

TESTIMONY OF GENE SMALL
PRESIDENT, NORTHERN CHEYENNE TRIBE
Before the HOUSE COMMITTEE ON APPROPRIATIONS Subcommittee on Interior,
Environment, and Related Agencies
February 25, 2025

Thank you for the opportunity to testify on behalf of the Northern Cheyenne Tribe in order to bring Congressional attention to the law and order crisis occurring on our Reservation and present specific solutions that Congress has the power to put into action. My testimony will be focused on law enforcement and detention services provided by the Bureau of Indian Affairs, Office of Justice Services (BIA-OJS). The Tribe seeks \$35 million for BIA to build a replacement adult detention center on our Reservation, and a substantial increase in BIA-OJS law enforcement services funding of at least 20%, especially for more staff. This funding will help the United States meet its specific treaty and statute-based fiduciary obligations to my Tribe regarding law enforcement. Our Tribe has the support of Montana state and local government officials on this pressing issue.

Below, I explain that BIA-OJS is grossly underfunded. Next, I describe how lack of resources leads to everyday terror and tragic consequences for the Northern Cheyenne people. I then explain how adequate funding could improve law and order in Indian Country and Northern Cheyenne specifically. I conclude by pointing out the measures my Tribe is taking to combat crime despite our very limited resources.

BIA-OJS Receives a Mere 13% of the Funding Needed to Provide Law Enforcement Services. At Least 20% More Funding Is Needed to Hire Sufficient Staff and Ensure BIA-OJS Has Adequate Facilities and Resources.

BIA-OJS states that its mission is to “uphold Tribal sovereignty and provide for the safety of Indian communities by ensuring the protection of life and property, enforcing laws, maintaining justice and order, and by ensuring that sentenced American Indian offenders are confined in safe, secure, and humane environments.” BIA-OJS’ jurisdiction covers major federal crimes such as murder, manslaughter, child sexual abuse, kidnapping, rape, assault, arson, burglary, robbery, and the production, sale or distribution of illegal drugs, as well as Tribal criminal laws.

BIA-OJS is falling woefully short of meeting its mission and is failing to protect Tribal communities from these crimes, especially at Northern Cheyenne. Lack of funding is a key reason. Also, BIA-OJS is not properly fulfilling its obligations due to mismanagement; we see this on our Reservation regularly. Today, I primarily focus on the lack of funding.

In BIA-OJS’ 2024 report to Congress on the status of its programs,¹ BIA-OJS reported that overall Indian country BIA-OJS is funded at less than 13% of total need and an additional 25,655 personnel are required to adequately serve Indian Country. BIA-OJS’ law enforcement programs include uniform police officers, who are generally responsible for patrolling designated service areas and responding to a wide range of calls for service, as well as criminal investigators and

¹ February 2024 BIA-OJS Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2021:
https://www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf

dispatch personnel. According to the report, the funding need for law enforcement programs across Indian Country is \$1.7 billion annually, but only \$256 million was provided in 2021 – just 15% of need. BIA-OJS also oversees, or directly operates, more than 90 detention centers throughout Indian Country. The funding need for detention programs across Indian Country is \$284 million annually, but only \$125 million was provided in 2021 – only 44% of need. Tribal courts are also a part of the criminal justice system funded by Congress through BIA-OJS. The funding need for tribal courts across Indian Country is \$1.5 billion annually, but only \$65 million was provided in 2021 – only 4% of need. The unmet staffing need for law and order in Indian Country was 25,655 fulltime employees, broken down as follows: 11,635 more law enforcement employees needed; 1,402 more corrections employees needed; and 12,618 more tribal court employees needed.

The Lack of Adequate Federal Funding Leads to Tragic Consequences, Including on the Northern Cheyenne Reservation.

The Northern Cheyenne Reservation. Our Reservation is about 700 square miles. Our resident population of about 5,000 is, on average, well below the poverty line and the unemployment rate is close to 50%. United States Highway 212 is a major trucking route that runs through the middle of our Reservation and contributes directly to the high incidence of a variety of serious crimes, including human trafficking, missing and murdered indigenous people, and manslaughter.

