

{Insert Name of Tribal Nation}

WRITTEN TESTIMONY

SUBMITTED ON [Insert Month/Day], 2023

2023 ANNUAL CONSULTATION ON VIOLENCE AGAINST NATIVE WOMEN

On behalf of [Insert Name of Tribal Nation], thank you for the opportunity to provide written testimony regarding the 2023 Government to Government annual consultation on violence against women pursuant to 34 U.S.C. 20126. We look forward to working with the federal government to fully implement the Violence Against Women Act (VAWA) mandated annual tribal consultation.

The following issues, concerns, and recommendations were identified by Tribal Nations and advocates during the past annual consultations (2006-2022), through National Congress of American Indians (NCAI) resolutions (2000-2022), through regional tribal organizations resolutions, and numerous national meetings. Tribal leaders and advocates continue to raise concerns about barriers preventing the protection of American Indian and Alaskan Native (AI/AN) women at national meetings with the administration, federal departments and agencies, and with their respective Congressional delegations. A review of statements made by tribal leaders during consultations over the years clearly demonstrate that many of the issues raised are not new, but instead illustrate the complicated legal and policy barriers embedded in the layers of federal Indian law.

To achieve the purpose of Title IX of the Violence Against Women Act (VAWA), the [Insert Name of Tribal Nation] recommends that the executive and legislative branches of the federal government address the following issues and coordinate with Tribal Nations regarding implementation of the proposed recommendations.

Issues regarding the implantation of VAWA

1. Limited tribal jurisdiction over non- Indian offenders and Special Tribal Criminal Jurisdiction (STCJ)

Limited jurisdiction over non-Indian offenders on tribal lands continues to be key reason for the perpetration of disproportionate violence against AI/AN women. VAWA 2022 restored jurisdiction to all Tribal Nations who choose to exercise Special Tribal Criminal Jurisdiction under VAWA by including Tribal Nations in Maine and establishing an Alaskan Pilot Project. While a pivotal step forward, the most recent reauthorization did not address protections for elders or serious crimes that co-occur with domestic and sexual violence, such as financial crimes and homicide. Perpetrators will continue to slip through the cracks until Congress fully restores every Tribal Nation's complete jurisdiction over all crimes committed by non-Indians on Indian land.

Recommendations for the Department of Justice (DOJ) and the Department of Interior (DOI):

- We urge Congress to legislatively pass a full Oliphant fix, as outline in NCAI Resolution SPO-16-037
- DOJ and DOI should coordinate and collaborate to implement the provisions of VAWA 2022 and support Tribal Nations in implementing their restored jurisdiction over non-Indian perpetrators.
- DOJ and DOI should offer joint training opportunities for tribal and federal law enforcement on the implementation of VAWA 2022 in Indian Country.
- DOJ and DOI should support legislation that would fully restore Tribal Nations' jurisdiction over non-Indians for any offense on tribal lands.

2. Inadequate funding for restored tribal jurisdiction

The federal government has a trust responsibility to find tribal public safety in Indian Country. While we celebrate the historic wins in VAWA 2022. Tribal Nations are unable to meaningfully exercise restored jurisdiction and make Indian Country safer if the federal government does not live up to its trust responsibility to provide public safety funding and resources to implement the restored jurisdiction. Tribal Nations spend significant time and resources to prepare their justice systems and victim services programs to meet the needs of their communities; however, many Tribal Nations are limited by a lack of flexible, consistent, and sustainable funding for their justice systems, leaving many without the ability to implement the VAWA 2022 restored criminal jurisdiction. For example, costly healthcare expenses for non-Indian inmates sentenced by tribal courts often strain Tribal Nations' already limited budgets. It is our hope that the 2022 VAWA tribal reimbursement program will help with many of these costs. Still, the federal government must live up to its trust responsibility by providing consistent and sustainable upfront funding for tribal public safety and justice systems. Restoring tribal criminal jurisdiction will help to make tribal communities safer without necessary resource and funding to properly exercise that jurisdiction.

Recommendations for DOJ, DOI, and BOP

- DOJ, DOI, and all other federal agencies should live up to their trust and treaty responsibilities to the Tribal Nations by including annual, consistent, and sustainable non-competitive funding for Tribal Nations for all public safety and victim services needs in their annual budget requests.
- In the President's Budget, DOJ should request the full amount of funding authorized for tribal programs in VAWA 2022, especially the \$25 million for the Special Tribal Criminal Jurisdiction (STCJ) grant program and reimbursement for FY 2024 and FY 2025.
- BOP should cover transportation costs for Tribal Nations to transport inmates to designated facilities and coordinate with Tribal Nations to provide federal transportation to the faculty.
- DOJ and DOI should increase funding for Tribal Nations implementation of STCJ for DOJ, DHHS and the BIA.

