

U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, and Related Agencies
Investigating the Crisis of Missing and Murdered Indigenous Women Hearing
November 20, 2024

Questions from Chairman Mike Simpson (ID-02)

Jurisdiction

Chairman Simpson: Assistant Secretary Newland or Director Melville, I understand that the complex jurisdiction rules make law enforcement difficult in Indian Country. For example, in a non-PL 280 state, if the offender is Indian, the victim is Indian, and the crime is a “Major” crime, the Federal government and the Tribal government split jurisdiction. However, if a “Non-Major” crime is committed under the same scenario, it is solely Tribal jurisdiction. Additionally, the Supreme Court’s decision in *Castro-Huerta v. Oklahoma* determined that the federal government and states have concurrent jurisdiction over non-Indians who commit crimes against Indians in Indian Country.

Chairman Simpson Q1: What can we do to limit confusion when it comes to responsibility?

Answer: Strengthen Tribal criminal jurisdiction over their own lands and reservations and empower Tribes to set the public safety agenda for their own communities.

Under the current legal framework, a strategy to really limit confusion is cross-training and cross-deputizations. Cross-training on jurisdiction with agencies in and surrounding a reservation will help law enforcement better understand the jurisdictions. Cross-deputization will allow law enforcement to take action no matter who they encounter or where they are encountered.

Recruitment and Retention

Chairman Simpson: Assistant Secretary Newland, I understand that there continues to be difficulty recruiting and retaining Tribal law enforcement officers which hampers agencies’ responses to missing persons and crimes.

Chairman Simpson Q2: What are some of the barriers that Tribal law enforcement agencies face in hiring and retaining law enforcement officers, including those agencies operating under a 638 contract and those operated by BIA?

Answer: The Bureau of Indian Affairs (BIA) and Tribes face a number of barriers to recruit and retain staff. Key factors are the remote locations of our facilities and lack of housing in these locations. Additionally, background checks can take a long time and we lose some applicants to other law enforcement agencies because their background checks take several months. Most

tribal law enforcement agencies are not able to compete with their local and state agencies when it comes to pay and benefits.

Chairman Simpson Q3: Is it solely a matter of pay and retirement benefits, or are there other recruitment issues?

Answer: Pay and benefits are critical but as the issues raised above point out there are other factors like remoteness of locations that constrict applicant pools and the length of time to complete background checks for those willing to apply. Also, it is necessary for Indian Affairs' Office of Human Capital Management to have sufficient funding to improve recruitment through higher staffing levels and improved data systems to help streamline recruitment processes.

Chairman Simpson Q4: What steps can Congress take to address some of these barriers?

Answer: I recommend that Congress strengthen Tribal jurisdiction, make progress addressing the funding shortfall identified in the Tribal Law and Order Act report, and implement policy recommendations in the Not Invisible Act Commission report. Congress could also enact the BADGES Act (118th Congress H.R. 1292/S. 465), which DOI testified to support, which would allow BIA's Office of Justice Services (OJS) to conduct their own background checks on BIA direct service law enforcement personnel.

Other specific actions Congress could take include providing additional funding for facilities improvement and repair and facility replacement as well as additional funds for recruitment and retention incentives and human capital servicing capacity, consistent with the FY 2025 President's Budget. Additional facility funding helps ensure our facilities are modern and safe and we are able to build additional housing units to support recruitment and retention. Additional funding for law enforcement programs will allow BIA to support higher levels of staffing and offer recruitment incentives such as hiring or retention bonuses. Improved recruitment and retention also requires additional human capital staffing and improved data systems to streamline the recruitment process. The FY 2025 President's budget requests an increase of about \$900,000 to enhance BIA's human capital capability.

BIA and FBI Agreement

Chairman Simpson: Director Melville, I understand that the Bureau of Indian Affairs and the Federal Bureau of Investigation have an agreement related to the administration of criminal investigations in Indian Country.

Chairman Simpson Q5: Can you tell us a bit about how this agreement has supported the work of BIA's Office of Justice Services?

