



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted electronically

November 25, 2024

Daron Carreiro
Acting Director
Office of Tribal Justice
U.S. Department of Justice
Room 2318, RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Director Carreiro,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the U.S. Department of Justice's (DOJ) Tribal consultations on funding for Tribal public safety and criminal justice systems, as well as its Office for Victims of Crime consultations. As DOJ is aware, for far too long, the United States has neglected its trust and treaty public safety obligations to Tribal Nations—both by placing barriers on the exercise of our criminal jurisdiction 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. In recognition of this crisis, we greatly appreciate that DOJ has initiated this consultation in response to Tribal advocacy and look forward to partnering on efforts to increase Tribal public safety and justice resources.

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 in assisting its membership in dealing effectively with public policy issues.

Introduction

Tribal Nations are political, sovereign governments 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 committed

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

Because there is Strength in Unity

throughout our territorial jurisdictions. Early Supreme Court decisions recognized this broad jurisdictional authority. But the United States has slowly chipped away at Tribal Nations' exercise of 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 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—sacred trust and treaty obligations that stem from taking our lands and resources. Despite numerous reports over the last several decades quantifying widespread underfunding, Congress and the Administration have, as of yet, failed 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.”

In addition, the Bureau of Indian Affairs' (BIA) most recent Tribal Law and Order Act (TLOA) report, for Fiscal Year (FY) 2021, revealed the total obligation of BIA for which BIA *should be* providing funding for public safety and justice in Indian Country is \$3.5 billion – over *one billion* more than the entire BIA budget. Indeed, the federal government has acknowledged it is funding Tribal law and safety at *only 13%* of the total costs necessary to keep Tribal communities safe – a truly shocking statistic. 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. And these numbers do not even reflect the underfunding of federal prosecutors required to fill the current jurisdiction gap in Indian Country, a reality we see in serious under prosecution of crime on our lands.

It is critically important, then, that the federal government, including DOJ, finally do its part to address the dangerous lack of resources for public safety and justice in Indian Country – a problem for which the United States is responsible. USET SPF appreciates DOJ's commitment to taking action to increase funding and other resources for public safety and justice in Indian Country.

Potential Proposals to Change Department Public Safety and Criminal Justice Systems Grants

In recognition of the public safety and justice crisis in Indian Country, DOJ has assembled an internal working group that includes DOJ's grantmaking offices and the Office of Tribal Justice to examine options for improving funding opportunities for Tribal Nations, including consideration of potential legislative proposals. This working group has identified three proposals that DOJ has received from Tribal Nations and advocates on potential pathways for improvement that might address long-standing Tribal concerns about inadequate funding and cumbersome funding mechanisms for Tribal public safety programming, each of which would require Congressional action.

Below, we identify and provide additional thoughts related to the three legislative proposals that are the subject of the work group consultation. USET SPF supports each of these proposals and urges DOJ to work with Congress to see that they are enacted as soon as possible. Many of these proposals are in fact encompassed within USET SPF's [Marshall Plan for Tribal Nations](#) and [plan for a new era](#) of federal Indian law and policy.

Proposal 1: Seek Congressional Authorization for a New DOJ Formula Grant Program

Advocate for Congress to authorize a new DOJ Tribal formula grant program that would fund Tribal public safety and justice systems through a single grant award to each Tribal Nation that applies for funding, to be funded either by a new appropriation or a set aside from existing appropriations.

USET SPF supports the creation of a new consolidated Tribal formula grant program. We note that DOJ is requesting comment on whether to request new funding or utilize existing funding for this purpose. While new funding for this purpose is preferable for some reasons, USET SPF suspects set asides from existing sources might be the most expedient option, given the current legislative landscape. We ask that DOJ pull in as much funding as possible for such a program, while keeping the eligible uses of funding as flexible as possible to promote Tribal self-determination and an efficient use of funds. For example, a Tribal Nation might like to use these funds for a Healing to Wellness Court, which offers a non-punitive, holistic solution to various offenses.

Regarding the funding formula associated with this program, it is critical that Tribal Nations that are smaller in size receive an adequate and meaningful level of funding and that factors other than size are considered. Therefore, we would oppose any formulas that over-rely on population size or landbase as factors, urge that a funding floor be established to further promote equity, and ask that other important factors, such as proximity to urban areas with high crime rates, are considered. Additionally, the formula should be developed via extensive consultation with Tribal Nations, perhaps with the assistance of an independent agency, such as the Government Accountability Office.

