

Testimony of Michelle Demmert
Before the U.S. House of Representatives
Subcommittee on Border and Maritime Security of the Committee on Homeland Security
“Hidden in Plain Sight: Understanding Federal Efforts to Stop Human Trafficking”
September 26, 2018

Good morning, I am pleased to present testimony to the Subcommittee today on how human trafficking is impacting Native communities. My name is Michelle Demmert, and I am an enrolled citizen of the Central Council Tlingit and Haida Indian Tribes of Alaska, and I am the elected Chief Justice of our Supreme Court. I am also the co-chair of the National Congress of American Indians’ Task Force on Violence Against Women and the Alaska Native Women’s Resource Center Law and Policy Consultant.

Trafficking, in multiple forms, has been utilized as a tool of genocide and colonization of American Indians and Alaska Natives (AI/AN) within the United States since first contact with Europeans. Leading sex trafficking researcher and Native scholar, Dr. Sandi Pierce notes that it is no secret that “the selling of North America’s indigenous women and children for sexual purposes has been an ongoing practice since the colonial era. There is evidence that early British surveyors and settlers viewed Native women’s sexual and reproductive freedom as proof of their ‘innate’ impurity, and that many assumed the right to kidnap, rape, and prostitute Native women and girls without consequence.”¹ The intentional use of force, in both sexual and labor contexts, against AI/AN people is an act that seeks to degrade tribal sovereignty through an actual stealing away of our people or a utilization of them in unnatural ways.

Recently, there has been an increase in interest from Congress regarding human trafficking in tribal communities. The Government Accountability Office (GAO) released two reports on this topic in 2017.² On September 27th of last year, the Senate Committee on Indian Affairs held a hearing on “the GAO Reports on Human Trafficking of Native Americans in the United States.”³ Witnesses at that hearing included the GAO, the Bureau of Indian Affairs’ Office of Justice Services (BIA OJS), the Department of Justice’s Office of Tribal Justice, and the Executive Director of the Minnesota Indian Women’s Sexual Assault Coalition. I encourage you to review the testimony from that hearing to get a greater understanding of how the federal government attempts to address trafficking in tribal communities and statistics from a tribal perspective in an urban area.⁴

¹Sandi Pierce and Suzanne Koeplinger, *New language, old problem: Sex trafficking of American Indian women and children*, National Resource Center on Domestic Violence (2011), <https://vawnet.org/material/new-language-old-problem-sex-trafficking-american-indian-women-and-children>.

² U.S. Gov’t Accountability Office, GAO-17-325, *Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-funded Services* (2017); U.S. Gov’t Accountability Office, GAO-17-624, *Human Trafficking: Information on Cases in Indian Country or that Involved Native Americans* (2017).

³ *Oversight Hearing on “The GAO Reports on Human Trafficking of Native Americans in the United States”: Before the S. Comm. on Indian Affairs*, 115th Cong. (2017).

⁴Melissa Farley, Nicole Matthews, Sarah Deer, Guadalupe Lopez, Christine Stark & Eileen Hudon, *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*, available at <http://www.niwrc.org/resources/garden-truth-prostitution-and-trafficking-native-women-minnesota>.

Prevalence of trafficking on tribal lands

In the United States, as well as in Canada, “there is no data collection/tracking method that provides a complete picture of sexual exploitation or human trafficking.”⁵ The data that is available supports the conclusion that AI/AN women are trafficked at disproportionately high rates. Across four sites surveyed in the U.S. and Canada as part of a 2015 report, an average of **40 percent** of the women who had been trafficked identified as AI/AN or First Nations:

“In Hennepin County, Minnesota, roughly **25 percent** of the women arrested for prostitution identified as American Indian...In Anchorage, Alaska, **33 percent** of the women arrested for prostitution were Alaska Native...In Winnipeg, Manitoba, **50 percent** of adult sex workers were defined as Aboriginal...and **52 percent** of the women involved in the commercial sex trade in Vancouver, British Columbia were identified as First Nations.”⁶

It is important to note that in not one of these cities and counties do Native women represent more than 10 percent of the general population.

