

**Testimony of Vice-Chairperson Tracey Treppa
Habematolel Pomo of Upper Lake
Before the U.S. House of Representatives
Committee on Appropriations
Subcommittee on Interior, Environment, & Related Agencies
February 12, 2020**

Summary of Topics Discussed

- I. Bureau of Indian Affairs – Tribal Court Funding for Tribes in Public Law 83-280 States**
- II. Bureau of Indian Affairs – Support for Public Safety Training Funding**

Introduction & Background

Good morning Chairwoman McCollum, Ranking Member Joyce, and Honorable Members of the Subcommittee on Interior, Environment, and Related Agencies. My name is Tracey Treppa and I have the honor of serving as Vice-Chairperson of the Habematolel Pomo of Upper Lake.

The Habematolel Pomo of Upper Lake have resided in the area now known as Lake County, California, since time immemorial. Like most tribes, we have faced many challenges since the United States first claimed dominion over our territory. In 1850 the United States Army attacked our defenseless ancestors in what would become known as the Bloody Island Massacre. Shortly thereafter, we signed a treaty in good faith with the federal government, but the United States Senate never ratified it. We were fortunate to eventually secure a 564-acre reservation in our ancestral homelands.

In 1958 we suffered the unlawful termination of our federal recognition through the California Rancheria Act. During the termination period, we lost our entire land base and the Tribe suffered greatly. We fought termination tirelessly in federal court and in 1983, we won the legal battle and our federal recognition was reaffirmed – but much damage was already done.

Our tribal government, through the Tribal Executive Council, is committed to rebuilding our tribal nation for our future generations. Today, our population is approximately 287 tribal members who are the descendants of the survivors of the Bloody Creek Massacre. The Tribe has been able to restore just under 12 acres of our former land base, but we continue that critical work.

I. Tribal Court Funding for Tribes in Public Law 83-280 States

As I stated earlier, our Tribe and its members are resilient because it is in our DNA. We are the descendants of survivors, and as a tribal leader, it is my duty to provide my people with the tools necessary to continue not just to survive but to thrive. When the Executive Council deliberated what tools would be needed to help our people succeed and to build a safe and healthy community for them, the creation of a tribal court system topped the list.

Tribal courts are essential to the effective exercise of tribal sovereignty. Tribal courts administer justice in our communities, provide a forum for tribes to receive child welfare cases, and ensure that law and order is upheld and protected. Unfortunately, for years tribes located in Public Law 83-280 (“Public Law 280”) states have not had access to federal funding to create and sustain tribal court systems. This lack of resources hampered my own Tribe’s ability to foster a functioning court.

For years the Habematolel Pomo fought to gain access to equitable federal funding for tribes in Public Law 280 states – but to no avail. Many of the tribes in northern California are small, and we do not have the same resources as others to make our voices heard here in Washington, D.C., but that does not mean that we do not have the same needs as other tribes. For years we had consistently requested tribal court funding, but until recently, no one was listening.

The Bureau of Indian Affairs (“BIA”) had taken the stance that, because of its limited tribal court funding, it was appropriate to prioritize tribes in non-Public Law 280 states since the federal government was still primarily responsible for criminal jurisdiction in Indian Country in those states. The Ninth Circuit Court of Appeals approved the BIA’s rationale for law enforcement funding when it allowed the BIA to prioritize tribes in non-Public Law 280 states.¹ It became clear after this decision that tribes in Public Law 280 states needed to fight harder if there could be any hope of Congress appropriating public safety and tribal court funding for them.

One of the major impediments to providing funding to tribal courts in Public Law 280 states, besides the limited resources, was that the BIA could not quantify how much it would cost to provide tribal court funding to tribes in Public Law 280 states. Fortunately, in 2015 Congress acted and required through the Consolidated and Further Appropriations Act that:

Within 180 days of enactment of this Act, the Bureau [of Indian Affairs], in coordination with the Department of Justice, is directed to report to the House and Senate committees of jurisdiction on the budgetary needs of tribal courts in [Public Law 83-280] States. *See* 160 Cong. Rec. H976405 (Dec. 11, 2014) (*Explanatory Statement*)

This was an amazing first step because finally, Congress was forcing the BIA to quantify the challenge and assign a cost to it.

The BIA sent a report to Congress on September 16, 2015, that contained a cost analysis for the six mandatory Public Law 280 states: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin.² The BIA estimated in the report that it funded tribal courts in non-Public Law 280 states at 6.14% of the real cost of operating and supporting the court. Further, the BIA estimated that to fund tribal courts in Public Law 280 states at the same level, it would cost \$16.9 million. The BIA noted that “[w]hile \$16.9 million would not be widely viewed as robust or perhaps even

¹ *Los Coyotes Band v. Jewell*, 729 F.3d 1025 (9th Cir., 2013).

