

Questions for the Record
John C. Anderson
United States Attorney, District of New Mexico
U.S. Department of Justice
“Reviewing the Trump Administration’s Approach to the MMIW Crisis”
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Subcommittee for Indigenous Peoples of the United States
U.S. House of Representatives
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Questions from Rep. Gallego

- 1. How will the long-term plan of U.S. Attorneys presenting at conferences address the on-the-ground efforts of the Missing and Murdered Indigenous Women (MMIW) movement?**

Response:

We do not believe that there is anything in the written or oral testimony that suggests a long-term plan of U. S. Attorneys presenting at conferences.

Initially, it is very important to separate cases of missing persons from murder investigations. Not all people who go missing are murdered, and not all murder investigations originate with a missing person report. U.S. Attorneys’ Offices (USAOs) are very active in prosecuting murder cases on a daily basis. There are currently murder investigation protocols and policies in place for federal law enforcement on addressing murders in Indian country. If a murder takes place outside of Indian country, it is typically handled by state authorities.

National meetings, such as the Native American Issues Subcommittee (NAIS) meeting, allow for U. S. Attorneys across the United States to share information, experiences and best practices to better understand and address significant issues in Indian Country, such as murdered or missing indigenous persons (MMIP). The Department of Justice (DOJ), including U.S. Attorneys, use conferences and meetings with tribal, state, and local partners as an opportunity to gain a better understanding of the unique issues each entity is facing and to learn how best to collaborate together to effectively combat issues such as MMIP. Furthermore, conferences offer an opportunity to provide training to our various partners on related issues. In addition to national conferences, local meetings allow for real world solutions specific to local communities to be developed by federal, state, and tribal partners that are aimed at addressing on-ground efforts in those jurisdictions.

In November, the President signed an Executive Order launching an interagency effort to address missing and murdered indigenous persons, co-chaired by the Attorney General. Pursuant to that effort, the Department has also launched our own national strategy to address missing and murdered Indigenous Persons, and as part of that initiative, the Department is investing an initial \$1.5 million to hire 11 MMIP coordinators in 11 states to serve with all U.S. Attorney’s offices in those states, and others who request assistance. The states are Alaska, Arizona, Montana,

Oklahoma, Michigan, Utah, Nevada, Minnesota, Oregon, New Mexico, and Washington State. MMIP coordinators will work closely with federal, tribal, state and local agencies to develop common protocols and procedure for responding to reports of missing or murdered indigenous people. The first MMIP coordinator is already on board in Montana.

2. In your testimony, you mentioned that the Native American Issues Subcommittee met with the Federal Bureau of Investigation (FBI) to discuss MMIW cases,

a. What protocols did you discuss (i.e. jurisdictional, investigative, etc.)?

Response:

The NAIS met with Federal Bureau of Investigation (FBI) and the Bureau of Indian Affairs (BIA) at the NAIS meeting in August 2019 and discussed various topics, including MMIP. The purpose of the discussion was to examine the data currently available and to obtain perspective on the scope of the MMIP issue. The protocols included in the current version of the Savanna's Act proposed legislation were identified, and the FBI identified its protocols for Child Abduction Response Teams.

b. Will the information and notes gathered for the meetings become public?

Response:

Discussions involving law enforcement sensitive information are generally not public. These discussions often include private and confidential information sharing regarding cases, victims, law enforcement investigative strategies, and bad act information. There is nothing from the single NAIS meeting that was provided by USAs that will be made public. Other participants, such as the FBI and BIA would have to be consulted regarding whether any information they provided can be made public.

c. Will there be a final report or promising strategies based on this intergovernmental agency interaction?

Response:

There will not be a final report issued regarding the NAIS meeting. Intergovernmental agency interactions are imperative to better understand the full scope of MMIP issues and determine how best to address them. The Department anticipates continuing these intergovernmental discussions with a primary purpose of improving responses to MMIP issues.

Questions from Rep. Grijalva

3. Annually, how many of the FBI-referred MMIW cases are prosecutable?

Response:

Again, it is important to separate cases of missing persons from murder investigations. Traditionally, murders that occur in Indian country are investigated by the FBI or BIA. When evidence of a crime is present, these cases are referred to a USAO for a determination of whether the matter is ripe for prosecution. Accidental deaths or matters where there is no evidence of a crime are either administratively closed by the lead federal law enforcement agency or are declined for prosecution by a USAO. It is important to note that the federal government does not have jurisdiction over murders that occur outside of Indian country.

Most missing persons cases do not become criminal investigations because the missing person is found alive and unharmed. Only murder cases within the jurisdiction of the federal government are investigated by federal law enforcement, such as the FBI or BIA. In Fiscal Year 2019, the majority (89 cases filed out of 134 total referrals or 66.5 %) of criminal investigations involving murders¹ in Indian country that were referred to the USAO were prosecuted. Of those 134 referrals, the FBI referred 111 murder cases to USAOs, which resulted in 74 cases being filed. The BIA referred 15 cases, resulting in 7 cases filed. The primary reason for a matter being declined was insufficient evidence, which accounted for 62% (28 of the 45) of declined murder referrals. The remaining declinations were declined because: (1) the USAO was legally barred from filing charges (12% or 5 out of 45 declinations); (2) the defendant was not available (4% or 2 out of 45 declinations); (3) prioritization of federal resources or interests (4% or 2 out of 45 declinations); (4) or the matters were referred to another jurisdiction for prosecution (18% or 8 out of 45 declinations).