And while these data are only snapshots of sex trafficking in major cities, similar trends are emerging in more remote reservation communities. In 2015 alone, the White Earth DOVE Program (Down On Violence Everyday), which serves the White Earth, Red Lake, and Leech Lake Reservations in northwestern Minnesota, identified **17 adult victims** of sex trafficking.⁷ In northeastern Montana, the Montana Native Women’s Coalition reported that they have observed a **12 to 15 percent increase** over the previous year’s program base (between 2014-2015) regarding the number of Native women who have been trafficked.⁸

In my home state of Alaska, the FBI and the BIA have warned tribal leaders that traffickers were preying on Native women and would be targeting young women who traveled to Anchorage for the Alaska Federation of Natives conference.⁹ There has also been a great deal of discussion about the dangerous situation created for Native women by the oil boom in the Bakken region of North Dakota.¹⁰ “Specifically, the influx of well-paid male oil and gas workers, living in

⁵ Victoria Sweet, *Rising Waters, Rising Threats: The Human Trafficking of Indigenous Women in the Circumpolar Region of the United States and Canada* (2014), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2399074.

⁶ *Trafficking in Native Communities*, Indian Country Today, May 24, 2015, <https://newsmaven.io/indiancountrytoday/archive/trafficking-in-native-communities-JGKqWdmCQ0-6BCi-rN-X9w/>.

⁷ Amy Dalrymple and Katherine Lymn, *Native American populations ‘hugely at risk’ to sex trafficking*, Bismarck Tribune, Jan. 5, 2015, https://bismarcktribune.com/bakken/native-american-populations-hugely-at-risk-to-sex-trafficking/article_46511e48-92c5-11e4-b040-c7db843de94f.html.

⁸ *Human Trafficking Will Become One of the Top Three Crimes Against Native Women*, Indian Country Today, July 15, 2015, <http://indiancountrytodaymedianetwork.com/2015/07/15/human-trafficking-will-become-one-top-three-crimes-against-native-women-161083>.

⁹ ‘I can’t get my sister back:’ Investigators warn of sex traffickers targeting Natives,’ Anchorage Daily News, April 28, 2016, <https://www.adn.com/rural-alaska/article/i-can-t-get-my-sister-back-investigators-warn-sex-traffickers-targeting-natives/2010/12/03/>.

¹⁰ Kathleen Finn ET. AL., *Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation*, 40 *Harvard Journal of Law & Gender* 1, (2017) <http://harvardjlg.com/wp-content/uploads/2012/01/jlg-winter-3.pdf>.

temporary housing often referred to as ‘man camps,’ has coincided with a disturbing increase in sex trafficking of Native women.”¹¹

Human trafficking is a highly underreported crime for a variety of reasons, including the fact that “many trafficking victims do not identify themselves as victims. Some may suffer from fear, shame, and distrust of law enforcement. It is also not unusual for trafficking victims to develop traumatic bonds with their traffickers because of the manipulative nature of this crime.”¹²

Human trafficking also intersects with intimate partner violence in a way that can obscure the scope of the problem. According to the National Network to End Domestic Violence, “there is a marked overlap in the pattern of behaviors that both abusers and traffickers use to exert power and control over a victim. Intimate partner trafficking occurs when an abuser ‘[compels] their partner to engage in commercial sex, forced labor, or involuntary servitude.’ Alternatively, trafficked individuals sometimes live with their trafficker and are subjected to the physical violence, emotional manipulation, and overbearing control that are hallmarks of domestic violence.”¹³ Domestic and sexual violence are crimes that also disproportionately impact AI/AN women. The National Institute for Justice has found that 84% of AI/AN women will experience intimate partner violence, sexual violence, or stalking in their lifetime, and one in three have experienced it in the past year.¹⁴

Heightened Risk for American Indians and Alaska Natives

Traffickers prey on persons perceived to be vulnerable.¹⁵ AI/AN women and girls have many of the indicators that increase vulnerability, including being relatively young, from a high-poverty population, high rates of homelessness and substance abuse, exceptionally high rates of past violent victimization, and a lack of resources and support services.¹⁶ An FBI agent involved with prosecuting trafficking cases in Anchorage has said that Native women are also particularly vulnerable because “[t]here have been traffickers and pimps who specifically target Native girls

¹¹ *Id.*

¹² National Congress of American Indians, Policy Research Center, Human & Sex Trafficking: Trends and Responses across Indian Country (2016), available at <http://www.ncai.org/policy-research-center/research-data/prc-publications/TraffickingBrief.pdf>.

