect of our inherent sovereignty is jurisdiction over our lands and people, including inherent jurisdiction over crimes. Early U.S. Supreme Court decisions recognized that Tribal Nations exercised this jurisdiction in parity with other units of government. *See, e.g.*, *Ex parte Crow Dog*, 109 U.S. 556 (1883). But, over time, the United States has placed barriers on Tribal Nations' exercise of our jurisdiction, including through legislation such as the Indian Civil Rights Act of 1968, which limits Tribal Nations' sentencing authority (even over our own people), and through later U.S. Supreme Court decisions, such as *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), which limits Tribal Nations' exercise of criminal jurisdiction over non-Native people on our own lands.

In *Oliphant*, the U.S. Supreme Court held that 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 the Court's own precedent recognizes that aspects of inherent Tribal sovereignty persist unless *expressly* divested—Tribal Nations' exercise of our inherent sovereignty was, in the case of criminal jurisdiction over non-Native people, simply impractical for the United States. Not only is this decision immoral and prejudicial, but it is also illogical, as states and other units of government routinely exercise criminal jurisdiction over non-citizens present within their geographical boundaries. It is this very exercise of jurisdiction that keeps everyone safe—something that is clearly in the United States' best interests.

More recently, the U.S. Supreme Court has used the jurisdictional gaps and confusion it created with *Oliphant* and other decisions to justify *further* limitations on Tribal sovereignty by allowing the expansion of states' encroachment on Tribal jurisdiction, including criminal jurisdiction, in *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022). Rather than restore Tribal criminal jurisdiction or call on the federal government to fulfill its obligations, the Court said that states could exercise "concurrent" jurisdiction over crimes committed by non-Indians against Indians in Indian Country. This has only added further jurisdictional complexity to the picture and has emboldened states—most notably Oklahoma—to deepen their encroachment efforts, disrupting Tribal jurisdiction and public safety efforts and priorities in the process and leading to repeated, costly litigation.

Failure of the United States to Meet Its Trust and Treaty Obligations Regarding Public Safety.

While the United States stifles Tribal Nations' exercise of our own criminal jurisdiction on our lands, it further undermines public safety with its persistent underpayment on its debt to Indian Country. Prior to the arrival of colonizing forces to our shores, Tribal Nations fully exercised our sovereign jurisdiction over all two billion acres of what is now called the United States. In taking for itself nearly all Tribal Nations' original territory through war, treaty-making, and other coercive means, the United States incurred a debt to Tribal Nations that manifests in trust and treaty obligations to provide services and funding to Tribal Nations and Tribal communities, including for public safety purposes.

The Bureau of Indian Affairs (BIA) has reported that, as of Fiscal Year (FY) 2021, the United States is meeting only 13% of its public safety and justice funding obligations in Indian Country. Despite numerous reports over the last several decades quantifying widespread underfunding, Congress and the Executive 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**.

Underfunding manifests in less safe Tribal communities, and it is exacerbated by jurisdictional complexity. Indian Country faces some of the highest rates of crime, with Native people 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. Importantly, federal prosecutors who often are the only entities possessing jurisdiction over a particular crime do not bring a prosecution unless very stringent criteria are met—usually only prioritizing major crimes with clear evidentiary support. Chronic underfunding leaves Tribal Nations without adequate BIA police officers and detention infrastructure, and, just as critically, without the resources needed to contract or compact for these essential services through the Indian Self-Determination and Education Assistance Act. Without sufficient infrastructure, such as detention facilities to hold criminals prosecuted in Tribal court, a robust exercise of Tribal criminal jurisdiction remains out of reach for many Tribal Nations.

Additional Inequities Faced by Restrictive Settlement Act Tribal Nations.

As we work to address critical public safety issues in Indian Country, it is important to keep in mind that some Tribal Nations, including some USET SPF member Tribal Nations, are living under Restrictive Settlement Acts (RSA) that further limit their ability to exercise criminal and civil jurisdiction over their lands. These RSAs flow from difficult, coercive circumstances in which states demanded unjust restrictions on Tribal Nations' preexisting sovereign rights as a prerequisite to respecting Tribal land claims or getting out of the way of federal recognition. When Congress enacted the states' demands into law via RSAs, it condoned these additional state-driven restrictions on certain sovereign authorities for RSA Tribal Nations that do not exist for other Tribal Nations across the United States.