Answer: The BIA-Federal Bureau of Investigation (FBI) Memorandum of Agreement (MOA) clearly outlines the resources and responsibilities of each law enforcement agency during use of force incidents, police involved shootings, and in-custody death. Before the MOA, FBI involvement was discretionary and responsibilities were not outlined. Improved partnering with

the FBI was exemplified recently in Operation Not Forgotten, conducted during June through September of 2024, in which the MMU worked jointly with the FBI with the goal of moving cases closer to resolution, providing services to victims, and bringing offenders to justice. In total, 304 cases received investigative assistance, including direct MMU assistance on five cold case murder investigations. As a result of the successful collaboration, the FBI and MMU plan on working a similar joint operation during 2025.

Questions from Chairman Tom Cole (OK-04)

Overcrowding at Correctional Facilities

Chairman Cole: Assistant Secretary Newland, I continue to hear from Tribes across the country about the lack of space for inmates at correctional facilities. I have even heard that Tribes are sending inmates to other states – I know for a fact that this is happening in my home state of Oklahoma.

Chairman Cole Q1: Can you talk a little about what the agency is doing to address the issue?

Answer: In the Tribal Law and Order Act report we estimate the annual operational needs for existing detention and corrections programs throughout Indian Country at \$284 million per year, which is well above our current funding level. Additionally, it would cost over \$400 million to replace the 12 detention facilities in poor condition that do not have full funding for replacement as of the end of FY 2024. These are the resource needs just to maintain existing detention capacity nationwide.

Under current funding levels, a key strategy is to improve our implementation of facility improvement and repair projects and facility replacement projects. Among the facilities on BIA's facility inventory, there are 14 total facilities in poor condition as of the end of FY 2024. While other facilities are not in poor condition, they need to be modernized to keep up with industry standards and provide a better environment to work in and house incarcerated individuals. In FY 2025, we will have two new fully functional facilities opened, which will increase capacity. The FY 2025 President's budget requests additional funding for facility construction to keep up with growing costs and increase the number of facility replacement projects implemented. The need for additional funds is particularly true to provide detention facilities in places where there are no BIA owned facilities such as areas impacted by the *McGirt v. Oklahoma* Supreme Court decision. The recent levels of enacted funding, including FY 2024, allows BIA to slowly make progress replacing existing facilities. For BIA to make notable progress addressing new detention center needs in places where they don't exist, a substantial funding increase would be necessary.

The Department's Office of the Assistant Secretary for Indian Affairs (Indian Affairs) is also working with Tribes on utilizing Indian Self Determination and Education Assistance Act 105(l) Tribal leases to maintain law enforcement facilities and build new ones. For example, in FY 2024 the Gila River Indian Community took out a loan to build a new law enforcement center and 105(l) Tribal lease funds will compensate them for the principal and interest for the facility.

While this particular law enforcement facility is not a detention center, it is an example of an approach that could be taken to build new detention centers and increase capacity across Indian Country. 105(l) Tribal leases are likely to increasingly become a more important tool to fund adequate law enforcement facilities if appropriated construction funding does not grow to meet the need.

Chairman Cole Q2: What additional support can Congress provide to help with corrections infrastructure?

Answer: There are three critical actions Congress can take. First, increase funding for Public Safety and Justice Facility Improvement and Replacement construction and move the Detentions and Corrections program funding level closer to that identified in the 2021 Tribal Law and Order Act report which is available at www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf. At current appropriations levels we can only fund replacement for about 1 facility per year, and there are 14 facilities in poor condition. Second, provide mandatory funding for the 105(l) Tribal lease program, as proposed in the FY 2025 President's Budget. Tribes can leverage the 105(l) Tribal lease program to build their own law enforcement facilities and maintain them. However, the growth of these legally required payments in a flat budget scenario means that supporting 105(l) Tribal leases can come at the expense of other programs like law enforcement operations if Congress does not authorize mandatory funding or sufficient discretionary increases to cover the growth in cost of 105(l) Tribal leases. Third, ensure that sufficient administrative funding is included in annual appropriations or mandatory funding for the processing of 105(l) Tribal leases. At current funding levels we only have enough funding to support a few staff to address a growing set of leases which currently exceed 800 105(l) leases annually. This has resulted in a backlog to process leases. Sufficient administrative funding is necessary to ensure that Indian Affairs can keep up with Tribal demand for 105(l) Tribal leases, in particular 105(l) leases that support Tribes' corrections facilities.