¹³ The National Network to End Domestic Violence, The Intersections of Domestic Violence and Human Trafficking, November 10, 2017, https://nnedv.org/latest_update/intersections-domestic-violence-human-trafficking/.

¹⁴ Department of Justice, Nat’l Inst. of Justice, Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey 26 (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

¹⁵ U.S. Department of Justice, Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, Fiscal Year 2015, <https://www.justice.gov/archives/page/file/870826/download>.

¹⁶ Statement of Tracey Toulou Director of Tribal Justice, U.S. Department of Justice, Before the S. Comm. on Indian Affairs, Sept. 27, 2017, https://www.indian.senate.gov/sites/default/files/upload/Tracy%20Toulou%20Testimony_0.pdf.

because they feel that they're versatile and they can post them (online) as Hawaiian, as Native, as Asian, as you name it."¹⁷

Compounding these demographic vulnerabilities is the lack of an effective law enforcement and criminal justice system in many places. Current federal law limits the authority of Indian nations to fully protect victims of crime and respond to crimes of trafficking that occur on their lands. Criminal jurisdiction in Indian country is divided among federal, tribal, and state governments, depending on the location of the crime, the type of crime, the race of the perpetrator, and the race of the victim. The rules of tribal jurisdiction were created over 200 years of Congressional legislation and Supreme Court decisions – and are often referred to as a “jurisdictional maze.”¹⁸

The complexity of the jurisdictional rules creates significant impediments to effective law enforcement in Indian country. Each criminal investigation involves a cumbersome procedure to establish who has jurisdiction over the case according to the nature of the offense committed, the identity of the offender, the identity of the victim, and the exact legal status of the land where the crime took place. The first law enforcement officials called to the scene are often tribal police or BIA officers, and these officers may initiate investigations and/or detain a suspect. Then a decision has to be made—based on the race of the individuals involved in the crime, the type of crime committed, and the legal status of the land where the crime occurred—whether the crime is of the type warranting involvement by the FBI or state law enforcement.

Often times answering these questions can be very difficult. Each of the three sovereigns has less than full jurisdiction, and the consequent need for multiple rounds of investigation often leads to a failure to act. Overall, law enforcement in Indian country requires a degree of cooperation and mutual reliance between federal, tribal, and state law enforcement that—while theoretically possible—has proven difficult to sustain. As described by Theresa Pouley, former Chief Judge at the Tulalip Tribes of Washington, “The combination of the silence that comes from victims who live in fear and a lack of accountability by outside jurisdictions to prosecute that crime, you’ve created if you will, the perfect storm...which is exactly what all of the statistics would bear out.”¹⁹

For over three decades before amendments included in the reauthorization of the Violence Against Women Act in 2013 (VAWA 2013), tribes did not have jurisdiction over *any* crimes committed by non-Indians on their reservations.²⁰ In 1978, the Supreme Court ruled in *Oliphant v. Suquamish* that, absent specific direction from Congress, tribal nations do not have jurisdiction over crimes committed by non-Indians in Indian country.²¹ Congress recognized the impacts of this ruling. According to the Senate Committee on Indian Affairs’ Report on this issue, “Criminals tend to see Indian reservations and Alaska Native villages as places they have free

¹⁷ ‘I can’t get my sister back:’ Investigators warn of sex traffickers targeting Natives,’ Anchorage Daily News, April 28, 2016, <https://www.adn.com/rural-alaska/article/i-can-t-get-my-sister-back-investigators-warn-sex-traffickers-targeting-natives/2010/12/03/>.

¹⁸ See Robert N. Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 ARIZ. L. REV. 503, 508-13 (1976).