For example, some RSAs purport to limit Tribal Nations' exercise of their own jurisdiction or to grant states jurisdiction over Tribal lands. Further, some states have wrongly argued that the existence of a RSA prohibits later-enacted beneficial federal statutes from applying to a RSA Tribal Nation—especially those that are predicated on Tribal jurisdiction or that may affect state jurisdiction. For this reason, some USET SPF member Tribal Nations report being threatened with lawsuits should they attempt to implement enhanced jurisdiction, such as the Tribal Law and Order Act's sentencing provisions. USET SPF firmly believes that Congress did not intend these RSAs—these land claim or recognition settlements—to forever prevent a handful of Tribal Nations from taking advantage of future beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens and communities.

We urge DOJ to take steps to ensure that its legislative proposals would, if enacted, apply equally to RSA Tribal Nations by including language such as: "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, and all provisions of this Act shall apply within the State of Maine."

II. Comments and Recommendations

Proposal #1: Expand the Bureau of Prisons Tribal Prisoner Program.

USET SPF supports this proposal, which would remove the cap on the number of offenders the Bureau of Prisons (BOP) may accept from Tribal courts—currently set at 100—and replace it with a required minimum number of 300 prisoners from Tribal courts. The BOP Tribal prisoner program provides a critical federal resource for Tribal Nations that lack detention capacity or are unable to house non-Native offenders sentenced in Tribal court under the Violence Against Women Act (VAWA) special domestic violence jurisdiction. Detention costs and facility availability are huge hurdles to the exercise of Tribal court jurisdiction.

We echo others' comments that more than 300 beds are needed, as well as their recommendation to raise the minimum number of beds required. Additionally, we urge DOJ to work to ensure that BOP would have the resources and capacity to take in a higher number of Tribal prisoners if this legislative proposal were enacted.

USET SPF also notes the need for expanding the BOP Tribal prisoner program's scope, in addition to its capacity. As it is now, to be eligible for BOP confinement under the program, a prisoner must have been sentenced in a Tribal court for committing a violent crime for which the sentence includes a term of imprisonment of one or more years. Given the restrictions placed on Tribal Nations' criminal jurisdiction and sentencing authority by the United States, and the fact that detention facilities for even shorter sentences are often unavailable to Tribal Nations, this relatively narrow scope limits the effectiveness and impact of the program. USET SPF has supported other proposals that would expand the program's scope, including the Protection for Reservation Occupants against Trafficking and Evasive Communications Today Act (PROTECT Act), which would authorize BOP to accept prisoners convicted in Tribal courts for drug-related offenses. We encourage DOJ to consider similar measures to expand the program's scope for the legislative proposals now under consideration.

Proposal #2: Remove Statute of Limitations for Second Degree Murder.

USET SPF supports efforts to increase parity and jurisdictional clarity for Tribal Nations, and this proposal is a positive step. Federal law currently contains a five-year statute of limitations for second-degree murder, while every state law addressing this crime has none. By removing the federal statute of limitations, this proposal would reconcile federal and state law, helping to ensure that offenders cannot get away with murder in Indian Country by banking on under-resourced law enforcement and prosecutors and hoping their cases run cold.

USET SPF does not take a hard position on which of the two options offered by DOJ best achieves this goal, but the second option (new provision rather than amendment) likely affords more clarity. Additionally, we note that this proposal is not designed to be retroactive, meaning it would not apply to pending investigations. We urge DOJ to consider how this proposal may be modified to apply retroactively, at the

very least to cases pending at the time the legislation is enacted. We also recommend considering whether the proposal could include a post-enactment window of some years to allow for cases to be reopened so that victims and families may resume or continue their pursuit of justice.

Proposal #3: Amend Tribal Law Enforcement Access to Firearms.

USET SPF supports this proposal insofar as it would increase parity between Tribal Nations and other units of government by eliminating regulatory barriers faced by Tribal law enforcement agencies that do not apply to federal, state, or local law enforcement agencies. We encourage DOJ to pursue full parity for Tribal law enforcement to access the tools they need on the same terms as other law enforcement agencies, including those tools not covered by the current proposal.