Failure to Provide Detention Services. Currently, there is no facility to house offenders within our large, crime-ridden Reservation. The longtime detention center on our Reservation, the Lame Deer Adult Detention Center (LDADC), was closed in 2019 by BIA. The nearest BIA-OJS contracted detention facility, the Rocky Mountain Regional Detention Center (RMRDC), is far from the Reservation – 60 miles from our Tribal capitol and primary population center of Lame Deer where BIA-OJS offices are. Within the Reservation is where BIA-OJS is legally obligated to provide the uniform police officers, detention, and related services to our Tribe. (The Tribe has not contracted for those services under the Indian Self-Determination Education Assistance Act, P.L. 92-638, because we do not want to take on such a poorly performing and underfunded program.)

Civil Rights Violations. In addition to being far from the Reservation, the RMRDC is also understaffed and operates at just 25% capacity (about 100 out of 400+ beds). The portion of the RMRDC that is operational is overcrowded. BIA-OJS police officers call the RMRDC to find out whether there is space to hold a detained suspect – and will ‘un-arrest’ a detained suspect if there are no beds available. Because there is not adequate space to house offenders locally or regionally, Northern Cheyenne Tribal members are incarcerated at a contracted jail in Oklahoma, more than 1,000 miles from the Reservation. Defense counsel cannot communicate with detainees in these facilities, in violation of their right to counsel. Also, those in Oklahoma are often held longer than their sentences because BIA-OJS only transports prisoners back to Montana intermittently. The cost to transport offenders between Montana and Oklahoma is a waste of federal resources.

Zero Rehabilitation Services. Despite the statutory requirement to provide inmates with rehabilitation services,² BIA-OJS provides none, claiming they are not funded by Congress.

² Indian Law Enforcement Reform Act, 25 U.S.C. § 2802.

Handful of Officers for Vast Reservation with Major Law Enforcement Needs. For many years, BIA-OJS budgeted at least 20 uniform police officers for our Reservation. After the Tribe sued BIA-OJS for failure to provide adequate services to our Reservation, we discovered that BIA-OJS reduced the budget to 12 officers. The police force has failed to be fully staffed at even 12 officers: at best two-thirds of the positions are filled at any given time. This is woefully inadequate, especially considering: (1) the size of our Reservation; (2) the crime rate on our Reservation; and (3) the 120-mile round trip distance and associated travel time to book offenders at the RMRDC.

8-Fold Increase in Violent Crime. The Tribe hired a Ph.D criminologist to independently assess detention needs. The expert found, based on federal statistics, that since BIA closed the LDADC in 2019, violent crime increased by an astonishing 800%. The expert concluded an 80-bed adult detention facility on Reservation is needed to support an adequate law enforcement program.

BIA-OJS Fails to Enforce Most Criminal Laws. BIA-OJS fails to enforce the law because of the small number of officers on duty, which can be as few as two officers. BIA-OJS officers only book offenders suspected of the most serious crimes because of insufficient space at the RMRDC. BIA-OJS officers frequently release suspects back out into the community. Often, those who are not arrested go on to commit more serious crimes.

Officer No-Shows Lead to Vigilantism. The Northern Cheyenne people have lost faith in BIA-OJS. When our members and local businesses are victimized and call 911, police officers either do not show up at all or arrive much too late. A few years ago, Tribal members independently established, without Tribal Council authorization, a citizen-run vigilante group called the “People’s Camp,” and members began contacting that group for help instead of BIA-OJS. BIA-OJS officers also regularly fail to attend Tribal Court hearings, even when subpoenaed, which undermines the function of our Tribal Court and our ability to prosecute criminals within our jurisdiction.

Terrible Impact on Everyday Life. Tragedy after tragedy befalls our people because BIA-OJS is not providing adequate law enforcement services. The failure to enforce and detain those who have committed lesser offenses exacerbates violent crime on our Reservation. For example, this fall an eight-year-old child was killed in the cross-fire of a drug-related incident. A few weeks earlier, BIA-OJS received a call for service at the same residence regarding discharge of a firearm, but failed to respond. If BIA-OJS had responded appropriately to the prior lesser offense, this gut-wrenching tragedy may not have occurred. Similarly, BIA-OJS failed to arrest an individual for intoxication and assault; that same individual was subsequently suspected in the death of his father.