3. Outstanding Injustices of Missing and Murdered Indigenous Women (MMIW)

The federal response to the MMIW crisis is a breach of the federal trust responsibility and a human rights violation as reflected in the statistical disparities documented by the National Institute of Justice (NIJ). An adequately resourced a local Tribal response to present abductions and murders is critically important in Indian Country. In 2018, the DOJ noted in their report to Congress that "[i]s the Department's position that prioritization of initiatives in Indian Country, including the effort to build capacity in Tribal courts, will lead to enhanced public safety for Native Americans." The federal government's failure to adequately fund tribal services and tribal law enforcement and the lack of response from federal law enforcement is a continuation of genocide committed against Indigenous peoples of this country.

Recommendations for DOJ, DOI the Department of Homeland Security (DHS) and the Department of Health and Human Services (DHHS):

- Every day, DHS agencies and DHS staff work within Indian Country and interact with tribal citizens, yet DHS does not have protocols to respond to MMIW cases. DHS should require each department within the agency to develop and implement MMIW protocols in consultation with Tribal Nations. This would further the mission established by President Biden in Executive Order 14053: *Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People*. For example, Customs and Border Patrol could better coordinate with Tribal Nations on MMIW cases to occur near U.S. Borders, the Transportation Security Agency could train staff how to identify human trafficking victims, the Cyber Security Infrastructure Security Agency could train tribal staff and citizens on how to protect against traffickers, the DHS Blue Campaign could offer free culturally specific information campaigns for Tribal Nations (this is notably important since VAWA 2022 restored tribal jurisdiction over sex-trafficking), and the

Federal Emergency Management Agency could coordinate with Tribal Nations to help find MMIW victims during or after disasters.

- DHS should establish permanent MMIW staff positions within the Department.
- DOJ and DOI should review, revise, and create law enforcement and justice protocols appropriate to the disappearance of AI/AN women and girls, including enter a jurisdictional issues as provided by the Savanna's Act and the Not Invisible Act.
- All federal departments should coordinate efforts to increase support for Tribal responses to missing and murdered AI/AN people as required by Savanna's Act and by Executive Order 14053.
- All federal government shit coordinate efforts in consultation with Tribal nations to increase the response of state governments, where appropriate, to cases of disappearance or murder of AI/AN people.
- The DOJ and DOI should support the Bridging Agency Data Gaps and Ensuring Safety for Native Communities (BADGES) Act.
- DOJ should ensure that data on Indian country, Tribal Nations, and tribal citizens is included in the various reports required by Executive Order 14074: *Advancing Effective, Accountability Policing and Criminal Justice Practice to Enhance Public Trust and Public Safety*. The public reports that contain anonymized data from the Accountability Database, should include a breakdown of what cases occurred in Indian country and in what BIA region that conduct occurred.

4. Support the family members of abducted, missing, or murdered AI/AN women

While preventing the occurrence of MMIW should be the primary goal, further steps must be taken to ensure that when crimes occur, both families and the victim are supported in a culturally appropriate way. In many reported incidents, the pain of losing a loved one was exacerbated by improper or culturally insensitive treatment of the case or remains.

Recommendations for DOJ, DOI, DHS, and DHHS:

- DOJ, DOI, DHS, and DHHS should implement recommendations from the National Congress of American Indians (NCAI) regarding the tribal set-aside from the Crime Victims Fund (CVF) to assure the resources reach victims, survivors, and their families.
- Increase tribally-based victim advocacy services to prevent MMIW and to support the families and community members of abducted, missing, or murdered AI/AN women. These increases should include but not limited to, the following: increased accountability of law enforcement agencies-state and federal-where these crimes occur; prevention and education initiatives and campaigns; counseling for the children and family members of the victim; burial assistance, community healing such as walk for justice and to honor the missing

or murdered; community meals and gatherings; and other tribal-specific activities.

- Develop protocols, in consultation with Tribal Nations, which recognize the inherent right of American Indians and Alaskan Natives to exercise their traditional practices to prevent and intervene in response to MMIW. These protocols must address the current violations of tribal beliefs, religious, and cultural practices of the handling of human remains. The protocols must address the following:

- 1) The cremation of AI/AN peoples' remains without notice or consent of a family member. In numerous cases, like in the case of Kaysera Stops Pretty Places in Montana, families did not consent to the coroner's unilateral decision to cremate the body of AI/AN victim;
- 2) The denial of requests by immediate family members to see the bodies of their loved ones. In documented cases, the requests of the family to see the remains of AI/AN victims have been denied without explanation;
- 3) Mailing and shipping human remains without notice to the family, often without proper clothing and modesty covers. In documented cases, mothers and families have received the naked remains of their loved ones in cardboard boxes and plastic bags.;
- 4) In adjudicated cases, return of the victim's personal effects and belongings to the family, if desired, for proper disposal and/or burial consistent with cultural practices.
 - Provide direct funding to Tribal Nations to help families of MMIW transport their loved one home and lay them to rest in culturally-appropriate manner.