Proposal #4: Amend U.S. Marshals Service Authority to Carry Out Tribal Violent Felony Warrants.

USET SPF supports this proposal, which would help create parity between Tribal law enforcement agencies and other law enforcement agencies throughout the country by authorizing the U.S. Marshals Service (USMS), upon request of a Tribal Nation, to partner with Tribal law enforcement in locating missing children and arresting fugitives in Indian Country via execution of Tribal warrants. USET SPF has supported similar proposed legislation, such as the Tribal Warrant Fairness Act.

Providing Tribal law enforcement with access to USMS resources would give Tribal Nations an important tool in addressing the critical Missing and Murdered Indigenous People (MMIP) crisis. Currently, the USMS may assist state, local, and other federal law enforcement agencies with missing children investigations, upon request from those agencies. This proposal would extend this authorization to Tribal law enforcement agencies as well. Additional resources and coordination increase the likelihood that Native children are found and safely returned in the critical first hours after they are reported missing.

Relatedly, access to USMS resources would help Tribal Nations address criminals' exploitation of Indian Country's jurisdictional gaps. Too often, criminals see Indian Country as a "safe haven" for their crimes due to the limitations placed on Tribal Nations' exercise of criminal jurisdiction and the federal government's failure to properly resource public safety on Tribal lands. This proposal would provide Tribal law enforcement agencies with access to USMS assistance in locating and apprehending such fugitives, while also integrating Tribal law enforcement into the USMS' Fugitive Apprehension Task Force program in parity with other federal, state, and local partners.

We note, however, that unlike the Tribal Warrant Fairness Act, DOJ's proposal does not require consultation with Tribal Nations in connection with the establishment of fugitive apprehension task forces. We urge DOJ to add such a requirement, as Tribal consultation would help to ensure these task forces operate in a manner that both respects Tribal sovereignty and meets Tribal Nations' goals, in accordance with the federal government's trust and treaty obligations.

Proposal #5: Amend Unlawful Flight to Avoid Prosecution Statute.

This proposal would extend the existing authority for certain federal law enforcement entities—USMS and the Federal Bureau of Investigation (FBI)—to execute state-issued warrants for fugitives to include those fugitives located on Tribal lands. Currently, federal law enforcement must follow a Tribal Nation's processes for extradition or warrant domestication to do this. USET SPF supports this proposal in principle, to the

extent that it furthers parity and addresses issues of criminals exploiting jurisdictional gaps to evade justice. However, we believe there is more work to be done before this proposal moves forward.

First, the proposal should clearly provide that Tribal Nations must consent to this jurisdiction before it is expanded. Each Tribal Nation's lands and circumstances are different, and relationships with state and federal law enforcement vary widely. Tribal consent is especially critical here, where this jurisdiction would extend to Tribal citizens. To account for shifting circumstances, Tribal Nations should also be able to revoke this consent. A Tribal consent requirement should be workable, given the existing backstop of relying on Tribal extradition statutes to effectuate this same jurisdiction.

Second, more Tribal consultation should be conducted on this specific proposal if it were to move forward, especially to address concerns and suggestions raised during the present round of consultation sessions. It is particularly important to address concerns regarding the involvement of the FBI and whether there may be opportunities for bad-faith state actors to take advantage of this jurisdiction. Given the practical complexity of patchwork and non-contiguous Tribal lands, the suggestion was also raised for the proposal to include a *mens rea* requirement—that is, actual *intent* to flee or evade prosecution—rather than scooping up anyone who happens to cross Tribal land. Another suggestion was for DOJ to consider ways in which this jurisdiction might be made reciprocal, so that Tribal law enforcement could pursue fugitives who *leave* Tribal lands to evade prosecution. We believe more discussion is warranted on these and other issues related to this proposal. However, we note that additional Tribal consultation should not prevent other proposals from moving forward.

Finally, on a more technical matter, we recommend considering whether the proposal should cross-reference a definition of "Indian Country," if the definition would not be immediately clear from the context of the statute.