Crime at Northern Cheyenne in National News. In 2023, CBS News published the “Missing Justice” podcast about the law enforcement situation at Northern Cheyenne, focusing on BIA-OJS’s bungling of the investigation of a tragic murder of a Northern Cheyenne woman, which led to an erroneous not-guilty verdict.³ In 2024, NBC News broadcast a story about the drug crisis at Northern Cheyenne and other Montana reservations, in which the U.S. Attorney and a former Montana head of U.S. Drug Enforcement Agency admitted that more resources are badly needed.⁴

³ www.cbsnews.com/missingjustice

⁴ <https://www.nbcnews.com/news/mexican-drug-cartels-are-targeting-americas-last-great-place-rcna130822>

Montana State and Local Officials Recognize This Shameful Situation and Support the Tribe's Need for More Federal Law Enforcement. The Tribe has met with Governor Gianforte, Attorney General Knudsen, Montana Highway Patrol, and Big Horn and Rosebud County officials – all stand with the Tribe on the pressing need for more law enforcement resources at Northern Cheyenne. In addition to collaborating with the Tribe, letters of support are in development.

Tangible Solutions to Save Lives: Funding for More Staff and a New Adult Jail ASAP.

To fulfill treaty and statutory obligations and address the law and order crisis at Northern Cheyenne, more uniform patrol officers and detention center capacity is badly needed. A 20% funding increase to BIA-OJS's Northern Cheyenne Agency is necessary to restore public safety at Northern Cheyenne. Because BIA-OJS has not been able to attract enough staff for the RMRDC, it operates at a quarter of its capacity. The BIA-OJS police force has been similarly understaffed for years. Funding to hire more officers and staff at competitive rates must be provided by Congress so BIA-OJS personnel can be successfully recruited, hired and retained.

According to the Tribally-commissioned independent assessment, a new 80-bed facility on our Reservation is vital to combating crime on our Reservation. In FY23, BIA-OJS found that the LDADC (not currently operational) was the #1 facility across Indian Country needing an assessment under BIA's Public Safety Construction Site Assessment and Capital Investment Program. BIA's assessment found that renovating or expanding the existing structure is not recommended because, even with repairs, the building would not meet space criteria for a detention center. BIA's assessment found that new construction is the most cost-effective option and calculated the cost to build a new facility at approximately \$33 million. Accordingly, and to account for inflation, Congress should appropriate \$35 million to BIA's Department of Facilities Management and Construction to build a new adult detention facility at Northern Cheyenne.

In addition to supporting law enforcement services, a new Northern Cheyenne detention facility would: (1) keep offenders detained; (2) allow officers to remain on active duty on the Reservation, eliminating the 120-mile round trip drive to book detainees at the RMRDC; (3) afford detainees more services at the Indian Health Services hospital, Tribal rehabilitation services, the Tribal Court and defense counsel, which are all nearby in Lame Deer; (4) eliminate transportation costs to out-of-state contract facilities; and (5) as a result, resolve ongoing civil rights violations. Finally, a new 80-bed Northern Cheyenne detention center would operate at full capacity because, as was previously demonstrated, an on-Reservation jail will be readily staffed locally by Tribal members.

The Tribe Has Invested in Trying to Combat the United States' Lack of Funding.

While it is the United States' legal obligation to protect our Reservation from crime, the Tribe continues to take actions to protect our people. We issue curfews, hire security crews, update our Law and Order Code, engage with state and local law enforcement, and demand that BIA-OJS fulfill its obligations in meetings, letters and lawsuits.

The Northern Cheyenne Tribe needs Congress' help to stop the law enforcement crisis on our Reservation. We implore you to act swiftly before more Northern Cheyenne lives are lost. Thank you for the opportunity to testify.