We do not have statistics that show the number of cases in which a person first went missing and then later was discovered to be the victim of a crime.

4. In your testimony, you mentioned that you attended a tribal consultation in New Buffalo, Michigan.

a. What will you do with this information?

Response:

U.S. Attorneys were present to listen to the comments and concerns of our tribal partners to gain a better understanding of the issues and needs of tribal communities that had representatives in attendance. It is important to note that the Office on Violence Against Women (OVW), which hosts this annual tribal consultation on violence against American Indian and Alaska Native women, compiles a summary report of recommendations from the consultation. These recommendations will inform OVW's – and the Department's – work administering tribal grant programs and responding to sexual assault, domestic violence, dating violence, stalking, and sex trafficking in tribal communities. Each year, prior to a consultation, OVW provides tribal leaders with an "update report" that reflects the Department's efforts to respond to tribal

¹ For the purposes of this response, murder has been defined to include the following statutes: 18 U.S.C. §§ 1111, 1112, 1117, 924(j), and 06S:6-2-107; See Appendix B in the 2017 ICIP Report at https://www.justice.gov/tribal/page/file/1113091/d_1401_17th_St_NW,_Washington,_DC_20036ownload

recommendations over the course of the previous year. In addition, this year, the day before the OVW consultation was held in New Buffalo, the Office for Victims of Crime (OVC) hosted a one-day consultation attended by more than 120 tribal representatives. Nearly \$300 million has been collectively available the past two year for OVC to award to tribal communities to provide a wide variety of crime victims' services, including assistance to families of murder victims. The comments provided at this consultation are also being compiled, and OVC staff continues to work to address the concerns and suggestions that were offered.

b. Is the information publicly available?

Response:

Each year, after OVW has received oral testimony at the consultation itself and reviewed written submissions, OVW shares a summary report on the consultation with tribal leaders and posts the report on its website. A complete copy of a transcript of the proceedings is available to the public upon request. We anticipate the report from the August 2019 consultation will be available in early 2020. The report from the 2018 consultation is available here: <https://www.justice.gov/tribal/page/file/1161726/download>. The 2019 Update on the Status of Tribal Consultation Recommendations is available here: <https://www.justice.gov/ovw/tribal-consultation#2018>.

c. Will you provide any other information developed from tribal consultations to the Committee?

Response:

USAOs hold annual tribal consultations with the Tribes in their respective districts. These consultations are usually in the form of a free-flowing exchange of information on a wide variety of public safety issues. The information gained from the consultations is used at the district level to identify tribal public safety priorities and to develop and explain law enforcement actions, processes and initiatives. On the national level, this information is not collected in aggregate and cannot be provided. Information developed from tribal consultations by other components would be better addressed by each component. The Department can provide the Committee with OVW's summary report for the 2019 consultation when it is completed. Older summary and update reports are available on OVW's Tribal Consultation webpage at <https://www.justice.gov/ovw/tribal-consultation>.

Questions from Rep. Haaland

- 5. The Bridging Agency Data Gaps & Ensuring Safety (BADGES) Act addresses the gaps in national MMIW data by requiring BIA direct-service officers and FBI agents with jurisdiction in Indian Country to report missing persons cases to the NamUs database.**

- a. Considering that the FBI and BIA work collaboratively to process crime scenes and collect evidence, why do you believe that MMIP data collection remains a problem?**

Response:

From a legal perspective, reports of missing persons and murder cases are two separate issues that require different law enforcement responses. Because it is not a crime to go missing, data related to missing persons do not intersect with data about criminal activity unless an actual crime occurs, such as a murder. Under the current systems, “MMIW data” generally requires extraction and analysis from separate data repositories. FBI and BIA typically work collaboratively in murder investigations. However, FBI does not generally have jurisdiction over a missing persons case. FBI involvement would be initiated when called in by Tribal, BIA, or local law enforcement. Any related data would be generated by the agency that initially responds to the missing persons report, (*i.e.*, the Tribal, BIA or local law enforcement). Except for missing persons under the age of 21, entry of missing person data is not mandatory under federal law for State, Tribal and local law enforcement agencies; each state may have their own legislation that makes entry of some missing persons cases mandatory. As such, not all missing person data may be entered in a timely manner.

More specifically, Section 101 would amend 34 U.S.C. § 20961 (a) by adding provisions that authorize persons using the National Missing and Unidentified Persons System (NamUs) to access “national crime information databases.” This term is defined at 28 U.S.C. § 534 (f)(3)(A) as “the National Crime Information Center (NCIC) and its incorporated criminal history databases, including the Interstate Identification Index (III)” We believe, however, that access to the full complement of records and information residing in NCIC and the III is unnecessarily broad for the National Institute of Justice (NIJ) to carry out the purposes of the NamUs System. As a result, the CJIS Division recommends any access by the NIJ to national crime information databases should be limited to NCIC’s Missing Person and Unidentified Person Files since NCIC is the FBI’s relevant database for information on missing and unidentified persons.