² Bureau of Indian Affairs Office of Justice Services, *Report to the Congress on the Budgetary Cost Estimates of Tribal Courts in Public Law 83-280 States*, September 16, 2015.

adequate, it would match existing levels of funding in non-P.L. 280 states, which reflect a constrained fiscal environment.”³

Thanks to the BIA report, Congress now knew what the cost would be to provide equal access to tribal court funding in all states – both Public Law 280 states and non-Public Law 280 states. Congress then acted to provide funds to assist tribal courts in Public Law 280 states through the Consolidated Appropriations Act of 2016 (Pub. L. 114-113), which provided \$10 million to among other things:

Work with Indian tribes and tribal organizations to assess needs, consider options, and design, develop, and pilot tribal court systems for tribal communities, *including those communities subject to full or partial State jurisdiction under Public Law 83-280*. (emphasis added).

This was the first time that Congress explicitly told the BIA to make funds available for tribal courts in Public Law 280 states.⁴

The Tribe submitted an initial funding request to the BIA to create its judiciary on July 25, 2017. A month later, the Tribe participated in the BIA’s tribal consultation process regarding the funding, which occurred on August 29, 2017, in Sacramento, California. Our Chairperson Sherry Treppa explained how grateful the Tribe to Congress for the opportunity to begin creating a tribal judiciary. She noted that the Tribe never had access to tribal court funding before.

The BIA awarded the Tribe 72,868 dollars to begin work on our tribal court system. This may not seem like much in the big picture of federal grants, but to our Tribe, it has made a big difference. It has allowed us to cover the startup costs that had hindered our ability to create a judiciary. The Tribe used the funds to develop a judicial code, court rules, bench book, child welfare code, and conduct site visits to other tribal courts. The funding was also used to purchase office equipment and essential computer software like case management systems.

I am proud to say that now that the legal infrastructure has been created to support our judiciary, we will be looking to retain our first judge and begin hearing cases within a year. This would not be possible without the support of this Subcommittee and the funding directed to tribal courts in Public Law 280 states. I strongly urge the Subcommittee to retain this funding and expand upon it. Tribal courts make a difference in Indian Country.

³ *Id.* at 1.

⁴ Congress has continued to include similar language directing tribal court funding to Public Law 280 states since that time. Most recently the Joint Explanatory Statement of the Further Consolidated Appropriations Act of 2020 directed “14,000,000 is to address the needs of Tribes affected by Public Law 83-280 and as further outlined in the Senate Report 116-123.” That Senate Reported explained that “the Committee remains concerned about the Tribal courts needs as identified in the Indian Law and Order Commission’s November 2013 report which notes Federal investment in Tribal justice for Public Law 83–280 States has been more limited than elsewhere in Indian Country.” At 57.

II. Support for Public Safety Training Funding

The Habematolel Pomo strongly supports the mission of the BIA Office of Justice Service (“OJS”) and the funding it receives from Congress to provide tribes with the training that they need. The Tribe received funding the OJS to host an intergovernmental jurisdictional training in our homelands. The training took place on February 6th and 7th, 2019, and received incredibly high marks from participants.

The training convened tribal, state, local, and federal governments and governmental agencies to foster better intergovernmental cooperation within our shared communities. The training had over 50 attendees on each of the two days, and participants included: tribal leaders and tribal court staff; tribal, local, and federal law enforcement; local and state court staff; local government staff; and staff from non-profit organizations. It was one of the most significant and most diverse intergovernmental trainings to ever take place in Lake County.

The training covered the following topics: Public Law 280 jurisdiction; the Violence Against Women Act; the Indian Child Welfare Act; tribal court funding streams; and the opioid crisis and marijuana laws. It was great to see the different governments and government agencies come together to learn how each of our jurisdictions interacts with and impacts the others. Many of the participants knew little about tribal sovereignty and the topics that were covered – especially the Indian Child Welfare Act and the Violence Against Women Act.

The Tribe appreciates Congress’ commitment to fund these training opportunities and the OJS for working so closely with the Tribe to make the training a success. We have seen a noticeable impact from the training, and our coordination with neighboring jurisdictions is very productive. We are consistently asked by the community and our neighbors about when we will host a follow-up training, which with the support of Congress and OJS, we hope to do later this year.

I strongly encourage the Subcommittee to consider maintaining and growing training and assistance funding in the upcoming budget. This funding helps tribes and their neighbors to learn more about one another and increases coordination and access to resources.

That concludes my testimony. I appreciate the opportunity to be here today, and I am happy to answer any questions from the Subcommittee.