

DOI SELF-GOVERNANCE ADVISORY COMMITTEE

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Department of the Interior – Bureau of Indian Affairs
Office of Justice Services Headquarters
Charles Addington, Deputy Bureau Director
1849 C Street NW
MS-3662-MIB
Washington, District of Columbia 20240

RE: Urge Department of the Interior Office of Justice Services to Advance a Budget that Includes Additional Funding to Support the Current and Future Cold Case Offices, Funding for Tribes to Exercise Public Safety and Justice Jurisdiction in P.L.280 States, and Additional Justice Responsibilities that Have Arisen as a Result of the McGirt v. Oklahoma Decision

Dear Director Addington:

On behalf of the Self-Governance Advisory Committee (SGAC), I write to urge the Bureau of Indian Affairs - Office of Justice Services (BIA-OJS) to advance a budget request to the Department of the Interior Office of Policy Management and Budget (DOI-OPMB) and the Office of Management and Budget (OMB) that adequately captures the additional financial obligation that has arisen as a result of the Department's unilateral decision to open seven Cold Case Offices, concurrent jurisdictional obligations in P.L.280 states, and the expanded public safety and justice responsibilities that have been imposed on the Department as a result of the McGirt v. Oklahoma decision.

For too long the epidemic of Missing and Murdered Indigenous Persons (MMIP) has gone unaddressed, uninvestigated, and unresolved. American Indians and Alaska Natives experience disproportionate high levels of violence across the country. According to the Federal Bureau of Investigation's National Crime Information Center there are more than 1400 unresolved American Indian /Alaska Native missing person cases in the United States. However, the exact number of MMIP is unknown.

Executive Order 13898 established the Task Force on Missing and Murdered Indigenous Persons on November 26, 2019. The EO indicated that the goal of the task force was to make the criminal justice system work better for American Indian

and Alaska Native communities by reducing violent crime and addressing MMIP. It also sets forth specific work of the Task Force, including:

- Conduct appropriate consultations with Tribes;
- Develop model protocols and procedures to improve the response of investigators and prosecutors to MMIP cases and investigate challenges;
- Establish multi-disciplinary, multi-jurisdictional teams to review cold cases;
- Clarify roles, authorities and jurisdiction by developing best practices;
- Facilitating formal agreements among law enforcement agencies to maximize cooperation and trauma informed responses;
- Develop and execute an education and outreach campaign for communities that are most affected by crimes against American Indians and Alaska Natives to identify and reduce crime; and,
- Develop in partnership with NamUs a public awareness campaign to educate communities about the needs of affected families and available resources.

While we commend BIA/OJS for implementing measures to address the MMIP crisis, we are concerned about the lack of consultation with Tribal governments, adequate long-term funding for new offices created by the Department, the lack of coordination among Federal agencies, data gaps, and jurisdictional complexities.

Consultation with Tribal Governments

In accordance with the directive of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, Tribal nations must be consulted on Federal policies that have implications for Tribal governments. In addition, Executive Order 13898 directed the Task Force to “conduct appropriate consultations with Tribal governments on the scope and nature of the issues regarding missing and murdered American Indians and Alaska Natives.” Unfortunately, Tribes were not consulted before the Department took action to establish these Cold Case Offices. We believe proper consultation should have provided Tribal governments an opportunity to learn about and provide input on the agency’s plans for the establishment of the Cold Case Offices, including the number of proposed facilities, the location of each facility, the purpose and function, staffing, current and future maintenance and operational costs and plans for securing additional appropriations.

Long-term Funding Plans

Some immediate concerns regarding funding include the specific line item that funded the opening of the seven Cold Case offices and whether the funding for this line item will be consistent from year to year. If the line item is not consistently funded at appropriate levels, Tribal safety and justice line items will be negatively impacted to support these additional expenses. There are also Regions who lack a Cold Case Office that need to be factored into the future funding costs equation.

Additional appropriations are urgently needed so that Tribal public safety and justice programs that are already significantly underfunded are not bearing the additional burden of these new financial obligations.

Lack of Coordination Among Federal Agencies

Lack of coordination across agencies has proven to hinder effective implementation of law enforcement programs at the local level. A holistic multi-faceted approach to building safe communities is essential and there needs to be processes and procedures put in place to ensure the goals of both Executive Orders are attained. Cold Case Offices will be staffed with law enforcement personnel and newly appointed special agents from BIA/OJS, as well as, Tribal law enforcement, the Federal Bureau of Investigation and Offices of the U.S. Attorneys. Tribes want to see better coordination and cooperation across law enforcement agencies and a responsive justice system that has been absent for decades.

Since a multi-disciplinary team that includes people from all of the different law enforcement agencies are responsible for addressing MMIP, funding to support this effort should come from several different sources and flexibility on the use of funding should be built into the equation to ensure efficient and effective use of funding. Better inter-agency coordination is also needed to improve the integrity of the data collected. Data needs to be appropriately tracked so the crime trends can be identified and addressed.