The language of Subsection (a)(3) includes the phrase “assisting or supporting” law enforcement, but does not define it. It should be said that prior experience with agency activities, at all levels of government, that involve assisting or supporting law enforcement operations usually do not meet the requirements of the administration of criminal justice. In view of this, access to the NCIC Missing Person and Unidentified Person Files, through NamUs, should be limited to only the detection of criminal conduct relating to missing and unidentified person cases.

- b. Where can these two departments improve their coordination adequately collect the evidence and data relating to these crimes?**

Response:

We believe the BIA and FBI work well together on homicide cases, and we are working closely with our colleagues to better understand how data on reports of missing or murdered persons are collected, how often those numbers are updated, and what protocols are required to resolve reported cases. We have begun a targeted effort to educate Federal prosecutors and law enforcement, with an ultimate goal of establishing improved and more standardized protocols for data collection, reporting, and case management. As we take steps to improve our response to cases of missing or murdered Indigenous people, the combined Federal team will reach out to our Tribal, State and local partners to ensure that the improved practices and protocols reflect input from all of the agencies that contribute to cases of missing or murdered persons.

As the FBI is rarely a first responder, the onus to collect/enter data falls to the initial responder, like BIA, Tribal, or local police. It is incumbent on local and Tribal law enforcement to notify the FBI and/or BIA in a timely manner when a potential victim goes missing under suspicious circumstances or is murdered. However, some agencies have mandatory waiting periods (*e.g.*, 48 hours) before the missing person is eligible to be entered into NCIC. It is also the responsibility of the agency entering the person into NCIC to remove or cancel the entry.

The FBI Criminal Investigative Division (CID) would like to emphasize that conducting an investigation and collecting evidence are separate from, and not correlated to, data entry. When the FBI conducts an investigation and collects evidence, there is a reasonable belief that a crime has been committed, but going missing is not a crime.

6. The Office for Victims of Crime (OVC) fund application process is lengthy and has several phases. Many tribes do not have the administrative staff available to apply for these grants, although these critical resources for Indigenous victims are greatly needed.

c. Has your agency looked critically at this process? If so, does DOJ plan to simplify the application process or to provide additional administrative assistance for tribal applicants?

Response:

OVC continues to assess the current application process with the goal of simplifying it as much as possible, while still gathering the necessary data to determine an applicant's needs; the allowability of their request (considering statutory guidelines); their ability to fulfill the program being proposed; the applicant's financial capability; and risk level. The two-phase grant application process used in FY 2018 for the Tribal Victim Services Set-Aside was a unique, one-time occurrence the Department developed under the time constraints that year. In March 2018, Congress enacted the FY 2018 budget, which included a \$133 million set-aside for tribes from the Crime Victims Fund.

While it was not possible to host an in-person tribal consultation prior to developing and implementing a program to disseminate the FY 2018 set-aside funds, the Department did host

three telephone consultations during 2018 with tribal leaders, victim advocates, and other interested parties, and considered feedback received at earlier consultations and listening sessions. Further, OJP created the broadest program possible, allowing for a wide variety of victim services to be funded, to be responsive to the needs of tribal communities.

In Phase 1, the tribal applicant's narratives were 4 to 8 pages in length (compared to the typical 20+ pages) and the Phase 1 budget proposals included 9 line items (as opposed to the more complicated spreadsheets usually required). As a result of extensive outreach efforts in FY 2018, OVC received 196 applications for this program.

Originally, in FY 2019, OVC decided to place its tribal programs for victim services within the CTAS program. However, once the FY 2019 budget was enacted to include a \$167 million set-aside for tribal victim services, OVC decided to expand programming options and offer additional solicitations to tribes.

DOJ hosted an in-person tribal consultation in May 2019 to hear from tribal leaders and representatives, and OJP hosted various pre-application webinars throughout FY 2019, to assist potential applicants with budget development and grant-writing. Additionally, OJP sponsored two in-person grant-writing workshops in the Lower 48 and Alaska to aid previously unsuccessful applicants. OVC also engaged in additional outreach activities to inform potential applicants about the tribal set-aside funds for victim services. These webinars were quickly archived on the OVC website and are available for anyone to access at any time.

Further, OVC is committed to providing vital programmatic training and technical assistance, as well as tribal financial management assistance, to grantees and other tribal entities that wish to apply for funding in the future. OVC currently supports three organizations that provide substantive, subject-matter training and technical assistance and financial grants management assistance, so that all applicants/grantees have the resources and infrastructure needed to establish and/or sustain successful victim services programs.

To prepare for future tribal set-aside funding, in August 2019, OVC hosted a tribal consultation in Michigan to solicit feedback from tribal leaders and representatives, and OVC continues to gather additional guidance. The Department of Justice remains committed to improving services for victims of crime in Native communities, and creating grant programs that are not overly burdensome.