Proposal 2: Seek New Statutory Authority Allowing for Integration of DOJ Grants

Advocate for Congress to enact a PL 477-like statute that authorizes a program where Tribal Nations receiving public safety and criminal justice funding can choose to integrate funding into one DOJ-approved plan. Suggestions on the scope of such a program have included integration of (1) all Tribal public safety and criminal justice funding sources across the federal government, (2)

DOJ-grant awards only (both formula and discretionary, whether Tribal-specific or not), or (3) victim-services only funding sources. One option to consider is structuring such a program as a pilot program that could provide the opportunity to assess results and report to Congress whether to continue and/or expand the pilot.

USET SPF strongly supports the expansion of 477-like mechanisms across the federal government as an opportunity to streamline service delivery in Indian Country and further promote Tribal self-determination. We would advocate that all public safety and justice funds throughout the federal government be eligible for inclusion in this mechanism. Given the success of 477 in self-sufficiency programs furthering workforce and employment, as well as the sophistication Tribal Nations possess in administering a variety of programs and services, there is no need to begin with a pilot program. This would create unnecessary barriers to full implementation of the program, as well as prioritize some Tribal Nations over others. Additionally, we note that some programs operated by DOJ meet the eligibility criteria for the existing 477 program, and DOJ's consideration of a new 477-like program designed specifically for public safety and justice funding should not undermine Tribal Nations' requests to integrate those programs into their 477 plans now.

Proposal 3: Advocate for Increased Base Funding for Public Safety Through BIA

Partner with the Department of the Interior to advocate for an increase in base funding available through BIA to meet the public safety and criminal justice needs of Tribal Nations. Some Tribal Nations have suggested that increased appropriations and funding opportunities need to be made available to Tribal Nations for these purposes. It was further suggested that these opportunities be made available to all Tribal Nations, whether or not they currently receive base funding.

USET SPF asserts that additional public safety funding at BIA is absolutely essential. As noted above, the most recent TLOA report found that BIA's obligation to Tribal Nations is approximately \$3.5 billion and yet, only about \$500,000 is funded. Due to chronic shortfalls in this funding category, several USET SPF member Tribal Nations do not have access to any public safety base funding and those that do are severely underfunded. We believe that additional advocacy from DOJ would be helpful to achieving funding increases in these budget lines.

OVC Tribal Consultation

We also note that the Office for Victims of Crime is proposing various ways to create more flexibility and reduce burdens for Tribal funding flowing from the Tribal Victim Services Set-Aside Program and Crime Victim Compensation funds. We support these funding flexibilities and reduced burdens. And, again, we note that some DOJ programs are eligible for the currently-existing 477 program and the flexibilities available under it.

Additional Legislative Proposals

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 employment 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 of 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. We ask that DOJ join us in supporting the passage of this bill during the remainder of this Congress.

Restrictive Settlement Acts

As we work to ensure that Tribal sovereignty is fully upheld, we remind DOJ 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 lands 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 prevents application of other beneficial federal statutes. For example, some USET SPF member Tribal Nations report being threatened with lawsuits should they attempt to implement 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.

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 TLOA and the Tribal provisions of the Violence Against Women Act (VAWA). Toward that end, it is our understanding 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 has called upon Congress to pass, and DOJ to support, legislation containing: (1) an amendment to the Indian Civil Rights Act's VAWA 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.

Conclusion

We strongly urge DOJ to work to provide meaningful levels of public safety and justice resources to Tribal Nations, in accordance with trust and treaty obligations, including through its support of these legislative proposals. We also call on DOJ to ensure federal funding flows to Tribal Nations with the increased flexibility and reduced use and reporting limitations that appropriately reflect Tribal Nations' sovereignty. We further urge DOJ to consider how it might support action to fully recognize Tribal criminal jurisdiction over all persons and activities throughout our territorial jurisdictions for all Tribal Nations. Only then will we have the ability to truly protect our people. We thank you for holding this consultation and look forward to further opportunities to discuss improved public safety in Indian Country. 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.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director