Lack of Information for Law Enforcement

Significant gaps in data have exacerbated the MMIP crisis. Data gaps impact how law enforcement handles or follows-up on cases. Other systematic flaws that have inhibited the proper execution of justice include underreporting, racial misclassification, potential gender or racial bias, and lack of resources to follow through and close out cases have all attributed to the current crisis. The Monthly Crime Report data that the BIA/OJS collects does not currently track missing persons or domestic violence statistics. We understand the Task Force is working to collect and manage data across jurisdictions, establish protocols for new and unsolved cases, establish multi-jurisdictional cold case teams, improve the response to investigative challenges, and provide clarity on the roles, authority and jurisdiction for those involved. We are optimistic that the Task Force will serve as the coordination conduit for all of the agencies and establish a uniform data set that more accurately captures the metrics for MMIP and reflects the true disparities and need for universal information that law enforcement can use to mitigate these atrocities in Indian country.

Jurisdictional Complexities

Jurisdictional confusion and gaps are another public safety and justice quagmire that exists in Indian country. During the termination era in 1953,

Congress, through P.L. 280, gave six states--Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin—criminal jurisdiction over Tribal citizens and others on the reservation. It also allowed other states to assume some jurisdictional authority. P.L.280 drastically altered criminal justice in Tribal communities and produced a number of negative consequences for Tribal nations located within these States.

Since its enactment, P.L.280 has been largely opposed by Tribal Nations because it diminishes Tribal sovereignty and Self-Determination by transferring broad Federal law enforcement authority to states without consent of Tribal nations. In addition, P.L.280 is often cited as a reason to deny Tribal governments access to Federal public safety and justice funding. Further, although Tribal governments retain concurrent jurisdictional authority in states with authority under P.L.280, the lack of funding impedes most Tribal governments from exercising this authority.

P.L. 280 has been a contributing source of lawlessness on reservations because neither the state or Federal government is exercising jurisdiction and Tribes are not being provided funding to exercise their concurrent jurisdictional authority. An Amendment enacted as part of the Indian Civil Rights Act of 1968 required Tribal consent before any more states could assume jurisdiction and allowed states to return or retrocede jurisdiction back to the Federal government. However, the discretion remains with the state as to whether to seek retrocession of jurisdiction. Although a handful of Tribes have successfully convinced states to retrocede jurisdiction back to the Federal government, there are other states that have denied the requests of other Tribes – leaving these Tribes without recourse to public safety and justice.

For a number of years, Tribes have advocated for a legislative fix that would allow them, rather than states, to initiate and complete the retrocession process. Section 221 of the Tribal Law and Order Act (TLOA) of 2010, P.L.111-211, provided Tribes a partial victory by authorizing Tribal governments to request that the Federal government re-assume concurrent criminal jurisdiction over that Tribe's Indian country. TLOA amends the mandatory provisions of P.L.83-280 to provide, upon the request of an Indian Tribe and the consent of the United States Attorney General, the U.S. shall accept concurrent jurisdiction over the Tribe's Indian country. If a Tribe's request is denied they are allowed to appeal that decision.

The Department of Justice maintains that TLOA only applies to the six "mandatory" P.L. 280 states and not the ten optional P.L. 280 states because it believes in the ten optional states, P.L. 280 never removed the Federal governments concurrent jurisdiction. Therefore, Tribes in optional states need not request federal re-assumption. Given the Federal Governments position, at least with respect to the ten optional states, Tribes in these states should be provided law enforcement and court funding.

Jurisdictional gaps exist because the state and/or Federal government(s) are not exercising their authority and they are not providing funding to Tribes to exercise their concurrent jurisdictional authority. This is a human rights crisis that needs to be ameliorated. Tribes in P.L. 280 states must be provided funding to exercise their concurrent jurisdictional authority over public safety and justice matters.

Finally, the Supreme Court ruled in the *McGirt v. Oklahoma* decision that as it pertains to the Major Crimes Act, much of the eastern portion of the state of Oklahoma remains as Native American lands of the prior Indian reservations of the Five Civilized Tribes, never disestablished by Congress as part of the Oklahoma Enabling Act of 1906. With this finding comes additional responsibilities for public safety and justice that will require additional resources. It is incumbent on the Federal government to ensure they request additional appropriations to cover the cost of these obligations.

If you have questions or would like to discuss this letter in further detail, please contact me at rallen@jamestowntribe.org or at (360) 681-4621. Thank you.

Sincerely,



W. Ron Allen, Tribal Chairman/CEO
Jamestown S'Klallam Tribe
Chairman, SGAC

Cc: Tara Mac Lean Sweeney, Assistant Secretary Indian Affairs, DOI
Mark Cruz, Deputy Assistant Secretary for Policy and Economic Development, DOI
Sharee Freeman, Director, Office of Self-Governance, DOI
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