Proposal #6: Establish a Felony Child Abuse and Neglect Statute.

USET SPF supports this proposal in principle, but we urge the need for greater Tribal consultation before it moves forward. A federal child abuse and neglect statute would provide consistency for such crimes across Indian Country, where currently federal law enforcement must assimilate state child abuse laws, and there may be great value in that consistency. At the same, however, a one-size-fits-all solution is rarely suitable for Indian Country. We suggest considering language that would allow Tribal Nations to opt in or opt out of the federal statute, as some Tribal Nations may have reason to prefer their respective state-level statute.

We appreciate DOJ's efforts in the language of this legislative proposal to avoid the criminalization of poverty as it relates to child abuse or neglect, and we encourage DOJ to consider how to ensure that intent carries over into implementation. Given the various concerns raised during the present round of Tribal consultation sessions and the fact that this proposal would create an entirely new statute, we believe further Tribal consultation is warranted. Again, however, additional Tribal consultation on individual subjects should not prevent other proposals from moving forward.

Proposal #7: Extend Federal Criminal Jurisdiction Over Sexual Abuse Crimes Against Children in Alaska Native Villages.

USET SPF takes no position on this Alaska-specific proposal, deferring to others more knowledgeable and deeply affected, other than to emphasize that additional responsibilities should always carry a commensurate increase in resources.

Proposal #8: Amend the Stored Communications Act.
This proposal would amend the Stored Communications Act to authorize Tribal courts to issue search warrants for electronic communications, including social media websites, so that Tribal law enforcement would no longer have to go through state or federal channels. USET SPF supports this proposal as a parity-increasing measure that would allow Tribal law enforcement to obtain information in a more direct, timely, and reliable manner.

We encourage DOJ to further consider other measures to increase parity for Tribal Nations' access to federal crime information, collection, and tracking, such as those in the Bridging Agency Data Gaps & Ensuring Safety (BADGES) for Native Communities Act.

Proposal #9: Expand Authority for the Entry of Domestic Violence Protection Orders.

USET SPF strongly supports this proposal, which would authorize Tribal *civil* courts to enter protection orders into the federal protection order database. While this authority already exists for Tribal criminal courts, extending it to Tribal courts would align this authority with current practice, as Tribal courts often issue protection orders through a civil petition process. This expansion would also account for the realities of Public Law 280 states and other restrictions on Tribal criminal jurisdiction, including for RSA Tribal Nations, where not all Tribal Nations have criminal courts.

Proposal #10: Amend Tribal Background Check Authorities.

USET SPF supports this proposal, as it would increase parity for Tribal governments by authorizing the same access as states have to federal criminal history records for purposes of conducting background checks for childcare staff.

Proposal #11: DOJ Training and Technical Assistance to Inter-Tribal Consortia.

This proposal would add inter-Tribal consortia and information sharing to the list of purposes for which DOJ may provide technical assistance to Tribal governments. USET SPF supports this proposal insofar as it would promote Tribal self-determination by supporting Tribal Nations that choose to develop inter-Tribal consortia models to provide public safety services.

Proposal #12: Clarify Responsibility for NCIC Training for Law Enforcement Officers.

USET SPF supports this straightforward proposal that would clarify that DOJ—and not the BIA—bears responsibility for providing training and technical assistance to Tribal law enforcement agencies regarding the National Crime Information Center (NCIC) and other FBI databases. This fix would resolve ambiguity and confirm existing practice, as DOJ is already the lead on providing NCIC services to Tribal law enforcement agencies and already has the resources in place to provide the relevant training.

III. Conclusion

USET SPF appreciates DOJ's—and specifically OTJ's—care and dedication in developing these proposals to address jurisdictional gaps and remove certain barriers to Tribal Nations' exercise of criminal jurisdiction. These measures certainly represent steps in the right direction. We emphasize, however, that more

comprehensive reform is needed before we can come close to full parity. USET SPF urges DOJ to continue pushing ever forward to that goal.

Should you have any questions or require further information, please contact Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org, or Katie Klass, USET/USET SPF General Counsel, at KKlass@usetinc.org.

Sincerely,

Chief Kirk Francis
President

Kitcki A. Carroll
Executive Director