¹⁹ *Tribal Justice: Prosecuting non-Natives for sexual assault on reservations*, PBS NEWS HOUR (Sept. 5, 2015), <https://www.pbs.org/newshour/show/tribal-justice-prosecuting-non-natives-sexual-assault-indian-reservations>.

²⁰ See, e.g., Angela R. Riley, *Crime and Governance in Indian country*, 63 UCLA L. REV. 1564, 1567 (2016) (discussing the history of criminal justice in Indian country, the resulting “jurisdictional maze,” and the impacts of this maze on Native women).

²¹ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

reign, where they can hide behind the current ineffectiveness of the judicial system. Without the authority to prosecute crimes of violence against women, a cycle of violence is perpetuated that allows, and even encourages, criminals to act with impunity in Tribal communities and denies Native women equality under the law by treating them differently than other women in the United States.”²² Numerous researchers and policy commissions have concluded for decades that jurisdictional complexities in Indian country were a part of the problem. And again, Alaska has a uniquely complex jurisdictional arrangement and no solution has yet been legislated.²³ As the Ninth Circuit summarized in a 1994 report, “Jurisdictional complexities, geographic isolation, and institutional resistance impede effective protection of women subjected to violence within Indian country.”²⁴ Unfortunately, the amendments included in VAWA 2013 that created a framework for some tribes to exercise jurisdiction over domestic violence crimes are limited in scope and do not reach sex trafficking crimes. In the trafficking cases that involve a non-Native trafficker—likely the majority of them—all the tribal court can do is banish the trafficker from the reservation or issue a civil protection order.

The United States Department of Justice has testified to Congress that jurisdictional complexity has made the investigation and prosecution of criminal conduct in Indian country very difficult and that some violent crimes convictions are thrown into doubt, recommending that the energy and resources spent on the jurisdictional questions would be better spent on providing tangible public safety benefits.²⁵ The Indian Law and Order Commission, a bi-partisan commission created by the Tribal Law & Order Act of 2010, concluded that “criminal jurisdiction in Indian country is an indefensible morass of complex, conflicting, and illogical commands.”²⁶ These challenges are not unique to trafficking cases, but they undoubtedly complicate the justice response and make reservations an attractive target for traffickers. Native women as a population are often viewed as unprotected prey and the pleas of victims and their families for help go unheard. One mother in Alaska, reported:

“[m]y daughter was and still is a victim of sex trafficked women. I reported it to the authorities and received no help. I told them the address, location, and names of her traffickers. The Anchorage Police Department would not listen to me until I got my two white friends to make a call for me. I contacted Priceless Alaska but they would not help me unless a State Trooper investigates and makes a referral to their organization. No one would help me. I also called the FBI, three times, and they did not respond. Through, my two white friends, I reported her missing. My daughter was held, by traffickers, at Eagle River, Alaska, for 4 months.”

—Martina Post, Testimony of the Native Village of Alakanuk, USDOJ Tribal Consultation, December 6, 2016

²² S. Rep. No. 112-265, at 7 (2012).

²³ INDIAN LAW & ORDER COMM’N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER, (2013).

²⁴ John C. Coughenour et al., *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 745, 906 (1994).

²⁵ Testimony of The Honorable Thomas B. Heffelfinger, U. S. Attorney, Minneapolis, Minneapolis, Oversight Hearing before the Senate Committee on Indian Affairs on Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the United States Supreme Court, July 11 2002

²⁶ INDIAN LAW & ORDER COMM’N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER, (2013).

In Alaska, 28 percent of the youth at Covenant House Alaska were survivors of human trafficking and Alaska experiences the most heinous cases of sex trafficking in the nation. Dr. Laura Murphy of Loyola University’s Modern Slavery Research Project, researched and reported that among all the Covenant House sites across the country, Alaska had the most brutal cases of sex trafficking – worse than the big, crime-filled cities of Los Angeles, Detroit, New Orleans and even New York.²⁷