Drug Crisis

Chairman Cole: Assistant Secretary Newland, we know that addressing the Tribal drug crisis requires a more holistic approach, including improving everyday life on reservations.

Chairman Cole Q3: How will addressing the drug crisis and the prevalence of cartels across the U.S. support efforts to combat human trafficking in Indian Country?

Answer: By acknowledging that cartels exploit a dual-crisis situation with drug trafficking and human trafficking, law enforcement can target and dismantle intersecting organizations and networks, reducing the reach of traffickers and span of their organizations. Strengthening laws and policies related to traffickers and organizations engaging in interconnected activity and proposing laws targeting cartels that directly impact Indian Country are crucial. Combining efforts and enhancing collaboration between federal, Tribal, and state agencies that investigate

and enforce laws, along with an enhanced legal framework, are vital strategies to combat these dual threats effectively.

One effective example of this combined approach is the Tiwahe Initiative, which completed a five-year strategic planning process in September 2024. This strategic plan will guide the work of the Tiwahe Initiative across the fiscal years 2025-2029 which includes building a strong programmatic structure to support Tribal demonstration sites and their Tiwahe operations. Tribes receive \$7.6 million in Tiwahe Tribal Court funding and \$2.0 million in Tiwahe Healing to Wellness Court funding per year. A request for an additional \$1.9 million in Healing to Wellness Court funding was included in the FY 2025 President's Budget.

The Tiwahe Tribal Court funding supports judges, prosecutors, defenders, and other necessary court functions. This funding allows Tribal Courts to exercise sovereignty over their members in a whole host of cases including drug prosecutions, domestic violence matters, child welfare matters. This function is essential in holding Tribal drug dealers and traffickers accountable while also supporting victims.

The Tiwahe Healing to Wellness Court funding supports both cultural approaches to helping those with substance abuse disorders and providing training and technical assistance to Tribes who want to start these courts. Healing to Wellness courts provide holistic, wrap around services centered on culture and tradition to individuals with substance abuse disorders. Many individuals moving through these courts achieve sobriety, and some end up working at the healing to wellness court to provide mentorship and services. Tribes like these approaches to rehabilitation and recovery because they are flexible enough to allow Tribes to use their traditional approaches to criminality and/or addiction in their communities while achieving community safety and wellness goals.

The Tiwahe Program also funds social services, Indian Child Welfare Act services, housing, job placement and training, and recidivism reduction. The FY 2025 budget requested \$28.6 million in additional funding to further expand the Tiwahe Program. Drug crimes and substance abuse disorder are a symptom of communities unable to fully support their members. Through Tiwahe's holistic and flexible funding models, Tribes are able to design approaches to community well-being that make sense for their specific Tribal needs and are rooted in culture and tradition. During the last 10 years of the Tiwahe program, Tribes are seeing reductions in substance abuse, fewer child removals due to neglect or abuse, lower crime rates, and fewer cases of domestic violence. In addition, more people are getting jobs and moving off of government assistance and are more connected to community. By providing flexible Tiwahe funding to Tribes to support prevention and intervention services, these communities and their members are thriving.