5. Accountability of extractive industries for violence against AI/AN women

The escalation of sexual and domestic violence, including sex trafficking, due to the presence of extractive industries on or nearby tribal lands must be addressed by DOJ, DOI, DHHS, and DHS, and the Department of Defense (DOD). Extractive industries, companies, and subcontractors must be held accountable for the resulting violence from itinerant workforces that are used within tribal communities by these industries. AI/AN women and their children should not be exposed to violence by those employed by these industries.

Recommendations for DO, DOI, DHHS, DHS, and DOD:

- DOJ, DOI, DOD Army corps of Engineers, DHHS, and DHS should create standards of protection for tribal communities for extractive industries' compliance before, during, and post construction to protect AI/AN women and children. The protections must also be included throughout the federal permitting processes.
- DHHS should enhance support for services and training for shelter and related advocacy and medical services by developing materials addressing the needs of

domestic and sexual violence victims who are victimized by itinerant workers who cannot be held accountable by local tribal authorities.

- The DOJ, DOI, and DHS should establish screening guidelines to prevent convicted rapists, domestic violence offenders, stalkers, child predators, sex traffickers, and murderers from employment with extractive industries on or near tribal lands to prevent predators from accessing vulnerable and often unprotected populations of AI/AN women and children.

6. DHHS, Administration of Children and Families, Family Violence prevention and Services Program

During the 2021 consultation, tribal leaders raised concerns about the lack of shelter and supportive services for Tribal Nations. The Family Violence Prevention and Services Act (FVPSA) is the only dedicated federal funding source for domestic violence shelters across the country. However, FVPSA authorization expired in 2015, leaving Tribal nations without funding for domestic violence shelters.

Recommendations for DHHS:

- DHHS should support FVPSA reauthorization.
- DHHS should amend FVPSA to increase the tribal set-aside for Tribal Nations and provide funding for tribal coalitions.

Other recommendations:

- DOJ and DOI, and all other federal agencies should live up to their trust and treaty responsibilities to Tribal Nations by including annual, consistent, and sustainable non-competitive funding for Tribal Nations for all public safety and victim services needs in their annual budget requests.
- The U.S. Attorney General and DOJ must consistently and timely submit the VAWA Annual Tribal Consultation Report to Congress on the DOJ website, it's been late and we had been waiting.
- Tribal Shelters are needed! Set-aside money for infrastructure and implementation of tribal shelters. We only have 50 shelters across this nation with 12-15 beds and over 574 Tribal Nations. This is a disgrace as members of our tribes are deserving of safer spaces.
- Support flex funding for survivors who are in need of childcare services, car maintenance, transportation vouchers, application fees, counseling, internet access, food, clean water, and legal aid.
- HUD shall also be a part of OVW Tribal Consultation because we know that housing is very limited already on tribal communities, domestic violence and sexual violence are

the number one causes of homelessness. There needs to be a solution to long-term housing on tribal lands.

Recently, criminal groups in Arizona have opened hundreds of fraudulent drug rehab treatment and sober-living centers for the express purpose of defrauding Medicaid and taking advantage of unhoused or vulnerable persons. These criminal groups lured thousands of Indigenous relatives to these centers under the guise of treating addiction but with the intent of inducing them to apply for the American Indian Axis Program within the Arizona Medicaid system. As of July 17, 2023, several crews continue to operate in Albuquerque and an unknown number of New Mexicans from across the state and tribal communities remain missing as a result of the Arizona Medicaid fraud.

Allocate resources to hire for the full-time temporary position of Arizona Medicaid fraud emergency manager. The manager would:

- Oversee creation of a taskforce which will determine next best steps regarding the Arizona Medicaid fraud
- Work with tribal leaders, local government officials and nonprofits throughout the state to generate a list of those who are missing as a result of the Arizona Medicaid fraud
- Work with tribal leaders, local government officials, and nonprofits throughout the state to determine the reach of the Arizona Medicaid fraud
- Work with tribal leaders, local government officials, and nonprofits to determine the current efforts of the Arizona Medicaid fraud criminals to lure New Mexicans from their communities to fraudulent rehabs and sober-living centers
- Investigate New Mexico Rehabilitation Facilities
- Investigate the deaths that occurred while in these fraudulent facilities
 - Demand compensation to families impacted by the loss of loved ones and compensation to the victims of this crime as they were targeted by criminals resulting in harm and displacement.

These are just some of issues we are working against that affect violence against our women, children, and community. We are carrying all of this when we are thinking about protection and safety.

Framing Paper on Tribal Governments Program Formula Question

OVW has, in the past, explored distributing OVW Grants to Indian Tribal Government Program funds through a formula. Should this method be revisited? If so, would you be willing to serve on a working group to explore different funding models?

Questions:

1. Should OVW revisit its efforts to identify a method for distributing Tribal Governments Program funds on a formula basis?
2. If so, would you be willing to participate in a working group to explore different formula funding models?