Federal Response

Investigating and prosecuting trafficking crimes in tribal communities is largely the responsibility of the federal government, although in some cases the tribal or state government will have concurrent jurisdiction. According to the GAO, there are four federal agencies that investigate or prosecute human trafficking in Indian country—the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Attorneys’ Offices (USAOs).²⁸ GAO reports that the BIA, FBI, and USAOs record whether a trafficking case occurred in Indian country in their case systems, but ICE does not. None of the federal agencies track whether the victim is Native American or not.²⁹ In its recent report, the GAO found that from 2013–2016, there were only 14 federal investigations, and two federal prosecutions of human trafficking offenses in Indian country.³⁰ Given what we know about the prevalence of trafficking in tribal communities and the responsibility of the federal government to investigate and prosecute these crimes, this is extremely concerning.

The GAO released a second report in July 2017 examining the extent to which local law enforcement agencies or tribal governments were filling the void left by federal law enforcement agencies investigating and prosecuting trafficking cases. The GAO surveyed 203 tribal law enforcement agencies and 86 major city law enforcement agencies. Of the 132 tribal law enforcement agencies who responded, 27 of them reported that they initiated human trafficking investigations between 2014–2016, for a total of 70 investigations involving 58 victims. The GAO asked tribal law enforcement agencies about the number of human trafficking investigations they conducted in Indian country. The question posed to major city law enforcement agencies differed, however. They were asked about the number of human trafficking investigations that involved at least one Native American victim. Only six of the major city law enforcement agencies reported human trafficking cases with at least one Native American victim. Those six reported a total of 60 investigations involving 81 Native American victims from 2014–2016. The Minneapolis Police Department reported 49 of the 60 total investigations. GAO reported that the Minneapolis Police “made a concerted effort, starting in

²⁷Murphy, L.T., (2017) Labor and Sex Trafficking Among Homeless Youth, 12.

²⁸ Government Accountability Office. (2017). Human Trafficking Investigations in Indian Country or Involving Native Americans and Actions Needed to Better Report on Victims Served. (GAO Publication No. 17-762T). Washington, D.C.: U.S. Government Printing Office.

²⁹ Id. at 14.

³⁰ Id. at 6.

2012, to meet with tribal elders and service providers who worked with the Native American population to demonstrate their willingness to investigate human trafficking crimes. The officials stated that, following those meetings, the number of human trafficking crimes involving Native American victims that were reported to the department increased.”³¹

GAO reported that tribal law enforcement agencies believe that human trafficking is occurring at a higher rate than is being reported. Unsurprisingly, when tribal law enforcement were asked to identify factors that hampered their ability to hold traffickers accountable, several themes emerged: 1) victims are unwilling to cooperate; 2) lack of resources, such as necessary training, equipment and funding for sex crime investigations; 3) inter-agency cooperation is absent or deficient; and 4) a lack of appropriate laws in place

Conclusion

While human trafficking impacts every community, there is a growing awareness and concern that Native women and girls are particularly vulnerable and are victims of sex trafficking at an alarming rate. There is a particular concern about the relationship between both intimate partner violence and the extractive industries and sex trafficking. It is important that Congress take action to hold federal officials accountable for their failure to adequately investigate and prosecute trafficking crimes in tribal communities, while also ensuring that tribal governments have the resources and authority that they need to address these issues. There are several bills currently pending before Congress that would help achieve these goals.

- H.R. 6545, the Violence Against Women Reauthorization Act of 2018, would amend 25 U.S.C. 1304 to make clear that tribal courts can hold anyone who traffics American Indians or Alaska Natives in Indian Country accountable for their crimes.
- H.R. 4608, the SURVIVE Act, would amend the Victims of Crime Act to ensure that tribal governments receive a portion of the annual disbursements from the Crime Victims Fund in order to provide services and compensation to trafficking and other crime victims in tribal communities.
- S. 3280, The End Trafficking of Native Americans Act, would establish a joint Department of Justice and Interior Advisory Committee to improve coordination in efforts to address trafficking of Indians and on Indian lands.

Taken together, these three bills would significantly improve access to justice and services for American Indian and Alaska Native trafficking victims. I urge you to support these bills. Thank you for the opportunity to testify today. Gunalchéesh.

³¹ *Id.* at 10.