Healing to Wellness Courts in Indian Country have proven effective in addressing the drug crises within our communities. While these courts are effective currently about 27 Tribes receive funding from BIA to support Healing to Wellness Court related activities given current appropriations levels extensive additional funding would be needed to provide access to this successful strategy to all Tribes. Healing to Wellness Courts, can serve as drug courts, and are often initiated by the tribal team members conducting extensive interviews with the participant to

identify trauma and identify needs that will combat recidivism. These interviews provide insight into family trauma history and focus on needs such as housing, employment, family issues, and legal issues etc. Further, these Courts help to braid services not only for the participant, but at times, also include the participant's extended family. Tribal justice systems which include healing to wellness courts are conducted by community members inherently familiar with traditional cultural aspects as well as knowledge of western services available to combat continued drug use. This also allows for cultural approaches in providing service, such as joining or family referrals to the Wellness program without criminal activity first.

In order to be effective best leverage Healing to Wellness programs in combatting human and drug trafficking and, it is imperative that housing issues be addressed and funded, as indicated by the request for Housing Program increases in the FY 2025 President's Budget. Furthermore, mental health and behavior health services, when provided by the Healing to Wellness Courts have proven very effective.

Tribes using some version of Healing to Wellness Courts include: Penobscot Nation, Lac Corte Oreilles Band of Lake Superior Chippewa Indians, and Yurok Tribe, all of which work with in conjunction with their State Counterparts to address reservation issues and also issues near the reservation. Confederated Salish and Kootenai Tribes (CSKT), Muscogee (Creek) Nation, and Choctaw Nation focus on meeting identified needs to combat recidivism, such as housing and back to work programs, along with behavioral health components.

The Choctaws and CSKT also provide a type of probation focused on services to assist in combating recidivism. Rather than punitive and limited conditions of release, these Tribes have a number of behavioral health, housing options as well as additional legal options to assist in creating a productive member of society.

Missing and Murdered Indigenous Women

Chairman Cole: We know the Missing and Murdered Indigenous Women crisis requires support from the federal government, states, and Tribes. It is also clear that these issues are complex and involve an in-depth understanding of Tribal governments and jurisdictions.

Chairman Cole Q4: How has your agency engaged with Tribes and law enforcement?

Answer: The BIA OJS Missing and Murdered Unit (MMU) is comprised of four regions with Special Agents who have been strategically positioned throughout Indian Country to better provide investigative services to the Tribes we serve and Tribal law enforcement programs we work with daily. The MMU has participated in numerous federal, state, Tribal, and local meetings, summits, presentations, and trainings throughout Indian Country. All of these initiatives and collaborative efforts involved the investigation of Missing and Murdered Indigenous Persons (MMIP) crisis and the investigations of Human Trafficking in Indian Country. The MMU has initiated Tribal listening sessions where the primary focus is to engage with Tribal leadership and law enforcement to conduct reviews of their unsolved missing or

murder investigations and to learn what resources they need and how MMU can better provide investigative services to address the MMIP crisis.

Chairman Cole Q5: How are you ensuring your staff are properly educated on these unique issues?

Answer: As with any strategy effective work requires maintaining strong relationships with Tribes. We start with ensuring our team develops a healthy relationship with the Tribes and Tribal members. The BIA OJS Division of Drug Enforcement (DDE) agents and officers are encouraged to enhance their focus on the emerging dual threat of human trafficking and drug trafficking. DDE agents and officers attend specialized training programs, workshops, seminars, and other continuing education opportunities to improve their investigative skills and response to continually evolving threats that they investigate. DDE agents and officers continue to increase their interagency collaboration by joining and working with new and various task forces investigating human trafficking, and participate in efforts to apply new and advanced technology and data analysis tools aimed at identifying trafficking patterns and identities of those responsible.

The Missing and Murdered Unit (MMU) is comprised of federal special agents, program analysts, victim services coordinators, and administrative personnel whose primary jobs are the analysis, investigation, and operational support of the investigation of missing, murdered, and human trafficking cases involving American Indian and Alaskan Natives. In order to address the Missing and Murdered Indigenous Person (MMIP) crisis, MMU has identified specific objectives and training needs to ensure all MMU staff have the required skills and knowledge to competently and efficiently investigate these complex cases. The MMU is also committed to the continuous improvement of the Unit to provide the best possible service to the American Indian and Alaskan Natives we serve in Indian Country.